



SEALED TENDERS FOR THE FOUNDATION REHABILITATION DESIGN WILL BE RECEIVED BY:

The Corporation of the Municipality of Powassan
250 Clark Street, PO Box 250
POWASSAN, ON, P0H 1Z0

TENDER NUMBER: 2022-04

FOUNDATION REHABILITATION DESIGN

TENDER CLOSING DATE AND TIME: 10:00 A.M. LOCAL TIME August 11, 2022

TENDER OPENING TIME: 10:05 A.M. LOCAL TIME August 11, 2022
To be awarded on August 16, 2022

TENDERS FOR: Evaluate issues with existing building foundation and walls, draft and stamp plans for foundation/wall rehabilitation work, and inspect/approve rehabilitation construction

**This complete tender package must be submitted in a sealed envelope, clearly marked "Foundation Rehabilitation Design" Tender: 2022-04
LOWEST OR ANY TENDER NOT NECESSARILY ACCEPTED**

Location Of Work:

The location of work is to be at the South Himsworth Community Center (Powassan Lion's Den) - 7 Glendale Heights Drive, Powassan, Ontario.

Schedule of Contract Documents:

1. The following information for bidders
2. The following quote specifications
3. Bid Form
4. Appendix A: Consulting Engineers of Ontario & Municipal Engineers Association - Client/Engineer Agreement For Professional Consulting Services
5. Appendix B: South Himsworth Community Center Pictures

General Information:

All inquiries concerning the quote, prior to quote closing shall be directed to:

Codey Munshaw, Director of Public Works & Engineering
Municipality of Powassan
Box 250, 250 Clark Street, Powassan ON, P0H 1Z0
Telephone: 724-2813 ext. 202
Email: cmunshaw@powassan.net

Or

Mark Martin, C.B.O
Municipality of Powassan
Box 250, 250 Clark Street, Powassan ON, P0H 1Z0
Telephone: 724-2813 ext. 228 or 492-3488
Email: mmartin@powassan.net

For the purpose of this document, a company or persons that will be or is proposing to providing a service to the Municipality of Powassan, shall be hereby referred to as the "Service Provider".

The Service Provider will submit their sealed Tenders by traditional mail/drop-off at the previously stated Municipal building before Tender closure.

A Service Provider may amend their Tender at any time prior to the set closing date/time by submitting a signed and sealed amendment. No amendments will be accepted post Tender closure. A Tender may be voided by superseding it with a later Tender or letter of withdrawal, prior to the closing date and time.

Any and all Tenders that are received after the quote closing date/time, will be rejected by the Municipality. Any and all unsigned Tenders will be deemed unacceptable, and will be rejected by the Municipality.

The Municipality reserves the right to reject any or all tenders. The Municipality shall have the right to cancel the request process and to place a new request for tenders. The tenders shall be evaluated by the Municipality in its sole and unfettered discretion. The Municipality reserves the right, in its absolute discretion to accept a tender which it deems most advantageous to itself and the right to reject any tender, in each case without giving any notice. Supplementary materials changing the terms of the request shall render the quote non-compliant. Tenders which contain qualifying conditions may, at the sole discretion of the Municipality, be disqualified or rejected. In no event will the Municipality be responsible for the costs of the preparation of the submission of a tender. No Bidder shall have any claim for any compensation of any kind because of participating in this tendering process and by submitting a tender each Bidder shall be deemed to have agreed that it has no claim.

Notification of Acceptance of Tender will be by telephone and written form of notice, to the address of the Service Provider used on the bid forms. The Date of Acceptance shall be deemed to be the date the Service Provider receives the Notification of Acceptance.

The Tender opening will be on August 11, 2022, at 10:05am at 250 Clark Street, Powassan. For those wishing to attend the Tender opening, please see the front reception prior to the opening time.

Scope of Work:

The Service Provider will be responsible for the supply of all manpower and equipment necessary conduct:

- Complete an engineering assessment to determine the underlying issues that are causing the foundation damage
- Complete a detailed design and material/quantity list, to be used in a foundation rehabilitation Tender, and provide an estimated construction cost for such repairs
- Conduct on-site inspections of foundation rehabilitation construction

Project Details:

Over the past couple years, the foundation wall on the Northeast corner of the South Himsworth Community Center has experienced cracking. The foundation cracking appears to be caused by frost action on the building (see Appendix B for pictures of foundation/wall cracking). The existing building is a slab on grade with a frost wall foundation. The successful service provider shall determine the cause of the foundation damage, recommend a solution, and provide detailed drawings and a quantity take-off sheet for the recommended solution. The solution must address the cause of the foundation issues, as well as the necessary repairs to the foundation. Upon request by the successful service provider, and upon receiving appropriate locates; the public works department can arrange a test pit to evaluate the foundation wall below grade.

Following the Tender award, the service provider shall investigate, and determine the cause for the foundation damages. Once the issues are determined, the service provider shall meet with Municipal staff, during such time, the service provider shall propose the repair options and the estimated cost for the repairs. Once Municipal staff approve of the proposed repairs, the successful service provider shall start the detailed design. Included in the detailed design, shall be the necessary temporary support systems that may be required during the foundation repairs. The successful Service Provider shall meet with Municipal staff throughout the detailed design period, to ensure that the design is to the satisfaction of the Municipality. The detailed design shall be approved and stamped by a licensed professional engineer with P.E.O. The Successful service provider shall conduct on-site inspections of the foundation rehabilitation, to ensure that rehabilitation conforms with the foundation rehabilitation detailed design.

Work is to be completed by September 16, 2022.

Should the service provider anticipate the need for sub-consultants, the service provider shall include in the Tender submission a list of the sub-consultants and their experience with similar projects. Sub-consultants shall be subject to section 1.17 of Appendix A.

The Service Provider shall be paid in a Lump Sum for each task completed on the Bid Form. Any variance from the original Tendered bids shall be approved by the Public Works Engineer prior to the commencement of such work. Should additional site inspections be required, the Service Provider shall be paid for this additional work at approved time and material rates.

For the unit price bid, the Service Provider shall supply all materials, labour, tools, equipment and all other things necessary to complete the work in accordance with these contract documents and to the satisfaction of the Director of Public Works & Engineering, Chief Building Official, or their representative.

Service Providers Ability To Perform Work:

The Service Provider is required to complete the following statements, and is required to include the said statements using the space provided or similar documentation provided by the Service Provider in their Tender submission.

Statement A: The Service Provider must state contracts and/or experience in successfully performing similar projects.

Statement B: The Service Provider must list all senior supervisory staff to be used during the completion of the contract, and the relative experience of each listed staff member.

Statement A – Service Provider’s Experience for Reference:

Statement B – Senior Supervisors and Experience:

Performance Evaluation:

Failure to execute the contract in a competent and timely manner will result in the disqualification of the bidder from bidding on the Municipality of Powassan’s contracts for a period of two (2) years.

Liability/Indemnification:

The Service Provider shall indemnify the Municipality, its officers, employees and agents from all claims, demands, actions, or other proceedings initiated by others arising out of or attributable to anything done, or omitted to be done by the Service Provider, its officers, employees or agents in connection with the services performed or required to be performed under this Contract.

Liability/Insurance:

The Service Provider shall maintain a policy of motor vehicle liability insurance for both owned and non-owned licensed vehicles having limits of not less than five million dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death, and damage to property.

The Service Provider shall maintain a policy of general liability insurance having limits of not less than five million dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death, and damage to property.

The general liability policy shall include the Municipality as an additional insured, but only in respect of and for the duration of the services to be performed under this contract and shall contain a cross liability clause endorsement.

The Service Provider shall also maintain professional liability (errors and omissions) insurance in the amount of five-hundred thousand dollars (\$500,000.00) per claim and one-million dollars (\$1,000,000.00) in aggregate. This insurance shall cover any and all errors or omissions made by the professional in the rendering of all reports and professional services as requested by this proposal.

The Service Provider shall provide proof of valid WSIB coverage.
Prior to the beginning of the Contract the Service Provider must provide proof of insurance (certificate of insurance or certified copy of policy) to the Public Works Engineer.

POLICY NO.: _____ INSURANCE CO.: _____
POLICY NO.: _____ INSURANCE CO.: _____
AMOUNT: _____ EXPIRY DATE: _____

Protection of Property:

The Service Provider will be responsible for any damage that may occur relative to the execution of all operations arising from the contract. Any damage done to municipal or private property must be made good to the satisfaction of the Municipality.

The Service Provider will supply adequately trained and competent persons to conduct work during this project.

Delay in Project:

All damage, loss, expense and delay incurred or experienced by the Service Provider in the execution of the work, by reason of unanticipated difficulties shall be borne by the Service Provider and shall not be the subject of a claim for additional compensation.

Health & Safety:

All work performed under this Contract must be carried out in accordance with the Municipality's Health and Safety Policy and any federal and provincial health and safety legislation and regulations. Failure to comply with this condition will be considered a breach of contract.

The Service Provider shall assure that all staff on the job site wear appropriate PPE (Personal Protective Equipment), and that all safety measures are in place to minimize and or prevent their staff and the general public from harm or injury.

Breach of Contract and Contract Termination:

If the Service Provider or Municipality shall fail to meet the terms of the contract herein explained, the party conforming to the contract will have the opportunity to terminate the contract due to the other party breaching the contract. When a non-conformance is noticed by a party, the conforming party has a responsibility to notify (either by letter or email) the non-conforming party. The non-conforming party will have 10 business days to meet the terms of the contract, failure to do so will be a breach of contract and will be grounds for immediate dismissal.

Additionally, should the Service Provider or Municipality knowingly provide false information during the completion of this contract document, it will be henceforth considered that the complying party was given insufficient information to formal accept the contract; meaning that the contract will be now in void, unless both parties can agree on new terms to this contract.

Bid Form:

The Service Provider has carefully examined the conditions and specifications attached and referred to in this contract, and has carefully examined the site and work location and understands and accepts the said conditions and specifications, and for the prices set forth in this quote, hereby offers to furnish all labour, equipment and materials, except as otherwise specified in the contract, to complete the work in strict accordance with said conditions and specifications for the sum provided in the table below:

Item	Description	Quantity	Units	Unit Bid Price	Total Bid
1	Engineering assessment of issues causing foundation damage	1	LS	\$	\$
2	Detailed design of foundation rehabilitation	1	LS	\$	\$
3	On-Site inspections during foundation rehabilitation	1	LS	\$	\$
				HST	\$
				Total Bid	\$

I/We (the Service Provider) promise: that I/we are over the age of 18, are of right mind, are not under the influence of alcohol or controlled substances, wish to enter into a legally binding contract with the Municipality of Powassan, and agree to perform the work without undue delay to ensure work is completed as specified by the above stated Tender no later than: **SEPTEMBER 16, 2022.**

Name of Individual or Firm _____
hereinafter referred to as the
"Service Provider" (Print)

Address:

Phone Number _____

Authorized Signature _____

Title _____

Date _____

Witness or Firm Seal _____

Appendix A:

Association of Consulting Engineering
Companies | Ontario (ACEC-Ontario) in
partnership with the
Municipal Engineers Association (MEA)

CLIENT/ENGINEER AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES

*2020
(VERSION 3.1)*

Please enter the title of the project/ assignment

Table of Contents

DEFINITIONS 4

ARTICLE 1 - GENERAL CONDITIONS 5

ARTICLE 2 – SERVICES TO BE PROVIDED 12

ARTICLE 3 - FEES AND DISBURSEMENTS 13

ARTICLE 4 – FORM OF AGREEMENT 17

ARTICLE 5 – SCHEDULES..... 18

**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

Dated the ____ day of _____ 20 ____

-BETWEEN-

Hereinafter called the 'Client'

-AND-

Hereinafter called the 'Engineer'

WHEREAS the Client intends to (Description of Project)

Hereinafter called the 'Project' and has requested the Engineer to furnish professional Services in connection therewith.

NOW THEREFORE WITNESSETH that in consideration of the covenants contained herein, the Client and the Engineer mutually agree as follows:

DEFINITIONS

1. Client

Client shall be the party identified herein, and shall mean a municipality within the Province of Ontario or a related municipal organization representing the interests of Ontario municipalities.

2. Engineer

Engineer shall be the party identified herein, and shall be properly qualified to provide the professional services prescribed in this Agreement.

3. Municipal Engineers Association (MEA)

MEA shall mean the association of public sector Professional Engineers engaged in performing the various functions that comprise the field of municipal engineering in Ontario

4. Association of Consulting Engineering Companies | Ontario (ACEC-Ontario)

shall mean the industry association created to represent the business interests of member consulting engineering firms, working with all levels of government and other stakeholders to promote fair procurement and business practices to support its member firms as necessary.

5. Order of Precedence:

- i. Standard Agreement
- ii. Schedule A: Supplementary Conditions to the Standard Agreement
- iii. Schedule B: Addenda to the Request for Proposals (RFP)
- iv. Schedule C: Request for Proposal (RFP)
- v. Schedule D: Proposal submission document(s) from the Engineer
- vi. Schedule E: Other

ARTICLE 1 - GENERAL CONDITIONS

1.1 **Retainer**

The Client hereby retains the services of the Engineer in connection with the Project and the Engineer agrees to provide the services described in Article 2 (Services to be provided) for the Project under the general direction and control of the Client.

1.2 **Compensation**

The Client shall pay the Engineer in accordance with the provisions set forth in Article 3. For purposes of this agreement, the basis of payment shall be as specified in Article 3.2.

1.3 **Staff and Methods**

The Engineer 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 Professional Engineers Act (RSO 1990, Chapter P.28) and the regulations therein. The Engineer shall employ only competent staff who will be under the supervision of a senior member of the Engineer's staff. The Engineer shall obtain the prior agreement of the Client before making any changes to the staff list after commencement of the Project.

1.4 **Drawings and Documents**

Subject to Article 3, drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Engineer for the Client may be used by the Client, for the Project herein described, including "record" drawings. Subject to Article 1.5, the Client has ownership of the drawings and the client indemnifies the Engineer for unauthorized use of the documents and deliverables.

1.5 **Intellectual Property**

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

The Client 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 Engineer in connection with the Project and for no other purpose or project.

1.6 **Records and Audit**

- a) In order to provide data for the calculation of fees on a time basis, the Engineer shall keep a detailed record of the hours worked by staff employed for the Project.
- b) The Client may inspect timesheets and record of expenses and disbursements of the Engineer during regular office hours with respect to any item which the Client is required to pay on a time scale or disbursement basis as a result of this Agreement.

- c) The Engineer, when requested by the Client, shall provide copies of receipts with respect to any disbursement for which the Engineer claims payment under this Agreement.
- d) For seven (7) years after the expiry date or any date of termination of the Agreement, the Engineer shall maintain 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.

1.7 Changes and Alterations and Additional Services

With the consent of the Engineer, the Client 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 Client necessitates additional staff or Services, the Engineer shall be paid in accordance with Section 3.2.2.1 for such additional Services and staff employed directly thereon, together with such expenses and disbursements as allowed under Section 3.2.4, or as otherwise agreed in writing between the parties.

1.8 Delays

In the event that the start of the project is delayed for sixty (60) days or more for reasons beyond the control of the Engineer, the Engineer shall have the right to renegotiate the agreement before the commencement of the project.

1.9 Suspension or Termination

The Client 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 Engineer shall perform no further Services other than those reasonably necessary to close out his/her Services. In such an event, the Engineer shall be entitled to payment in accordance with Section 3.2 for any of the Engineer's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.

If the Engineer is an individual and deceases before his/her Services have been completed, this Agreement shall terminate as of the date of his/her death, and the Client shall pay for the Services rendered and disbursements incurred by the Engineer to the date of such termination.

1.10 Indemnification

The Engineer shall indemnify and save harmless the Client from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Client, his employees, officers or agents may suffer, to the extent the Engineer is legally liable resulting from the negligent acts of the Engineer, his employees, officers or agents in the performance of this Agreement.

The Client agrees to hold harmless, indemnify and defend the Engineer from and against any and all claims, actions, losses, expenses, costs or damages of every nature including liability and costs of defense arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligent acts of the Engineer in the performance of his/her Services to the Client within this project.

1.11 Insurance

The Client will accept the insurance coverage amount specified in this clause section (a) or (b), or whichever is applicable to the claim or as specified in the RFP as the aggregate limit of liability of the Engineer for Clients damages.

- a) Comprehensive General Liability and Automobile Insurance

The Insurance Coverage shall be \$_____ per occurrence and in the aggregate for general liability and \$_____ for automobile insurance. When requested, the Engineer shall provide the Client with proof of Comprehensive General Liability and Automobile Insurance (Inclusive Limits) for both owned and non-owned vehicles.

b) **Professional Liability Insurance**

The Insurance Coverage shall be in the amount of \$_____ per claim and in the aggregate. When requested, the Engineer shall provide to the Client proof of Professional Liability Insurance carried by the Engineer, and in accordance with Professional Engineers Act (RSO 1990, Chapter P.28) and Regulations therein.

c) **Additional Coverage**

If the Client requests to have the amount of coverage increased from that detailed in the RFP, or requests other special insurance for this Project then the Engineer shall endeavour forthwith to obtain such additional or special insurance at the Client's expense as a disbursement allowed under Section 3.2.

It is understood and agreed that the coverage provided by these policies will not be changed or amended in any way nor cancelled by the Engineer until (30) days after written notice of such change or cancellation has been delivered to and acknowledged by the Client.

1.12 Force Majeure

The Client agrees that the Engineer is not responsible for damages arising directly or indirectly from any delays for causes beyond the Engineer's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labour disputes; severe weather disruptions or other natural disasters or acts of God; fires; riots, war or other emergencies; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if such delays resulting from any such causes increase the cost or time required by the Engineer to perform its services in an orderly and efficient manner, the Engineer shall be entitled to a reasonable adjustment in schedule and compensation.

1.13 Contracting for Construction

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

1.14 Assignment

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

1.15 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.

1.16 Approval by Other Authorities

Unless otherwise provided in this Agreement, where the work of the Engineer is subject to the approval or review of an authority, department of government, or agency other than the Client, such applications for approval or review shall be the responsibility of the Engineer, but shall be submitted through the offices of the Client and unless authorized by the Client in writing, such applications for approval or review shall not

be obtained by direct contact by the Engineer with such other authority, department of government or agency. Costs for all application fees shall be borne by the Client unless otherwise provided for by the Engineer. The foregoing in no way limits the Engineer'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 Client.

1.17 Sub-Consultants

The Engineer may engage Sub-Consultants for specialized services provided that prior approval is obtained, in writing, from the Client and may add a mark-up of _____% of the cost of such Services to cover office administration costs when claiming reimbursement from the Client.

1.18 Inspection (Review by the Client)

The Client, or persons authorized by the Client, 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.

1.19 Publication

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

1.20 Confidential Data

The Engineer shall not divulge any specific information identified as confidential, communicated to or acquired by him/her, or disclosed by the Client 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 Engineer by a third party without obligation of confidentiality, which is independently developed by the Engineer without access to the Client's information, or which is required to be disclosed by law or court order. No such information shall be used by the Engineer on any other project without the approval in writing of the Client.

1.21 Dispute Resolution

- 1) Negotiation
 - a) In the event a matter of difference between the Engineer and the Client in relation to the Contract the grieved party shall send a notice in writing of dispute to the other party which contains the particulars of the matter in dispute and the relevant provisions of the Contract Documents. The responding party shall send a reply in writing to the dispute within ten (10) business days after receipt of the notice of dispute setting out particulars of this response and any relevant provisions of the Contract Documents.
 - b) The Engineer and the Client shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of any and all relevant facts, information, and documents to facilitate these negotiations.

- c) In the event of failure by the Engineer and the Client to reach agreement within ten (10) business days of receipt of the responding party's reply, or if either party concludes that further negotiation is unlikely to result in agreement, the matter shall be referred to mediation as provided in Section 2 herein.

2) Mediation

- a) The Engineer and the Client shall jointly select an impartial Mediator who shall be, preferably, properly qualified in the area of work as contemplated by this Contract. In the event that the parties, acting reasonably, cannot agree on a mediator, the candidates selected by the parties shall, acting reasonably, choose a third party to act as the Mediator.
- b) The Mediator shall meet with the parties within ten (10) business days after the selection of the Mediator, or as soon thereafter as is practicable, to attempt to mediate and resolve the dispute. The Engineer and the Client shall observe such reasonable procedures for conducting the mediation as the Mediator may reasonably request.
- c) If no agreement is reached upon mediation, or if either party concludes that further mediation is unlikely to result in agreement, then either the Engineer or the Client may request the Mediator to recommend (and only recommend) a basis, or bases, for resolution of the dispute. The Mediator shall, after consideration of the parties' positions and written submissions (if so requested), issue a written recommendation in this regard. Any recommended basis for resolution shall have absolutely no binding effect upon either party unless both parties agree to accept it and shall be without prejudice to the parties' positions in any further proceeding.
- d) If no agreement is reached either party may refer such matter as is arbitrable to arbitration as provided in Section 3 herein or exercise any legal rights it may have.
- e) All meetings and proceedings shall be held in the municipality of the Client or a reasonable alternate at a time and location as determined by the parties.
- f) The costs and expenses of the Mediator shall be shared equally by the Engineer and the Client.

3) Arbitration

- a) In the event that the parties are unable to settle any dispute between them which is under mediation, either party may refer such matter to arbitration as provided herein:
 - i. The Client and the Engineer shall select an arbitrator within ten (10) business days of the submission of a dispute to arbitration under this Section, which arbitrator shall be neutral and independent of the parties. If the parties are unable to agree on an arbitrator, either party shall be at liberty to seek an appointment of an arbitrator upon application under the Arbitration Act, 1991, S.O. 1991, C. 17.
 - ii. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, C.17, unless the parties otherwise agree. If the issue in dispute is particularly time sensitive, the parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process. In any event, all disputes shall be submitted to the arbitrator within thirty (30) calendar days of the selection of the arbitrator. All arbitration meetings and proceedings shall be held in the municipality of the Client or a reasonable alternate, at a time and location determined by the parties, but in any event no later than thirty (30) calendar days following the submission of the dispute to the arbitrator.
 - iii. In addition to the examination of the parties by each other, the arbitration panel may examine, in the ordinary course, the parties or either of them and the witnesses in the matter referred to the arbitration panel, and the parties and witnesses, if examined, shall be examined on oath or affirmation.
 - iv. The arbitration panel shall, after full consideration of the issues in dispute, the relevant facts and applicable law, render a decision within thirty (30) calendar days after argument of the issue to the arbitrator, which decision shall be final and binding on the parties and not subject to appeal or challenge, except such limited relief provided under Subsection 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the *Arbitration Act, 1991*.
 - v. Each party shall bear its own costs and expenses incurred in the arbitration, and the parties shall share equally in the costs and expenses of the arbitrator.

- vi. Any award of the arbitration panel may, at the instance of either of the parties to this Agreement and without notice to the other of them, be made an Order of the Superior Court of Ontario, pursuant to the *Arbitration Act, 1991* and the *Courts of Justice Act, R.S.O. 1990, c.C-43*.

4) Adjudication

- a) Nothing in this Agreement shall prevent the right of either the Engineer or the Client to refer to adjudication any dispute which may be adjudicated under the provisions of section 13.5 of the *Construction Act, R.S.O. 1990, c. C-30*.
- b) Any such adjudication shall be governed by the provisions of Part II.1 CONSTRUCTION DISPUTE INTERIM ADJUDICATION of the *Construction Act*.

1.22 **Time**

The Engineer shall perform the Services in accordance with the requirements of Article 2 and shall complete any portion or portions of the Services in such order as the Client may require.

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

1.23 **Estimates, Schedules and Staff List**

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

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

- 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 Engineer will seek payment on a time basis. The Engineer 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 Engineer's staff who is to be the liaison person between the Engineer and the Client.

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

The Engineer will require prior written approval from the Client for any of the following changes:

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

1.23.3 **Monthly Reporting of Progress**

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

1.24 **Additional Conditions**

Any requirements regarding insurance, WSIB, permits, approvals, AODA, etc. to be listed here. If there are no additional conditions, then this section is to be left blank. Documentation supporting additional conditions detailed here shall be contained in Article 5.

ARTICLE 2 – SERVICES TO BE PROVIDED

2.1 Services to be provided by Engineer as detailed in the RFP and as provided for in the Engineer's Proposal.

2.2 Services to be provided by Client as detailed in the RFP and as provided for in the Engineer's Proposal.

ARTICLE 3 - FEES AND DISBURSEMENTS

3.1 Definitions

For the purpose of this Agreement, the following definitions shall apply:

a) Cost of the Work:

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

b) Site:

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

3.2 Basis of Payment for this agreement

Note: If you have multiple bases of payment please select "Applies" in the appropriate sections below. If one basis of payment applies, be sure it is the only option selected.

3.2.1 Fees Calculated on a Percentage of Cost Basis

The Client shall pay the Engineer fees to be calculated as a percentage of the Cost of the Work for normal projects as follows:

CALCULATION OF FEE

<u>TYPE OF SERVICE</u>	<u>PERCENTAGE</u>

3.2.2 Fees Calculated on a Time Basis

a) Fees

The Client shall pay the Engineer a fee, calculated on a time basis, for that part of the Services described in Article 2. Fees on a time basis for all staff shall be hourly rates based on job classifications as detailed in the Engineer's proposal.

For a project of over one (1) year duration, or for projects which become extended beyond one (1) year in duration, the Engineer may from time to time seek approval from the Client to adjust hourly rates and such approval shall not be unreasonably withheld.

b) Time Expended

All time expended on the assignment, whether in the Engineer's office, at the Client's premises, or elsewhere, and including travel time, shall be chargeable.

3.2.3 Upset Cost Limit

(a) The Engineer shall be paid a fee, calculated on a time basis, for the Services.

(b) Included in the fee, the Engineer shall be reimbursed at cost plus an administrative charge of ___% for all reasonable expenses properly incurred by them in connection with the Services, 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 total fees and disbursements paid by the Client to the Engineer for the Services shall not exceed the total upset amount of \$_____ plus, applicable taxes made up as follows:

(i) \$_____ plus, applicable taxes for Core Services as described in Schedule A; and,

(ii) \$_____ plus, applicable taxes as a Contingency Allowance for Additional Services that may be required but are not included in Schedule A.

(d) Notwithstanding Subsections (a) and (b) of this Section, the Client, at its sole discretion, may limit the fees and disbursements paid by the Client to the percentage equivalent to the project complete in the opinion of the Client.

(e) The Engineer must request and receive the written approval of the Client before any Additional Services are carried out that are not included in Schedule A. The Engineer shall not be entitled to any payment from the Contingency Allowance unless the Engineer has satisfied this condition. When approving Additional Services that are not included in Schedule A, the Client, at its sole discretion, may, in writing, set a limit on the monies from the Contingency Allowance that may be permitted for the requested Additional Services.

3.2.4 Reimbursable Expenses – Apply to 3.2.1. through 3.2.3. and shall be included in 3.2.5.

In addition to the fee, the Engineer shall be reimbursed at cost plus an administrative charge of ___%, for all expenses and disbursements properly incurred by the Engineer in connection with the project.

3.2.5 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.

b) Monthly progress invoices will be based on the percentage of project completed or

milestone achieved as detailed in the RFP.

- c) If the project is abandoned or delayed for any reason beyond the Engineer's control, the Client shall pay a fee for services rendered to that date, plus the termination expenses reasonably incurred by the Engineer in winding down the project.

3.3 Payment

3.3.1 Fees Calculated on a Time Basis

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

3.3.2 Fees Calculated on a Percentage of Cost Basis

a) Monthly Payment

The Engineer shall submit an invoice to the Client for that part of the design of the Project completed in the immediately preceding month calculated upon the basis of the Engineer's estimate of the cost of that part of the Project, and, if the Client agrees with such estimate and that such part has been completed, the Engineer will be paid the amount of the fee so invoiced.

b) On Award of Contract

Following the award of the contract for the construction of the Project, the Engineer shall recalculate his/her fee on the basis of the tender quantities and prices on which the contract for the construction of the Project was awarded, plus the estimated cost of materials and other services supplied by the Client and upon such recalculation, the amount paid to the Engineer shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Engineer of any overpayment made to the Engineer.

c) Delay of Award of Contract

In the event the contract for construction of the Project is not awarded within _____ months of the acceptance of the Design by the Client the final fee for design shall be determined as in paragraph (a) above, and paragraph (b) shall not apply.

Further services for the Project beyond the _____ months will be undertaken on a time basis.

d) On Completion of the Work

Following Completion of the Work, the Engineer shall recalculate his/her fee on the basis of the actual Cost of the Work and upon such recalculation the amount paid to the Engineer shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Engineer of any overpayment to the Engineer.

3.3.3 Lump Sum

Based on a milestone basis as per the Engineer's proposal.

3.3.4 Invoices Generally

a) Requirements for a proper invoice

All invoices submitted by the Engineer to the Client under this Agreement shall contain the following information:

- (1) The Engineer'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 amount payable for the services supplied, and a statement that payment is due upon receipt;
- (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):

b) Disputed invoices

If the Client intends to dispute any invoice delivered by the Engineer, in whole or in part, the Client shall within 14 calendar days of receiving the invoice, deliver to the Engineer a notice of non-payment in Form 1.1 as prescribed by the *Construction Act*.

Any undisputed portion of any invoice shall remain payable upon receipt in accordance with the terms of payment set out in section 3.3.5.

3.3.5 Terms of Payment

The Client will compensate the Engineer in accordance with the fees and charges for services as set out in the proposal or as otherwise mutually agreed.

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, as presented and without hold-backs, by the Client upon receipt, and in any event no later than 28 days after receiving the proper invoice.

Interest on overdue accounts will be charged at the rate of ___% per annum.

ARTICLE 4 – FORM OF AGREEMENT

ENGINEER: _____

The signatory shall have the authority to bind the Engineer for the purposes of this agreement.

This _____ Day of _____, 20 ____

Signature		Signature	
Name		Name	
Title		Title	

CLIENT: _____

The signatory shall have the authority to bind the municipality or its agency for the purposes of this agreement.

This _____ Day of _____, 20 ____

Signature		Signature	
Name		Name	
Title		Title	

ARTICLE 5 – SCHEDULES

Copies of Request for Proposal and Proposal Submission documents if required.

This article includes all schedules, (i.e. Request for Proposal, Proposal Submission, Certificates of Insurance, etc.) as well as any additional information required to form the Agreement, such as supplemental general conditions, etc.

The following schedules form part of:

Schedule A: Supplementary Conditions – attached OR not used

Schedule B: Addenda – attached OR not used

Schedule C: Scope of Services – RFP attached OR not used

Schedule D: Proposal from engineer – attached OR not used

Schedule E: Other

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Attached
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NOTE: Attach all appropriate schedule documents as indicated (✓).

Appendix B: South Himsworth Community Center Pictures

















