

**AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

MEMORANDUM OF AGREEMENT dated the 30<sup>TH</sup> day of March A.D. 2020

BETWEEN

**Town of Kingsville**

Hereinafter called the Client

THE PARTY OF THE FIRST PART

AND

RC Spencer Associates Inc.

Hereinafter called the Engineer

THE PARTY OF THE SECOND PART

WHEREAS

the Client intends to

**carry out engineering design, contract administration and inspection services for Road 2 East Reconstruction.**

hereinafter called the Project and has requested the Engineer to furnish professional services in connection therewith;

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

## **ARTICLE 1. GENERAL CONDITIONS**

### **1.1 Ownership of Documents**

All plans, drawings, specifications, designs, construction data, and documents prepared by the Engineer shall be and remain the property of the Client. The Engineer shall be entitled to a copy of such documents for record purposes only, and shall not use or permit the use thereof for the construction of any other project without the consent of the Client.

### **1.2 Patents**

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 service, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the engineer.

The client shall have a permanent, non-exclusive, royalty-free licence 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, for the life of the project, and for no other purpose or project.

### **1.3 Confidential Data**

The engineer shall not divulge any confidential information acquired in the course of carrying out the services provided for herein. No such information shall be used by the engineer on any other project without approval in writing by the client.

This requirement shall not prohibit the engineer from acting to correct or report a situation which the engineer may reasonably believe to endanger the safety or welfare of the public, provided that the engineer notifies the client of what is intended.

### **1.4 Insurance**

When requested, the engineer shall supply to the client a summary of insurance coverage currently being maintained by the engineer, including but not exclusive to professional liability insurance, comprehensive general liability and automobile insurance. Such summary shall include the name of the insurance company, type of insurance and amount of such coverage.

If the client requests that the amount of coverage of the engineer's insurance be increased or special insurance be obtained for this project, the engineer shall cooperate with the client to obtain such increased or special insurance coverage at the client's expense.

It is understood and agreed that the coverage provided by either of the policies named in the aforementioned summary or specially required will not be changed or amended in any way nor cancelled by the engineer until 60 days after written notice of such change or cancellation has been delivered to the client.

### **1.5 Arbitration**

All matters in dispute under this agreement may with the consent of both parties be referred to arbitration.

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 client or the engineer.

The award of the arbitrator shall be final and binding upon the parties.

The provisions of the Ontario Arbitrations Act shall apply.

### **1.6 Successors and Assignment**

This agreement shall ensure to the benefit of and be binding upon the parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors and assigns.

If a party to this agreement who is an individual should desire to bring in a partner or partners, or if a party which is a partnership should desire to bring in a new partner or partners to share the benefits and obligations of this agreement, they may do so by properly notifying the other party in writing of such intended action.

If a party to this agreement is a partnership, and a partner thereof either dies or retires, the remaining parties therein shall form a new successor partnership to share the benefits and obligations of the agreement.

Except as foresaid, neither party shall assign this agreement without the prior consent in writing of the other.

### **1.7 Termination and Suspension**

The client may at any time, by notice in writing to the engineer, suspend or terminate the services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the engineer shall perform no further services other than those reasonably necessary to close out the engineer's services. In such event, the engineer shall be paid by the client for all services performed and for all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

If the client is in default in the performance of any of the client's obligations set forth in this agreement, the engineer may, by written notice to the client, require such default be corrected. If, within 30 days of receipt of such notice, such default shall not have been corrected, the engineer may immediately terminate the agreement. In such event, the engineer shall be paid by the client for all services performed and for all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

If the engineer is practising as an individual and dies before services have been completed, this agreement shall terminate as of the date of death and the client shall pay for the services rendered and disbursement, incurred by the engineer to the date of such termination.

### **1.8 Records and Audit**

In order to provide data for the calculation of fees of a time basis, the engineer and the sub-consultants shall keep a detailed record of the hours worked by, and the salaries paid to, the engineer's staff employed on the project.

The client may inspect and audit the books, payrolls, accounts and records of the engineer and sub-consultants during regular office hours with respect to any item which the client is required to pay on a payroll multiplier basis as a result of this agreement.

The engineer, when requested by the client, shall provide copies of receipts with respect to any disbursements for which the engineer claims payment under this agreement.

### **1.9 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, the employees, officers or agents of the client may suffer as a sole result of the negligence of the engineer, the employees, officers or agents of the engineer in the performance of this agreement.

The client agrees to hold harmless, indemnify and defend the engineer from and against any and all claims, losses, damages, liability and costs of defence 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 solely arise out of the negligence of the engineer in the performance of consulting services to the client within this project.

### **1.10 Contracting for Construction**

The engineer, or any person, firm or corporation associated or affiliated with or subsidiary to the engineer, shall not tender for any or all of the execution of the project or have an interest either directly or indirectly in the construction of the project, without the prior written consent of the client.

### **1.11 Approval by Other Authorities**

Unless otherwise provided in this agreement or explicitly required by legislation, 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, preparation of 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.

### **1.12 Changes and Alterations and Additional Services**

After giving notice to 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 Article 4 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Article 4. In the case of a reduction in the requirement for services, any reduction in the engineer's fee will be the subject of negotiation. No such change shall require the execution of a formal amendment to this agreement.

## ARTICLE 2. RESPONSIBILITIES OF THE CLIENT

The client shall:

- a) make available to the engineer all relevant information required by the engineer, and shall instruct the engineer fully as to the client's requirements, including design objectives, constraints and criteria, special equipment and systems, site requirements and construction budget. The engineer shall be entitled to rely upon the accuracy and completeness of all such information and data furnished through the client or client's consultants whether such consultants are engaged at the request of the engineer or not.
- b) engage consultants directly, when so required by the engineer, to perform services necessary to enable the engineer to fully carry out the engineer's duties, such services to include a legal survey of the site, site services data, geotechnical reports and appropriate testing.
- c) give the engineer authority to act as the client's agent in all matters falling within the scope of the engineer's services.
- d) promptly review all documentation submitted by the engineer, and inform the engineer of decisions in time for the orderly progress of the engineer's services and of the work.
- e) obtain all required consents, approvals and licences and permits from authorities having jurisdiction.
- f) arrange and make provision for the engineer's entry and access to public and private property and the project site in the performance of the duties.
- g) arrange and pay for tender advertising and any necessary legal, financial or insurance counselling services required for the project.
- h) designate in writing a representative to have authority to transmit instructions to and receive information from the engineer.
- i) immediately notify the engineer whenever the client, or the client's representative, becomes aware of a defect or deficiency in the work or the contract documents.

## **ARTICLE 3. ENGINEERING SERVICES PROVIDED UNDER THIS AGREEMENT**

### **3.1 General**

The engineer shall render services to the client "in a timely manner" under this agreement with that degree of care, skill and diligence normally provided in the performance of services in respect of projects of a similar nature to that contemplated by this agreement at the time and place that such services are rendered.

### **3.2 The engineer shall perform the following services in connection with the project:**

Spencer Associates Inc. will generally consist of the activities as put forward in the requirements of the RFP.

The scope of the engineering services of Option #2 will include the following:

1. Convene project initiation meeting after entering into an agreement,
2. Carry out a total station topographic survey, including Coordinating and recording utility locates,
3. Liaise with local utility companies to determine the extent of their plans within and adjacent to the proposed infrastructure,
4. Carry out preliminary engineering analysis and design,
5. Review and consultation with Town staff,
6. Coordinate services of a geotechnical investigation,
7. Finalize drawings and specifications, for review by Town staff,
8. Make application and submit for MOE approval (Form 1) of the feeder watermain (Option #2)
9. Proceed to tender and assist during tender stage,
10. Provide contract administration and full time inspection,
11. After construction, provide inspection and deficiency review including end of maintenance inspection review,
12. Prepare and submit as-built drawings, including GPS/total station record of infrastructure.

all in accordance with a 21 February 2020 proposal, a copy of which is attached.

## **ARTICLE 4. FEES AND DISBURSEMENTS**

### **4.1 Definitions**

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

#### **4.1.1 Site**

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

### **4.2 Basis of Payment**

#### **4.2.1 Fees calculated:**

**The client shall pay the engineer a total fee of \$ 335,810.00 plus 13% H.S.T., for those parts of the services described in Article 3 as follows:**

#### **4.2.2 Reimbursable expenses**

Included in the fee, the engineer shall be reimbursed at cost plus an administrative charge of 0%, plus the cost of the additional insurance incurred by the engineer and as requested by the client, for all reasonable expenses properly incurred by the engineer in connection with the project, including but not limited to: long distance telephone charges, advertising for tenders, special delivery and express charges, and the cost of providing and maintaining site office.

### 4.3 Payment

#### 4.3.1 Fees invoiced on a monthly basis:

a) Monthly payment

The engineer shall submit an invoice with such detail and supporting documentation as the client may reasonably require to the client for all services completed in the immediately preceding month. Interest at the annual rate of 6 % (0.5 % monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the client has received the engineer's invoice.

b) Delay of award of contract

In the event the contract for construction of the project is not awarded within 18 months of the acceptance of the design by the client, the final fee for design shall be determined as in paragraph a) above.

IN WITNESS THEREOF the parties hereto have caused to be executed those present by their officers properly authorized in that behalf on the day and year first above written.

**SIGNED, SEALED AND DELIVERED**

In the presence of:

ENGINEER

Per:   
Richard C. Spencer, M.A.Sc., P.Eng.  
President  
RC Spencer Associates Inc.

CLIENT

Per: Town of Kingsville