

This Agreement made this day of **MONTH**, 20**XX**:

Between:

The Corporation of the Town of South Bruce Peninsula

hereinafter called the "Town"

- and -

Consultant

hereinafter called the "Consultant"

Whereas, the Town intends to engage the services of the Consultant in connection with the project as hereinafter described (the "Project"):

The Project is described as **DESCRIPTION** as outlined in Schedule 'A'.

And Whereas the Town desires to have the Consultant perform professional services in connection with the Project;

Now Therefore Witnesseth that in consideration of the covenants herein, the Town and the Consultant mutually agree as follows:

1. Retainer

The Town hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the professional services described in Schedule "A" (the "Services") for the Project under the general direction and control of the Town.

2. Compensation

- (a) The Town shall pay the Consultant for the Services at the established rate(s) identified in Schedule "B". The Consultant shall submit an invoice to the Town for all Services completed in the immediately preceding month. The Town shall pay the Consultant within (30) days of receipt of the invoice.
- (b) When requested by the Town, the Consultant shall provide, for approval by the Town:

- (i) An estimate of the total fees and disbursements to be paid for the Services;
 - (ii) A schedule of progress 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;
 - (iii) A Staff list showing the number, classifications and salary ranges of Staff and/or hourly rate ranges for Principals and Executives, for which the Consultant will seek payment pursuant to the terms, as agreed. 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.
- (c) The Consultant shall not receive any payment of fees and disbursements until approval, in writing, is issued by the Town for the above estimate of fees and disbursements and schedules of progress and Staff list.
- (d) The Consultant will require prior approval, in writing, by the Town for any of the following changes:
- (i) Any increase in the estimated fees and disbursements beyond those approved under Schedule "B";
 - (ii) Any change in the schedule of progress which results in a longer period than approved in Schedule "B";
- (e) The Consultant will require prior approval, in writing, by the Town for any of the following changes:
- (i) Any increase in the estimate fees and disbursements beyond those approved under Section 2(b)(i);
 - (ii) Any change in the schedule of progress which results in a longer period than approved in Section 2 (b)(ii);
 - (iii) Any change in the number, classifications and salary ranges of the Staff provided in Section 2 (b)(iii);
- (f) The Consultant shall provide a monthly report to the Town (descriptive and fee value) showing:

- (i) the portion of the Services completed in the preceding month;
- (ii) Services completed to date;
- (iii) remaining Services to be completed.

3. Staff and Methods

- (a) Unless otherwise agreed, the Consultant shall use current state of the art principles and shall skillfully and competently perform the Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff previously approved by the Town.
- (b) The Consultant shall inform himself of applicable procedures and standards established by the Town and shall comply with such procedures and standards in the performance of the Services.
- (c) The Consultant shall obtain the prior agreement of the Town before making any changes to the staff list after commencement of the Project.

4. Ownership and Use of Documents

- (a) Drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis.
- (b) Where the parties have not otherwise agreed, all drawings, plans, information, mathematical or computer models, statistical data and reports compiled or prepared by the Consultant pursuant to this Agreement shall be the exclusive property of the Town whether the Project be executed or not. The Town shall own all rights of copyright therein and they are not to be used by anyone without the permission of the Town.
- (c) In the event that the said documents and models are used by the Town for purposes other than in connection with the Project, or if the said documents and models have been amended, altered or revised in any manner whatsoever without notice to the Consultant and without receiving its prior written consent, the Consultant does not warrant the fitness of same for the Town's use, and the Town agrees to indemnify and hold harmless and defend the Consultant from and against all claims, demands, losses or damages, liability and costs associated with such use by the Town.

5. Patents and Trademarks

- (a) 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 performance of its Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant unless the concepts, products or processes were conceived by, or jointly conceived with, the Town.
- (b) The Town shall have permanent non-exclusive royalty-free license to use the concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from Services rendered by the Consultant in connection with the Project.

6. Changes and Alterations and Additions Services

With the consent of the Consultant, the Town may in writing at any time alter 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 at the established rate(s).

7. Suspension or Termination

- (a) The Town may at any time, by notice in writing to the Consultant, suspend or terminate this Agreement or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out its Services. In such an event, the Consultant shall be entitled to payment at the established rate(s) for the work reasonably necessary to close out its Services only.
- (b) If the Consultant is practicing as an individual and dies or becomes incapacitated before the Services have been completed, this Agreement shall terminate as of the date of death, or incapacity, as applicable, and the Town shall pay for the Services rendered by the Consultant to the date of such termination.

8. Indemnification

- (a) The Consultant shall indemnify and save harmless the Town, its officers, employees or agents from and against any and all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever resulting from or connected with the Project to the extent that they are caused by:
 - (i) negligent acts, errors or omissions of the Consultant, its officers, employees or agents in providing the Services on the Project;
 - (ii) failure of the Consultant, its officers, employees or agents to comply in material respects with federal, provincial, and local laws and regulations applicable to the Services undertaken by the Consultant hereunder;
 - (iii) breach of this Agreement by the Consultant, its officers, employees or agents; or
 - (iv) a willful misconduct on the part of the Consultant, its officers, employees or agents.
- (b) Without limiting the generality of the foregoing, the Consultant shall also indemnify and save harmless the Town from and against all actions, claims and demands whatsoever which may be brought against or made upon the Town for the infringement of or use of any intellectual property rights including any copyright or patent arising out of the reproduction or use in any manner of information of any kind whatsoever furnished by the Consultant in the performance of this Agreement.

9. Insurance

- (a) The Consultant shall ensure that all insurance coverage including all provisions relating to insurance coverage set out in this section are in place prior to the commencement of services pursuant to this Agreement.
- (b) During the Term of this Agreement, and any renewal or extension thereof, the Consultant will, at its expense (including the cost of deductibles) maintain in effect, with an insurer licensed in Ontario:
 - (i) a contract of general liability insurance for its operations, with limits of not less than Two Million (\$2,000,000) Dollars, in addition to coverages for defense and claimants' costs, all for any one occurrence, including coverages for:

- personal injury including death;
- property damage or loss (direct or indirect and including loss of use thereof);
- broad form property damage;
- contractual liability;
- non-owned automobile liability;
- products – completed operations;
- contingent employers liability;
- cross liability;
- severability of interest; and
- blanket contractual liability.

The policy of insurance shall name the Town of South Bruce Peninsula as an additional insured with respect to its interest in the operations of the Consultant; shall provide that the policy shall be non-contributing with, and apply only as primary and not as excess to any other insurance available to the Town; and shall also provide that neither the Consultant nor the insurer shall cancel, materially change or allow the policy to lapse without first giving the Town thirty days prior written notice. All policies of insurance shall be in form and content acceptable to the Town acting reasonably.

(ii) a policy of professional liability insurance or other errors and omissions insurance covering claims and expenses for liability for loss or damage arising from negligence in the administration or application of professional services or guarantee or work rendered, of standard wording, with coverage of no less than Two Million (\$2,000,000) Dollars; and

(iii) a policy of motor vehicle liability insurance of standard wording, covering:

- motor vehicles owned, leased or operated by or on behalf of the Consultant, in connection with the Services provided or to be provided under this Agreement, with coverage of not less than Two Million (\$2,000,000) Dollars per claim; and
- equipment leased, borrowed, rented or operated by or on behalf of the Consultant, with coverage of not less than Two Million (\$2,000,000) Dollars.

(c) Every policy of insurance shall contain either no deductible amount or a deductible amount which is reasonable considering the

financial circumstances of the Consultant. The Consultant shall be responsible to pay all deductible amounts.

- (d) No policy shall contain any provision which would contravene the obligations of the Consultant hereunder or otherwise be to the detriment of the Town.
- (e) The Consultant shall provide or cause to be provided to the Town, prior to award of Contract, a certificate from its insurer, which shows that the policy or policies placed and maintained by it complies with the requirements of this agreement. No review or approval of any such insurance certificate by the Town shall derogate from or diminish the Town's rights or the Consultant's obligation contained in this Agreement.
- (f) If at any time the Town is of the opinion that the insurance taken out by the Consultant is inadequate in any respect, it shall forthwith advise the Consultant of the reasons therefore and the Consultant shall forthwith take out additional insurance satisfactory to the Town.
- (g) The taking out of insurance shall not relieve the Consultant of any of its obligations under this agreement or limit its liability hereunder.
- (h) Failure to provide the aforementioned insurance will result in the withholding of payments or at the sole option of the Town, forfeiture of the Contract.

10. Contracting for Construction

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

11. Non-Assignment

The Consultant shall not assign this Agreement or any part thereof, without obtaining the prior written approval of the Town, which approval may be withheld by the Town in its sole discretion, or given subject to such terms and conditions as the Town may impose.

12. Approval by Other Authorities

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

13. Specialized Services and Sub-consultants

The Consultant may engage others for specialized services provided that prior approval is obtained, in writing, from the Town and may add a markup of not more than 5% of the cost of such services to cover office administrative costs when claiming reimbursement from the Town.

14. Inspection

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.

15. Publication

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

16. Confidential Information

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

17. Arbitration

- (a) Any dispute, difference or disagreement between the parties hereto regarding the Services provided by the Consultant or arising from the application or interpretation of this Agreement may with the consent of both parties, be referred to arbitration.

- (b) No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Town or the Consultant.
- (c) If the parties elect to refer to arbitration any dispute, difference or disagreement:
 - (i) The award of the arbitrator shall be final and binding upon the parties;
 - (ii) The provisions of the Arbitration Act, S.O., 1991, Chapter 17, as amended shall apply, unless the parties agree otherwise.

18. Time

- (a) The Consultant shall perform the Services expeditiously to meet the requirements of the Town and shall complete any portion or portions of the Services in such order as the Town may require and the Town shall have the right to take possession of and use any completed or partially completed portions of the work notwithstanding any provisions expressed or implied to the contrary.
- (b) The Consultant shall perform all the Services required under this Agreement by the date or dates set out in this Agreement, or as otherwise approved, in writing, by the Town. Requests for extensions of the completion date shall be submitted, in writing, by the Consultant no later than twenty (20) days prior to the completion date.
- (c) The Town shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, and shall make any decisions which he is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

19. Workplace Safety and Insurance Board Coverage

- 1. The Consultant clearly understands and agrees that it is not, nor is anyone hired by it, covered by the Town under the *Workplace Safety and Insurance Act* S.O. 1997, c.16, Sch A., as amended and the Consultant I shall be responsible for and shall pay all dues

and assessments payable under the *Workplace Safety and Insurance Act, the Employment Insurance Act, S.C. 1996, c.23* or any *Act*, whether Provincial or Federal, in respect of itself, its employees and operations, and shall furnish the Town, if requested, with such satisfactory evidence that it has complied with the provisions of any such Acts. If the Consultant fails to do so, the Town shall have the right to withhold payment of such sum or sums of money due to it that would be sufficient to cover its default and the Town shall have the right to pay same. The Town is not the employer of the Consultant or its personnel under any circumstances whatsoever.

- (b) The Consultant shall, both prior to commencing work under this Agreement and within sixty (60) days of the expiration of this Agreement date, submit a letter of good standing from the Workplace Safety and Insurance Board to the Town that all assessments or compensation have been paid, and the Town may, at any time during the performance, request a further declaration that all such assessments of compensation have been paid.
- (c) The Consultant must have valid Workplace and Safety Insurance Board Coverage and will be required to submit a current Clearance Certificate prior to the execution of the contract for the provision of the Services.

20. Occupational Health and Safety

The consultant shall agree to sign and abide by the Town of South Bruce Peninsula Occupational Health & Safety Compliance Form for Consultants, as attached to this contract as Schedule 'C'.

21. No Smoking Policy

The contractor, as well as their employee(s), must at all times abide by the Town's No Smoking Policy, Policy D.6.1, as well as any and all provincial and federal smoking regulations, when performing the work under the contract agreement.

22. Complete Agreement

- (a) The contents of any invitation by the Town for proposals, any proposal by the Consultant to provide the Services that is accepted by the Town, and any schedules attached hereto shall be deemed to be part of this Agreement.

- (b) In the event of any inconsistency or conflict in the provisions of this Agreement, such provisions shall take precedence and govern in the following order:
 - (i) this signed Agreement between the Consultant and the Town;
 - (ii) any schedule(s), other than the accepted proposal and the invitation for proposals, attached hereto.
 - (iii) the invitation for proposals made by the Town;
 - (iv) the Consultant's proposal that has been accepted by the Town;
- (c) This Agreement constitutes the sole and entire agreement between the Town and the Consultant relating to the Project, and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether express or implied, shall form a part thereof.
- (d) If one or more of the phrases, sentences, clauses, paragraphs, sections or subsections contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court of competent jurisdiction, this Agreement shall be construed as if such phrase(s), sentence(s), clause(s), paragraph(s), section(s) or subsection(s), had not been inserted.
- (e) This Agreement may be amended only by written instrument signed by both the Town and the Consultant, or by a court order pursuant to subsection (d) hereof.

23. Fee Holdback

The project will be subject to a 10% fee holdback on the fees for Contract Administration, to be accumulated based on each invoice submitted (i.e. 90% of each invoice will be paid, 10% will be held by the Town). This holdback will be released to the proponent upon delivery of the Record Drawings.

24. Gender and Number

Words importing the masculine gender shall include the feminine and neuter, and the singular shall include the plural where the meaning or context so requires.

24. Headings

Section headings contained herein are included solely for convenience, and are not intended to be full or accurate descriptions of the content hereof and shall not be considered part of this Agreement.

In Witness Whereof the parties hereto have caused to be executed those presents by their officers properly authorized in that behalf on the day and year first above written.

The Corporation of the Town of South Bruce Peninsula

Per:

Janice Jackson, Mayor

Angela Cathrae, Clerk

- and -

CONSULTANT

Per:

Signing Officer

Witness

I/We have authority to bind the Corporation

Schedule "A"

Core Services to Be Provided By the Consultant

The Project shall be undertaken in order of precedence in accordance with the following proposal submission, all attached hereto:

Schedule "B"

Fees and Disbursements Compensation

1. The total fees and disbursements paid by the Town to the Consultant for the Services shall not exceed the prices as bid by the Consultant in the proposal submission, to a total upset amount of **\$XXX** plus applicable taxes.
2. The Town, at its sole discretion, may limit the fees and disbursements paid by the Town to the percentage equivalent to the project complete in the opinion of the Town.
3. The Consultant must request and receive the written approval of the Town before any Additional Services are carried out that are not included in Schedule "A".

Schedule 'C'



Town of South Bruce Peninsula Occupational Health and Safety Compliance Form for Consultants

The consultant shall provide and maintain the necessary first aid items and equipment as required under the First Aid Regulations of the Worker's Compensation Act and Occupational Health and Safety Act as applicable to the scope of work. This shall include but not be limited to the provision of an adequately maintained first aid kit which shall be present at the project or job site.

The consultant shall ensure that all employees are provided with and instructed in the use of safety equipment as required by the Occupational Health and Safety Act and by other regulations. Normal safety precautions should be observed while around and operating equipment.

The consultant, by executing the contract, unequivocally acknowledges that he/she is the constructor within the meaning of the Occupational Health and Safety Act and amendments thereto.

The consultant shall ensure that all work areas are secured in a safe manner so as to eliminate any injury or harm to workers or persons. The consultant shall abide by all Occupational Health and Safety regulations and shall ensure proper safety attire and equipment is inspected and being used at all times. The consultant shall not leave equipment or materials in such locations which would cause harm to any person, animal or thing.

Where any injury, accident or incident occurs on or about the work area, the consultant shall immediately notify the Town of South Bruce Peninsula and shall provide such documentation and follow up information as required by the Town.

The consultant hereby acknowledges by signing this form that he/she is aware of and shall view the Town of South Bruce Peninsula Health and Safety Policy Document. The consultant hereby acknowledges that the Town, when requested, shall be permitted to view the Health and Safety Policies of the consultant and any firm or sub-consultant associated with the works.

Name of Consultant / Firm (print)

Signature of Consultant

Date

Schedule 'D'

The Town of South Bruce Peninsula

Contract **XX-XX**

List of Sub-Consultants



Contractor: **CONSULTANT / FIRM**

DATE

Under the above-mentioned contract, the Town of South Bruce Peninsula is hereby directing the contractor to provide a list of subcontractors, to certify that these sub-contractors have provided the contractor with the necessary insurance and WSIB coverage, and that all subcontractors agree to abide by the terms and conditions of this contract.

List all sub-consultant that will be providing labour and/or materials within this contract:

Name(s)	Company Name (if applicable)
1) _____	_____
2) _____	_____
3) _____	_____

I, _____, signing authority for **CONSULTANT**, verify that I
Name (please print)
have received the necessary insurance and WSIB coverage from all sub-contractors for the work under this contract.

Signing Officer

Witness

Lara Widdifield, C.E.T.
Director of Public Works

Date