



**REQUEST FOR PROPOSALS  
FOR THE PROVISION OF  
CONSULTING SERVICES FOR  
ROAD CONDITION ASSESSMENTS**

**RFP 2015 – 004**

**RFP CLOSING**

**DATE: Friday April 24, 2015**

**TIME: 1:00 PM local time**

**QUERY END DATE: Wednesday April 22, 2015 at 1:00 PM local time**

**LOCATION: Customer Service Centre  
10 Lisgar Avenue  
Tillsonburg, Ontario, N4G 5A5**

**LATE SUBMISSIONS WILL NOT BE ACCEPTED**

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## 1.0 INTRODUCTION

The Town of Tillsonburg (hereinafter referred to as the “Town”) is seeking a qualified consultant (hereinafter referred to as “Consultant”) to provide the necessary professional services to perform visual roadway condition assessments of the entire municipal road network. The purpose of this project is to develop a baseline road condition data set of all municipal roads, which will be utilized by Town staff for analyzing and prioritizing the Town’s capital works program for linear assets.

## 2.0 TO PROPONENTS

- 2.1 Submissions for this proposal shall be physically received at the Customer Service Centre by 1:00 p.m. (local time) on April 24, 2015. Sealed proposal packages must be clearly marked as to contents. Late submissions will not be accepted and will be returned unopened in a timely manner. The Proponent is responsible to deliver the submission by the closing date and time and assumes the risk of any and all means of delivery be it by hand delivery, postal service, or courier service.

Five (5) copies of the Proposal submission are required, signed by a principal of the prime firm with signing authority.

- 2.2 The Town reserves the right to:

- (a) cancel the request for proposals at any time;
- (b) reject, accept or not consider any or all proposals;
- (c) reject or not consider proposals from any firm who cannot show a reasonable acquaintance with the class of work herein specified

- 2.3 The Town is not obligated to award this RFP.

- 2.4 In receiving proposals, the Town accepts no obligation of any kind to accept any proposal. Should the Town receive only one proposal submission, the Town reserves the right to award the proposal to the proponent of the sole submission, to recall the request for proposals or to cancel the proposal call in its entirety. No liability shall accrue to the Town for its decision in this regard.

- 2.5 Inquiries regarding the Terms of Reference shall be directed in writing as follows:

*Primary Contact*

**Kevin De Leebeeck, P.Eng.**

**Director of Operations**

**(519) 842-9200 ext. 2232**

**[kdeleebeeck@tillsonburg.ca](mailto:kdeleebeeck@tillsonburg.ca)**

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- 2.6** Any discussions verbally or in writing with elected officials of the Town prior to the awarding of this project by the Town are prohibited and may result in the disqualification of the Proponents submission.
- 2.7** Any such clarifications so given shall not in any way alter the Terms of Reference
- 2.8** Any “revisions” to the Terms of Reference shall be issued to those who have received the proposal as an addendum prior to the closing date and time.
- 2.9** Fees must include all operating, overhead, disbursements and incidental costs and the Proponent must be satisfied as to the total requirements of this request for proposal. Pricing is subject to Harmonized Sales Tax.
- 2.10** The Town shall not be liable for any cost of preparation or presentation of proposals, and all proposals and accompanying documents submitted by the respondents become the property of the Town and will not be returned.
- 2.11** Proposals submitted shall be considered final and may not be altered by subsequent offerings, discussions or commitments unless authorized by the Town.
- 2.12** All correspondence, documentation and information provided shall become the property of the Town, and as such, are subject to the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and may be subject to public release pursuant to the Act. Because of the MFIPPA, Proponents are reminded to make note in their proposals of any proprietary information or similar confidential information, which through disclosure, could cause them injury.
- 2.13** The Town reserves the right to use any of the ideas presented in any reply to the RFP, unless clearly identified as proprietary. Selection or rejection of the proposal does not affect that right.
- 2.14** Proposals shall be irrevocable and valid for acceptance by the Town for a period of sixty (60) days from the proposal closing date.
- 2.15** It shall be understood and acknowledged that while the Terms of Reference include specific requirements and specifications, a complete consulting service and investigation is required for the visual condition assessment of all roadways with the Town boundaries. Items or details not specified in the Terms of Reference, but needed to complete the work shall be provided as if specified. Any omission or error or misinterpretation of the Terms of Reference shall not relieve the successful Proponent of the responsibility to fulfill those Terms of Reference and provide complete consulting services.
- 2.16** Submissions should contain sufficient information for evaluation and selection. A firm may be required to provide additional information or clarification on the contents of their submission.

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- 2.17** The successful Proponent shall indemnify and hold harmless the Town, its officers, council members, partners, agents and employees from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the Town and against all loss, liability, judgments, claims, suits, demands or expenses which the Town may sustain, suffer or be put to resulting from or arising out of the successful Proponents failure to exercise reasonable care, skill or diligence or omissions in the performance or rendering of any work or service required hereunder to be performed or rendered by the successful Proponent, its agents, officials and employees.
- 2.18** The Town may not award this RFP to any Proponent not having the required experience to ensure acceptable performance and completion of the proposal. Any Proponent submission will be considered non-compliant if reference checks or past experience is deemed unsatisfactory, in the sole opinion of the Town.
- 2.19** This RFP and subsequent Consultant Agreement (**Appendix A**) will be interpreted and governed by the laws of the Province of Ontario and the federal laws of Canada, both as to interpretation and performance, and shall be treated, in all respects, as an Ontario contract.
- 2.20** Legal Claims and Damages
- a) The Town reserves the right not to accept a Response from any person or corporation which includes any non-arm's length corporation and all related corporations thereto who, or which, has a claim or instituted a legal proceeding against the Town or against whom the Town has a claim or instituted a legal proceeding with respect to any proponent or sub-consultants or any venter within the submitted Responses.
- b) A Proponent, by submitting a Response agrees that it will not claim damages, by any means, in respect to any matter relating to the RFP, the bidding and evaluation process or any subsequent procurement process, if any, resulting from this RFP.

### **3.0 EVALUATION – Single Envelope Process**

- 3.1** It is the intention of the Town to evaluate Proponents on the basis of their demonstrated ability and experience on similar projects, their qualifications and experience as a team, their approach and methodology to meet the requirements, quality control and assurance, their proposed schedule, and the total upset price.

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## 4.0 TERMS OF REFERENCE

### 4.1 Introduction

The intent of this project is to provide condition assessments of each road section based on the Pavement Condition Index (PCI) methodology. The PCI rates the condition of the surface of a road network and provides a numerical rating for the condition of road segments within the road network, where 0 is the worst possible condition and 100 is the best. The PCI measures the type, extent, and severity of pavement surface distresses as well as the smoothness and ride comfort of the road. The PCI is a subjective method of evaluation based on inspection and observation where knowledge and experience needs to be applied in a systematic way.

### 4.2 Scope of Work

In general terms and upon award of the RFP, the Consultant will be required to perform the following activities. It should be noted that throughout the duration of this project, the Consultant will be responsible for providing their own traffic control measures, if applicable. Any traffic control measures taken are to meet the Ministry of Transportation's Book 7 mandate, at no additional cost to the Town.

#### 4.2.1 Road Network Data

The road condition surveys are to cover all the roadways within the municipal boundaries of the Town. The Town has divided the municipal road network into 829 segments (from intersection to intersection), which have unique identification numbers (ID). The road inventory attribute information will be made available to the successful Proponent in digital form (Excel). These ID's must be used when collecting and summarizing the field data which will facilitate cross-referencing of data in the Town's database applications. There are approximately 125 km of road condition surveys required as part of this project, however the Town reserves the right to increase or decrease this amount at the Town's sole discretion based on available budget and timing. **Table 1** provides a breakdown of the road types, number of lanes, and associated lengths.

As previously mentioned, all roads have been sectioned from intersection to intersection which can be identified using the street name along with the "from" and "to" identifiers. Every effort has been made to ensure the accuracy of the road section listing. If, for any reason there are errors in the list, all data must reflect the existing conditions and the Consultant shall work with Town staff to resolve any discrepancies.

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**Table 1 – Road Inventory Summary**

<b>Road Type</b>	<b>Lanes</b>	<b>Centerline (km)</b>	<b>Lane (km)</b>
Local	1	6.2	6.2
Local	2	74.1	148.1
Local	3	0.1	0.4
Collector	2	19.9	39.8
Collector	3	0.2	0.8
Arterial	2	17.6	35.2
Arterial	3	4.9	14.7
Arterial	4	0.3	1.4
Arterial	5	0.3	1.3
Arterial	6	0.1	0.7
<b>TOTAL:</b>		<b>123.7</b>	<b>248.5</b>

**4.2.2 Ride Comfort Assessment**

The Ride Comfort Rating (RCR) is often the most important and influential component of the PCI. It is a perceived measure of a roadway roughness as experienced by the motoring public. The RCR is evaluated subjectively and rated on a scale of 0 to 10, with 10 being ideal conditions.

**Ride Comfort Rating**

<b>0 – 2</b>	<b>2 – 4</b>	<b>4 – 6</b>	<b>6 – 8</b>	<b>8 – 10</b>
<b>Very Poor</b>	<b>Poor</b>	<b>Fair</b>	<b>Good</b>	<b>Excellent</b>
Uncomfortable with constant bumps or depression	Uncomfortable with frequent bumps or depressions	Comfortable with intermittent bumps or depressions	Smooth with a few bumps or depressions	Very smooth

- Only one RCR value shall be provided for the entire road section and reported to 1 decimal point (i.e. 5.7)
- On two-lane roadways the RCR applies to both directions. Rate ride in each direction and report the average RCR. On multi-lane roadways rate only the right lanes and average.
- The same vehicle shall be used during the entire project.

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- The rating is to be done at the posted speed. If not possible to maintain the posted speed safely, rate at a safe speed and note the speed. Obey all traffic signs and signals.
- The rating should not be influenced by the class of roadway or the appearance of the pavement or pavement surroundings such as shoulders and ditches and should not include railway crossings, speed calming devices or bridges.

#### 4.2.3 Surface Distress Assessment

The Distress Manifestation Index (DMI) is a systematic method of classifying and assessing visible consequences of various distress mechanisms. The pavement condition will be evaluated based on the type, severity and extent, and amount of pavement defects or distresses. Each surface distress is to be evaluated on the basis of two components:

- **Severity:** Defined as ‘How bad is the defect?’ and is expressed in terms of the width or degree of wear associated with a particular pavement condition. An example of a severity measurement includes the average width of a crack.
- **Density:** Defined as ‘How much is there?’ and is expressed in terms of the quantity of the surface that a particular defect/distress covers. Examples of measures used for density would include the number and length of transverse cracks, length of longitudinal cracking, or the pavement area affected by alligator or pattern cracking.

The assessment of the surface condition shall be based on the distress definitions described in MTO SP-024 “Manual for Condition Rating of Flexible Pavements”.

Examples of surface distress types include, but are not limited to the following distresses:

- Rippling/Shoving
- Ravelling and Coarse Aggregate Loss
- Flushing/Bleeding
- Distortion
- Patching
- Disintegration and Debonding
- Wheel Track Rutting
- Alligator Cracking
- Potholes
- Map Cracking
- Longitudinal Cracking
- Transverse Cracking
- Pavement Edge Cracking

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Utility cuts are to be rated as patching with an appropriate distress severity and density.

The measurement ranges for each surface defect, and corresponding severity and density weightings shall be discussed and agreed upon by the Town and the Consultant prior to performing visual surveys.

#### **4.2.4 Pavement Condition Index**

The Pavement Condition Index (PCI) as determined by the combination of the RCR and DMI scores provides an overall condition rating from 0 to 100 of the road segment, where 0 is the worst possible condition and 100 is the best. The PCI ratings can then be used to track the rate of deterioration of pavement and help identify the remaining useful life of road sections while also assisting in the development of rehabilitation and replacement strategies.

#### **4.3 Upset Limit**

The estimate submitted by the Proponent shall be the upset limit and the Proponent shall not be paid in excess of the upset limit without the prior written approval of the Town.

Any work that is felt to be outside the scope of the Terms of Reference must be identified and discussed with the Town's Project Manager for authorization and resolution. If additional costs are to be incurred over the upset limit, written authorization to proceed must be obtained prior to the commencement of the additional work.

Further, no invoice will be honoured for any work whatsoever that was not authorized by the Town's Project Manager in writing. Verbal authority, regardless of the source, will **not** be honoured in considering invoices.

#### **4.4 Invoicing**

Invoices submitted require:

- a) Upset limit;
- b) Current and to-date expenditures per task with percentage completion;
- c) A history of all invoices submitted showing the amount;
- d) Budget remaining;
- e) Summary of work completed for the current period.

Any invoice received, which does not meet the above requirements, will be returned unpaid.



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#### 4.5 Schedule

The following should be included as milestone dates in the submitted project schedule.

- **Project Start up Meeting** – within 1 week of award to outline the Proponents schedule and proposed plan for project completion, approximately two (2) hours in length located at the Customer Service Centre.
- **Project Progress Meetings** – will be held every 4 weeks to update the progress and report on any problematic issues arising during the project, approximately one (1) hour in length located at the Customer Service Centre.
  - For each meeting, the Consultant shall be responsible for providing a meeting agenda no later than two (2) business days before the meeting and provide meeting minutes within five (5) business days of the meeting date.
- **Project Timeframe** – The project is to commence as soon as the RFP is awarded with all infield road condition assessments completed by **July 3<sup>rd</sup> 2015** and the submission of all final completed documents requested in the Terms of Reference by no later than **July 31<sup>st</sup> 2015**.

#### 4.6 Deliverables

The Town requires the following:

- Pavement Appraisal/Evaluation Form that determines the Pavement Condition Index (PCI) in Excel format through USB 2.0 format or email.
- A summary spreadsheet of all surface distresses and the corresponding severity and density rating for each road segment in Excel format for later analysis.
- Digital copies in Microsoft Word and Excel formats of all documents and spreadsheets in accordance with the Terms of Reference through USB 2.0 format or email.

### 5.0 CONTENTS OF SUBMISSION

Submissions must include the following information, and be assembled in the following order.

#### 5.1 Corporate Qualifications and Experience

Include a brief summary of your firm's background, area of expertise, location of office(s), organization chart, and number of employees. List any sub-consultants you will be using, including their background, expertise, location, and number of employees. Respondents shall include at least three (3) Project Abstracts that outline previous projects with similar consulting service, analysis, and document preparation. The referenced projects shall be

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of a similar or greater cost and magnitude that have been successfully completed by their firm in the past three (3) years. The project descriptions shall include the project value, comparison of budget versus actual, project constraints, location, client names, and contact name, title, email, phone, and address such that Town staff can contact.

**5.2 Project Team**

Provide a brief resume of the Project Manager and Support Staff that would be directly involved in the project, indicating relevant experience, qualifications, credentials, and notable achievements in the area of this work assignment. A CV is to be provided for the Project Manager and each of the committed key technical staff intended to be involved with the project and clearly indicate what role and responsibility each Manager and Staff will play. The Town must be informed and approve any changes or substitution of key personnel for this project. A Project Personnel table shall outline by task the key personnel and hours assigned to the project, as well as total task and project hours.

**5.3 Approach and Methodology**

Respondents are to confirm their understanding of the scope of work and clearly define and/or describe how their proposed approach would meet those requirements, including the sequence and timing of milestones, the respective expertise involved and their time allocation for each. The work plan should include a scheduling of activities and resources necessary to meet the project objectives, including the provision of quality assurance and quality control plan which provides for senior technical review of all project activities.

**5.4 Quality Assurance and Control**

Strategic decisions will be based on the collected data and analysis results. Many sources of error exist that could affect the analysis and decision making process. Factors to consider as potential sources of error include such things as inadequate personnel training, data transfer, data entry, etc. A description of an internal quality assurance and control program designed to minimize potential sources of error should be include as part of the Proponents proposal.

**5.5 Schedule of Work**

Respondents shall indicate when work would commence and approximately how long it would take to complete the assignment. Meeting dates, milestones, other key events, and major project deliverables should be clearly identified on the project schedule. The schedule should identify the critical path delineating what staff resources will be required and when they will be required. The proposed schedule must align with the RFP deliverable target dates. This portion of the proposal would ideally be provided in Microsoft Project or similar scheduling format.

**5.6 Appendices**

Respondents are to include any additional information regarding their firm and/or services that could prove beneficial to the evaluation team in accessing their submission.

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This section will contain a detailed cost breakdown summarized by a **total upset price** broken into relevant sub-sections such as:

- Total Project Management and correspondence
- Meetings (start-up and progress meetings)
- Document and Database creation
- Field Surveys
- QA/QC Procedures
- Reporting/Deliverables
- Summary

**5.10 Project Personnel Table**

The Project Personnel table shall outline by task the key personnel, hourly rates, hours assigned to the project and associated task, and project totals.

The Proponent should also include the following:

- Staff per diem charge out rates
- Cost to attend additional meetings at the Customer Service Centre.

**6.0 LOBBYING AND CONFLICT OF INTEREST**

**6.1** Proponents are prohibited from engaging in conduct which is or could reasonably be considered as any form of political or other lobbying as an attempt to influence the outcome of this RFP.

**6.2** The Proponent shall not discuss or communicate directly or indirectly with any other Proponent regarding the preparation or content of a Proposal.

**6.3** Any discussions verbally or in writing with elected officials of the Town prior to the awarding of this RFP by the Town are prohibited and may result in the disqualification of the Proponents submission.

**6.4** The Proponent is required to disclose to the Town, prior to submitting a Proposal, any potential or real conflict of interest in relation to its Proposal or its participation in the RFP.

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- 6.5** If a conflict of interest exists, the Town may, in its discretion, either withhold evaluation of that Proponent's Proposal until the matter is resolved to the satisfaction of the Town or reject that Proponent's Proposal.
- 6.6** The failure of any Proponent to comply with this article may result in the disqualification of the Proponent and the rejection of its Proposal.

## **7.0 TERMS OF PAYMENT**

Unless otherwise stated herein, the Town's normal terms of payment will be Net Thirty (30) calendar days from the Receipt of Goods/Services or the Date of Invoice, whichever occurs later. Invoices shall be forwarded to the attention of:

**THE CORPORATION OF THE TOWN OF TILLSONBURG**  
**10 Lisgar Avenue, Tillsonburg, ON, N4G 5A5**  
**Attn: Kevin De Leebeeck, P.Eng.**  
**Director of Operations**

## **8.0 AWARD AND EXECUTION OF AGREEMENT**

The following documentation is required from the successful Proponent prior to the execution of the Agreement;

### **8.1 Certificate of Insurance**

Throughout the term of the Agreement, the successful Proponent will be required to obtain and keep in full force and effect the required insurance policy(s) as set out in the Draft Consultant Agreement attached hereto as **Appendix A**.

### **8.2 Workplace Safety and Insurance Board**

A copy of the Proponents Certificate of clearance from the Workplace Safety and Insurance Board must be submitted by the successful Proponent. Clearance certificates should be renewed every ninety (90) days throughout the term of the Agreement.

### **8.3 Health & Safety**

The successful Proponent, upon request, will provide the Town, prior to commencement of work, with a written copy of the Health and Safety Policy for their firm along with Health and Safety procedure(s) relevant to the work to be performed.

The firm will be expected to work in accordance with the Occupational Health and Safety Act (re: duties of Constructors and duties of employers) and applicable regulations. Health and Safety legislation and Environmental legislation and regulations are considered the minimum requirement the Firm must meet.

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## 9.0 PROPOSAL EVALUATION CRITERIA

An Evaluation Committee will evaluate each of the RFP's received in accordance with the evaluation criteria as set out below. The Committee reserves the right to enter into further discussions in order to obtain information that will allow the Committee to reach a decision with a Proponent, and to waive irregularities and omissions if, in doing so, the best interest of the Town will be served.

The Town reserves the right to interview the top scoring Proponents that submits a Proposal to provide the evaluation team with additional insight into the Proponent's ability to meet the requirements as requested in the RFP. The interviews, if conducted, would be performed by the Evaluation Committee prior to RFP award.

The Town also reserves the right to contact references provided by the Proponent and include this information within the total score of the Corporate Qualifications & Experience component.

Selection of a Proponent will be based on, but not solely limited to, the following criteria and weighting:

ITEM	DESCRIPTION	EVALUATION AREA	POINTS
1	CORPORATE QUALIFICATIONS & EXPERIENCE	DEMONSTRATED ABILITY ON SIMILAR PROJECTS. POSITIVE REFERENCES	15
2	PROJECT TEAM	QUALIFICATION AND EXPERIENCE OF PROJECT TEAM	15
3	APPROACH AND METHODOLOGY	THOROUGH UNDERSTANDING OF THE PROPOSED TASKS, ABILITY TO CONVEY THAT UNDERSTANDING MEETING ALL REQUIREMENTS	20
4	QUALITY ASSURANCE & CONTROL	DEMONSTRATES THE IMPORTANCE OF	15
5	SCHEDULE & WORK PLAN	PROONENTS SCHEDULE MEETS REQUIRED TIMELINES	15
6	PROPOSED FEE	TOTAL UPSET PRICE	20
<b>TOTAL</b>			<b>100</b>

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Each Proposal shall demonstrate a thorough understanding of the Terms of Reference and be organized so as to follow Section 5.0 Contents of Submission. The Proponent with the highest total score will be recommended to be selected as the successful Proponent. By responding to this RFP, Proponents agree to accept the recommendations of the Evaluation Committee.

The Proposed Fee component will form the upset limit in the subsequent Engineering Agreement to be executed. The fees shall be based on a cost matrix identifying the staff required (i.e., the number of hours) for the tasks identified in the Terms of Reference. Subtotal figures for each task and each major task **shall be** shown. For example, field survey's is a major task. The total fee submitted shall be equal to the product of the total number of person hours and the stated hourly rates for each staff member, plus disbursements.

All expenses/disbursements associated with each task in the project scope shall be individually identified within the total proposed fee. All fees are to exclude any applicable taxes (i.e. Harmonized Sales Tax) and shown separately in the Proposal and all future invoices

Disbursements will be reimbursed at cost and must be job related. Backup documentation for all disbursements is to be submitted with each invoice. Operating and overhead expenses will not be considered as a disbursement. The following are examples of acceptable and unacceptable disbursements:

Acceptable Disbursements:	Travel – Automobile Printing and Reproduction Meals Communications (telephone bills)
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Unacceptable Disbursements:	AutoCAD Charges Computer Charges Equipment Charges (unless clearly identified in proposal) Information Technology Charges
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Describe in detail the basis upon which the fee is based, and clearly outline the cost of any exclusion, provisional and/or discretionary items, which may impact the proposed fee.

It is the Evaluation Committee's intention to normalize the Proponent Fee to ensure that assumptions made by each Proponent are comparable. The normalized figures will be used in the Proposal Fee component of the evaluation.

The lowest fee proposed for the entire project shall be awarded the full amount of points available for the fee portion of the evaluation. All higher fees proposed shall be awarded points, rounded to the closest full point. Evaluation of the proposed fee for scoring is based on the following formula:

$$[1 - \{(Proponent\ Fee - Lowest\ Fee) \div (Lowest\ Fee)\}] \times 20$$

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This formula is designed to give the lowest cost the maximum point (20 points). All other firms will be evaluated against the lowest cost. It can be seen from the formula that zero points will be given if the Proponents' proposed fee is more than double the lowest proposed fee.

The Evaluation Committee will review all Proposals received and score the Proposals using a consensus approach.

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**PROPONENTS must complete this form and include with their Submission**  
**Please ensure all information is legible.**

<b>1.</b>	Bidder's Contact Individual	
<b>2.</b>	Office Phone #	
<b>3.</b>	Toll Free #	
<b>4.</b>	Cellular #	
<b>5.</b>	Fax #	
<b>6.</b>	E-mail address	

**Bidder:** \_\_\_\_\_ **Date** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**THIS PAGE IS A MANDATORY REQUIREMENT FOR THE SUBMISSION**



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**THE PROPONENT DECLARES**

1. No person(s), firm or corporation, other than the Proponent, has any personal interest in this RFP or in the award for which this RFP is made;
2. No member of Council, no officer or employee of the Town is or will become interested directly or indirectly as a contracting party, partner, shareholder, surety or in any portion of the profits thereof, or in any of the monies to be derived, therefrom;
3. This RFP is made without any connection, comparison of figures, or arrangements with, or knowledge of any other corporation, firm or person making an RFP for the same and is in all respects without collusion or fraud;
4. By signing this submission, I confirm I have read and understood the content and requirements of this RFP document;

**ACKNOWLEDGEMENT TO RECEIPT OF ADDENDA**

**This will acknowledge receipt of the following addenda and, that the pricing includes the provision set out in such addenda**

<b>ADDENDUM #</b>	<b>DATE RECEIVED</b>
# _____	_____
# _____	_____
# _____	_____

**Check here if NO Addenda received**

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF PROPONENT  
By my signature, I hereby confirm I am a principal, or have been duly authorized by the principal/board, to sign on behalf of the Proponent

**THIS PAGE IS A MANDATORY REQUIREMENT FOR THE SUBMISSION**

**APPENDIX A**

**Draft Consultant Agreement**

**TOWN OF TILLSONBURG  
CONSULTANT AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**BETWEEN:**

\_\_\_\_\_  
(hereinafter called the “Consultant”)

OF THE FIRST PART

- and -

**THE CORPORATION OF THE TOWN OF TILLSONBURG**  
(hereinafter called the “Town”)

OF THE SECOND PART

**WHEREAS** the Town requested Proposals from interested proponents for the provision of consulting services for road condition assessments as described in Schedule “A” attached hereto;

**AND WHEREAS** the Consultant submitted a proposal dated \_\_\_\_\_ 2015 attached hereto as Schedule “B”;

**AND WHEREAS** the Town wishes to retain the Consultant to deliver the Services as set out in this Agreement;

**AND WHEREAS** the Consultant has represented to the Town that it has the skills and ability to deliver the Services to the Town in an effective and efficient manner;

**NOW THEREFORE** in consideration of the mutual covenants herein contained and the provision of other good and valuable consideration (the receipt and adequacy of which is acknowledged) the Parties hereto agree as follows:

**1. Definitions**

- 1.1 **“Agreement”** means this agreement to provide the Services to the Town and includes any amendments, supplements, schedules, exhibits or appendices attached, referencing this agreement, or expressly made a part hereof.

1.2 **“Confidential Information”** means any and all material and information whatsoever of the Town and/or representatives of the Town which has or will come into the possession or knowledge of the Consultant or any Consultant Personnel in connection with or as a result of the relationship of this Agreement including, without limitation, information concerning the Town’s past, present and future clients, suppliers, and business. For the purposes of this definition, “information” and “material” includes know-how, data, patents, copyrights, trade secrets, processes, techniques, programs, designs, formulae, marketing, advertising, financial, commercial, sales, or programming materials, written materials, agreements, draft agreements, requests for proposals, compositions, drawings, diagrams, computer programs, studies, work-in-progress, visual demonstrations, ideas, concepts, and other data, in oral, written, graphic, electronic, or any other form or medium whatsoever. Notwithstanding the foregoing, Confidential Information does not include the following information:

- (a) information which is in the public domain when it is received by or becomes known to the Consultant or Consultant Personnel or which subsequently enters the public domain through no fault of the Consultant or Consultant Personnel (but only after it enters the public domain);
- (b) information which is already known to or in the possession of the Consultant or Consultant Personnel at the time of its disclosure to the Consultant or Consultant Personnel by the Town and/or representatives of the Town and is not the subject of an obligation of confidence of any kind;
- (c) information which is received by the Consultant or Consultant Personnel without an obligation of confidence of any kind from any person (other than the Town and/or representatives of the Town); and
- (d) information which is disclosed by the Consultant or Consultant Personnel pursuant to a requirement of law or of a governmental agency or by operation of law, provided that the Consultant or Consultant Personnel has disclosed only that part of the Confidential Information which it was required to disclose and has notified the Town prior to such disclosure in a timely fashion in order to permit the Town to attempt to prevent or restrict such disclosure should it so elect.

For greater clarity, Confidential Information shall include materials and information of a third party in the possession of the Town and/or representatives of the Town.

1.3 **“Consultant Personnel”** means individuals employed, retained by or acting on behalf of the Consultant or a permitted subconsultant of the Consultant.

1.4 **“Project Schedule”** means the intended start and finish dates for the Services as proposed by the Consultant and approved by the Town and as otherwise provided in the Proposal and this Agreement.

- 1.5 **“Proposal”** means the proposal submitted to the Town by the Consultant and attached hereto as Schedule “B”.
- 1.6 **“Services”** means the services to be furnished by the Consultant to the Town pursuant to this Agreement, as specified in the scope of work described in Schedule “A” and as identified in Schedule “B” attached hereto.

## **2. Services of the Consultant**

- 2.1 The Consultant shall provide to the Town the Services in accordance with the terms and conditions of this Agreement and agrees to undertake the scope of work described in Schedule “A” and perform the consulting services identified in Schedule “B” for the Town.
- 2.2 The scope of work described in Schedule “A” and the consulting services identified in Schedule “B” may be amended or otherwise modified by agreement in writing by the Town and the Consultant and attached to this Agreement and, thereafter, the Services shall be deemed to include the services described in such amended scope of work and/or consulting services.

## **3. Level of Services**

- 3.1 Unless otherwise expressly specified in this Agreement, the Consultant agrees to supply at its sole cost and expense all staff, equipment, accommodations, disbursements and technical assistance necessary to perform the Services to be furnished under this Agreement and assume all overhead expenses in connection therewith, to the reasonable satisfaction of the Town.

## **4. Commencement and Prosecution of Work**

- 4.1 The Consultant shall commence work pursuant to this Agreement when directed by the Town. The Consultant shall proceed with due dispatch to ensure that its obligations are completed as quickly as reasonably possible, but in any event to be completed before the completion date set out in Schedule “A”. The Town shall give due consideration to all plans, drawings, reports, tenders, proposals, and other information provided by the Consultant and shall make any decisions which it is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.
- 4.2 The Town shall be entitled to terminate this Agreement at any time without cause, whether or not the Consultant has breached or failed to perform any of its obligations to the Town under this Agreement, and in the event of such termination, the remuneration payable to the Consultant shall be determined by calculating the proportion of the work completed and applying that proportion to the fees payable hereunder for the Services.

## 5. Total Contract Price

- 5.1 In consideration of the Services provided by the Consultant, the Town agrees to pay the Consultant the sum of <WRITTEN NUMERIC WORDS> dollars and xx/100 (\$XX,XXX.XX). The sum of payment includes all fees, disbursements and applicable taxes, except for H.S.T. which (if applicable) shall be included in each invoice submitted to the Town and the Town agrees to pay such applicable H.S.T. to the Consultant.
- 5.2 In each invoice submitted to the Town, the Consultant shall include all applicable Taxes. The Consultant shall remit all applicable Taxes to the applicable taxing authorities as required by law. The Consultant hereby covenants and agrees to indemnify the Town and save it harmless from and against all liabilities and claims whatsoever against the Town, including, without limitation, fines, penalties and interest thereon, for or by reason of or in any way arising out of its failure to deduct, withhold or contribute any amount in respect of its payments to the Consultant pursuant to this Agreement. Such liabilities and claims shall include, without limiting the generality of the foregoing, federal or provincial income taxes, federal or provincial pension plan contributions, unemployment insurance premiums, workers' compensation premiums and contributions under any federal or provincial social insurance or income security programs.
- 5.3 Notwithstanding subsection 5.1 above, the parties may agree on the performance of extra work by the Consultant. Any such extra work must have been approved in writing, in advance, by the Town and, failing such approval; no payment shall be made in respect of same.

## 6. Payment

- 6.1 Payments shall be made to the Consultant by the Town, to the limits established in Section 5 of this Agreement, in accordance with invoices from the Consultant detailing charges owing and based on the completion of tasks outlined in the Consultant's Proposal and Project Schedule. Valid invoices submitted to the Town with respect to Services shall, subject to the terms and conditions of this Agreement be paid by the Town within 30 days of receipt by the Town of the applicable invoice.
- 6.2 Progress payments for the Services performed by the Consultant shall be made only where expressly agreed in writing by the Town. A claim for a progress payment made by the Consultant shall not include any aspect of the Services not yet fully and properly performed.
- 6.3 If any Services under the Agreement are included by the Consultant in its progress claims as partially or fully completed, but are not completed in accordance with the Agreement or are not otherwise completed to the Town's satisfaction, the Town may withhold from payment the total amount payable, or a part thereof, for those Services until they are completed or corrected to the full satisfaction of the Town.

- 6.4 Where a contingency allowance is provided for in the Agreement, the Consultant shall not be entitled to payment of the whole or any part of that amount, except to the extent that it can be shown that extra or additional Services have been carried out by the Consultant beyond that contemplated within the Agreement, and those extra Services have been approved in writing, in advance, by the Town's Project Manager or contract representative as set out in this Agreement.

## 7. Term

- 7.1 This Agreement shall commence on the date set forth above and, subject to earlier termination as provided for in this Agreement, continue in effect until the completion date identified in Schedule "A" (the "Term").
- 7.2 The Town will have the option to extend this Agreement for satisfactory completion of the Services herein provided by the Consultant and/or for additional work that may be required. The Town reserves the right to award any follow-on work to the Consultant without necessitating a separate procurement process.
- 7.3 The provisions of and the rights, obligations and liabilities of the parties under Sections 1, 5, 6, 13, 14, 16 – 31 of this Agreement shall survive the termination of this Agreement and shall continue in full force and effect thereafter.

## 8. Insurance Requirements

- 8.1 Throughout the Term of the Agreement, the Consultant covenants and agrees to purchase, maintain and keep in full force and effect a policy or policies of:

8.1.1 Comprehensive General Liability Insurance, applying to all operations of the Consultant subject to limits of not less than five million dollars (\$5,000,000) per occurrence which shall include coverage for personal injury, including death, broad form property damage, and contingent employer's liability. The Town reserves the right from time to time to request greater amounts or other types of policies appropriate to the work as the Town may reasonably require and the Consultant agrees to comply with all such reasonable requests made by the Town in this regard. In addition, any subconsultants have to be approved by the Town before any work is done and the following insurance and indemnification requirements and clauses apply to said subconsultants. The insurance policy shall:

- a. include as additional insured's "The Corporation of the Town of Tillsonburg" and the "County of Oxford";
- b. contain a cross-liability clause, severability of interests clause endorsement;
- c. contain a clause including Contractual Liability coverage arising out of the Agreement;

8.1.2 Automobile Liability Insurance, that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of liability of not less than two million dollars (\$2,000,000) per occurrence or such greater amount as the Town may from time to time reasonably request, in respect of the use or operation of all licensed vehicles owned or leased by the Consultant for the provisions of Services. The policy must provide coverage for personal injury, including death or property damage arising out of the ownership, use or operation of all owned and/or leased automobiles;

8.1.3 Non-Owned Automobile Liability Insurance, in standard form having an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence or such greater amount as the Town may from time to time reasonably request, in respect of the use or operation of vehicles not owned by the Consultant for the provisions of Services;

8.1.4 Professional Liability Insurance (Errors and Omissions), is required and will have an inclusive limit of not less than two million dollars (\$2,000,000) or, alternatively, the Consultant shall purchase and maintain in force for the duration of the project, single project Professional Errors and Omissions Liability Insurance with limits dedicated to the Services and having an inclusive limit of not less than two million dollars (\$2,000,000) per claim. The Consultant shall ensure any person providing professional service in connection with this Agreement have and maintain the required Professional Liability Insurance as described herein.

- 8.2 Proof of insurance will be submitted by way of an executed Certificate of Insurance in a form satisfactory to the Town each year and at least ten (10) days prior to renewal of policy. All requested lines of coverage to be shown on the Certificate of Insurance. The Consultant shall neither perform nor be remunerated for any Services under this Agreement unless and until said insurance certificate has been provided and approved by the Town insurer.
- 8.3 All such insurance policies shall be maintained in force for the Term and provide that it is not cancellable or changeable unless prior written notice by mail or facsimile transmission has been received by the Town from the insurer(s) not less than thirty (30) days prior to the cancellation date or the date any changes are to take effect with respect to the policy/policies.
- 8.4 It shall be the sole responsibility of the Consultant to determine what additional insurance coverage, if any, are necessary and advisable for its own protection and/or to fulfill its obligation under this Agreement. Any such additional insurance shall be maintained and provided at the sole expense of the Consultant.
- 8.5 The Consultant and the Town agree to immediately notify the other party of an occurrence, incident, or event which may reasonably be expected to expose any of the parties hereto to liability of any kind in relation to the Services and/or this Agreement.



- 8.6 The issuance of such policies of insurance shall not be construed as relieving the Consultant from responsibility for other or larger claims, if any, for which is may be held responsible.

## **9. Indemnification**

- 9.1 The Consultant shall indemnify and save harmless the Town, its employees, agents, successors, members and assigns (collectively the “Indemnified Parties”), from and against all actions, causes of action, suits, claims and demands whatsoever which may be brought against or made upon any one or more of the Indemnified Parties and against any and all losses, liability, judgments, claims, costs, demands or expenses which any one or more of the Indemnified Parties may sustain, suffer, or be put to resulting directly or indirectly from or as a consequence of or in connection with the Services provided by the Consultant, including but not limited to those arising out of the Consultant’s failure to exercise reasonable care, skill or diligence in the performance or rendering of any work or service required hereunder to be performed or rendered by the Consultant.
- 9.2 Without limiting the generality of the foregoing, the Consultant hereby agrees to well and truly save, keep harmless and fully indemnify the Indemnified Parties from and against all actions, causes of action, suits, claims and demands whatsoever which may be brought against or made upon any one or more of the Indemnified Parties, 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 any plans, designs, drawings, specifications, information, negatives, data, material, sketches, notes, documents, memoranda, or computer software furnished by the Consultant in the performance of this Agreement.
- 9.3 All goods and services provided to the Town pursuant to this Agreement, including information, software and other intellectual property, shall be fully warranted against defects in accuracy, material and workmanship (as applicable) for a warranty period which commences immediately upon the supply and delivery of the goods and services, and which terminates one (1) year following the total completion of this Agreement.

## **10. WSIB**

- 10.1 The Consultant prior to commencing the Services,
- (a) shall submit to the Town an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board and shall provide additional certificates with respect to such coverage every ninety (90) days, or as often as the Town deems necessary during the Term of the Agreement to ensure continued good standing with the Workplace Safety and Insurance Board; or

- (b) furnish proof in a form satisfactory to the Town from the Workplace Safety and Insurance Board that the Consultant does not require Workplace Safety and Insurance Board insurance, but in such a case if the Consultant changes its status during the term of the Agreement so that such coverage is required, the Consultant shall immediately provide the Town with the certificate required under subsection 10.1 (a).

10.2 Where a substantial portion of the work to be done under the Agreement is to be carried out by a subconsultant, the Town may require the Consultant to furnish the same evidence as provided under subsection 10.1.

## **11. Consultant Standard of Care**

11.1 During the entire Term of this Agreement, the Consultant shall devote such time and attention to the performance of the Services as is necessary for the proper and effective exercise of its obligations under this Agreement. In performing the Services under this Agreement and in otherwise exercising its powers and discharging its obligations and duties hereunder, the Consultant shall and shall ensure that all Consultant Personnel;

- (a) act diligently, honestly and in good faith and in the best interests of the Town;
- (b) exercise the degree of care, skill and diligence that fully experience, careful and prudent consultants employing best practices would exercise in comparable circumstances;
- (c) to the best of its ability make every effort to promote the interests and reputation of the Town; and
- (d) to the best of its ability assist the Town in achieving its objectives and goals.

11.2 The Consultant shall act ethically and fairly in all of its dealings with the Town and all elected or appointed officials, officers, employees and independent contractors of the Town, and co-operate with them in respect of the discharge of their duties to the Town.

11.3 The Consultant shall not act in any case where there may be any conflict of interest between it (or any of its directors, officers, employees, subconsultants or Consultant Personnel) and the Town. The Consultant shall notify the Town of and fully disclose to the Town, in writing and immediately upon same becoming known to the Consultant, any potential or actual conflict of interest that may arise or has arisen prior to the execution of this Agreement or during the performance of its duties under the Agreement.

## **12. Assignment, Subconsulting and Consultant Personnel**

- 12.1 The Consultant shall not sell, assign, convey, transfer or encumber in any manner this Agreement, any part of this Agreement or any of its rights or obligations hereunder without the prior written consent of the Town. Any such attempted sale, assignment, conveyance or transfer in violation hereof by the Consultant shall be void and of no force and effect.
- 12.2 The Consultant is the prime contractor under this Agreement and, as such, no subconsulting by the Consultant shall relieve the Consultant of any responsibility for the full performance of all obligations of the Consultant under this Agreement. Notwithstanding the approval of any subconsultants by the Town, the Consultant shall assume full responsibility for the performance of the Services in accordance with the terms of this Agreement, including any activities, works, and/or Services provided by subconsultants and any acts and/or omissions of subconsultants.
- 12.3 The Consultant shall provide Consultant Personnel that possess the training and qualifications required to deliver the Services.

## **13. Confidential Information**

- 13.1 Upon completion or expiration or earlier termination of this Agreement, whichever shall first occur, the Consultant shall return to the Town all written or descriptive matter, including but not limited to drawings, descriptions, or other papers, documents or any other material, which contains any Confidential Information which is then in the possession or control of the Consultant or any Consultant Personnel and shall remove all digital representations thereof in any form from all electronic storage media in its or their possession or control, and shall certify in writing to the Town that the Consultant has fully complied with this subsection. Except as expressly provided in this paragraph, no Confidential Information shall be disclosed without the approval in writing of the Town, and:
  - (a) the Consultant shall hold all Confidential Information in trust and strictest confidence for the Town and shall not disclose any such Confidential Information, by publication or other means, to any person, company or other government agency nor use same for any other project other than for the benefit of the Town as may be authorized by the Town in writing;
  - (b) any request for such approval by the Town shall specifically state the benefit to the Town of disclosure of Confidential Information;
  - (c) any use of the Confidential Information shall be limited to the express purposes as set out in the approval of the Town;

- (d) the Consultant shall not, at any time during or after the Term of this Agreement, use any Confidential Information for the benefit of anyone other than the Town;
  - (e) the Consultant shall not make any copies or partial copies of the Confidential Information except as required for its permitted use as described herein or as otherwise authorized in writing by the Town. The Consultant shall take all reasonable steps to protect the Confidential Information to ensure that Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement; and,
  - (f) the Consultant shall ensure that all Consultant Personnel having access to the Confidential Information comply with this Section of the Agreement.
- 13.2 The Consultant acknowledges that disclosure of Confidential Information may cause serious and irreparable harm to the Town which cannot be adequately compensated for in damages and accordingly agrees that the Town shall be entitled to obtain injunctive relief, in addition to any other appropriate remedy, to prevent such disclosure.

#### **14. Right of Ownership and Use**

- 14.1 Upon completion or other termination of this Agreement, all information, negatives from original photography, computer software, data, material, sketches, plans, designs, notes, documents, memoranda, specifications or other paper writing gathered, assembled, or prepared by the Consultant and/or Consultant Personnel (hereinafter collectively referred to as "the material") shall become the sole property of the Town including copyright with respect to all such material. The Consultant shall execute any documents required to give effect to the foregoing.
- 14.2 The Consultant waives in whole and in part any and all moral rights arising under the Copyright Act in the material as against the Town and anyone claiming rights of any such nature from or through the Town. Further, the Consultant represents and warrants that its employees, servants, subconsultants and agents (Consultant Personnel) have waived or shall waive in whole and in part any and all moral rights arising under the Copyright Act in the material as against all parties, including the Consultant and the Town, and anyone claiming rights of any such nature from or through the Town.
- 14.3 The Consultant acknowledges and agrees that, as a consequence of the assignment and waiver as herein stated, all rights which may subsist in the material shall be and remain the sole and exclusive property of the Town and the material shall be treated as Confidential Information.

## **15. Accessibility for Ontarians with Disabilities Act, 2002 and Barrier Free Design Guidelines**

- 15.1 The Town is committed to providing equal treatment to people with disabilities with respect to the use and benefit of Town services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public.
- 15.2 Effective 1 January 2010, third party contractors who deal with the public or other third parties on behalf of the Town, as well as vendors who participate in developing Town policies, practices or procedures governing the provision of goods and services to members of the public or other third parties, must conform with the Accessibility Standards for Customer Service, O. Reg. 429/07 (Appendix A) (“Regulation”), under The Accessibility for Ontarians with Disabilities Act, 2005 (AODA).
- 15.3 Pursuant to Section 6 of the Regulation, the Consultant shall ensure that all of its employees, agents, volunteers, or others for whom it is at law responsible, receive training about the provision of the goods and services contemplated herein to persons with disabilities. Such training shall be provided in accordance with Section 6 of the Regulation and shall include, without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. Where requested by the Town, the Consultant shall provide written proof that employees working with Town staff and/or public have been trained as required under the act as well as any documentation regarding training policies, practices and procedures.

## **16. Consultants Default and Town’s Remedies**

- 16.1 The provisions of this section are in addition to any other rights, privileges and remedies to which the Town is entitled by Law, in equity or otherwise in the Agreement.
- 16.2 The following shall constitute, without limitation, acts or events of default (“Default”) by the Consultant:
  - (a) where the Consultant fails or neglects to commence or to proceed with the provision of Services diligently and at a rate of progress that in the opinion of the Town will ensure entire completion within the time provided for in the Agreement;
  - (b) where the Town reasonably determines that the Consultant has abandoned its duties with respect to the Services or failed to observe and perform any of the provisions of the Agreement, the determination of which shall be at the sole discretion of the Town;
  - (c) where the Consultant fails to comply with and maintain in good standing any insurance policies, professional certificates, permits, licences or approvals

required by the Agreement or commits any acts or omissions that jeopardizes or may jeopardize these policies, permits, licences or approvals;

- (d) where the Consultant fails to comply with or observe or perform, or breaches or violates, any provision, term, covenant, warranty, condition, responsibility and/or obligation of the Agreement;
  - (e) where the Consultant fails to comply with any laws, statutes, rules or regulations;
  - (f) where the Consultant fails to comply with any instruction or direction of the Town;
  - (g) where the Consultant defaults in the completion of the Services within the time limit under the Agreement or within a Town-extended time limit;
  - (h) where the Consultant makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or makes a proposal to its creditors.
- 16.3 Without restricting, limiting, precluding or otherwise prejudicing any other right, privilege or remedy of the Town provided in this Agreement or by law or in equity, in the event that the Consultant has committed an act of Default or an event of Default has occurred, the Town may provide written notice (“Default Notice”) to the Consultant to the effect that if the Consultant does not completely remedy the Default to the satisfaction of the Town within three (3) business days of delivery of the Default Notice, or such other period of time as may be specifically provided for under the Agreement or otherwise granted by the Town in writing, in its absolute discretion, then the Town may terminate the Agreement and/or the Services of the Consultant immediately.
- 16.4 If the Default is not completely remedied to the satisfaction of the Town in accordance with subsection 16.3, the Town may terminate the Agreement immediately and enforce any performance bond, letter of credit or other performance security provided by the Consultant (where applicable).
- 16.5 A waiver of a Default shall not extend to, or be taken in any manner whatsoever to affect the rights of the Town with respect to any subsequent default, whether similar or not.
- 16.6 The remedies provided in this Agreement are in addition to all other legal, equitable or statutory remedies to which the Town is otherwise entitled, as well as any other remedies stipulated in the Agreement, and the taking of any one remedy shall not preclude the taking of any other remedy.
- 16.7 If the Town terminates the Agreement as a result of an act or event of Default, in addition to any other rights, privileges and remedies it is entitled to, the Town may:

- (a) take possession of all of the work in progress, supplies, goods and materials, and complete the Services by whatever means the Town may deem appropriate under the circumstances;
  - (b) withhold any further payments to the Consultant until the completion of the Services and the expiry of all obligations; and
  - (c) recover from the Consultant loss, damage and expense incurred by the Town or may be incurred by the Town by reason of the Consultant's default (which may be deducted from any monies due or becoming due to the Consultant, with any balance remaining to be paid by the Consultant to the Town).
- 16.8 Unless the Town otherwise agrees in writing and without limiting any other provision of this section, the failure, refusal or neglect by the Consultant to deliver the Services in a diligent manner within the time specified or to promptly replace, remedy or correct the Consultant's performance and/or Services as required pursuant to the Agreement shall be deemed to constitute an authority for the Town to purchase and/or replace the Services in question on the open market. The Consultant shall forthwith reimburse the Town for all of its extra costs and expenses incurred to purchase and/or replace such Services, and the Town's internal costs and any delay costs.

## **17. Compliance with Laws**

- 17.1 The Consultant shall comply with all Federal, Provincial and Municipal laws, statutes, rules and regulations which are in any way related to or connected with the conduct of the business of the Consultant, the Services of this Agreement including, but not limited to, the Occupational Health and Safety Act, or any successor legislation, as applicable, and to provide to the Town, upon request, reports confirming such compliance.
- 17.2 The Consultant shall comply with the Human Rights Code and refrain from acts of discrimination and harassment in the same manner as would apply to employees of the Town pursuant to applicable laws and its Code of Conduct.
- 17.3 The Consultant shall at all times comply with all corporate rules, guidelines and policies of the Town.

## **18. Governing Law**

- 18.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada, as applicable to the matters herein. Any action or other legal proceeding arising under or with respect to the Agreement will be determined by a court of (or other forum) of competent jurisdiction within the Province of Ontario and all courts competent to hear appeals from them.

## 19. Agreement Non Exclusive

- 19.1 Unless otherwise expressly provided in the Request For Proposals attached hereto as Schedule "A" or any Addendum thereto, no Agreement shall be deemed to confer upon the Consultant an exclusive right to supply those Services to the Town related to this Agreement or otherwise.

## 20. Notification

- 20.1 Any demand, notice, direction or other communication required, or permitted to be given under this Agreement shall be in writing and shall be addressed to the respective parties as follows:

The Corporation of the Town of Tillsonburg  
200 Broadway St. Unit 204  
Tillsonburg, Ontario  
N4G 5A7  
Attention: Director of Operations

Name of Consultant  
Address of Consultant  
City, Province  
Postal Code  
Attention:

- 20.2 Either party may change its address by notice given in accordance with this section. Notices may be delivered personally, in which case they shall be effective immediately, or through regular mail, in which case they shall be effective on the fifth (5<sup>th</sup>) day following mailing.

## 21. Interpretation

- 21.1 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 and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.
- 21.2 All captions, titles, and paragraph headings in this Agreement are inserted for convenience and ease of reference only and do not define, limit or enlarge the scope, meaning or intent of any provisions of this Agreement.



## **22. Complete Agreement**

22.1 This Agreement, including the Schedules attached hereto, constitutes the complete and exclusive statement of the agreement between the parties hereto and supersedes and replaces all previous communications, agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties relating to the subject matter of this Agreement.

## **23. Relationship of the Parties**

23.1 The Consultant shall perform the Services as an independent contractor and nothing in this Agreement shall be construed to create or imply a relationship of partners, joint ventures, principal/agent, or employer/employee between the Consultant and the Town. The Consultant shall have no power or authority to bind the Town or to assume or create any obligation or responsibility, express or implied, of any nature or any kind, in law or in equity on the Town's behalf. The Consultant shall not hold itself out to any third party as a joint venture, partner, agent, employee or servant of the Town, and nothing contained in this Agreement shall operate or be construed so as to create any such relationship between the Consultant and the Town. The Consultant shall be solely responsible for the payment of compensation, workers' compensation, disability benefits, employment insurance and all other similar payments and benefits and for withholding income taxes or other deductions with respect to all individuals employed or, if permitted by this Agreement, retained by the Consultant to provide the Services.

## **24. Successors and Assigns**

24.1 This Agreement shall enure to the benefit of and be binding on the parties hereto, and their respective heirs, successors and permitted assigns. Provided, however, that the Consultant shall not assign this Agreement nor any interest herein without the prior written consent of the Town, and for the purposes of this Agreement, assignment shall include any transfer in the majority ownership or controlling interest in the Consultant, whether through the sale of shares, direct acquisition of assets or otherwise.

## **25. Changes to Agreement in Writing**

25.1 Any variation, amendment or addition of or to this Agreement shall be in writing and be signed by the Consultant and the Town pursuant to and in accordance with authority delegated by Council for the Town, and shall be binding upon the Consultant and the Town as fully and to the same extent as if set out herein.

## **26. Schedules**

26.1 Schedules "A" and "B" to this Agreement and as attached hereto form part of this Agreement.

## **27. Representations and Warranties**

- 27.1 The Consultant represents and warrants as follows to the Town and acknowledges and confirms that the Town is relying on such representations and warranties:
- (a) the Consultant is a legal entity established under the laws of its jurisdiction and has all the necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
  - (b) the Services will be performed in an efficient and professional manner by duly competent and trained Consultant Personnel that have the requisite experience to provide the required services;
  - (c) The Consultant is not now a party to any agreement or business relationship which is in conflict with this Agreement, and the Consultant shall not enter into any agreements or incur any obligations during the term of this Agreement or after which may be in conflict with this Agreement; and
  - (d) The Consultant is not a “non-resident person” for the purposes of the *Income Tax Act* (Canada).

## **28. Severability**

- 28.1 In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, no other provisions contained in this Agreement shall be affected or impaired thereby.

## **29. Order of Precedence**

- 29.1 In the event of any conflict between any of the provisions of the Proposal and the body of this Agreement, the provisions in the body of this Agreement shall govern.

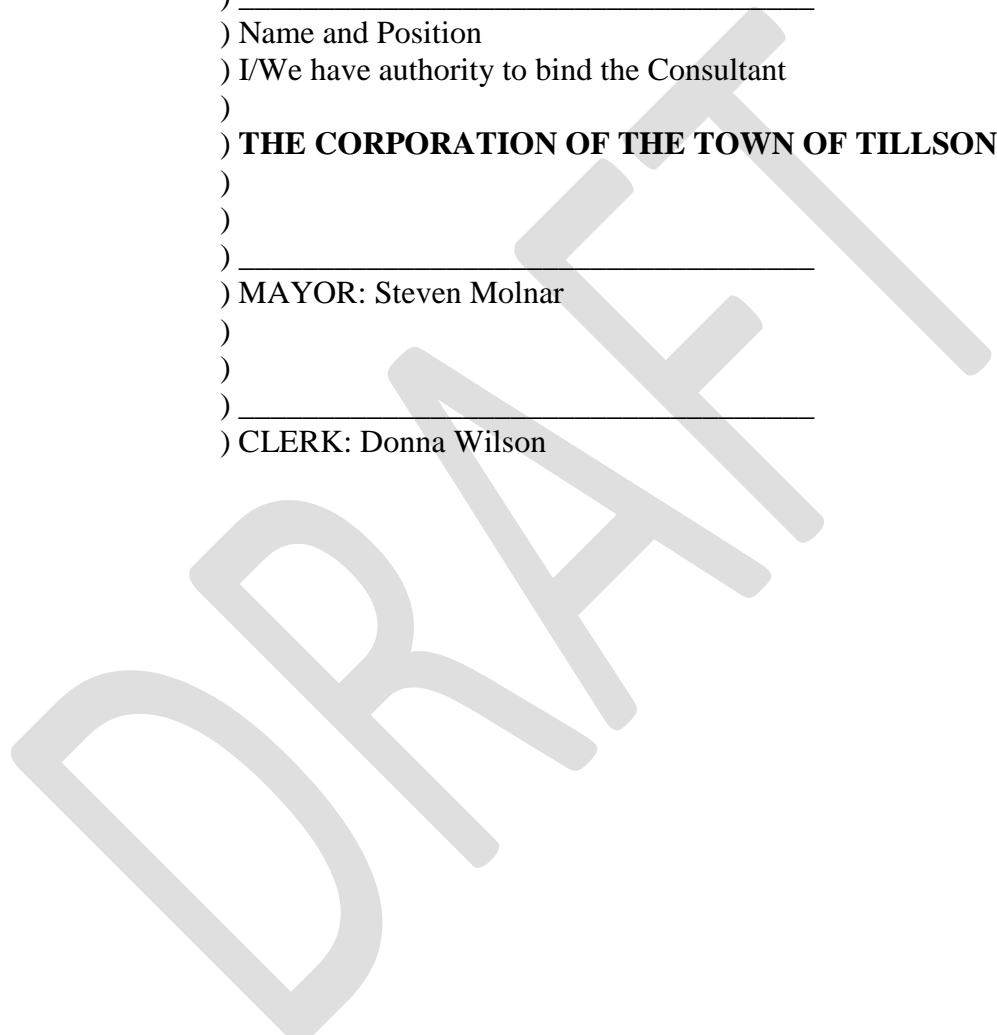
## **30. Counterparts**

- 30.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. The parties hereto may execute the counterparts in either original, faxed form or other electronic communication and the parties adopt any signatures received by a receiving fax machine or other electronic communication as original signatures of the parties but any party providing its signature by fax or other electronic communication shall promptly forward to the other party an original of the signed copy of this Agreement that was faxed or sent by other electronic communication.

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing offices in that behalf duly authorized.

**SIGNED, SEALED AND DELIVERED** as of the date first above written

) **CONSULTANT LEGAL NAME**  
)  
)  
) \_\_\_\_\_  
) Name and Position  
) I/We have authority to bind the Consultant  
)  
) **THE CORPORATION OF THE TOWN OF TILLSONBURG**  
)  
)  
) \_\_\_\_\_  
) MAYOR: Steven Molnar  
)  
)  
) \_\_\_\_\_  
) CLERK: Donna Wilson



**SCHEDULE "A"**

**Request for Proposal RFP 2015 - 004 and any Addenda issued**

**SCHEDULE "B"**

**Consultant Proposal dated \_\_\_\_\_, 2015**