



AGREEMENT FOR PROJECT MANAGEMENT SERVICES

between

The Corporation of the Town of Kingsville

and

Ontario Clean Water Agency

Engineering, Procurement and Construction of the CWWF
Funded Projects

OCWA Project No. 17-038-03 and 17-038-05

PROJECT MANAGEMENT AGREEMENT

This Agreement made this 21st day of November, 2017.

BETWEEN:

The Corporation of the Town of Kingsville

(hereinafter called the "Client")

- and -

Ontario Clean Water Agency

(hereinafter called the "Agency")

SECTION 1: INTRODUCTION

1.1 Purpose

The purpose of this Agreement is to set out the rights and obligations of the parties relating to the management by the Agency for the Client of the **Engineering, Procurement and Construction of the Clean Water and Wastewater Fund (CWWF) Projects**.

1.2 Covenant

Pursuant to sub-section (2) of Section 10 and Section 11 of the *Ontario Water Resources Act*, R.S.O. 1990, Chapter O.40 as amended, the parties in consideration of the covenants, terms and conditions herein, covenant and agree as set forth in this Agreement and attached Schedules.

SECTION 2: AGENCY'S SERVICES

2.1 Services

The Agency will perform for the Client the Services referred to in Schedule "A" hereto in consideration of the payment to the Agency by the Client of the fee referred to in Schedule "B".

2.2 Excluded Services

The Agency's Services do not include the responsibility to provide or manage the provision of any submission to or representation to any Court, or before the Ontario Municipal Board or any other administrative tribunal.

2.3 Optional Services

The Client may from time to time request services described as Optional Services, in which case the parties shall negotiate any change that may be required to Schedules "A" and "B" and record same by amendment of those Schedules.

SECTION 3: AGENCY'S FEE

3.1 Fees

The Agency will charge for its Services in accordance with Schedule "B" including any Optional Services that have been ordered by the Client.

3.2 Disbursements

Any mutually agreed to disbursements made by the Agency on behalf of the Client to third parties will be reimbursed to the Agency at cost plus a 5% administration fee.

3.3 Invoices

The Agency will forward to the Client invoices for fees and disbursements in accordance with Schedule "B" hereto.

3.4 Payment

The Client shall pay the Agency's invoices within 30 days of their receipt.

SECTION 4: OBLIGATIONS TO OTHERS

4.1 Progress Payments

The Agency will forward to the Client for payment, all third party accounts or progress certificates received by the Agency for payment by the Client in connection with the Project.

4.2 Payments

The Client shall pay the amounts due under all third party accounts or progress certificates within 20 days after their receipt by the Client, or as the relevant contract or purchase order may require, whichever is sooner. In order to facilitate tracking of all project costs and expenditures, the Agency may request and the Client shall provide on request a copy of project payment and expenditure particulars.

4.3 Government Grant Funding

The Agency will provide advice on eligibility issues of Project expenditures that may be subject to approval for any applicable government grant funding. Such advice however, shall not be construed in any manner as acceptance or approval of the expenditure as a grant eligible cost.

SECTION 5: CONSTRUCTION CONTRACT ADMINISTRATION

5.1 Documentation

The parties agree to use the Agency's Construction Contract Administration Documents, examples of which are listed in Schedule "D".

5.2 Tenders

All tenders for construction contracts will be received and opened at the Agency's corporate office in accordance with the Agency's established practice. Should the Client require any tender to be received and opened at its municipal office, the Client shall indemnify and save harmless the Agency, from any claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever associated with such tender opening.

5.3 Award of Tender

Based on the Client's acceptance of the tender, the Agency may award the Construction Contract on behalf of the Client and order the commencement of work under the Construction Contract on behalf of the Client.

5.4 Changes

The Project Manager may authorize changes necessary to proceed with the work under the Construction Contract and may authorize payment for that work without prior approval of the Client provided that:

- (i) total costs of the proposed changes and all approved additional costs of the Project, if any, will not exceed the Approved budget for the Project;

- (ii) the proposed changes shall not exceed the scope of the approval provided by the Environmental Compliance Approval, Certificate of Approval, or Drinking Water Works Permit whichever is applicable;
- (iii) the cost of the proposed changes taken in aggregate shall not exceed the total value of the contingency allowance under the Construction Contract approved by the Client from time to time.

5.5

Client Representative

The Client will designate one person as the representative to:

- (i) liaise with the Agency's Project Manager;
- (ii) observe the progress of the work;
- (iii) assist with the resolution of problems and disputes, if any;
- (iv) report to the Client as required by the Client; and
- (v) obtain, where necessary, approvals or directions from the Client that are required by the Agency, and to communicate them to the Agency as soon as reasonably possible.

SECTION 6: LAND ACQUISITION

6.1

Responsibilities

It is the responsibility of the Client to acquire all necessary interests in land for the construction and operation of the Works. If land must be acquired, the Agency's responsibility shall be limited to advising the Client as to a process for land assembly.

6.2

Expropriation

When an interest in land must be acquired by expropriation, this shall be the responsibility of the Client and not the responsibility of the Agency.

6.3

Assistance

If the Client requests assistance from the Agency at any stage of a land acquisition process, including expropriation, such assistance may be provided by the Agency as an Optional Service.

SECTION 7: OPERATION OF THE WORKS

.1 Responsibilities

The Client shall be exclusively responsible at all times for the operation of the Works.

- 7.2 Under a separate agreement, not forming part of this Agreement, the Agency may agree in writing to operate the Works as the Client's operator, or may assist the Client in the recruitment and training of staff for such purpose.

SECTION 8: INSURANCE

8.1 Existing Works

When the Client owns or operates any existing water or sewage works as of the date of this Agreement, to which the Work relates, the Client shall procure and maintain in force, at its own expense, a policy or policies of commercial general liability and property insurance with per occurrence and aggregate limits of not less than \$5,000,000 and a policy of "all risks" (as that term is understood in the Canadian insurance industry) property insurance with a sum insured of not less than the replacement value of all property including the Works, naming the Agency as a named insured.

8.2 Proposed Works

When the Client proposes entirely new water or sewage works, unconnected with any existing facility and for the period prior to award of Construction Contract, the Agency shall ensure that the Contractor provide for a policy or policies of commercial general liability and property insurance in a reasonable amount naming the Agency as a named insured from the date the Client first acquires an insurable interest.

8.3 Course of Construction

The Agency shall require the Contractor to provide the Client with proof of insurance, including builder's risk, commercial general liability and property insurance, but shall not be liable to the Client for any deficiency in or lack of insurance coverage of any nature or kind whatsoever.

8.4 Proof of Insurance

The Client shall provide the Agency with a Certificate of Insurance to confirm insurance coverage as set out in Section 8.1 above, if requested to do so by the Agency.

SECTION 9: INDEMNIFICATION AND MUTUAL RESPONSIBILITY

9.1 Work by Others

The Agency does not assume and disclaims any liability, whether direct or consequential, expressed or implied, for the quality or performance of any work, service or material supplied or performed, or required to be supplied or performed by others except to the extent that such liability is due to the negligence of the Agency.

9.2 **Laws in Force**

This Agreement and the provision of the Agency's services are subject to all applicable laws in force from time to time.

9.3 **Release and Indemnity**

The Client shall indemnify and save harmless the Agency, its employees, officers, directors and agents (together the "Indemnified Agency Parties"), from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Indemnified Agency Parties may suffer, to the extent the Client is legally liable as a result of the negligent acts of the Client, its employees, officers, directors or agents in the performance of this Agreement.

9.4 The Agency shall indemnify and save harmless the Client, its employees, officers, directors and agents (together the "Indemnified Client Parties") from and against any and all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Indemnified Client Parties may suffer, to the extent the Agency is legally liable as a result of the negligent acts of the Agency, its employees, officers, directors or agents in the performance of this Agreement.

9.5 No conduct of the Agency, nor any oral statement by any officer, director, employee or agent of the Agency shall be construed as constituting or evidencing any approval of the form or substance of document not originated by the Agency, or as in any way endorsing, confirming or acknowledging any expenditure as a grant eligible expenditure.

9.6 **Procedure for Indemnification**

A party (the "Indemnified Party") shall undertake the following when claiming indemnification from the other party:

- (a) upon receipt of a claim or notice of claim, the Indemnified Party shall immediately forward such claim or notice to the Indemnifying Party;
- (b) if required by the Indemnifying Party, the Indemnified Party requesting indemnification shall provide all documentation relating to the claim, or notice of claim;
- (c) the Indemnified Party shall take such steps necessary to protect its right to defend such claim, or notice of claim, and shall assign such right to the Indemnifying Party including any subrogation rights;

- (d) the Indemnified Party shall not settle any claim, or notice of claim, without the prior written consent of the Indemnifying Party; and
- (e) the Indemnifying Party shall have the right to take over the defence of any claim, or notice of claim and the Indemnified Party shall fully co-operate with such action.

SECTION 10: CLIENT'S REMEDIES

10.1 Client Termination

The Client may terminate this Agreement at any time with or without cause upon notice in writing personally served on the Agency's VP of Engineering, Capital and Support Services and, in which case:

- (i) the Agency shall be relieved forthwith of any further obligation to perform this Agreement;
- (ii) concurrently with notice, the Client shall pay the Agency all earned fees to the date of termination without set-off or deduction of any kind;
- (iii) the Client's notice of termination, when served, shall be deemed by the parties to this Agreement to constitute the Client's release of the Agency from any and all claims or causes of action whatsoever which may exist up to and including the date of service of the notice of termination and the Client's undertaking and agreement to fully exonerate the Agency from any claims that may be made against it after the date of service of the notice of termination in respect of such claims; and
- (iv) this section shall survive the termination of this Agreement by the Client.

SECTION 11: AGENCY'S REMEDIES

11.1 Agency Termination

The Agency may terminate this Agreement at any time for cause, which shall include but not be limited to:

- (i) the Client's failure to give any one or more approvals to the Agency within a reasonable time after request;
- (ii) the Client's failure to make any one or more payments required by this Agreement; and

(iii) any fundamental change to the nature or quality of the Project, or the method of carrying it out or the rejection by the Client of any advice or recommendation by the Agency as to any fundamental aspect of the Project or the method of carrying it out.

(iv) the Agency's notice of termination, when served, shall be deemed by the parties to this Agreement to constitute the Client's release of the Agency from any and all claims or causes of action whatsoever which may exist up to and including the date of service of the notice of termination and the client's undertaking and agreement to fully exonerate the Agency that may be made against it after the date of service of the notice of termination in respect of such claims.

11.2 Release & Indemnity

Where the Agency terminates under Section 11.1, the provisions of Sections 10.1 (i), (ii), (iii) and (iv) apply and are incorporated here by reference.

SECTION 12: SPECIAL TERMS OF AGREEMENT

12.1 Conflict

In the event of any conflict between a special term set out in subsection 12.2 below and any other term of this Agreement, this section shall govern.

12.2 Special Terms

None.

SECTION 13: GENERAL

13.1 Entire Agreement

This Agreement contains the entire agreement between the parties hereto with reference to the subject matter hereof, shall not be altered or amended except as provided herein or by a written agreement duly executed by the parties hereto, shall enure to the benefit of and be binding upon the parties hereto and their successors, and shall not be assigned by either party in whole or in part without the consent in writing of the other party.

13.2 Recitals

The recitals in Section 1 form an integral part of this Agreement.

13.3 Further Acts

Each party shall make, do, execute and deliver all acts or deeds, as may reasonably be required by the other, in writing, in order to carry out the true intent of this Agreement.

13.4 Severability

If any one or more sections or subsections of this Agreement shall be or become illegal, void or invalid at law, the remaining sections and subsections shall continue in force and be binding upon the parties.

13.5 Succession

This Agreement shall bind the parties, their successors and assigns.

13.6 Assignment

The obligations under this Agreement cannot be assigned by one party without the prior written specific consent of the other, which consent shall not be unreasonably withheld.

13.7 Counterparts

This Agreement may be executed in counterparts, all of which, when executed and delivered, and taken together shall constitute the executed Agreement.

13.8 Serving of Notices

Any notice or other communication required to be given by either party to this Agreement to the other shall be deemed to be served if mailed, or delivered by electronic means of communication to the recipient as noted below. Notices shall be addressed as follows:

in the case of the **Client**, to it at:

The Corporation of the Town of Kingsville
2021 Division Road
Kingsville, Ontario N9Y 2Y9

Attention: Mr. Andrew Plancke
Email: aplancke@kingsville.ca

or in the case of the **Agency**, to it at:

Ontario Clean Water Agency – Project Planning and Delivery
Sheridan Centre, 2225 Erin Mills Parkway, Suite 1200
Mississauga, ON L5K 1T9

Attention: Rick Albert, GSC, CET
Email: ralbert@ocwa.com
Facsimile: 905-855-3232

13.9 Gender and Singular References

References to the masculine or singular throughout this Agreement shall be read to include the feminine and plural, or vice versa, as the context requires.

13.10 Definitions

- 13.10.1 **"Agency"** means the Ontario Clean Water Agency who may act through its employees, agents, servants or officers but excluding the Consulting Engineer and any of its employees or subconsultants.
- 13.10.2 **"Agreement"** means the within Project Management Agreement, including, as an integral part of such agreement, all Schedules.
- 13.10.4 **"Approved Budget"** means the total amount approved for the Project by the Client and, includes without limiting the foregoing all engineering costs, all tender and construction costs, all land acquisition costs, all financing costs, miscellaneous costs, all applicable taxes and all fees payable under this Agreement.
- 13.10.5 **"Client"** means the party named as such on page 1, who may act through employees, agents, servants, or officers.
- 13.10.6 **"Construction Contract"** means any contract other than an Engineering Agreement entered into by the Client or the Agency as agent of the Client for purposes of acquiring goods, materials or services to facilitate the construction of the Works.
- 13.10.7 **"Construction Contract Administration Documents"** means the documents in usual and ordinary use by the Agency in performing the Agency's services under this Agreement and includes those listed in Schedule "D" hereto.
- 13.10.8 **"Contractor"** means a person, firm or corporation contracting with the Client to provide professional services, labour, materials, and equipment for the execution of the Works.
- 13.10.9 **"Optional Services"** means those services described in Schedule "A" which have been requested in writing by the Client and agreed to by the Agency.
- 13.10.10 **"Project"** includes the Works as described in Schedule "C" and Services as described in Schedule "A" including Optional Services and may include the development, design and implementation of the Works.

13.10.11 **"Project Manager"** means the person acting as Vice-President, Engineering, Capital and Support Services of the Agency, and includes a delegate or other person designated in writing as the Project Manager by the Agency.

13.10.12 **"Services"** means the services described in Section 2 and specifically referred to in Schedule "A".

13.10.13 **"Works"** means the works constructed or acquired from time to time for the Client under this Agreement as described in Schedule "C".

IN WITNESS WHEREOF the Agency and the Client have duly executed this agreement under seal.

CLIENT:

per: _____ c/s
Nelson Santos, Mayor

and per: _____ c/s
_____, Clerk

ONTARIO CLEAN WATER AGENCY:

per: _____ c/s

Vice-President, Engineering, Capital
and Support Services

and per: _____ c/s

Vice-President, Finance

Dec 7/2017