

Consulting Agreement

between

The Corporation of the Town of Tecumseh

and

Dillon Consulting Limited

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This Agreement made this 27th day of February 2024.

Between:

The Corporation of the Town of Tecumseh

(hereinafter called the "**Municipality**" or "**Town**")

Of the First Part

-and-

Dillon Consulting Limited

(hereinafter called the "**Consultant**")

Of the Second Part

Recitals:

Whereas the Town intends to retain the consulting services of qualified professionals to complete the engineering consulting services for the Project known as: Town of Tecumseh 2024 Road Needs Study;

;

And Whereas the Consultant has agreed to provide the Consulting Services in accordance with the Proposal Submission letter entitled Town of Tecumseh 2024 Road Needs Study Outline of Professional Services dated January 26, 2024 which letter is filed with the Municipal Clerk and which letter is incorporated by reference hereto

And Whereas the Consultant has further agreed to provide the Consulting Services in accordance with and 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 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 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.

“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.

“Project” shall mean the Project as outlined in the Proposal Submission.

“Proposal Submission” shall mean the Consultant’s Outline of Professional Services letter submission dated January 26, 2024, which submission is incorporated by reference and made expressly a part of this Agreement.

“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 the 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 by other members of the engineering and science professions currently practicing under similar conditions and otherwise in accordance with all applicable code(s) of ethics, provincial and/or national laws and regulations. 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, and the Town has ownership of any such drawings and documents. To the extent called for, 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 Consultant.

The Town shall have permanent non-exclusive royalty-free license to use any concept, product, or process, which is patentable, capable of trademark, or otherwise produced by or resulting from the Services rendered by the Consultant in connection with the Project and for no other purpose or project.

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, that are made available for review by the Town upon request, such accounts, and records to include but not be limited to its contracts, invoices, statements, receipts, vouchers, and all non-financial records in respect of the Project for at least six (6) years, 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.

2.7 Changes and Alterations and Additional Services

With the written 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

Consultant shall finalize a mutually agreed Project Schedule with milestones as noted in Proposal Submission . 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 (30) 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 and reasonable costs incurred to close out the Consultant's Services 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

- a) Without limiting the extent of scope of indemnification, each party shall indemnify the other party, to the extent of the fault or negligence of the indemnifying party, for damages and costs resulting from:
 - i. a breach of contractual obligations under the Agreement by the indemnifying party or anyone for whom that party is responsible; or
 - ii. negligent or faulty acts or omissions of the indemnifying party or anyone for whom that party is responsible.

- b) The Consultant's liability for claims which the Town has or may have against the Consultant or the Consultant's employees, agents, representatives, and subconsultants under the Agreement, whether these claims arise in contract, tort, negligence, or under any other theory of liability, shall be limited, notwithstanding any other provision of the Agreement:
 - i. to claims made by notice in writing within a period of six (6) years after completion of the Services or within such shorter period as may be prescribed by any limitation or statute in the jurisdiction in which the Project is located;
 - ii. in respect to losses of the type for which insurance is to be provided pursuant to Section 2.11 below, limited to the insurance proceeds recovered under the applicable policy of insurance required in the Agreement, or that which would have been recovered but for the Consultant's failure to maintain such insurance, in no event to exceed the minimum insurance limits of the applicable policies of insurance defined in this Agreement; and
 - iii. in respect to losses of the type for which insurance is not required to be provided in accordance with Section 2.11 below, limited to the total amount of the Consultant's fee and reimbursable expenses, or \$250,000, whichever is greater.
- c) Notwithstanding the foregoing, the limitation of liability shall not apply to third parties asserting claims, for bodily injury, sickness, disease (including death), or destruction of tangible property, against either of the parties.
- d) Neither party is liable to the other party in relation to the Agreement, whether due to breach of contract, tort, negligence, warranty, strict liability or otherwise, for consequential or indirect loss or damages, including without limitation, loss of profits, loss of revenue or loss of anticipated business incurred by other party.
- e) The obligation of either party to indemnify the other as set forth above shall be inclusive of interest and all legal costs.
- g) The Consultant shall not be liable for the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer's specifications, product literature or written documentation.
- h) Where the Consultant is a corporation or partnership, the Town and other consultants shall limit any claim they may have to the corporation or partnership, without liability on the part of any officer, director, member, employee, or agent of such corporation or partnership.
- i) The Consultant is not responsible for the identification, reporting, analysis, evaluation, presence, handling, removal, or disposal of hazardous substances at

or adjacent to the place of the Services, unless otherwise specified in the Proposal Submission or for the exposure of persons, property, or the environment to hazardous substances at or adjacent to the place of the Services.

- j) This indemnification and limitation of liability shall survive the Agreement.
- k)

2.11 Insurance

The Consultant shall obtain, maintain, and provide evidence thereof to the Town, appropriate insurance coverage in respect of the Services as may be more particularly detailed in the Proposal Submission.

The Consultant, 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 \$5,000,000 per occurrence.
- b) Add The Corporation of the Town of Tecumseh as additional insured 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 Consultant 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 Consultant and used on the work. Each such insurance shall have a limit of liability of \$2,000,000 per 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) Automobile liability insurance with limits of not less than \$2,000,000.00 per occurrence.

The Consultant’s insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Town.

The Consultant, 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 \$2,000,000 per claim and in the aggregate.

The Consultant shall provide a Certificate of Insurance evidencing coverage in force prior to execution of the Contract for this work.

2.12 Force Majeure

Neither party shall be responsible to the other for damages arising directly or indirectly from any delays due to 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.

2.3 Assignment

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

2.14 Previous Agreements

This Agreement supersedes all previous agreements, arrangements, or understandings between the parties whether written or oral in connection with or incidental to the Project provided that the Schedules attached hereto are incorporated and remain part of this Agreement.

2.15 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 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.

2.16 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.

2.17 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.

2.18 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.

2.19 Time

The Consultant shall perform the Services in accordance with the requirements of Article 3 of this Agreement and the Proposal Submission, if applicable, 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.

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. The Consultant shall relate such information to

the particular type of work that such staff are 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.
- 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.

Article 3

Services To Be Provided

3.1 Services to be Provided by Consultants

The Consultant shall perform the services those services called for within the Proposal Submission.

3.2 Services to be Provided by Town

The Town may provide access to the Town's information and/or database(s) as 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 a Fee for the total Services to be provided

under this Agreement up to an Upset Fee Limit amount of \$130,550.00 (excluding HST) and as referenced in Article 4.1.2.

4.1.2 Upset Cost Limit

- a) Notwithstanding anything else contained in this agreement, the Fee for the Services shall not exceed the amount of \$130,550.00 (excluding HST) unless and until agreed to in writing by the Town in its sole and absolute discretion (e.g., to cover Additional Expenses). This limit is termed “the Upset Cost 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.

4.2 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. Consultant under the Proposal Submission;
 - 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 twenty-one (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/Town shall be addressed to:

917 Lesperance Road, Tecumseh, Ontario N8N 1W9

Communications sent to the Consultant 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 endure 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, if any, attached hereto form part of this Agreement.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals as of the date first noted above.

SIGNED, SEALED AND DELIVERED
in the presence of

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The Corporation of the Town of Tecumseh

Gary McNamara - Mayor

Rob Auger – Director
Legislative & Clerk Services

We have authority to bind.

Dillon Consulting Limited

Per: _____

Per: _____

I/We have authority to bind.