

AGREEMENT FOR

PROFESSIONAL CONSULTANT SERVICES

MEMORANDUM OF AGREEMENT dated the _____, 2024

BETWEEN

The Long Point Region Conservation Authority

Hereinafter called the Client THE PARTY OF THE FIRST PART

AND

Hereinafter called the Consultant THE PARTY OF THE SECOND PART

WHEREAS

The Client intends to perform the duties outlined in:

The above is hereinafter called the Project and has requested the Consultant to furnish professional services in connection therewith;

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

ARTICLE 1. GENERAL CONDITIONS

1.1 Intellectual Property

For the purpose of the Consultant Agreement, "Consultant Output" includes, but is not limited to reports, studies, templates, compilations and collections of data, software, source code and related documentation, and other materials or documentation written, designed or produced by or for the Consultant pursuant to or in connection with the Consultant Agreement in any medium or format.

The Consultant shall assign all rights, title and interest in the Consultant Output to the Client. The Consultant must advise the Client prior to commencing any work on the project if these rights cannot be assigned.

The Consultant shall not incorporate into any deliverables anything that would restrict the right of the Client to modify, further develop or otherwise use the Consultant Output.

The Consultant represents and warrants that it shall at all material times have the right, title, and/or interest in and to the intellectual property embodied in the Consultant Output that it needs to legally and validly assign all right, title and interest in the Consultant Output, or, where not possible, to make a grant of license of the Consultant Output to the Client. The above license and warranty shall survive any termination or expiry of this Agreement.

1.2 Deliverables

The Consultant shall provide copies of deliverables to the Client in accordance with the format and timelines specified in the Project.

1.3 Patents

All concepts, products or processes produced by or resulting from the services rendered by the Consultant in connection with the project, or which are otherwise developed or first reduced to practice by the Consultant in the performance of service, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant.

The Client shall have a permanent, non-exclusive, royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise, produced by or resulting from the services rendered by the Consultant in connection with the project, for the life of the project, and for no other purpose or project.

1.4 Confidentiality

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

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

1.5 Insurance

The successful consultant must obtain, maintain and provide proof of Work Place Insurance Board (WSIB) clearance certification and two millions dollars of liability/errors and omissions insurance (minimum). Any sub consultant hired by the successful consultant must also provide, maintain and provide proof of WSIB clearance certificate, two million dollars of liability and two million dollars of errors and omissions insurance (minimum).

1.6 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 Consultant.

The award of the arbitrator shall be final and binding upon the parties. The provisions of the Ontario Arbitrations Act shall apply.

1.7 Successors and Assignment

This agreement shall inure 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.

1.8 Termination and Suspension

The Client may at any time, by notice in writing to the Consultant, suspend or terminate the services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Consultant shall perform no further services other than those reasonably necessary to close out the Consultant's services. In such event, the Consultant 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 Consultant 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 Consultant may immediately terminate this agreement. In such event, the Consultant 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.

No payment shall be awarded to the Consultant upon the termination of this agreement by the Client beyond the services performed and for all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

If the Consultant is practicing 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 Consultant to the date of such termination.

1.9 Progress Reporting

Throughout the period of the Agreement, the Consultant shall provide a brief progress report to the Client on a monthly basis, or as otherwise instructed by the Client, summarizing the hours worked on the project (separated by staff member and task), including the financial status of the project, broken down by fees and disbursements, and an estimate of percent complete on a task by task basis.

1.10 Qualified Persons

The Consultant represents and warrants that all work performed as part of this Agreement will be undertaken and completed by qualified persons.

1.11 Indemnification

The Consultant shall indemnify and save harmless the Client from and against all claims, actions, losses, expenses, or costs which the Client, the employees, officers or agents of the Client may suffer as a sole result of the negligence of the Consultant, the employees, officers or agents of the Consultant in the performance of this agreement.

The Client agrees to hold harmless, indemnify and defend the Consultant from and against any and all claims, losses, damages, liability and costs of defense arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may solely arise out of the negligence of the Consultant in the performance of consulting services to the Client within this project.

1.12 Contracting

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

1.13 Approval by Other Authorities

Unless otherwise provided in this agreement or explicitly required by legislation, where the work of the Consultant 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 Consultant, 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 Consultant with such other authority, department of government or agency.

1.14 Changes and Alterations and Additional Services

After giving notice to the Consultant, 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, fees shall be subject to negotiation. In the case of a reduction in the requirement for services, any reduction in the Consultant'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:

1. Make available to the Consultant all relevant information required by the Consultant that is known and available to the Client, and, shall instruct the Consultant fully as to the Client's requirements, including objectives, constraints and criteria, special equipment and systems, site requirements and budget.
2. Give the Consultant the authority to act as the Client's agent in all matters falling within the scope of the Consultant's services.
3. Promptly review all documentation submitted by the Consultant, and inform the Consultant of decisions in time for the orderly progress of the Consultant's services and of the work.
4. Designate in writing a representative to have authority to transmit instructions to and receive information from the Consultant.
5. Immediately notify the Consultant whenever the Client, or the Client's representative, becomes aware of a defect or deficiency in the work or the contract documents.

ARTICLE 3. CONSULTING SERVICES PROVIDED UNDER THIS AGREEMENT

3.1 General

The Consultant 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.

In connection with the project, the Consultant shall carry out the duties within the timeframe outlined in the Project.

ARTICLE 4. FEES AND DISBURSEMENTS

4.1 Lump-sum Fee Basis

1. The Client shall pay the consultant a fee, based on a Lump-Sum Fee Basis, for that part of the services described in the Project, inclusive for labour and reimbursable expenses, not to exceed:

Total Cost (excluding HST)

\$ XXX,XXX.XX

2. Monthly progress invoices will be based on milestones achieved. The Consultant 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. Invoices shall be based on milestones achieved described in the project.
3. Interest at the annual rate of 12% (1% monthly) will be paid on the total outstanding unpaid balance commencing 60 days after the Client has received the Consultant's invoice.
4. HST will be added to the Lump-Sum Fee.

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

CONSULTANT

CLIENT

Judy Maxwell, General Manager/Secretary Treasurer
Long Point Region Conservation Authority