

# The Corporation of the Town of Tecumseh

## By-Law Number 2023-020

Being a by-law to authorize the execution of an Agreement between the Corporation of the Town of Tecumseh and Stantec Consulting Inc for Engineering Services for the PJ Cecile Pump Station Replacement Project

**Whereas** Stantec Consulting Inc was awarded the tender for Engineering Services to complete the detail design, tender package and construction services for the PJ Cecile Pump Station Replacement Project (Project);

**And whereas** The Corporation of the Town of Tecumseh is desirous of entering into an Agreement with Stantec Consulting Inc for Engineering Services on the Project;

**And whereas** under Section 5 of the *Municipal Act 2001, S.O. 2001 c. M. 25* the powers of a municipality shall be exercised by its Council by by-law.

**Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:**

1. **That** the Mayor and the Clerk be authorized and empowered on behalf of The Corporation of the Town of Tecumseh, to execute an Agreement Between The Corporation of the Town of Tecumseh and Stantec Consulting Inc. dated 14<sup>th</sup> day of February 2023, and to do such further and other acts which may be necessary to implement the said Agreement.
2. **Read** a first, second, third time and finally passed this 14th day of February, 2023.

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Gary McNamara, Mayor

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Robert Auger, Clerk

# **CONSULTING AGREEMENT**

Between:

**The Corporation of the Town of Tecumseh**

-and-

**Stantec Consulting Ltd.**

**PREPARED BY:**

**WOLF HOOKER PROFESSIONAL CORPORATION**

Barristers & Solicitors  
72 Talbot Street North, Suite 100  
Essex, Ontario  
N8M 1A2

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**CONSULTING AGREEMENT**

***THIS AGREEMENT*** made in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**B E T W E E N:**

***THE CORPORATION OF THE TOWN OF TECUMSEH,***  
hereinafter called the "**Municipality**" or "**Town**"

**OF THE FIRST PART**

-and-

**STANTEC CONSULTING LTD.**  
hereinafter called the "**Consultant**"

**OF THE SECOND PART**

**HEREINAFTER** collectively referred to as the "Parties"

***RECITALS***

**WHEREAS** the Town intends to retain the Consulting Services of qualified professionals to complete the detailed design, tender package, and construction services for the PJ Cecile Pump Station Replacement Project.

**AND WHEREAS** the Town issued a Request for Proposal on November 18, 2022 respecting PJ Cecile Pump Station Replacement Project;

**AND WHEREAS** the Consultant responded to the RFP and has agreed to provide the Professional Services subject to the following terms, standards, requirements and conditions;

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

# ***ARTICLE 1***

## ***DEFINITIONS***

### **1.1 DEFINITIONS**

The following terms and expressions when used in this Agreement and the Schedules attached hereto and any amendments to this Agreement and such Schedules shall have the following meanings:

**Additional Services** shall mean those additional services not identified originally in the RFP or Proposal Submission but which the parties subsequently agree in writing shall be provided by the Consultant to the Town;

**Agreement** shall mean this Agreement and any amendment thereto;

**Business Day** shall mean any day, other than a Saturday, Sunday or any other day on which the principal-chartered banks located in the Town are not open for business during normal banking hours;

**DMAF Contract** shall mean the Disaster Mitigation and Adaption Fund, as outlined in the RFP;

**Force Majeure** shall mean the acts beyond the reasonable control of the party and as described in Article 2.12 of this agreement.

**Phase** shall mean each separate category of work outlined in the RFP, section 7.1, Table's 2, 3 & 4;

**Project** shall mean PJ Cecile Pump Station Replacement Project as outlined in the RFP;

**Proposal Submission** shall mean the Consultant's Project submission responding to the RFP, a copy of which is on file at the Town offices;

**RFP** shall mean the Request for Proposals referred to in the recitals above a copy of which is attached hereto as Schedule A;

**Schedules** shall mean the schedules attached hereto and forming part of this Agreement;

**Services** shall mean those Services to be delivered or performed by the Consultant under the agreement, and without limiting the foregoing as more particularly described in Article 3 and Additional Services as applicable.

## ***ARTICLE 2***

### ***GENERAL CONDITIONS***

#### **2.1 RETAINER**

The Town hereby retains the Consultant in connection with the Project and the Consultant agrees to provide the Services described in Article 3 (Services to be provided) for the Project under the general direction and control of the Town.

#### **2.2 COMPENSATION**

The Town shall pay the Consultant in accordance with the provisions set forth in Article 4. For purposes of this agreement, the basis of payment shall be as specified in Article 4.2.

#### **2.3 STAFF AND METHODS**

The Consultant shall perform the Services under this agreement with the degree of care, skill and diligence normally provided in the performance of such Services as contemplated by the agreement at the time such Services are rendered and as required by the Consultant's governing professional body (e.g. Professional Engineers Ontario, Ontario, Association of Architects, Association of Ontario Land Surveyors, etc...) and otherwise in accordance with the best practices established by professional associations (e.g. the Municipal Engineers Association, the Association of Consulting Engineering Companies, etc...) and the code(s) of ethics, provincial and/or national standards, laws and regulations applicable to such profession (e.g. Professional Engineers Act, etc...) and the laws of general application (e.g. the Workplace Safety and Insurance Act and the Occupational Health and Safety Act, etc...). The Consultant shall employ only competent staff who will be under the supervision of a senior member of the Consultant's staff. The Consultant shall obtain the prior agreement of the Town before making any changes to the staff list after commencement of the Project.

#### **2.4 DRAWINGS AND DOCUMENTS**

Drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant for the Town may be used by the Town, for the Project herein described, including "record" drawings and the Town has ownership of any such drawings. To the extent called for in the RFP, the Consultant shall cooperate, assist and collaborate with any other Consultant or third party to incorporate these drawings and documents into any larger or comparable document package applicable to the overall Project.

## **2.5 INTELLECTUAL PROPERTY**

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 their Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Town.

The Town shall retain all intellectual property rights to the product.

## **2.6 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 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.
- d) The Consultant shall keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements, receipts, vouchers, and all non-financial records in respect of the Project for at least six (6) years after the DMAF Agreement End Date which is March 31, 2034, in addition to all necessary records to substantiate
  - i) all charges and payments under the Agreement and
  - ii) that all deliverables were provided in accordance with the Agreement.
- e) In a manner set forth in section 11.4 of the RFP, Canada, the Auditor General of Canada, and their representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of the overall DMAF Contract, and by extension this contract, and any records and accounts respecting the Project for the purpose of audit.

## **2.7 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 Services delete, extend, increase, vary or otherwise alter the Services forming the subject of the Agreement, and if such action by the Town necessitates additional staff or Services, the Consultant shall be paid in accordance with Section 4.2 for such additional Services and staff employed directly thereon, together with such expenses and disbursements as otherwise agreed in writing between the parties.

**2.8 DELAYS**

In the event that the start of the project is delayed for one hundred and eighty (180) days or more for reasons beyond the control of the Consultant, the Consultant shall have the option to terminate the Agreement, if such option is exercised in writing within thirty days failing which the timing for if any, is extended for the period of delay.

**2.9 SUSPENSION OR TERMINATION**

The Town may at any time by notice in writing 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. In such an event, the Consultant shall be entitled to payment for the Services rendered and disbursements incurred by the Consultant to the date of such suspension/termination in the manner and extent otherwise contemplated by section 4.2.

If the Consultant is an individual and should die before their Services have been completed, this Agreement shall terminate as of the date of their death, and the Town shall pay for the Services rendered and disbursements incurred by the Consultant to the date of such termination in the manner and extent otherwise contemplated by section 4.2.

**2.10 INDEMNIFICATION**

In the manner set forth in Article 9 of the RFP and without limiting the extent of scope of indemnification set out thereto, the Consultant shall indemnify and save harmless the Town and its elected officials, officers, employees and agents from and against all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever which the Town, its employees, officers or agents may suffer.

The Town further covenants and agrees that it will at all times indemnify and save harmless the Consultant, its officers, servants and agents, from and against all loss or damage, and from and against all actions, suits, claims and demands whatsoever which may be made or brought against the Consultant, its officers, servants and agents by reason or in consequence of the execution and performance of this agreement by the Town or the negligent acts and omissions of its servants, agents or employees.

**2.11 INSURANCE**

The Consultant shall obtain, maintain, and provide evidence thereof to the Town appropriate insurance coverage in respect of the Services as more particularly detailed in Article 9 of the RFP.

**2.12 FORCE MAJEURE**

Neither party shall be responsible to the other for damages arising directly or indirectly from any delays for causes beyond such party's control. For purposes of this Agreement, such causes include, but are not limited to, general strikes or other labour disputes (but not including loss or departure of individual staff); epidemic, quarantine, pandemic (including the COVID-19 pandemic), emergency protection legislation, regulations and orders, severe weather disruptions or other natural disasters or acts of God; fires; riots, war or other emergencies; failure of performance by the other party; or discovery of any hazardous substances or differing site conditions.

**2.13 CONTRACTING FOR CONSTRUCTION**

The Consultant or any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall not tender for the construction of the Project or have an interest either directly or indirectly in the construction of the Project.

**2.14 ASSIGNMENT**

Neither party may assign this Agreement or any portion thereof without the prior consent in writing of the other party.

**2.15 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 provided that the Schedules attached hereto and to the extent referenced herein, the information detailed in the Proposal Submission, are incorporated and remain part of this Agreement.

**2.16 APPROVAL BY OTHER AUTHORITIES**

Unless otherwise provided in this Agreement or stated in the RFP, where the work of the Consultant is subject to the approval or review of an authority, department of government, or agency (herein "an Authority") other than the Town, such applications for approval or review shall be the responsibility of and completed by the Consultant. Any such application shall be submitted to the Authority through the offices of the Town (when mandated or if requested by the Town). The Consultant shall be the primary point of contact with the Authority to monitor the progress and timely processing of such applications until or unless otherwise directed in writing by the Town. Costs for all application fees shall be borne by the Town unless otherwise provided for by the Consultant. The foregoing in no way limits the Consultant's responsibility to identify, understand and coordinate any and all approvals and permits required for the Project unless otherwise specified in the RFP or agreed to by the Town.

In the manner set forth in section 13.4 of the RFP, Consultants shall be responsible for applying for and complying with all applicable regulations and approvals in a reasonable

timeframe to secure approval prior to construction. These include but are not limited to Town of Tecumseh standards, Ministry of the Environment, Conservation, and Parks, Ministry of Natural Resources and Forestry, Department of Fisheries and Oceans, the Essex Region Conservation Authority, Environmental Protection Act, Excess Soil Regulations, etc.

## **2.17 SUB-CONSULTANTS**

The Consultant may engage Sub-Consultants for specialized services provided that they are noted in the Proposal Submission or otherwise prior approval is obtained, in writing, from the Town.

Sub-Consultants are to be paid as per the completed Tables 2, 3 and 4 in section 7 of the RFP completed in the Proposal Submission or as otherwise subsequently approved by the Town. Consultant shall pay Sub-Consultant and provide certificate of same to the Town and should the Consultant fail to pay Sub-Consultant, the Town may withhold funds from the next progress payment an amount equal to the amount alleged to be outstanding unless the Consultant has held back and paid into court the amount alleged to be payable to the Sub-Consultant or the Consultant and Town otherwise agree in writing.

## **2.18 INSPECTION AND COMPLIANCE WITH LAW**

The Town, or persons authorized by the Town, 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 they are being performed.

The Consultant shall comply with the laws, regulations, and policies set forth in sections 9.7 through 11.3 of the RFP.

In the manner set forth in section 11.4 of the RFP, the Consultant shall note that Canada, the Auditor General of Canada, and their representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of the Agreement, and any record and accounts respecting the Project and will have reasonable and timely access to the Project sites and to any documentation relevant for the purpose of audit.

## **2.19 PUBLICATION**

The Consultant agrees to obtain the consent in writing of the Town before publishing or issuing any information regarding the Project. All communication inquiries received by the proponent are to be sent directly to the Town for response.

In the manner set forth in section 11.5 of the RFP, this project is funded in part by the Government of Canada. The Town is solely responsible for the operational communications for this project and these communications are not subject to the federal official language policy. The Consultant will be required to share information about the project promptly should significant media inquiries be received or if major stakeholder issues arise relating to this project.

## **2.20 CONFIDENTIAL INFORMATION**

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired, or disclosed by the Town in the course of carrying out the Services provided for herein. 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 court order. No such information shall be used by the Consultant on any other project without the approval in writing of the Town.

## **2.21 TIME**

The Consultant shall perform the Services in accordance with the requirements of Article 3 of this Agreement and Table 5 "Preliminary Schedule" of the RFP and shall complete any portion or portions of the 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 are required in connection therewith, within a reasonable time so as not to unduly delay the work of the Consultant. Provided, the Consultant shall allow for reasonable time for such input to be processed having regard to any specific guideline or direction noted by the Town as to its decision making process.

The Consultant shall deliver services in a manner that is consistent with the preliminary schedule outlined in section 13.16 (Table 5 "Preliminary Schedule") of the RFP or as otherwise agreed to by the parties in writing.

## **2.22 ESTIMATES, SCHEDULES AND STAFF LIST**

### **2.22.1 PREPARATION OF ESTIMATE OF FEES, SCHEDULE OF PROGRESS AND STAFF LIST**

All information provided in the Proposal Submission from Consultant is accurate and correct as it relates to the following.

- a) An estimate of the total fees to be paid for the Services.
- b) A Schedule showing an estimate of the portion of the 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 may seek payment on a time basis where such recovery is contemplated under the RFP (subject to any pre-approval by the Town required under the RFP). 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.

**2.22.2 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 in the Bid Submission.
- b) Any change in the schedule of progress which results in a longer period than provided for in Subsection 2.22.1 (b).
- c) Any change in the number, classification and hourly rate ranges of the staff provided under Subsection 2.22.1 (c).

**2.22.3 MONTHLY REPORTING OF PROGRESS**

When requested by the Town, the Consultant shall provide the Town with a written report showing the portion of the Services completed in the preceding month and otherwise in accordance with Article 4 below.

**2.23 GENERAL CONDITIONS**

Consultant covenants, undertakings, representations, warranties and agreements to perform Services in a manner that is consistent with the requirements set out in the RFP. Notwithstanding any term, condition or other stipulation contained that may not be expressly addressed in the body, nevertheless such “term” shall be deemed incorporated into this agreement save and accept as expressly otherwise indicated.

***ARTICLE 3***

***SERVICES TO BE PROVIDED***

**3.1 SERVICES TO BE PROVIDED BY CONSUTLANTS**

The Consultant’s scope of work for the services to be provided shall meet or exceed and otherwise be deemed to include those services called for within the RFP, Section B “Project Details”, more specifically section 13 “Description of Work” and any additional or supplemental services or detailed scope of work as may be set out in the Consultant’s Proposal submission.

**3.2 SERVICES TO BE PROVIDED BY TOWN**

The Town will provide access to the Town’s information and/or database(s) to the extent set out in section 14 of the RFP and as otherwise may be requested or identified by the Consultant and approved by the Town all in accordance with and subject to any laws governing the disclosure and use of such information and/or database.

## *ARTICLE 4*

### *FEES AND DISBURSEMENTS*

#### **4.1 BASIS OF PAYMENT FOR THIS AGREEMENT**

##### **4.1.1 FEES CALCULATED ON A DELIVERABLE BASIS**

The Town shall pay the Consultant the Fee for the Services, calculated on the basis of the stage of completion of each Phase of the Services since the date of the previous invoice.

##### **4.1.2 UPSET COST LIMIT**

- a) Notwithstanding anything else contained in this agreement, the Fee for the Services shall not exceed the amount set out in the Proposal Submission's completed "not to be exceeded" as called for in section 7.1 of the RFP in the format required in Tables 2, 3, and 4 of the RFP unless and until agreed to in writing by the Town in its sole and absolute discretion (e.g to cover Additional Expenses). This upward limit is termed "the Upward Fee Limit".
- b) Included in the "Fee" but subject to the limits and payment terms set forth in article 4, the Consultant shall be reimbursed at cost for all reasonable expenses properly incurred by them in connection with the Services and identified in the Proposal Submission, including but not limited to: vehicle use charges, traveling and living expenses, long distance telephone charges, report production costs, photography, special delivery charges, supplies and equipment, field equipment costs, laboratory costs. Computer and office charges are considered part of overhead and shall not be invoiced as disbursements.
- c) Notwithstanding Subsections (a) and (b) of this Section, the Town, at its sole discretion, may limit the amounts paid to the Consultant by the Town to the percentage equivalent to each Phase of the project complete in the reasonable opinion of the Town.
- d) The Consultant must request and receive the written approval of the Town before any Additional Services are carried out that are not included in Article 3 of this Agreement. When approving Additional Services that are not included in Article 3, the Town, at its sole discretion, may, in writing, set a limit on the total amount that may be claimed by the Consultant for the requested Additional Services.

##### **4.1.3 LUMP SUM BASIS**

- a) Fees for the scope of work covered under this Agreement will be on a Lump Sum Price Basis, inclusive of labour, disbursements and reimbursable expenses but at all times reflective of the Upward Fee Limit.

- b) Monthly progress invoices will be based on the percentage of each Phase of the project completed or milestone achieved as detailed in the RFP.
- c) If the project is abandoned or delayed for any reason beyond the Consultant's control as confirmed by the Town, acting reasonably, the Town shall pay the balance outstanding on the Fee for the Services adjusted by the percentage of each Phase of the Project then completed multiplied by the Total Fee set opposite such Phase on Schedule A plus the termination expenses reasonably incurred by the Consultant in winding down the project.

## **4.2 PAYMENT**

### **4.2.1 FEES CALCULATED MONTHLY**

The Consultant shall submit an invoice to the Town for all Services completed in the immediately preceding month.

### **4.2.3 INVOICES GENERALLY**

- a) Requirements for a proper invoice

All invoices submitted by the Consultant to the Town under this Agreement shall contain the following information:

- (1) The Consultant's name and address;
- (2) The date of the invoice and the period during which invoiced Services were supplied;
- (3) Information identifying the Agreement under which Services were supplied;
- (4) A description of the services supplied;
- (5) The total amount payable for the services supplied, and a statement that payment is due within 30 days of receipt subject to reasonable verification;
- (6) The name, title, telephone number and mailing address of the person to whom payment is to be sent; and
- (7) The following additional information (if any):
  - i. Undertaking that Sub-Consultants are paid
  - ii. Community Employment Benefit (CEB) Assessment as in the manner set forth in section 11.2 of the RFP together with any other report deliverable by the Consultant under the RFP
  - iii. Stage of completion of each Phase of the Services
  - iv. Fees payable based on the percentage of work completed on any Phase less amounts previously accounted for in prior invoices;
  - v. HST applicable thereto along with the Consultant's HST number;
  - vi. Detail in respect of the actual time spent by the Consultant's employees, materials, equipment,
  - vii. A summary and details of the actual work of any Sub-Consultant otherwise consistent with the information noted in i) to vi) above.

b) Disputed invoices

If the Town intends to dispute any invoice delivered by the Consultant, in whole or in part, the Town shall within 21 calendar days of receiving the invoice, deliver to the Consultant a notice of non-payment setting out the reasons for non-payment and offering to mediate the dispute if not resolved within a further 21 calendar days.

Any undisputed portion of any invoice shall remain payable upon receipt in accordance with the terms of payment set out below.

**4.2.4 TERMS OF PAYMENT**

All fees, irrespective of their basis, shall be exclusive of HST, and HST will be added to each invoice. All fees and charges will be payable in Canadian funds unless noted otherwise. Invoices will be due and payable, within 30 days of, as presented and without holdbacks, by the Town upon receipt, together with the additional information called for above.

***ARTICLE 5***

***MISCELLANEOUS***

**5.1 COMMUNICATION**

Subject to the express provisions of this Agreement, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered and receipted mail, charges prepaid, or by facsimile transmission or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner.

Communications sent to the Municipality shall be addressed to:

917 Lesperance Road, Tecumseh, Ontario N8N 1W9

Communications sent to the Owner shall be addressed to:

Manager Engineering Services

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded

telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

**5.2 TIME OF ESSENCE**

Time shall be of the essence of this Agreement and of every part thereof.

**5.3 WAIVER**

No waiver by any part of a breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

**5.4 FURTHER ASSURANCES**

Each of the Parties covenants and agrees that he, his heirs, executors, administrators and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such by-laws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

**5.5 HEADINGS**

The headings of the Articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

**5.6 SUCCESSORS AND ASSIGNS**

The covenants hereunder shall run with the land and this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**5.7 GENDER**

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

**5.8 SEVERABILITY**

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in the case of partial invalidity or unenforceability of a

covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

**5.9 ENTIRE AGREEMENT**

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

**5.10 EXECUTION IN COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**5.11 JURISDICTION**

This Agreement and all other agreements, security and documents to be delivered in connection with this agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.

**5.12 TRUE COPY**

All of the parties hereto acknowledge having received a true copy of this document.

**5.13 SCHEDULES**

The Schedules attached hereto form part of this agreement.

**5.14 CONTRA PROFERENTEM RULE NOT APPLICABLE**

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the provisions of this agreement.

Should any provision of this agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

- a) Prepared this agreement or any part of it; or



***SCHEDULE "A"***

***REQUEST FOR PROPOSAL***



Request for Proposals –  
Consulting Services for PJ Cecile  
Pump Station Replacement  
Project

November 18, 2022

Town of Tecumseh  
917 Lesperance Rd.,  
Tecumseh, ON N8N 1W9  
Telephone (519) 735-2184  
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## Section A – Information for Applicants

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### 1. Request for Proposal (RFP) Overview

The Corporation of the Town of Tecumseh (Town) is seeking proposals for the services of qualified professionals (Proponent) to complete the preliminary and detailed design including approvals, prepare the tender package and provide construction services for the PJ Cecile pump station replacement project at 14080 Riverside Drive East (see Figure 1 - Project Site Plan).

This project is being funded in part by the Government of Canada through the Disaster Mitigation and Adaptation Fund (DMAF), a national, competitive, and merit-based contribution program intended to support public infrastructure projects designed to mitigate current and future climate-related risks and disasters triggered by climate change, such as floods, wildland fires, droughts, and seismic events. The overall objective of the DMAF is to strengthen the resilience of Canadian communities at risk of infrastructure failure that could result in threats to health and safety, threats to critical infrastructure (including interruptions in essential services), significant disruptions in economic activity and/or increasingly high costs for recovery and replacement.

The expected services (further explained in Section B) include:

- Professional services associated with engineering design of a pump station (including commissioning), road reconstruction including storm and sanitary design, review of storm sewer capacity, outfall structure, shoreline protection, utility coordination, limited public consultation (immediate adjacent properties);
- Professional services to prepare one full tender package for the project;
- Professional services to complete a pre-order 'Request for Quotation'(RFQ) document for long-lead equipment purchase (provisional);
- Topographical survey including utility confirmation suitable for detailed design;
- Legal boundary survey prepared by an Ontario Land Surveyor;
- Assistance to the Town in obtaining/coordinating necessary easement and/or property to complete the work;
- Professional services associated with the excess soil regulations;
- Geotechnical study covering excess soil, structural needs, and groundwater mitigation;
- Professional environmental services associated with all required approvals;
- Professional services associated with further archaeology work (Stage 1 and Stage 2 assessment in accordance with the SDMP recommendations) and indigenous consultation as required to fulfil the requirements of the completed Town of Tecumseh Storm Drainage Master Plan (completed June 2019), and DMAF requirements, the proponent shall include services required to confirm if Marine Archaeological assessment is required. If further Marine Assessment is deemed to be required, the additional work relating to further Marine Assessment shall be included in the provisional item in the cost table;
- Administrative and technical assistance to the Town in DMAF reporting;
- Acoustical professional services associated with a land use compatibility noise assessment and;
- Full construction services during construction.

It is the Town's intention to select one (1) successful candidate based on the results of the evaluation criteria.

Figure 1 - Project Site Plan



## 2. Closing Time and Date

- 2.1 Proposals must be received no later than **2:00 pm on Thursday, December 15, 2022.**
- 2.2 Proponents must successfully upload their proposals to the Town of Tecumseh's online Bids & Tenders Portal (Bids & Tenders portal) on or before the submission deadline. Submissions that are not fully and successfully uploaded to Bids & Tenders on or before the submission deadline will not be accepted and will be returned unopened. Hard copies, facsimiles (fax) or emailed proposals will not be accepted. Proponents are cautioned that uploading large documents may take significant time, depending on the size of the file(s) and internet connection speed.

- Proponents should allocate sufficient time to upload documents and finalize their submissions before the submission deadline.
- 2.3 Before gaining access to downloading a copy of the RFP documents, Proponents must create an account and then register to be a 'Plan Taker' for this RFP on the Bids & Tenders portal. You must be a registered plan taker to submit a Proposal. Proponents may preview RFP documents and/or download a watermarked copy before registering as a plan taker and creating an account to review the project at no cost.
  - 2.4 Failure of any Proponent to comply with this section will result in the disqualification of the Proponent and the rejection of their submission.

### 3. Proposal Opening Details

- 3.1 The opening of the submissions shall commence at **2:05 pm on Thursday, December 15, 2022** unless the Purchasing Officer or designate, acting reasonably, postpones the opening to some later hour. The opening shall continue once started, until the last proposal is opened.
- 3.2 There will not be a public opening for this RFP. Proposals will be received and opened electronically.
- 3.3 A list of the Proponents that submitted proposals will be available on the website immediately following the opening.
- 3.4 Once the criteria have been evaluated and a successful Proponent has been selected, this information will be made available on the Bids & Tenders Portal.

### 4. Proponent Questions

- 4.1 Proponents having questions or finding discrepancies or omissions in the document or specifications or having doubts as to the meaning or intent thereof, shall at once, notify the Town via the online Bids & Tenders portal only and shall not attempt to contact staff directly. All questions and requests for clarification are to be submitted through the question section of the online Bids & Tenders portal. The Town, at their discretion, will post written instructions or explanations by addenda, through the online Bids & Tenders portal only, as required.
- 4.2 Proponents may, during the bidding period, be advised by addendum of any additions, deletions, or alterations to the RFP document, via the online Bids & Tenders portal. All such changes shall be considered part of the RFP documentation and shall accordingly be reflected in the Proponent's submission. It will be the Proponent's responsibility to ensure they are registered as a plan taker to receive notification of any and all addenda that are issued. The Town will make every reasonable effort to provide written responses to questions that are submitted. Notice of any addendum to the Proposal will be issued to all registered plan takers by email through the online tender portal. Addenda shall only be posted on the online portal.
- 4.3 The deadline for questions regarding this RFP will be **Monday, December 5, 2022 at 4:30 pm**. The Town cannot guarantee a response to questions received after this time. Should any questions be considered relevant to all Proponents, the Town will provide both the question and the written answer to registered plan takers in the form of an addendum via the online Bids & Tenders portal only. Bidders are solely responsible for ensuring that the Town of Tecumseh has current contact information on file for the bidder.

## 5. General Terms and Conditions

- 5.1 This RFP is subject to the Town's Procurement Policies and Procedures as outlined in the Town Purchasing By-Law 2021-60 and as amended by By-Law 2021-103.
- 5.2 Proponents may amend any aspect of their Proposal at any time on or before the closing date and time. Where a Proponent submits more than one Proposal before the closing date and time, the last proposal submitted will supersede and invalidate all earlier proposals submitted by that Proponent.
- 5.3 Each Proponent is solely responsible for all costs they incur in the preparation of their Proposal, including, without limitation, all costs of providing the information requested by the Town, attending and participating in any interviews or meetings and conducting due diligence, or responding to any questions or clarifications or request for additional information made by the Town.
- 5.4 All necessary information may be obtained at the Town online Bids & Tender Portal at: <https://www.tecumseh.ca/en/town-hall/bids-and-tenders.aspx>
- 5.5 The Town will provide the successful Proponent with the as-built Information for the streets involved and other requested historic information (as available).
- 5.6 Refer to Section E for an example of the intended Agreement to be signed by the successful Proponent.
- 5.7 The Town reserves the right to reject any or all proposals for this work.

## 6. Evaluation, Negotiation and Award Process

- 6.1 Each response to this RFP will be evaluated by a committee (the Evaluation Committee) selected by the Town, to determine the degree to which the submission meets the criteria outlined in this Proposal.
- 6.2 The Evaluation Committee may include such persons as the Town may decide it requires, including Town Solicitor, and persons from Finance, Engineering, Planning, CAO Office, Public Works, IT, advisors and consultants.
- 6.3 The Proponent with the highest combined average score (Preferred Proponent) may proceed to the contract award phase. The Town is not obligated to enter into a contract with the preferred proponent or any proponent.
- 6.4 The evaluation of the Proposal shall be comprised of the following criteria:

Table 1 - Evaluation Criteria

Evaluation Criteria	Description	Maximum Pages	Maximum Score
<b>Understanding of the Scope</b>	Proponents should demonstrate their understanding of the scope, the area, the challenges and the opportunities.	2	10
<b>Proposed Implementation Plan</b>	Proponents shall include a proposed work plan and schedule listing key activities, milestones and timelines. The proponent shall provide an estimate of effort in hours and the proposed schedule for each phase of the work plan they put forward. Attention should be placed on key required approvals, critical path activities, DMAF requirements, quality control (including technical, scope, fee, and schedule), risk mitigation, etc.	6	30
<b>Relevant Project Experience</b>	Provide a minimum of three (3) projects completed within the last five (5) years that are relevant in size, nature, scope and complexity to the RFP. Provide a narrative which details and demonstrates the Proponent's experience and why the Proponent is uniquely qualified to carry out the services under the Contract.	3	20
<b>Project Manager</b>	Project details on the proposed Project Manager, their experience and their relevant experience which deems them qualified to manage the project. Page limit excludes resumes. Full 4-page (max) resumes should be provided in the appendix of the proposal.	1	15
<b>Project Staff</b>	Provide the proposed organizational structure of the team, including team members' relevant experience and sub-consultant details, if applicable. Page limit excludes resumes. Full 4-page (max) resumes of key personnel should be provided in the appendix of the proposal.	3	10
<b>Fee</b>	The fee is to be provided in the format put forward in Section A - 7. Project Cost Quotation Tables 2, 3, and 4.	2	15
<b>TOTAL</b>		Max 17 Pages	100

## 7. Project Cost Quotation

- 7.1 The Proponent shall provide their 'not to be exceeded' fee (including all administrative and expenses excluding tax) in the following format, see Tables 2, 3, and 4.

Table 2 - Total Cost for Engineering Design

Phase	Engineering Design	Sub-consultant Fee	Consultant Fee	Total Fee Including disbursements (Excludes Tax)
1	Project Management	\$	\$	\$
2	Preliminary Design	\$	\$	\$
3	Property Acquisition Assistance	Allowance		\$10,000
4	Detailed Design	\$	\$	\$
5	Permitting and Approvals	\$	\$	\$
6	Tender Documents (Main Contract)	\$	\$	\$
7	Pre-purchase document <b>PROVISIONAL</b>	\$	\$	\$
8	Topographical Survey, Legal Boundary Survey, Archaeological Study, Marine Archaeology Checklist, Geotechnical Investigation Including Excess Soils Management	\$	\$	\$
9	Further Marine Archaeological study if required <b>PROVISIONAL</b>	\$	\$	\$
<b>TOTAL Fee Not to Exceed (excluding tax)</b>				<b>\$</b>

Table 3 - Total Cost for Construction Services

Phase	Construction Services*	Sub-consultant Fee	Consultant Fee	Total Fee *including Disbursements (Excludes Tax)
10	Contract Administration	\$	\$	\$
11	Construction Observation	\$	\$	\$
12	Materials Testing & Excess Soil Qualified Professional Services	\$	\$	\$
<b>TOTAL Fee Not to Exceed (excluding tax)</b>				<b>\$</b>

\* Note that the fee should be based upon **the number of working days indicated in Section 13.17**. This will be re-evaluated and adjusted up or down (pro-rated), once detailed design is complete and a full picture of the construction is available. The number of working days shall also be used to consider a realistic materials testing program.

- 7.2 If additional work is required beyond what is provided for within this document, the Proponent agrees to adhere to the hourly (including disbursements, excluding tax) billing rates as entered in Table 4 below when providing fee estimates.

**Table 4 - Project Staff Hourly Rates**

<b>Staff Category</b>	<b>Hourly Billing Rate 2023 (including disbursements excluding tax)</b>	<b>Hourly Billing Rate 2024 (including disbursements excluding tax)</b>	<b>Hourly Billing Rate 2025 (including disbursements excluding tax)</b>	<b>Hourly Billing Rate 2026 (including disbursements excluding tax)</b>	<b>Hourly Billing Rate 2027 (including disbursements excluding tax)</b>
<b>Project Manager</b>	\$	\$	\$	\$	\$
<b>Senior Professional</b>	\$	\$	\$	\$	\$
<b>Junior Professional</b>	\$	\$	\$	\$	\$
<b>Administrative Staff</b>	\$	\$	\$	\$	\$
<b>Contract Administrator</b>	\$	\$	\$	\$	\$
<b>Senior Technologist</b>	\$	\$	\$	\$	\$
<b>Junior Technologist</b>	\$	\$	\$	\$	\$
<b>On-Site Observer</b>	\$	\$	\$	\$	\$

## 8. Successful Proponent Performance Evaluation

- 8.1 At the completion of every contract, service or receipt of goods, the Manager or applicable Department Director will complete a performance evaluation for the Company that completed the work.
- 8.2 The Purchasing Officer will provide the Company with a copy of the review and will keep a copy on file in accordance with the Town’s record retention policy.
- 8.3 Documented poor performance or non-performance on any contract may be used to determine the eligibility of a Company on future procurements.
- 8.4 The Company can request a debriefing to discuss any performance evaluation.

## 9. Responsibilities, Insurance and Limitation of Liability

- 9.1 The Successful Proponent shall defend, indemnify and save harmless the Town 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, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Successful Proponent, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Project.

- 9.2 The Successful Proponent agrees to defend, indemnify and save harmless the Town 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 or related to the Successful Proponent's status with WSIB. This indemnity shall be in addition to the indemnity called for in paragraph 9.1 above and in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Agreement in accordance with this Agreement and shall survive this Agreement. Notwithstanding the acceptance of this indemnity, the Successful Proponent shall comply with all applicable laws pertaining to health and safety when performing the Project including those noted further in this agreement. The Town shall not be responsible for any violation of same by the Successful Proponent who shall be directly responsible for the safety of the Successful Proponent and the Successful Proponent's employees while performing the Project.
- 9.3 The Successful Proponent, as Named Insured, shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the Town and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:
- a) A limit of liability of not less than **\$5,000,000/occurrence** with an aggregate of not less than **\$5,000,000**.
  - b) Add The Corporation of the Town of Tecumseh and His Majesty the King in Right of Canada as represented by the Minister of Infrastructure and Communities ("Canada") as additional insureds with respect to the operations of the Named Insured.
  - c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured.
  - d) Include insurance against liability for bodily injury and property damage caused by vehicles owned by the Successful Proponent and used on the work, and in addition, shall include insurance against liability for bodily injury and property damage caused by vehicles not owned by the Successful Proponent and used on the work. Each such insurance shall have a limit of liability of not less than **\$2,000,000** inclusive for any one occurrence and shall include contractual non-owned coverage (SEF 96). A "vehicle" shall be as defined in the Highway Traffic Act.
  - e) Products and completed operations coverage.
  - f) Broad Form Property Damage.
  - g) Contractual Liability
  - h) Work performed on Behalf of the Named Insured by Sub-Contractors.
  - i) The policy shall provide 30 days' prior notice of cancellation.
  - j) Coverage shall be written in an amount of not less than **\$5,000,000** and shall be endorsed to include Third Party Extension.
- 9.4 The Successful Proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Town.
- 9.5 The Successful Proponent, as Named Insured, shall, at their expense obtain and keep in force during the term of the Agreement, Professional Liability Insurance satisfactory to the Town and underwritten by an insurer licensed to conduct business in the Province of Ontario in an amount of at least **\$2,000,000**.
- 9.6 The Successful Proponent shall provide a Certificate of Insurance evidencing coverage in force prior to execution of the Contract for this work.

- 9.7 The Successful Proponent shall employ a high standard of public relations and communication.
- 9.8 The Successful Proponent agrees that the Owner has the right to accept or reject all or any portion of this Proposal.
- 9.9 The successful Proponent agrees to perform the whole of the work and to apply all materials, labour, tools, plant and machinery, necessary to do the work.
- 9.10 Workplace Safety and Insurance: The successful Proponent shall furnish evidence of compliance with all requirements of the Workplace Safety and Insurance Act and the Workplace Safety and Insurance Board. Such evidence to include a certificate of good standing issued prior to the execution of the Contract, and a further certificate issued annually on or before the anniversary date of each year.
- 9.11 Compliance with Laws, Regulations and Policies: The successful Proponent shall comply with all labour, police, health, environment, sanitary and other laws and regulations imposed by public bodies having jurisdiction during the Term.
- 9.12 The successful Proponent shall be, or shall become, familiar with all such laws, regulations and policies which in any manner affect the performance of the Contract, those engaged or employed in the work, or affect facilities or equipment used in the work, or which in any way may affect the conduct of the work and no plea of misunderstanding will be considered on account of ignorance thereof. Without limiting the generality of the aforesaid, it shall be the successful Proponent's responsibility to comply with the following "Health and Safety requirements:
- a) All applicable Provincial and Federal Acts and Regulations, including but not limited to, the Environmental Protection Act, the Fisheries Act, the Species at Risk Act, the Ontario Heritage Act, the Endangered Species Act, the Public Land Act, etc.;
  - b) Workplace Safety and Insurance Act;
  - c) Occupational Health and Safety Act;
  - d) Safety or other Policies established by the Authority or the Town.
- 9.13 Without limiting any indemnity otherwise called for above in section 9, the successful Proponent shall indemnify and hold harmless the Town of Tecumseh and its employees against and from all suits or actions arising from any Health and Safety violations as well as the cost to defend such charges as a result of any violation.
- 9.14 The Successful Proponent shall comply with all applicable municipal, provincial and federal laws pertaining to the Successful Proponent's services provided herein to the Town including, without limiting generality, all labour, police, health, environmental, public health and sanitation laws and regulations imposed by public bodies having jurisdiction over such matters.
- 9.15 Please be advised that the Town has a Policy on Health & Safety. The Successful Proponent is required to ensure that employees are advised and have a sound knowledge of this policy.
- 9.16 **Safety and First Aid:** Without limiting the generality of Section B 9.11 "Compliance with Laws, Regulations and Policies", the Successful Proponent shall:

- a) Provide and maintain the necessary items and equipment as called for under the First Aid Regulations of the Workplace Safety and Insurance Act and the Occupational Health and Safety Act.
- b) Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding the use, handling, storage, and disposal of hazardous materials; and regarding labelling and provision of material safety data sheets acceptable to Labour Canada and Health and Welfare Canada. Deliver copies of WHMIS data sheets to the Town on delivery of materials.
- c) Take all necessary precautions to ensure the continuous safety of any contract workers, the owner, and the general public at large on the Owner’s property.
- d) Provide the company’s Health and Safety Policy prior to the commencement of the agreement.

#### 10. Accessibility for Ontarians with Disabilities Act (AODA)

- 10.1 The AODA standards apply to Ontario businesses and non-profits. The Corporation of the Town of Tecumseh is participating in meeting the accessibility standards in Ontario.
- 10.2 The successful Proponent shall ensure that all its employees, agents, volunteers, or others for whom the successful Proponent is legally responsible receive training regarding the provisions of this Act.
- 10.3 Proponents shall ensure that any information, goods or services provided to or on behalf of the Town, conforms with:
  - a) Ontario Regulation 429/07 Accessibility Standards for Customer Service;
  - b) Ontario Regulation 191/11 Integrated Accessibility Standard, and;
  - c) World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA.
- 10.4 The successful Proponent shall ensure that such training includes, without limitation, a review of the purpose of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. The successful Proponent shall submit to the Town, as required from time to time, documentation describing its customer service training policies, practices and procedures and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents, volunteers or others who received such training.
- 10.5 The Town reserves the right to require the successful Proponent to amend its training policies to meet the requirements of the Act and the Regulation.
- 10.6 The successful proponent will be required to complete the AODA Form in Section F.

#### 11. Disaster Mitigation and Adaption Funding Program Requirements

- 11.1 The Proponent shall keep proper and accurate financial accounts and records, including but not limited to its Contracts, invoices, statements, receipts, and vouchers, in respect of the project for

at least six (6) years after the Agreement End Date (which is **March 31, 2034**) and that the Town has the contractual right to audit them.

- 11.2 The Proponent will be required to provide a Community Employment Benefits Assessment with each invoice submitted and to require their sub-consultants to do so as well. Refer to Section C – example.
- 11.3 The proponent shall ensure that all labour, environmental, and human rights legislation is respected.
- 11.4 The proponent shall note that Canada, the Auditor General of Canada, and their designated representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of contracts related to this RFP and any records and accounts respecting the Project and will have reasonable and timely access to the Project sites and to any documentation relevant for the purpose of audit.
- 11.5 This project is funded in part by the Government of Canada. The Town is solely responsible for the operational communications for this project and these communications are not subject to the federal official languages policy. All communication inquiries received by the proponent are to be sent directly to the Town for response. The proponent will be required to promptly provide information about the project to the Town should significant media inquiries be received or if major stakeholder issues arise relating to this project.

## Section B – Project Details

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### 12. Overview of the Proposed Infrastructure Improvements

In 2019, the Town completed the Storm Drainage Master Plan Final Environmental Assessment Report (SDMP) satisfying the Schedule B Class Environmental Assessment requirements.

See <https://www.tecumseh.ca/en/town-hall/storm-drainage-master-plan.aspx>

The SDMP provided recommendations on a number of projects, including the PJ Cecile Storm Pump Station Improvements. The current station has two vertical turbine pumps both equipped with 40 hp motors. No upgrades have been completed since the station was put into operation in 1974. The existing station is located on a narrow lot (< 14m wide) at 14080 Riverside Drive, Tecumseh, Ontario between a residential home and a working golf course property. The parcel that the existing pump station is located on is not owned by the Town. The Town has an easement on the eastern half of the 14080 Riverside Drive. 14080 Riverside Drive is owned by a number of property owners and it is listed on title for at least 50-100 properties within this community that have rights to it. The proponent shall note that beach access on this property, including public access to it, shall be maintained.

The SDMP recommends that a new pump station be constructed at the PJ Cecile PS site with a new pump capacity of 3.0 cubic metres per second (cms). Due to site constraints, the new pump station is likely to be constructed over the footprint of the existing structure, either partially or wholly. It is expected that the new station would be constructed utilizing temporary pumps to provide servicing during the construction. At no time shall the existing level of storm pumping service (less than 1 cms) be disrupted.

A new outfall pipe will be required to provide increased flow capacity, which, given the limited space on the property, will require careful attention. The existing outfall is currently discharging into the Beachgrove harbour at 14134 Riverside Drive. The SDMP recommends the extension of the new outfall to the northern end of the jetty bank (not owned by the Town) to eliminate additional flow into the harbour. It should be noted that the local conservation authority commented that the existing outfall has benefits to the harbour, as it eliminates stagnant water and encourages flow through the marina. The proponent shall ensure potential solutions, are fully reviewed and costed prior to moving this forward to detailed design. Environmental approvals, preliminary cost estimates, disruption to adjacent properties, potential property acquisition/easement, etc. for discharge solutions shall be fully reviewed and will no doubt play a part in which direction gains Town approval to move forward to detailed design. The proponent shall note that property considerations and significant consultation with the adjacent properties will be crucial to the success of this project.

As noted above the jetty that makes up the western limit of the marina is owned by Beachgrove and will require discussions to clarify the property needs. Proponents shall note that during the SDMP, there were discussions about enhancing the jetty and building a walkway or a boardwalk out to the outfall as a feature for Beachgrove.

The proponent shall note that sensitivity shall be exercised prior to proposing any construction around the commemorative bench, lighting and landscaping at the southeast corner of the Kensington/Riverside intersection.

Infrastructure of this size will no doubt require the intersection at Kensington Boulevard and Riverside Drive East to be fully reconstructed. Accordingly, the Town intends to have all infrastructure upgrades completed in the vicinity of this intersection such that a future project extending south on Kensington Boulevard, or east / west on Riverside Drive will not have to disturb the intersection. The following infrastructure shall be included in this design see **Error! Reference source not found.:**

- Detailed Design of storm sewers proposed within the SDMP, shown in **GREEN** on Figure 2;
- Stormwater study, boxed in **PURPLE** on Figure 2. This minor catchment area was excluded from the SDMP modelling. The Town wishes for the review of storm sewers in this area to be completed to ensure the conveyance of the 5-year storm (assumed to be undersized). If storm upgrades are required, a properly sized stub will be installed at the intersection to set the Town up for future sewer work.
- Full road reconstruction for the area boxed in **BLUE** on Figure 2.



Figure 2 - Proposed Infrastructure

### 13. Description of Work

The following is expected to be required and should be included in the proponent's proposed scope of work:

- 13.1 Proponent proposals shall put forward an experienced project manager who shall be the sole lead for all aspects of this multi-disciplinary project.
- 13.2 Proponent proposals will provide for complete preliminary and detailed design drawings, utility coordination, increasingly more accurate opinions of construction cost, acquisition of all required approvals, pump station commissioning and tender package preparation for the project. The successful firm will be required to administer the tendering process and to administer the project throughout construction. Further details regarding the specifics are included in the following points however, the proponent should consider themselves fully responsible to fulfill all necessary actions required to see this project through to completion.
- 13.3 Proponents will provide property acquisition/easement assistance to the Town during Preliminary and detailed design stages, given the property situation on the pump station site. The assistance will include, preparation of sketches and diagrams of proposed infrastructure and property needs, coordination with legal surveyor, discussions with property owners, and the golf course etc.. Given this work will be difficult to estimate, an allowance has been provided. Proponents will be required to keep track of the specific activities and manage the allowance with practicality. This item will be paid on a time and material basis.
- 13.4 Proponents shall be responsible for applying for and complying with all applicable regulations and approvals in a reasonable timeframe to secure approval prior to construction. These include but are not limited to Town of Tecumseh standards, Ministry of the Environment, Conservation, and Parks, the Essex Region Conservation Authority, Environmental Protection Act, Excess Soil Regulations, etc.
- 13.5 Proponent proposals shall include geotechnical services to inform the detailed design including structural and groundwater considerations; testing and analysis required to comply with Excess Soil Regulations during design and construction, and materials testing during construction. Proponents shall note that a geotechnical report was completed during the SDMP project, and uploaded as a separate file in Bids and tenders. It is the proponent's responsibility to review this completed geotechnical report and include any additional geotechnical work required to complete this project in their proposal. These services shall include obtaining public and private utility locates as required; retain the services of a drilling contractor; prepare a traffic management plan for the proposed work; complete the appropriate number of boreholes/monitoring wells across the project area as prescribed by the regulation(excess soil) and the needs of the design engineers; complete the appropriate soil sampling as prescribed by the regulation, including all laboratory fee's; backfill boreholes with bentonite material, patch boreholes in asphalt with cold patch asphalt, handle completely the spoils; handle completely the removal of drums containing soil cuttings from the drilling program.
- 13.6 Proponent proposals shall include a detailed and accurate topographical survey for the full stretch of detailed design, including utility locates of mains and laterals. The Town will assist with pumping down the storm sewers during invert pick up, but traffic control will be the responsibility of the proponent. The proponent shall note that the Town completes their own watermain and water services locates. A legal survey performed by an Ontario Land Surveyor shall be completed, including property acquisition and easement services.

- 13.7 Proponent proposals should include the provision of a Pump Station Design Brief to communicate key decision points prior to moving forward. Additionally, a full set of construction documents and the Engineers Opinion of Probable Construction Costs at a 30% submission, a 60% submission, and at Issued for Tender submission shall be provided. The Town shall be provided two weeks to provide feedback on the submissions.
- 13.8 Proponents shall note that given the proximity of adjacent properties, a land-use compatibility noise study shall be completed on the pump station site to inform the design to avoid any nuisance noise from the back-up generator or the pump station.
- 13.9 Pre-order Purchase Order RFQ will potentially be required for any equipment which requires significant time for delivery. The proponent shall note that an example of a similar RFQ document will be provided by the Town. This work shall be considered PROVISIONAL.
- 13.10 The proponent shall include effort within their proposal to collaborate and consult with the adjacent properties, given the proximity of the properties, especially the Beach Grove property once design commences of the pump station and outlet pipe.
- 13.11 DMAF Reporting Community Employment Benefits (CEB) Assessment - The Proponent will be required to assist the Town in the CEB Assessment by providing a Community Employment Benefits Assessment with each invoice submitted and to require the Contractor to do so as well by including appropriate language within the prepared contract documents. See <https://www.infrastructure.gc.ca/pub/other-autre/ceb-ace-eng.html> for further guidance. See Section C for an example of what will be needed throughout the course of the work required for this RFP and the future project construction contract.
- 13.12 The proponent shall act as the Qualified Person (QP) for the Corporation of the Town of Tecumseh for the project, ensuring that all aspects of O.Reg. 406/19 (Excess Soil) are adhered to. The work is expected to include:
- The completion of an environmental review for the project area to assess for evidence of potential or actual environmental contamination as a result of current or past activities, and to utilize this information for the preparation of a sampling and analysis plan. The scope of the environmental review should include the following:
    - ERIS database search of the project area;
    - Review of historical aerial photographs of the project area;
    - Review of fire insurance maps of the project area (if available);
    - A site visit of the project area; and
    - Prepare a summary report.
  - The preparation of a sampling and analysis plan, based on the findings of the environmental review.
    - Characterize excess soils expected to be generated from the project area. Compare the soil quality results to the Excess Soil Quality Standards (ESQS), as outlined in O.Reg. 406/19, classify the excess soil based on reuse site requirements; and prepare a summary report.
  - Preparation of an excess soil specification, quantities, and form of tender items for inclusion in the tender/contract documents for the project.
- 13.13 The SDMP, identified that a Stage 1 and Stage 2 Archaeological Land Study be completed for the property at 14080 Riverside Drive as well as the Jetty. Given the extensive work along the marina jetty for the proposed new outlet, the proponent shall include a review of the need for a marine archaeological study. The next steps for follow up marine assessment, if any, shall be included in the

provisional item provided. A full accounting of what additional services are included in the provisional item shall be provided. Proponent proposals shall include all services required to complete the Stage 1 and Stage 2 Reports including filing with the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI), in compliance with the Ontario Heritage Act. Proponents shall ensure the work follows the Standards and Guidelines for Consultant Archaeologists.

The Proponent will not conduct the archaeological assessment at the above-noted site until Indigenous Communities are contacted and invited to actively participate in said archaeological investigations, in accordance with the Town’s duty to consult and/or accommodate Indigenous Communities. Through active consultation during the EA and the detailed design, the Town has been made aware that there are active Indigenous Communities who are engaged and wish to continue to be engaged. The proposals shall include time to deal with any issues raised by the communities.

13.14 Environmental Approvals and Permits:

In concert with the detailed design, all aspects of environmental approvals shall be included in the Proponents scope of work including at a minimum:

- Completion of a fisheries background review including provincial and federal aquatic species at risk (SAR) to confirm the potential SAR requirements for the project;
- Submission of a Fisheries Act Request for Review to DFO to determine the likelihood of the project causing harmful alteration, disruption or destruction of fish and fish habitat (HADD) as defined by the Fisheries Act;
- Following their review, if DFO requires a SARA permit, Fisheries Act Authorization, or both, separate applications for a SARA permit and Fisheries Act Authorization shall be submitted;
- Participation in the application/permit approval process with the Essex Region Conservation Authority (ERCA), as it relates to the design. The property is within the ERCA regulated area and approval must be obtained based upon Section 28 of the Conservation Authorities Act.

13.15 Proponents shall be responsible for applying for and complying with all applicable regulations and approvals in a reasonable timeframe to secure approval prior to construction. These include but are not limited to Town of Tecumseh standards, Ministry of the Environment, Conservation and Parks, Ministry of Natural Resources and Forestry, Department of Fisheries and Oceans, the Essex Region Conservation Authority, Environmental Protection Act, Excess Soil Regulations, etc.

13.16 Proponents shall note the following preliminary schedule:

**Table 5 - Preliminary Schedule**

Activity	Preliminary Timeline
<b>Award Date</b>	January 2023
<b>Completed Tender Documents</b>	September 2024
<b>Approvals Received</b>	October 2024
<b>Tender Period</b>	November 2024
<b>Construction Start</b>	Spring 2025

13.17 Proponent proposals shall include Contract Administration and Construction Observation including general administration services during construction. The Proposal shall include the construction services based upon an estimated **240 working days**, to be re-evaluated and adjusted once the detailed design is complete. The successful proponent, on behalf of the Town, shall ensure that the work conforms to the contract documents, drawings, and specifications. The Consultant shall carry out the duties of “the payment certifier” pursuant to the provisions of The Construction Act.

The Construction Administration services shall include at minimum the following:

- a) Schedule, lead and attend the pre-construction meeting;
- b) Advise the construction Contractor on the Proponent’s interpretation of the drawings and specifications and issue supplementary details and instructions during the construction period, as required;
- c) Review for Town approval, the construction schedule proposed by the Contractor and comment on the procedures, methods, and sequence of work;
- d) Review shop drawings submitted for general compliance with the design requirements. Arrange regular site meetings. Minutes to be prepared and distributed to all parties within 7 days;
- e) Consider and advise on alternative methods, equipment, and materials proposed by the Contractor;
- f) Advise on the validity of charges for additions or deletions and advise on the issue of change orders when requested, including the preparation of change orders;
- g) Prepare and approve Contractor’s progress and final payment certificates;
- h) Maintain adequate records related to the construction contracts including the issuance of weekly working days statement;
- i) Prepare Working Days Form, Payment Certificates and Change Orders in accordance with the Town’s Standards;
- j) Make visits to the site at appropriate times during construction to review general conformity of the work with plans and specifications, including all commissioning exercises needed;
- k) Arrange for the testing and inspection of materials and work, by an authorized inspection and testing company, where the construction contract calls for such testing;
- l) Attend job meetings as deemed necessary. Record and circulate minutes of the meetings;
- m) Report on the construction to the Town with respect to progress, cost, and schedules.
- n) Obtain warranties and guarantees, direct and lead commissioning activities, direct and lead the operation and maintenance manual production;
- o) Supervise and prepare As-built drawings in accordance with PEO recommendations, and;
- p) Provide a Certificate of Substantial Performance and Final Completion.

The Construction Observation services shall include at a minimum, the following:

- a) Report to the Town and make recommendations if the Consultant determines that the Contractor is not carrying out his work in accordance with the Contract Documents or that the Contractor’s work does not satisfy the intent of the design or does not substantially conform with plans and specifications;
- b) Arrange for, or carry out, all necessary field-testing and inspection of materials and equipment installed. Results of all tests are to be provided to the Town promptly;
- c) Investigate, report, and advise on unusual circumstances, which come to the Consultant’s attention during construction;

- d) Lead and direct commissioning operations and delivery of the operation and maintenance manual;
- e) Carry out final inspection at the conclusion of the construction contract, at the end of the maintenance period, and as part of the acceptance program of the Town;
- f) Obtain and record field information of construction details for the modification of contract drawings to show the work 'as-built';
- g) Maintain sufficient data to determine periodic progress of the work;
- h) Review the construction Contractor's request for payments as to progress, quantities of work completed, and materials delivered to the site and advise the Town accordingly; and
- i) Prepare Contractor's Payment Certificates.

#### 14. Town Supplied Information

- 14.1.1 The following master plan is available for review of background of this project:  
<https://www.tecumseh.ca/en/town-hall/storm-drainage-master-plan.aspx>
- 14.1.2 All relevant As-built drawings needed to complete the design work within this RFP will be supplied to the successful consultant.
- 14.2 Access to the Towns GIS system will be granted to the successful proponent.
- 14.3 Sample RFQ for Pre-order documents will be supplied to the successful consultant.

## Section C - Community Employment Benefits (CEB)

For professional services, include the following information regarding community employment benefits to your procurement documents. The Consultant is to submit this information with each invoice until project completion.

Item	Invoice No. _____	Invoice No. _____	Invoice No. _____
Total No. hours worked on project during period			
<b>Target Group (examples)</b>	<b>No. of project hours each targeted group worked</b>	<b>No. of project hours each targeted group worked</b>	<b>No. project hours each targeted group worked</b>
Apprentices			
Women			
Recent Immigrants			

The Government of Canada defines the above-noted target groups as the following:

- **Apprentices:** An apprentice is a paid employee, registered with the regional apprenticeship authority, who works under the supervision of a certified journeyman to learn their skilled trade and fulfill all requirements established by their province or territory.
- **Women:** Self-identified by the employee.
- **Recent Immigrants:** Self-identified; recent landed immigrants to Canada within 10 years of start of work (of the Project).

## Section D - Acceptance

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I/We, the Undersigned, having examined the RFP and do hereby affirm the acceptance of the requirements of the RFP including the sample consultant agreement. I/We do certify that the information supplied on the Proposal Form to be true and complete in all respects and is open for acceptance by The Corporation of the Town of Tecumseh within 90 days of the closing date.

I, We

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

of

\_\_\_\_\_  
Company Name

Dated at \_\_\_\_\_ this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_,

I acknowledge that I have reviewed and incorporated \_\_\_\_of\_\_\_\_ Addenda into my proposal.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, Province Postal Code

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Facsimile No.

\_\_\_\_\_  
Email Address

Signature in the designated space, by an authorized officer of the Proponent's company affirms acceptance of the Request for Proposal requirements set forth in this document, the associated costs (where applicable) attributed to the business arrangement between the Proponent and The Corporation of the Town of Tecumseh and hereby certifies that the information supplied in this proposal to be true and compete in all respects.

Section E – Sample Town Agreement

**CONSULTING AGREEMENT**

Between:

**The Corporation of the Town of Tecumseh**

-and-

**XXX**

**PREPARED BY:**

**WOLF HOOKER PROFESSIONAL CORPORATION**

Barristers & Solicitors

72 Talbot Street North, Suite 100

Essex, Ontario

N8M 1A2

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- Schedule “E”- Tables 2, 3, and 4- Total Project Cost

**CONSULTING AGREEMENT**

*THIS AGREEMENT* made in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**B E T W E E N:**

*THE CORPORATION OF THE TOWN OF TECUMSEH,*  
hereinafter called the "**Municipality**" or "**Town**"

**OF THE FIRST PART**

-and-

**XXX**  
hereinafter called the "**Consultant**"

**OF THE SECOND PART**

**HEREINAFTER** collectively referred to as the "Parties"

*RECITALS*

**WHEREAS** the Town intends to retain the Consulting Services of qualified professionals to complete the detailed design, tender package, and construction services for the PJ Cecile Pump Station Replacement Project.

**AND WHEREAS** the Town issued a Request for Proposal on \_\_\_\_, 20\_\_ respecting PJ Cecile Pump Station Replacement Project;

**AND WHEREAS** the Consultant responded to the RFP and has agreed to provide the Professional Services subject to the following terms, standards, requirements and conditions;

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

***ARTICLE 1***

***DEFINITIONS***

**1.1 DEFINITIONS**

The following terms and expressions when used in this Agreement and the Schedules attached hereto and any amendments to this Agreement and such Schedules shall have the following meanings:

**Additional Services** shall mean those additional services not identified originally in the RFP or Proposal Submission but which the parties subsequently agree in writing shall be provided by the Consultant to the Town;

**Agreement** shall mean this Agreement and any amendment thereto;

**Business Day** shall mean any day, other than a Saturday, Sunday or any other day on which the principal-chartered banks located in the Town are not open for business during normal banking hours;

**DMAF Contract** shall mean the Disaster Mitigation and Adaption Fund, as outlined in the RFP;

**Force Majeure** shall mean the acts beyond the reasonable control of the party and as described in Article 2.12 of this agreement.

**Phase** shall mean each separate category of work outlined in the RFP, section 7.1, Table's 2, 3 & 4;

**Project** shall mean PJ Cecile Pump Station Replacement Project as outlined in the RFP;

**Proposal Submission** shall mean the Consultant's Project submission as outlined in the RFP;

**RFP** shall mean the Request for Proposals referred to in the recitals above a copy of which is attached hereto as Schedule A;

**Schedules** shall mean the schedules attached hereto and forming part of this Agreement;

**Services** shall mean those Services to be delivered or performed by the Consultant under the agreement, and without limiting the foregoing as more particularly described in Article 3 and Additional Services as applicable.

## **ARTICLE 2**

### **GENERAL CONDITIONS**

#### **2.1 RETAINER**

The Town hereby retains the Consultant in connection with the Project and the Consultant agrees to provide the Services described in Article 3 (Services to be provided) for the Project under the general direction and control of the Town.

#### **2.2 COMPENSATION**

The Town shall pay the Consultant in accordance with the provisions set forth in Article 4. For purposes of this agreement, the basis of payment shall be as specified in Article 4.2.

#### **2.3 STAFF AND METHODS**

The Consultant shall perform the Services under this agreement with the degree of care, skill and diligence normally provided in the performance of such Services as contemplated by the agreement at the time such Services are rendered and as required by the Consultant's governing professional body (e.g. Professional Engineers Ontario, Ontario, Association of Architects, Association of Ontario Land Surveyors, etc...) and otherwise in accordance with the best practices established by professional associations (e.g. the Municipal Engineers Association, the Association of Consulting Engineering Companies, etc...) and the code(s) of ethics, provincial and/or national standards, laws and regulations applicable to such profession (e.g. Professional Engineers Act, etc...) and the laws of general application (e.g. the Workplace Safety and Insurance Act and the Occupational Health and Safety Act, etc..). The Consultant shall employ only competent staff who will be under the supervision of a senior member of the Consultant's staff. The Consultant shall obtain the prior agreement of the Town before making any changes to the staff list after commencement of the Project.

#### **2.4 DRAWINGS AND DOCUMENTS**

Drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant for the Town may be used by the Town, for the Project herein described, including "record" drawings and the Town has ownership of any such drawings. To the extent called for in the RFP, the Consultant shall cooperate, assist and collaborate with any other Consultant or third party to incorporate these drawings and documents into any larger or comparable document package applicable to the overall Project.

**2.5 INTELLECTUAL PROPERTY**

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 their Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Town.

The Town shall retain all intellectual property rights to the product.

**2.6 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 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.
- d) The Consultant shall keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements, receipts, vouchers, and all non-financial records in respect of the Project for at least six (6) years after the DMAF Agreement End Date which is March 31, 2034, in addition to all necessary records to substantiate
  - i) all charges and payments under the Agreement and
  - ii) that all deliverables were provided in accordance with the Agreement.
- e) In a manner set forth in section 11.4 of the RFP, Canada, the Auditor General of Canada, and their representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of the overall DMAF Contract, and by extension this contract, and any records and accounts respecting the Project for the purpose of audit.

**2.7 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 Services delete, extend, increase, vary or otherwise alter the Services forming the subject of the Agreement, and if such action by the Town necessitates additional staff or Services, the Consultant shall be paid in accordance with Section 4.2 for such additional Services and staff employed directly thereon, together with such expenses and disbursements as otherwise agreed in writing between the parties.

**2.8 DELAYS**

In the event that the start of the project is delayed for one hundred and eighty (180) days or more for reasons beyond the control of the Consultant, the Consultant shall have the option to terminate the Agreement, if such option is exercised in writing within thirty days failing which the timing for if any, is extended for the period of delay.

**2.9 SUSPENSION OR TERMINATION**

The Town may at any time by notice in writing 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. In such an event, the Consultant shall be entitled to payment for the Services rendered and disbursements incurred by the Consultant to the date of such suspension/termination in the manner and extent otherwise contemplated by section 4.2.

If the Consultant is an individual and should die before their Services have been completed, this Agreement shall terminate as of the date of their death, and the Town shall pay for the Services rendered and disbursements incurred by the Consultant to the date of such termination in the manner and extent otherwise contemplated by section 4.2.

**2.10 INDEMNIFICATION**

In the manner set forth in Article 9 of the RFP and without limiting the extent of scope of indemnification set out thereto, the Consultant shall indemnify and save harmless the Town and its elected officials, officers, employees and agents from and against all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever which the Town, its employees, officers or agents may suffer.

The Town further covenants and agrees that it will at all times indemnify and save harmless the Consultant, its officers, servants and agents, from and against all loss or damage, and from and against all actions, suits, claims and demands whatsoever which may be made or brought against the Consultant, its officers, servants and agents by reason or in consequence of the execution and performance of this agreement by the Town or the negligent acts and omissions of its servants, agents or employees.

**2.11 INSURANCE**

The Consultant shall obtain, maintain, and provide evidence thereof to the Town appropriate insurance coverage in respect of the Services as more particularly detailed in Article 9 of the RFP.

**2.12 FORCE MAJEURE**

Neither party shall be responsible to the other for damages arising directly or indirectly from any delays for causes beyond such party's control. For purposes of this Agreement, such causes include, but are not limited to, general strikes or other labour disputes (but not including loss or departure of individual staff); epidemic, quarantine, pandemic (including the COVID-19 pandemic), emergency protection legislation, regulations and orders, severe weather disruptions or other natural disasters or acts of God; fires; riots, war or other emergencies; failure of performance by the other party; or discovery of any hazardous substances or differing site conditions.

**2.13 CONTRACTING FOR CONSTRUCTION**

The Consultant or any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall not tender for the construction of the Project or have an interest either directly or indirectly in the construction of the Project.

**2.14 ASSIGNMENT**

Neither party may assign this Agreement or any portion thereof without the prior consent in writing of the other party.

**2.15 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 provided that the Schedules attached hereto are incorporated and remain part of this Agreement.

**2.16 APPROVAL BY OTHER AUTHORITIES**

Unless otherwise provided in this Agreement or stated in the RFP, where the work of the Consultant is subject to the approval or review of an authority, department of government, or agency (herein "an Authority") other than the Town, such applications for approval or review shall be the responsibility of and completed by the Consultant. Any such application shall be submitted to the Authority through the offices of the Town (when mandated or if requested by the Town). The Consultant shall be the primary point of contact with the Authority to monitor the progress and timely processing of such applications until or unless otherwise directed in writing by the Town. Costs for all application fees shall be borne by the Town unless otherwise provided for by the Consultant. The foregoing in no way limits the Consultant's responsibility to identify, understand and coordinate any and all approvals and permits required for the Project unless otherwise specified in the RFP or agreed to by the Town.

In the manner set forth in section 13.4 of the RFP, Consultants shall be responsible for applying for and complying with all applicable regulations and approvals in a reasonable timeframe to secure approval prior to construction. These include but are not limited to Town of Tecumseh standards, Ministry of the Environment, Conservation, and Parks, Ministry of Natural Resources and Forestry, Department of Fisheries and Oceans, the Essex Region Conservation Authority, Environmental Protection Act, Excess Soil Regulations, etc.

**2.17 SUB-CONSULTANTS**

The Consultant may engage Sub-Consultants for specialized services provided that they are noted in the Proposal Submission or otherwise prior approval is obtained, in writing, from the Town.

Sub-Consultants are to be paid as per the completed Tables 2, 3 and 4 in section 7 of the RFP completed in the Proposal Submission or as otherwise subsequently approved by the Town. Consultant shall pay Sub-Consultant and provide certificate of same to the Town and should the Consultant fail to pay Sub-Consultant, the Town may withhold funds from the next progress payment an amount equal to the amount alleged to be outstanding unless the Consultant has held back and paid into court the amount alleged to be payable to the Sub-Consultant or the Consultant and Town otherwise agree in writing.

**2.18 INSPECTION AND COMPLIANCE WITH LAW**

The Town, or persons authorized by the Town, 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 they are being performed.

The Consultant shall comply with the laws, regulations, and policies set forth in sections 9.7 through 11.3 of the RFP.

In the manner set forth in section 11.4 of the RFP, the Consultant shall note that Canada, the Auditor General of Canada, and their representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of the Agreement, and any record and accounts respecting the Project and will have reasonable and timely access to the Project sites and to any documentation relevant for the purpose of audit.

**2.19 PUBLICATION**

The Consultant agrees to obtain the consent in writing of the Town before publishing or issuing any information regarding the Project. All communication inquiries received by the proponent are to be sent directly to the Town for response.

In the manner set forth in section 11.5 of the RFP, this project is funded in part by the Government of Canada. The Town is solely responsible for the operational communications for this project and these communications are not subject to the federal official language policy. The Consultant will be required to share information about the project promptly should significant media inquiries be received or if major stakeholder issues arise relating to this project.

**2.20 CONFIDENTIAL INFORMATION**

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired, or disclosed by the Town in the course of carrying out the Services provided for herein. 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 court order. No such information shall be used by the Consultant on any other project without the approval in writing of the Town.

**2.21 TIME**

The Consultant shall perform the Services in accordance with the requirements of Article 3 of this Agreement and Table 5 “Preliminary Schedule” of the RFP and shall complete any portion or portions of the 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 are required in connection therewith, within a reasonable time so as not to unduly delay the work of the Consultant. Provided, the Consultant shall allow for reasonable time for such input to be processed having regard to any specific guideline or direction noted by the Town as to its decision making process.

The Consultant shall deliver services in a manner that is consistent with the preliminary schedule outlined in section 13.16 (Table 5 “Preliminary Schedule”) of the RFP or as otherwise agreed to by the parties in writing.

**2.22 ESTIMATES, SCHEDULES AND STAFF LIST**

**2.22.1 PREPARATION OF ESTIMATE OF FEES, SCHEDULE OF PROGRESS AND STAFF LIST**

All information provided in the Proposal Submission from Consultant is accurate and correct as it relates to the following.

- a) An estimate of the total fees to be paid for the Services.
- b) A Schedule showing an estimate of the portion of the 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 may seek payment on a time basis where such recovery is contemplated under the RFP (subject to any pre-approval by the Town required under the RFP). 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.

**2.22.2 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 in the Bid Submission
- b) Any change in the schedule of progress which results in a longer period than provided for in Subsection 2.22.1 (b).
- c) Any change in the number, classification and hourly rate ranges of the staff provided under Subsection 2.22.1 (c).

**2.22.3 MONTHLY REPORTING OF PROGRESS**

When requested by the Town, the Consultant shall provide the Town with a written report showing the portion of the Services completed in the preceding month and otherwise in accordance with Article 4 below.

**2.23 GENERAL CONDITIONS**

Consultant covenants, undertakings, representations, warranties and agreements to perform Services in a manner that is consistent with the requirements set out in the RFP. Notwithstanding any term, condition or other stipulation contained that may not be expressly addressed in the body, nevertheless such “term” shall be deemed incorporated into this agreement save and accept as expressly otherwise indicated.

***ARTICLE 3***

***SERVICES TO BE PROVIDED***

**3.1 SERVICES TO BE PROVIDED BY CONSUTLANTS**

The Consultant’s scope of work for the services to be provided shall meet or exceed and otherwise be deemed to include those services called for within the RFP, Section B “Project Details”, more specifically section 13 “Description of Work” and any additional or supplemental services or detailed scope of work as may be set out in the Consultant’s Proposal submission.

**3.2 SERVICES TO BE PROVIDED BY TOWN**

The Town will provide access to the Town’s information and/or database(s) to the extent set out in section 14 of the RFP and as otherwise may be requested or identified by the Consultant and approved by the Town all in accordance with and subject to any laws governing the disclosure and use of such information and/or database.

**ARTICLE 4**

**FEES AND DISBURSEMENTS**

**4.1 BASIS OF PAYMENT FOR THIS AGREEMENT**

**4.1.1 FEES CALCULATED ON A DELIVERABLE BASIS**

The Town shall pay the Consultant the Fee for the Services, calculated on the basis of the stage of completion of each Phase of the Services since the date of the previous invoice.

**4.1.2 UPSET COST LIMIT**

(a) Notwithstanding anything else contained in this agreement, the Fee for the Services shall not exceed the amount set out in the Proposal Submission's completed "not to be exceeded" as called for in section 7.1 of the RFP in the format required in Tables 2, 3, and 4 of the RFP (attached as Schedule E) unless and until agreed to in writing by the Town in its sole and absolute discretion (e.g to cover Additional Expenses). This upward limit is termed "the Upward Fee Limit".

(b) Included in the "Fee" but subject to the limits and payment terms set forth in article 4, the Consultant shall be reimbursed at cost for all reasonable expenses properly incurred by them in connection with the Services and identified in the Proposal Submission, including but not limited to: vehicle use charges, traveling and living expenses, long distance telephone charges, report production costs, photography, special delivery charges, supplies and equipment, field equipment costs, laboratory costs. Computer and office charges are considered part of overhead and shall not be invoiced as disbursements.

(c) Notwithstanding Subsections (a) and (b) of this Section, the Town, at its sole discretion, may limit the amounts paid to the Consultant by the Town to the percentage equivalent to each Phase of the project complete in the reasonable opinion of the Town.

(d) The Consultant must request and receive the written approval of the Town before any Additional Services are carried out that are not included in Article 3 of this Agreement. When approving Additional Services that are not included in Article 3, the Town, at its sole discretion, may, in writing, set a limit on the total amount that may be claimed by the Consultant for the requested Additional Services.

**4.1.3 LUMP SUM BASIS**

- a. Fees for the scope of work covered under this Agreement will be on a Lump Sum Price Basis, inclusive of labour, disbursements and reimbursable expenses but at all times reflective of the Upward Fee Limit.

- b. Monthly progress invoices will be based on the percentage of each Phase of the project completed or milestone achieved as detailed in the RFP.
- c. If the project is abandoned or delayed for any reason beyond the Consultant's control as confirmed by the Town, acting reasonably, the Town shall pay the balance outstanding on the Fee for the Services adjusted by the percentage of each Phase of the Project then completed multiplied by the Total Fee set opposite such Phase on Schedule A plus the termination expenses reasonably incurred by the Consultant in winding down the project.

## **4.2 PAYMENT**

### **4.2.1 FEES CALCULATED MONTHLY**

The Consultant shall submit an invoice to the Town for all Services completed in the immediately preceding month.

### **4.2.3 INVOICES GENERALLY**

- a) Requirements for a proper invoice

All invoices submitted by the Consultant to the Town under this Agreement shall contain the following information:

- (1) The Consultant's name and address;
- (2) The date of the invoice and the period during which invoiced Services were supplied;
- (3) Information identifying the Agreement under which Services were supplied;
- (4) A description of the services supplied;
- (5) The total amount payable for the services supplied, and a statement that payment is due within 30 days of receipt subject to reasonable verification;
- (6) The name, title, telephone number and mailing address of the person to whom payment is to be sent; and
- (7) The following additional information (if any):
  - i. Undertaking that Sub-Consultants are paid
  - ii. Community Employment Benefit (CEB) Assessment as in the manner set forth in section 11.2 of the RFP together with any other report deliverable by the Consultant under the RFP
  - iii. Stage of completion of each Phase of the Services
  - iv. Fees payable based on the percentage of work completed on any Phase less amounts previously accounted for in prior invoices;
  - v. HST applicable thereto along with the Consultant's HST number;
  - vi. Detail in respect of the actual time spent by the Consultant's employees, materials, equipment.
  - vii. A summary and details of the actual work of any Sub-Consultant otherwise consistent with the information noted in i) to vi) above.

- b) Disputed invoices

If the Town intends to dispute any invoice delivered by the Consultant, in whole or in part, the Town shall within 21 calendar days of receiving the invoice, deliver to the Consultant a notice of non-payment setting out the reasons for non-payment and offering to mediate the dispute if not resolved within a further 21 calendar days.

Any undisputed portion of any invoice shall remain payable upon receipt in accordance with the terms of payment set out below.

**4.2.4 TERMS OF PAYMENT**

All fees, irrespective of their basis, shall be exclusive of HST, and HST will be added to each invoice. All fees and charges will be payable in Canadian funds unless noted otherwise. Invoices will be due and payable, within 30 days of, as presented and without holdbacks, by the Town upon receipt, together with the additional information called for above.

**ARTICLE 5**

**MISCELLANEOUS**

**5.1 COMMUNICATION**

Subject to the express provisions of this Agreement, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered and receipted mail, charges prepaid, or by facsimile transmission or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner.

Communications sent to the Municipality shall be addressed to:

917 Lesperance Road, Tecumseh, Ontario N8N 1W9

Communications sent to the Owner shall be addressed to:

\_\_\_\_\_

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

**5.2 TIME OF ESSENCE**

Time shall be of the essence of this Agreement and of every part thereof.

**5.3 WAIVER**

No waiver by any part of a breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

#### **5.4 FURTHER ASSURANCES**

Each of the Parties covenants and agrees that he, his heirs, executors, administrators and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such by-laws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

#### **5.5 HEADINGS**

The headings of the Articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

#### **5.6 SUCCESSORS AND ASSIGNS**

The covenants hereunder shall run with the land and this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

#### **5.7 GENDER**

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

#### **5.8 SEVERABILITY**

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in

the case of partial invalidity or unenforceability of a covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

#### **5.9 ENTIRE AGREEMENT**

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

#### **5.10 EXECUTION IN COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

#### **5.11 JURISDICTION**

This Agreement and all other agreements, security and documents to be delivered in connection with this agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.

#### **5.12 TRUE COPY**

All of the parties hereto acknowledge having received a true copy of this document.

#### **5.13 SCHEDULES**

The Schedules attached hereto form part of this agreement.



}       **XXXXX - XXXX**  
}  
}  
} \_\_\_\_\_  
}   **Per:** \_\_\_\_\_

***SCHEDULE "A"***

***REQUEST FOR PROPOSAL***

***SCHEDULE "B"***

***ADDENDA TO THE REQUEST FOR PROPOSALS (RFP)***

***SCHEDULE "C"***

***SUPPLEMENTARY CONDITIONS TO THE STANDARD AGREEMENT***

***SCHEDULE "D"***

***PROPOSAL SUBMISSION FROM CONSULTANT***

***SCHEDULE "E"***

NTD: Attach Table 2, 3, and Table 4 as completed by Consultant

Section F – AODA Form

**(TO BE COMPLETED UPON CONTRACT EXECUTION)**

**Service Providers  
Accessibility Standards for Customer Service  
(Ontario Regulation 429/07)  
CERTIFICATE**

To: Corporation of the Town of Tecumseh  
(the "Town")

From: \_\_\_\_\_  
(the "Service Provider")

Employee/Contractor/ Representative Name (PLEASE PRINT)	Date of Hire	Date of Training

## Section G – Proposal Submission Checklist

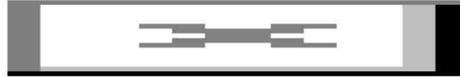
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The Proponents shall ensure their proposal includes the following for completeness:

<b>Items to be Included in Proposal</b>	<b>Complete?</b>
Understanding of the Scope	Y/N
Proposed Implementation Plan	Y/N
Relevant Project Experience	Y/N
Project Manager	Y/N
Project Staff	Y/N
Completed Fee table 2, 3, 4	Y/N
Completed Section D – Acceptance Form	Y/N

***SCHEDULE "B"***

***ADDENDA TO THE REQUEST FOR PROPOSALS (RFP)***



## **Addendum # 1**

**Bid Opportunity: 69 - RFP – PJ Cecile Pump Station Replacement Project**

**Closing Date: Thursday, December 15, 2022 2:00 PM**

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**Geotechnical Report**