



**The Regional Municipality of Durham**

**RFP-602-2016**

**FINANCIAL AND TECHNICAL CONSULTING FOR REGION'S INTEGRATED  
WASTE MANAGEMENT SYSTEM UTILITY ANAEROBIC DIGESTION**

**Date of Issue: June 8, 2016**

**Closing Date: June 30, 2016  
Closing Time: UNTIL 2:00 P.M. (Local Time)**

**THE REGIONAL MUNICIPALITY OF DURHAM  
REQUEST FOR PROPOSAL NO. RFP-602-2016**

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**DEFINITIONS**

<b>Agreement / Purchase Order</b>	A Contract that the Consultant / Company enters into with the Region authorizing the Consultant / Company to do the work. Includes the RFP document, its Appendices and addenda and the Consultant / Company's Proposal.
<b>Aerobic Composting</b>	Decomposition of organic matter using microorganisms that require oxygen.
<b>Anaerobic Digestion (AD)</b>	A series of biological processes in which microorganisms break down biodegradable material in the absence of oxygen
<b>Award</b>	The acceptance by the Region of a Proposal to carry out the Work.
<b>Consultant's / Company's Project Manager</b>	The individual designated by the Consultant / Company to lead their efforts to complete the Work. This person is the primary contact for the Consultant / Company.
<b>Contract</b>	See Agreement
<b>Consultant / Company</b>	The individual, contractor, company, supplier, corporation or consortium retained by the Region to carry out the Work.
<b>Procurement Officer</b>	The individual designated by the Region to undertake responsibility for the procurement process on the RFP.
<b>Proposal</b>	Written response to the RFP.
<b>Proposal Submission Deadline</b>	The date and time by which all Proposals must be received from those parties interested in becoming Respondents.
<b>Region</b>	The Regional Municipality of Durham, its successors and assigns.
<b>Region's Contact Person</b>	The individual designated by the Region to respond to questions and clarifications on the RFP.
<b>Region's Project Manager</b>	The individual designated by the Region to manage and administer the Work, once the Approved Respondent executes the Agreement
<b>Region's Staff</b>	Person(s) employed by the Regional Municipality of Durham
<b>Regional Chair or Chair</b>	The person elected by the majority of the electorate and represents the Region of Durham at Regional Council and who represents the Region and also is the CEO by statute.
<b>Regional Council</b>	The governing body of the Regional Municipality of Durham comprised of elected officials from the eight local Municipalities that make up the Region.
<b>Registered Document Taker</b>	Person, firm, company or consultant who has formally registered through the Bidding Opportunities link on the Region of Durham's Website and logged in to receive the competitive Bid Document (RFQ/RFT/RFP).
<b>Request for Proposals (RFP)</b>	The document issued by the Region offering Respondents the opportunity to submit a Proposal to carry out the Work. Includes all Appendices and Addenda.
<b>Respondent</b>	The person, firm, company, corporation or consultant submitting a Proposal in response to this RFP in the form and format specified in the document. Can mean more than one Respondent if a joint or consortium Proposal is submitted.
<b>Selected Respondent</b>	Respondent recommended by the Region to carry out the Work, still requiring Regional Council approval.

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<b>Selection Committee</b>	Representatives of the Region and other stakeholders appointed to evaluate the Proposals and recommend the Selected Respondent.
<b>Sub-Consultant/ Sub-Contractor</b>	An individual, consultant, company or corporation having a contractual relationship with the Consultant / Company for any part of the Work.
<b>Upset Limit</b>	Maximum price paid to the Consultant / Company for the Work to be performed by the Consultant / Company which includes all costs, disbursements and applicable duty and excise taxes, but <b>excludes</b> Harmonized Sales Tax (H.S.T.),
<b>Work</b>	All labour, material, equipment, fixtures, services, supplies, acts and deliverables required to be done, furnished, provided or performed by the Consultant / Company to manage the Work, as defined in the Agreement/ Purchase Order and contained in the Consultant's / Company's Proposal.

**SECTION 1  
INTRODUCTION AND INSTRUCTIONS TO RESPONDENTS**

**1.01 Purpose of this Request for Proposal (RFP)**

The Regional Municipality of Durham (the “Region”) is requesting proposals from qualified consulting firms for the purpose of providing technical and financial consulting services associated with performing a study to be implemented as described in **Section 5, Background and Scope of Work** of this RFP.

Please read this entire competitive bid document carefully and submit the information required in accordance with the instructions contained in **Section 2**.

**1.02 Submission of Proposals**

Respondents to submit **5 sets (1 original and 4 copies) of their Proposal**: in writing in **sealed envelopes and/or packages**, clearly addressed as set out below.

The Director, Legislative Services – Regional Clerk or Designate  
The Regional Municipality of Durham  
605 Rossland Road, East, 1<sup>st</sup> Floor, Corporate Services-Legislative Services  
Whitby, ON L1N 6A3

**Request for Proposals: RFP-602-2016**

Financial and Technical Consulting for Region's Integrated  
Waste Management System Utilizing Anaerobic Digestion

**Proposals will be received up until 2:00 p.m., local time,  
on June 30, 2016.**

**Proposals must be received in the Corporate Services-Legislative Services Division  
by the Closing Date and Time.**

**The onus unequivocally remains with the Respondent to ensure that the Region  
receives Proposals delivered or sent by courier or any third party prior to the  
Proposal Submission Deadline, in accordance with the submission process  
described in this Section. Proposals received after the Proposal Submission  
Deadline will not be considered and will be returned unopened.**

Proposals to include the complete name and address of their firm and the name, mailing address, and telephone number of the person the Region should contact regarding the proposal.

Faxed or electronic submissions **will not** be accepted in response to this RFP.

Proposals should be submitted in the form and format specified in **Section 2** and must include the completed **Form of Proposal attached in Appendix ‘A’**. A designated signing officer authorized to bind the Respondent to the provisions of their Proposal must sign the “Form of Proposal”. Failure to do so will result in the Proposal being rejected.

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Proposals must be legible and submitted in a non-alterable, fixed text format. The person signing on behalf of the Respondent must initial erasures, over-writing or strikeouts.

### **1.03 Pre-Bid Meetings**

There will be an optional **pre-bid information meeting** on **June 16, 2016 at 10:00 a.m. 5<sup>th</sup> Floor, in the Works Operations Centre, room # 5-3.** All firms wishing to submit a Proposal are **strongly advised** to attend. Failure to attend will not relieve Respondents from all responsibilities relating to this Contract, including all points of clarification and details discussed at the meeting in relation to any term, condition or specification contained in this Document, or subsequent Addenda issued.

### **1.04 Review and Clarification**

Proposals should not be restricted by any statements added to the Proposal or in a covering letter, or by alterations to the Form of Proposal supplied unless otherwise provided in the RFP.

**Should a Respondent have concerns regarding any Term or Condition within the RFP document, these must be addressed before Proposal closing, during the inquiry period noted below.**

All questions or inquiries must be made in **writing via e-mail** to the Region's contact below, before 4:00 p.m., **June 20, 2016 by 4:00 p.m.**

**Kelly Macpherson, CSCMP, Procurement Officer**  
E-mail: **Kelly.macpherson@durham.ca**

The Respondent is responsible for seeking clarification of any aspect of the RFP considered unclear. The Region's Procurement Officer noted above must receive all questions seeking clarification via e-mail. Responses to questions/clarifications will be communicated in writing to all Registered Document Takers via addenda to the RFP. (Refer to RFP Schedule).

**Respondents shall not contact other members of Regional staff in preparing their Proposal. The Region may disqualify a Respondent and/or their Proposal if it determines that inappropriate contact has been made.**

Protests based on any omission or error, or on the content of the RFP, will be disallowed if these issues have not been identified in accordance with this process. Should a dispute arise from the terms and conditions of any part of the RFP, regarding meaning, intent or ambiguity, the decision of the Region shall be final.

In submitting a Proposal, the Respondent acknowledges having read, completely understood, and accepted the terms and conditions of the RFP in full. The Region is not responsible for any misunderstanding of the RFP.

### **1.05 RFP Schedule**

The RFP schedule set out herein represents the Region's best estimate of the schedule that will be followed. If a component of this schedule is delayed, the rest of the schedule

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may be shifted by the same number of days. The approximate schedule is as follows (subject to change without notice).

1. Issue RFP Date:.....June 8, 2016
2. Pre-bid meeting:.....June 16, 2016 at 10:00 a.m.
3. Deadline for question submission:.....June 20, 2016 at 4:00 p.m.
4. Responses to questions (by addendum):.....June 23, 2016
5. Close RFP Date:.....June 30, 2016 at 2:00 p.m.
6. Evaluation:.....July 18-29, 2016
7. Delegated Approval:.....August, 2016
8. Contract Award:.....August, 2016

**1.06 Addenda to the RFP**

The Region may issue amendment(s) in the form of Addenda to clarify and/or modify certain aspects of the RFP prior to the Proposal Submission Deadline. Addenda will be sent **only** to **Registered Document Takers** issued RFP documents. **(Refer to Bidding Opportunities page of the Region’s website for details on document registration).**

Respondents shall sign and return with the Proposal or acknowledge on the “Form of Proposal”, receipt of such Addenda. In the event an RFP is amended, all terms and conditions that are not modified shall remain unchanged.

Under no circumstances shall Registered Document Takers rely upon any information or instructions from the Region, its employees, or agents unless provided in writing by the Region’s Procurement Officer and issued through formal addenda to the RFP.

The Region, its employees, or agents shall not be responsible for any information or instructions related to this RFP, with the exception of information or instruction circulated through formal Addenda to the RFP.

If any addendum is issued after the Deadline for Issuing Addenda, the Region may at its discretion extend the Proposal Submission Deadline for a reasonable amount of time.

The Respondent is solely responsible for ensuring receipt of all Addenda posted on the Region’s website and that they have been taken into account in the formation of their Proposal.

**1.07 Alternate Proposals**

Respondents may only submit one Proposal for evaluation. Where more than one version of a Proposal is received within an envelope / package, both Proposals will be disqualified and returned. Where two separate envelopes / packages are received, the Proposal stamped with the latest date/time will be accepted. Where the date/time stamp is not determinative, acceptance of one Proposal will be at the Region’s sole discretion.

**1.08 Joint or Consortium Proposals**

The submission of joint or consortium Proposals is acceptable. In such an event, all members of the joint venture or consortium must be identified as well as one Primary Respondent designated in the Proposal who will be responsible for overall success of the

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Work and serve as the point of contact for communication and billing. Proposals must be signed and addressed by the Primary Respondent, whose signature will bind all members of the joint venture or consortium.

Where the information requested in this Article is not clearly communicated in the Respondent's Proposal, the Region reserves the right, in its sole discretion, to determine acceptance as a Proposal being made by the Primary Respondent only, to accept the Proposal as a joint or consortium Proposal, or to reject the Proposal outright. Acceptance will be at the Region's sole discretion.

#### **1.09 Proposal Expiry Date**

Respondents hereby acknowledge that their Proposals shall be irrevocable in the form submitted by the Respondent for a period of one hundred and twenty (120) days from the Proposal Submission Deadline, or until an Agreement is signed with the successful Respondent(s), whichever comes first. Extensions to this period may be granted with the mutual agreement of the Region and the compliant Respondent(s), and may be initiated by either party.

#### **1.10 Amendments to Proposals**

Amendments to or withdrawals of Proposals will only be allowed if requests are received prior to the Proposal Submission Deadline. **No amendments or withdrawals will be accepted after this date.**

#### **1.11 Purchasing By-Law**

This RFP is issued, received, evaluated, accepted and processed in accordance with the Region's **Purchasing By-Law No. 68-2000 (As Amended)** of which a copy can be found at <http://www.durham.ca/departments/finance/purchasing/Bylaw68.pdf> and related procedures. In submitting a Proposal, the Respondent agrees to be bound by all terms and conditions of this RFP, including any appendices, the Region's Purchasing By-Law (As Amended), the Agreement and any amendments thereto, as fully as if they were incorporated herein.

#### **1.12 Errors and Omissions**

The Region shall not be held liable for any errors or omissions in any part of this RFP. The information contained in the RFP is supplied as a guideline for Respondents and is not necessarily comprehensive or exhaustive. Nothing in the RFP is intended to relieve the Respondents from forming their own opinions and conclusions.

#### **1.13 Material Supplied by the Region**

All material, documentation and information viewed or obtained by a Registered Document Taker in connection with this RFP is the property of the Region and shall not be used for any other purpose other than replying to this RFP and the fulfillment of any resulting Agreement. All material shall be returned upon request of the Region.

In the event of conflicts or inconsistencies among material viewed or obtained, this RFP shall prevail. Refer to **Article 1.06 – Addenda to the RFP**.



#### **1.14 Conflict of Interest**

In addition to the other information and representations made by each Respondent in the Form of Proposal, each Respondent must declare whether it has an actual or potential Conflict of Interest.

If, at the sole and absolute discretion of the Region, the Respondent is found to be in a Conflict of Interest, the Region may, in addition to any other remedies available at law or in equity, disqualify the Proposal submitted by the Respondent.

The Respondent, by submitting the Proposal, warrants that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the Proposal or performance of the contemplated Contract other than those disclosed in the Proposal. Where the Region discovers a Respondent's failure to disclose all actual or potential Conflicts of Interest, the Region reserves the right, in its sole and unfettered discretion, to refuse to consider the Respondent's Proposal Submission and disqualify the Respondent.

The Region, in addition to any other remedies it may have in law or in equity, shall have the right to rescind any Contract awarded to a Respondent in the event that the Region determines that the Respondent made a misrepresentation or submitted any inaccurate or incomplete information in their Proposal.

Conflicts of Interest include, but are not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the Respondent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of its proposal that is confidential to the Region and not available to other Respondents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process including the giving of a benefit of any kind, by or on behalf of the Respondent to anyone employed by, or otherwise connected with, the Region; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations in a Region Contract, the Respondent's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

#### **1.15 Municipal Freedom of Information and Protection of Privacy Act**

All correspondence, documentation and information provided to the Region, including the submission of Proposals, will be retained and not returned to the Respondent. As such, these items are subject to the Freedom of Information and Protection of Privacy Act, R.S.O 1990, c.F-31 ("FIPPA"), and the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M-56 ("MFIPPA") and may be subject to release pursuant to these Acts.

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Respondents are reminded to identify as confidential in their Proposal any specific scientific, technical, commercial, proprietary, or similar confidential information, for which disclosure could cause them injury. **Complete Proposals shall not be considered as confidential.**

By submitting any Personal Information requested in this RFP, Respondents are agreeing to the use of such information as part of the evaluation process, for any audit of this procurement process and for Contract management purposes. Where the Personal Information relates to an individual assigned by the Respondent to provide the deliverables, such information may be used by the Region to compare the qualifications of such individual with any proposed substitute or replacement in accordance with the experience requirements noted in the RFP and/or Agreement. If a Respondent has any questions about the collection and use of Personal Information pursuant to this RFP, questions are to be submitted to the Region's Contact in accordance with **Article 1.04 - Review and Clarification** of this RFP.

### **1.16 Limitation of Liability**

By submitting a proposal, each Respondent agrees that, other than the direct costs attributable to the preparation of a Proposal,

(a) neither the Region, nor any of its employees, advisors or representatives will be liable, under any circumstances, for any claim arising out of this proposal process including but not limited to loss of profits, loss of opportunity or for any other claim; and

(b) the Respondent waives any claim for any compensation of any kind whatsoever, including loss of profit or loss of opportunity by reason of the Region's decision to not accept the Proposal submitted by the Respondent, to award a contract to any other supplier or to cancel this RFP process, and the Respondent shall be deemed to have agreed to waive such right or claim.

### **1.17 Subcontractors**

Respondents to provide and submit, using **Appendix 'E' – Subcontractor Form**, with the Proposal a list of all proposed subcontractors to be used.

### **1.18 Volume of Work**

The Region makes no guarantee of the value of volume of work to be assigned through this RFP process.

The Region makes no representation, warranty or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to Respondents the general size of the work. These quantities furnished without any liability on behalf of the Region.

It is the Respondent's responsibility to avail itself of all the necessary information to prepare a Proposal in response to this RFP.

### **1.19 Proposals in English**

All Proposals are to be in English only. Any Proposals received by the Region that are not entirely in the English language may be disqualified.

### **1.20 No Incorporation by Reference by Respondent**

The entire content of the Respondent's Proposal should be submitted in a fixed form and the content of web sites or other external documents referred to in the Respondent's Proposal will not be considered to form part of its Proposal.

### **1.21 Debriefing**

Respondents may request a debriefing, which will be carried out only after a Contract has been fully executed by the Consultant / Company and the Region, within sixty (60) days of Contract award. All requests must be in writing to the Region's Contact. The intent of the debriefing information session is to aid the Respondent in presenting a better Proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

### **1.22 Governing Law of RFP Process**

This RFP process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

### **1.23 Additional Information for Bidders**

#### ***1.23.1 Award of PART 3 (reference Section 5, Scope of Work)***

Further to Article 1.09, Proposal Expiry Date, Respondents hereby acknowledge that the successful Respondent awarded PART 1 "Background Research and Technical Analysis" and PART 2 "Options Analysis, Business Case and Service Delivery Analysis", shall hold firm their proposal and acceptance of PART 3 "Procurement, Site Evaluation, Legislative Review and Project Implementation Schedule", until March 31, 2017. The Region, at its sole and unfettered discretion, reserves the right to award PART 3 to the successful Respondent of PARTS 1 and 2, at any time up to March 31, 2017, or not award PART 3, whichever is in the best interest of the Region.

## SECTION 2 PROPOSAL CONTENT AND FORMAT

### 2.01 Proposal Format

The Region discourages overly lengthy and costly Proposals. However, for the Region to evaluate Proposals fairly and completely, Respondents should provide all of the information requested in the format set out in the RFP. Failure to provide all required information as detailed in this section may result in the Respondent being disqualified or scoring poorly in the evaluation.

Respondents are encouraged to submit **their Proposal's bound, (as opposed to using binders), with each of the following sections of the Table of Contents below clearly identified** and presented in separate sections. Corporate information may be attached as an Appendix.

### 2.02 Table of Contents

For the Proposal the Respondent should provide a Table of Contents adhering to the following format:

- Section 1 Form of Proposal - **Appendix 'A'** – Complete Pricing **Section 1.0** and duly executed Signature Page **Section 2.0**
- Section 2 Knowledge, Understanding and Methodology of Project Requirements, Company Background and Qualifications, Work Team Background, Qualifications and Experience, Quality Control and Value Added Services
- Section 3 References
- Section 4 Work Team Breakdown

### 2.03 Mandatory Proposal Requirement(s)

**The conditions below must be met in order for the Proposal to be considered. Failure to meet these conditions will result in rejection of Proposal.**

- ✓ **Received at the location as detailed in Article 1.02 up until 2:00 p.m., local time, on June 30, 2016;**
- ✓ **Submission of Appendix 'A - Form of Proposal:** Completed Pricing **Section 1.0** and duly executed Signature Page **Section 2.0;**
- ✓ Signed or acknowledged Addenda as detailed in **Article 1.06.**

### 2.04 Rated Proposal Requirements

Proposals should include thorough details to allow for a comprehensive evaluation of Proposals based on the Evaluation Criteria disclosed under **Section 3.03 - Evaluation Criteria and Points Summary**. **In determining the level of detail to submit for**

evaluation, refer to the evaluation point's breakdown outline as noted in Section 3.03 relating to the following:

**I) Knowledge, Understanding and Methodology of Project Requirements**

Proposals should include, describe and demonstrate the following in this section:

- Comprehensive details regarding the Respondent's understanding of the objectives and deliverables of the Project;
- A detailed written description that clearly explains the work plan and methodology to be undertaken.
- A comprehensive project timeline schedule chart in the form of a Gantt (or equal) which identifies the proposed scheduling of all major project tasks as detailed in the Terms of Reference, **Section 5.0 – Scope of Work**, including the scheduling of all milestones and any scheduling dependency relationships existing between activities, tasks and / or Phases of the *Project* to meet the timelines set out in **Article 5.02**.
- A **work team breakdown** detailing the proposed Project Manager and all proposed team members (including any sub-consultants), defining their roles, responsibilities, hourly rates and the contributions each of the individuals will make to the project work

**II) Company Background and Qualifications**

Proposals should include, describe and demonstrate the following in this section:

- Overall experience and qualifications for projects of a similar nature;
- Related corporate project management experience and qualifications;
- Provide documentation of previous similar projects undertaken by the Respondent with similar scope that were completed on time and within budget;

**III) Work Team Background, Qualifications and Experience**

Proposals should include, describe and demonstrate the following in this section:

- Details of various successful projects of a similar nature to the scope of work in this RFP, involving the proposed project team including any sub consultants, highlighting any Municipal and/or Regional Government experience;
- Project Team (including sub-consultants), experience with the specific elements pertaining to the Project;
- The proposed Project Manager's demonstrated ability in report writing; addressing the elements of technical review; effective management of diverse teams, and budget and schedule control methods on previous projects relevant to the scope of work in this RFP;
- Organizational structure for this project indicating roles, time commitment and number of staff required including any sub consultants

#### **IV) Quality Control and Value Added Services**

Proposals should include, describe and demonstrate the following in this section:

- The quality control methods to be utilized indicating the commitment to the schedule and budget;
- A summary of any additional value-added services **included in the proposal price** that assists in delivery of the RFP requirements.

#### **V) Pricing**

**Respondent must provide a Total Upset Limits for the following in Appendix 'A' – Section 1.0 Pricing.**

**Provide an Overall Fee based on an Upset Limits for PARTS 1 and 2 together and PART 3.**

**1) PART 1 – Background Research and Technical Analysis and PART 2 – Options Analysis, Business Case And Service Delivery Analysis**

The Consultant will provide an overall upset limit fee to undertake all the Work that would be required to complete PART 1 and PART 2 of the project (see Scope of Work, Section 5.0); and

**2) PART 3 – Procurement, Site Evaluation, Legislative Review and Project Implementation**

The Consultant will provide an upset limit fee to undertake all the Work that would be required to complete PART 3 of the project (see Scope of Work Section 5.0).

**\*\*NOTE: the Contract Upset Limit for PARTS 1 and 2 combined , and PART 3 will be used for evaluation as noted in Article 3.03 V) – Pricing.**

The Pricing shall be a **total, all inclusive cost** to the Region to satisfy the Scope of Work, **including all direct and indirect costs**.

The Consultant(s) shall be responsible for all cost including, but not limited to, meetings with Regional staff and assisting the Region with implementation of the Work.

Prices and charges quoted shall be firm without escalator clauses or other qualifications and be expressed in Canadian currency. All applicable duty and excise taxes shall be included, excluding Harmonized Sales Tax (HST), which shall be extra where applicable. Should any additional tax, duty or variation in any tax or duty imposed by the Government of Canada or Province of Ontario become directly applicable to the Work subsequent to submission of the proposal and before the delivery of the Work covered by the Contract, an appropriate increase or decrease in the price of Work may be adjusted to compensate for such changes as of the effective date thereof.

**VI) Presentation and Demonstration**

Not applicable for this Work.

**2.05 References (Pass / Fail)**

Proposals should include a list of at least three references the Region may contact. The Region reserves the right to contact the references provided or any others deemed appropriate by the Region. References should be from sources of similar Work experience and relevant to the requirements of this Work.

In each case include the Company Name, Description of Work provided, Approximate Annual Value of Work, Contact Name & Title, Phone Number and Email Address

Where references contacted do not substantiate to an acceptable degree the Respondent's ability to perform the Work, the Region, in its sole discretion, reserves the right to disqualify the Respondent and move to consider the next highest scoring Respondent.

Note: The Region reserves the right to obtain and consider reference feedback from Regional Staff having experience with a respondent who has provided this Work to the Region of Durham within the last three years.

**References will only be rated as a Pass or Fail. In order for references to generate a pass, they must be considered accurate and relevant, based on similar size and scope of the Region's requirements, and prove to validate, to the Region's satisfaction, that the Respondent generally met the reference's expectations.**

**Note that the Region and/or staff that are currently employed with the Region or any individual employed by the Region during the most recent contract term for these products and services should not be listed as client references or utilized to provide letters of recommendation, letters of acknowledgement or any similar documentation meant to provide the same information.**

**2.06 Financial Stability (Pass / Fail)**

Further to **Article 3.07 – Reserved Rights of the Region, Sub Article b) where requested by the Region**, to assist in determining the financial stability and capacity of the Respondent to perform and complete the work for this RFP, Respondents shall submit the following information:

A letter from their bank or financial institution, providing supporting evidence of suitable financial capacity to perform the value of the Work by confirming the amount of current credit availability, along with the length of time doing business with the Respondent.

In addition, the Region reserves the right in its sole discretion to obtain credit reports and/or any other available financial information deemed by the Region to be appropriate for any Respondent from established Credit Reporting Agencies.

**SECTION 3  
EVALUATION CRITERIA AND SELECTION PROCESS**

**3.01 Mandatory Items**

All Proposals will be reviewed by the Procurement Officer for compliance to the mandatory conditions to determine compliance. Any Proposal not meeting all of the mandatory conditions noted in **Article 2.03** will be rejected. The mandatory submission requirements must be met before Proposals will proceed to the Rated Evaluation Stage. Failure to comply with these mandatory provisions disqualifies the Proposal from further consideration.

**3.02 Selection Process**

Proposals deemed compliant will be evaluated further based on the evaluation criteria described in **Section 3.03 - Evaluation Criteria and Points Summary**.

A Selection Committee consisting of Regional staff or their representatives will evaluate the Proposals. Subject to the Region's reserved rights as set out herein and fulfillment of any other conditions, the Respondent achieving the highest combined point score based on the rated criteria will be the Selected Respondent.

The Region reserves the right to seek clarification and supplementary information relating to the clarification from any or all Respondents or to request the Respondent to exhibit or otherwise demonstrate the information contained therein after the Proposal Submission Deadline. The response received by the Region from a Respondent shall, if accepted by the Region, form an integral part of that Respondent's Proposal. The Region reserves the right to interview any or all Respondents to obtain information about or clarification of their Proposals. In the event that the Region receives information at any stage of the evaluation process which results in earlier information provided by the Respondent being deemed by the Region to be inaccurate, incomplete or misleading, the Region reserves the right to revisit the Respondent's compliance with the mandatory requirements and/or adjust the scoring of rated criteria.

All of the provisions of this RFP are deemed to be accepted by each Respondent and incorporated into each Respondent's Proposal.

**3.03 Evaluation Criteria and Points Summary**

Respondent's proposals will be evaluated based on the following criteria:

	<u>Points</u>
<b>I) Knowledge, Understanding and Methodology of Project Requirements</b>	<b>[35]</b>

Based on the scope of work as detailed in the RFP, the degree to which your Proposal demonstrates:

- A narrative which thoroughly demonstrates the *Respondent understands* of the objectives and deliverables of the project.



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- A demonstrated and clear understanding of the work plan and methodology to be undertaken.
- Clarity and appropriateness of the comprehensive proposed project timeline for scheduling all major project tasks, milestones along with any dependency relationships existing between activities, tasks and the Project
- A **work team breakdown** which includes sufficient detail with respect to the Project Manager and all proposed team members (including sub-consultants) indicating the roles, responsibilities and contributions each proposed resource will provide to the project work, and how it relates to the total upset limits for each Part of the project.

**II) Company Background and Qualifications [10]**

Based on the scope of work as detailed in the RFP, the degree to which your Proposal demonstrates:

- An appropriate level and breadth of the company's overall experience and qualifications for projects of a similar nature.
- Related corporate project management experience and qualifications for projects of a similar nature completed successfully.
- Appropriate and relevant detail indicating previous similar projects undertaken by the Company with similar scope that were completed on time and within budget

**III) Work Team Background, Qualifications and Experience [20]**

Based on the scope of work as detailed in the RFP, the degree to which your Proposal demonstrates:

- Appropriate amount and relevant experience of the Project Manager and Project Team (including sub-consultants) in working on Municipal / Regional government projects.
- Resumes indicating relevant and comprehensive technical experience, education and qualifications of all proposed staff resources, including any consultants, necessary to provide the deliverables required in this project.
- The Project Manager's appropriate and relevant ability in report writing; addressing the elements of a technical review; effective management of a diverse team; provision of comprehensive services within budget and completion of the project on schedule, and exhibition of leadership qualities including quality and cost control. Appropriate number of staff with qualifications assigned to peer review projects.
- Appropriateness of proposed organizational structure for the project, the effectiveness of the proposed roles and the degree of time commitment of the Respondent's Project Manager, key team members including sub-consultants.

**IV) Quality Control and Value Added Services [10]**

Based on the scope of work as detailed in the RFP, the degree to which your Proposal demonstrates:

- Clarity and appropriateness of quality control methods indicating commitment to schedule and budget
- Evidence of additional and relevant value-added services included in the proposal price that assists in the delivery of the RFP requirements.

**V) Pricing [25]**

For evaluation purposes only, pricing will be evaluated on a weighted factor of **60% for PARTS 1 and 2** combined plus a weighted factor of **40% for PART 3**.

The lowest price associated with the Work as noted in **Appendix 'A' - Section 1.0 - Pricing** will be compared to each subsequent **price associated with the Work**. The maximum points available will be awarded to the Proposal with the lowest total cost for PARTS 1 and 2, plus PART 3.

Points will be awarded to each subsequent Proposal based the following formulas:

$$\frac{\text{Lowest Total Contract Upset Limit for PARTS 1 \& 2}}{\text{Subsequent Total Contract Upset Limit for PARTS 1 \& 2}} \times 15 \text{ Points} = \text{Score}$$

$$\frac{\text{Lowest Total Contract Upset Limit for PART 3}}{\text{Subsequent Total Contract Upset Limit for PART 3}} \times 10 \text{ Points} = \text{Score}$$

**VI) Presentation and Demonstration**

Not applicable for this RFP

**Maximum Total Points Available 100**

**References Pass/Fail**  
As detailed in **Section 2**

**Financial Stability Pass/Fail**  
As detailed in **Section 2**

**3.04 Total Score and Choice of Selected Respondent**

The Selected Respondent will be the Respondent with the highest total score for the Work based on the rated criteria. Subject to positive reference checks, the expressed and implied reserved rights of the Region and Regional Council approval, the Selected Respondent may be invited to enter into an Agreement in accordance with the Terms and

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Conditions of **Section 4** and all other terms and conditions of RFP #602-2016 and the Respondent's accepted proposal.

### **3.05 Negotiations**

The Region may negotiate with the Selected Respondent regarding revisions to non-material Terms and Conditions which will not impact the Work. The option of whether or not to negotiate rests solely with the Region. The Selected Respondent will be responsible any of their own expenses incurred to attend any such negotiations.

No liability shall accrue to the Region for its decision in this regard.

### **3.06 Award**

The initial agreement will Award PART 1 "Background Research and Technical Analysis" and PART 2 "Options Analysis, Business Case and Service Delivery Analysis" together, as per Appendix 'A' Section 1 – Pricing. The Region may, at its sole and unfettered discretion, elect to seek Council Approval to award PART 3 "Procurement, Site Evaluation, Legislative Review and Project Implementation". This will be determined up to March 31, 2017 as referenced in Section 1, Article 1.23.

The Region reserves the right, in its sole and unfettered discretion, to:

- Issue an Award to one or multiple Respondents for this Work in whole or in part; or
- Refrain from making an Award if it determines that to be in its best interest; or
- Not make an award to any Respondent, if it is determined by the Region that the costs of completing the Work exceed budgetary constraints

The Region may make an Award on the basis of the Proposals received without discussion. Therefore, each initial offer should contain the Respondent's best terms/information, including all required documentation as listed in this RFP.

The successful Respondent shall execute the Agreement in the form of SECTION 4 – Agreement Terms and Conditions and the Form of Agreement attached as Appendix 'B' to this RFP and satisfy any other applicable conditions of this RFP within fifteen (15) days of notice of selection. This provision is solely to the benefit of the Region and may be waived by the Region at its sole discretion.

A Respondent who submits conditions, options, variations or contingent statements to the terms set out in the RFP (which includes all Appendices and Addenda), either as part of its Proposal or after receiving notice of selection, may be disqualified. The Region acknowledges the need to add transaction-specific particulars to the Form of Agreement (Appendix 'B') but the Region will not otherwise make material changes to the Agreement.

The successful Respondent(s) will be notified of the Award in writing to the address given on the "Form of Proposal", and may be contacted verbally by the Region's Contact Person.

In addition to all of the Region's other remedies, if a successful Respondent fails to execute the Agreement or satisfy any other applicable conditions within fifteen (15) days of

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notice of selection, the Region may, in its sole and absolute discretion and without incurring any liability, rescind the selection of that Respondent and proceed with the selection of another Respondent.

The award of this RFP is subject to the availability of finances and the review and approval by Regional Management and Regional Council or designate as required. Any of these parties may elect not to approve the award of this RFP for any reason. If the required approvals are not obtained, this RFP may be cancelled. **IF THIS RFP IS CANCELLED THE RESPONDENT AGREES TO WAIVE ANY RIGHT TO CLAIM ANY DAMAGES OR COST RECOVERIES WHATSOEVER AGAINST THE REGION OF DURHAM, ITS ELECTED OFFICIALS, EMPLOYEES AND AUTHORIZED AGENTS.**

No liability shall accrue to the Region for its decision in this regard.

### **3.07 Reserved Rights of the Region**

The Region reserves the right to:

- a) make public the names of any or all Respondents;
- b) evaluate the financial stability and capacity of all, some or one of the Respondents at any point prior to Contract award;
- c) request written clarification or the submission of supplementary written information in relation to the clarification request from any Respondent and incorporate a Respondent's response to that request for clarification into the Respondent's Proposal;
- d) adjust a Respondent's scoring or reject a Respondent's Proposal on the basis of:
  - i. a financial analysis determining the actual cost of the Proposal when considering factors including quality, service, price and transition costs arising from the delivery of the required Work
  - ii. information provided by references
  - iii. the Respondent's past performance on previous contracts awarded by the Region
  - iv. the information provided by a Respondent pursuant to the Region exercising its clarification rights under this RFP process
  - v. other relevant information that arises during the RFP process
- e) waive formalities and accept Proposals which substantially comply with the requirements of this RFP;
- f) verify with any Respondent or with a third party any information set out in a Proposal;
- g) check references other than those provided by any Respondent;
- h) disqualify any Respondent whose Proposal contains misrepresentations or any other inaccurate or misleading information, or any qualifications;
- i) disqualify any Respondent or the Proposal of any Respondent who has engaged in conduct prohibited by this RFP;
- j) make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
- k) select the Respondent other than the Respondent whose Proposal reflects the lowest cost to the Region or the highest overall score;
- l) cancel this RFP process at any stage;
- m) cancel this RFP process at any stage and issue a new RFP for the same or similar deliverables;
- n) accept or reject any or all Proposals in whole or in part;

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- o) discuss with any Respondent different or additional terms to those contemplated in this RFP or in any Respondent's Proposal;
- p) if a single Proposal is received, reject the Proposal of the sole Respondent and cancel this RFP process or enter into direct negotiations with the sole Respondent;
- q) lowest cost or highest scoring or any Proposal will not necessarily be accepted

These reserved rights are in addition to any other expressed rights or any other rights which may be implied in the circumstances.

The Region may reject any Proposal that:

- Is incomplete, obscure, or does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP;
- May cause or have the potential to cause a Conflict of Interest;
- Does not comply with all applicable Municipal, Provincial, and Federal laws, codes, and regulations, which may be applicable to the Work performed subsequent to the RFP;
- Is restricted or qualified by a statement added to the "Form of Proposal" or by a covering letter, or by alterations to the "Form or Proposal" supplied

The Region may waive minor informalities that:

- Do not affect responsiveness;
- Are merely a matter of format;
- Do not change the relative standing or otherwise prejudice other Proposals;
- Do not change the meaning or scope of the RFP;
- Are trivial, negligible, or immaterial in nature;
- Do not reflect a material change in the Work;
- Do not constitute a substantial reservation against a requirement or provision

The Region shall not be liable for any expenses, costs or losses suffered by any Respondent or any third party resulting from the Region exercising any of its express or implied rights under this RFP.

### **3.08 Durham Region Accessible Customer Service Policy**

Durham Region's Accessible Customer Service Policy is stated below:

*"Region provides goods and services to all residents, including those with disabilities. Every effort will be made to ensure the following:*

- *The goods and services will be provided in a timely manner that respects the dignity and independence of persons with disabilities.*
- *The provision of goods and services to persons with disabilities, and others, will be integrated unless an alternate measure is necessary, whether temporarily or permanently, to enable a person with a disability to obtain, use or benefit from the goods and services.*

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- *People with disabilities may use assistive devices, guide animals and/or support persons in the access of goods and services.”*

**Statement of Understanding**

Respondents, by submitting a Proposal, hereby acknowledge that due to their participation, volunteer and/or contract involvement with the Region of Durham, acknowledge that they have been made aware of and have read the above Accessible Customer Service Policy, and understand that;

- A person with a disability may include someone who is blind, vision challenges, deaf or hard of hearing, physical disabilities as well as learning, intellectual and/or mental health disabilities;
- Many disabilities are not obvious or visible;
- People with disabilities will be provided with services from the Region of Durham in an equitable manner which respects their dignity and independence;
- Provision of goods and services to persons with disabilities will be integrated unless an alternate measure is required;
- Service animals are permitted on regional premises;
- Support persons may accompany and assist people with disabilities when accessing services;
- Assistive devices are used to allow independence to persons with disabilities and will be respected accordingly within regional offices;
- Accessible Feedback method is a process for both employees as well as members of the public to express any issues or comments on accessibility within regional services;

**SECTION 4  
AGREEMENT TERMS AND CONDITIONS**

**4.01 Agreement**

Where required based on the scope of work, the Consultant / Company will enter into an Agreement with the Region. This RFP, **including Section 4 it's Appendices and addenda, including Appendix 'B' – Consulting / Professional Services Agreement** and the Consultant's / Company's Proposal shall form the Agreement resulting from this RFP. This Agreement constitutes the entire understanding between the parties regarding the goods and services (Work) to be purchased hereunder. In case of any conflict between this Contract and any prior agreements or other documents on the same subject, the order of precedence of the Contract documents shall be:

**The fully executed Consulting / Professional Services Agreement - Appendix 'B';**

**The signed Purchase Order;**

The addenda to the RFP;

The RFP and its Appendices; and,

The Consultant's / Company's Proposal

Should a dispute arise from the terms and conditions of any part of the RFP, regarding meaning, intent or ambiguity, the decision of the Region shall be final.

**4.02 Non-Disclosure and Conflict of Interest Agreement**

Due to the nature of the Work and potential exposure to confidential information, the Consultant(s) / Company(s) may be required to sign a Non-Disclosure and Conflict of Interest Agreement. Reference **Appendix 'B' – Consulting / Professional Services Agreement**.

**4.03 Obligation and Authorization to Proceed**

The Region's obligation commences when the Agreement has been fully executed, or a Purchase Order issued as appropriate. The Region will not be responsible for any work done by the Consultant / Company, even work done in good faith, if it occurs prior to the start date set in the Agreement or Purchase Order.

Upon written notice to the Consultant / Company, the Region may set a different start date for the Work. This change will be contingent upon the Consultant / Company being advised of the revised start date prior to the original start date, or the Region and the Consultant / Company mutually agreeing to a different start date.

**4.04 Exclusivity of Contract**

The Agreement executed with the Consultant / Company will not be an exclusive Contract for the provision of the described deliverables. The Region at its sole discretion may contract with others for the same or similar deliverables to those described in this RFP or may obtain the same or similar deliverables internally. Respondents, by the submission of their Proposal, agree to these Terms.

No liability shall accrue to the Region for its decision in this regard.

#### **4.05 Insurance Requirements**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the Insurance requirements of this Contract.

#### **4.06 WORKPLACE SAFETY & INSURANCE BOARD (WSIB) REQUIREMENTS**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.07 Pricing Provisions**

Pricing is to be submitted in accordance with the Pricing Section of the Form of Proposal and shall be firm for the term of the Contract.

#### **4.08 Payment Procedures**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.09 Experience**

Throughout the contract term, in performing the Work, Consultant(s) / Company(s) and named subcontractors are to each have and, if requested, are able to provide conclusive proof of acceptable qualifications, certifications and related business experience as detailed in the scope of work. The assessment of acceptable qualifications and related business experience will be based on a range of measures including as appropriate professional and technical qualifications and competence of the firm and all staff performing the work, the firm's financial resources, the equipment and other facilities available to provide the services, managerial capability, reliability, experience and reputation, personnel available, the firm's legal capacity to enter into contract, their solvency and any outstanding litigation, their good standing regarding the payment of taxes and any history of false representation regarding qualifications and related experience.

The Region reserves the right in its sole discretion to cancel the award of the Contract if the Consultant / Company, or any of their subcontractors, are deemed to be unsuitable by the Region.

#### **4.10 Subcontracting**

Where allowed under **Section 1 of the RFP**, all proposed subcontractors must possess the required qualifications, experience and valid licenses. The Region reserves the right in its sole discretion to cancel the Contract if any named subcontractor(s) is/are deemed to be unsuitable by the Region, do not possess a valid license or has/have an unsatisfactory health and safety record. Consultant / Company using subcontractors shall be responsible for quality of work and restoration of substandard work performed by subcontractors.

The Consultant / Company shall be responsible to the Region to guarantee that each subcontractor hired by the Respondent carries the required amount of Insurance subject to



the inclusive limits as noted in this Contract. The Consultant / Company shall obtain for the benefit of the Region, as requested, certificates of insurance from each sub-contractor. Each certificate of insurance is to be sent to and approved by the Region prior to the sub-contractor commencing the Work.

**4.11 Criminal Reference Background Check**

**Criminal Reference Check** not applicable for this Work.

**4.12 Health and Safety**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the Health and Safety requirements of this Contract.

**4.13 Inspection, Modification and Correction - Reimbursement for Unacceptable Deliverables**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

**4.14 Severability**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

**4.15 Surety Requirements**

Not applicable for this Work.

**4.16 Fidelity Guaranty (Bond)**

Not applicable for this Work.

**4.17 F.O.B. Point**

All goods purchased through this Contract will be F.O.B. final destination. Unless specifically stated otherwise, all the prices offered must include the delivery costs to any location within the Region.

**4.18 Right to Inspect Place of Business**

At reasonable times, the Region may inspect those areas of the Consultant's / Company's place of business that are related to the performance of the Contract. If the Region makes such an inspection, the Consultant / Company must provide reasonable assistance.

**4.19 Assignment and Subcontracting**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.20 Contract Personnel**

Any change of the team members named in the proposal must be approved, in advance and in writing, by the Region's Project Manager. Personnel changes that are not approved by the Region may be grounds for the Region to terminate the Contract.

#### **4.21 Contract Changes - Additional Work**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.22 Suspension or Termination**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.23 Staff and Methods**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.24 Drawings and Documents**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.25 Intellectual Property**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.26 Records and Audit**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.27 Indemnification**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.28 Publication**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.29 Confidential Data / Information**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.30 Dispute Resolution**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.31 Laws and Regulations**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.32 Unpaid Accounts**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.33 Independent Contractor**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.34 Non-Waiver**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.35 Conflict of Interest**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.36 Copyright**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.37 Force Majeure**

Refer to **Appendix 'B' – Consulting / Professional Services Agreement** for the requirements of this Contract.

#### **4.38 Delivery and Performance of Work**

Time, save time of payment, shall be material and of the essence of the Contract.

Unless otherwise stated, the Work specified in the Contract shall be delivered or completely performed by the Consultant / Company as soon as possible and in any event within the period set out herein as the guaranteed period of delivery or completion after receipt of a Purchase Order, Contract, or Standing Agreement thereof.

#### **4.39 Defective Work**

If at any time prior to **one (1)** year after the completion and acceptance of the Work by the Region (or other period specified elsewhere in the Contract Documents) any part of the Work becomes defective, or is deficient or fails due to defect in design, material or workmanship, or otherwise fails to meet the requirements of the Contract, then the Consultant / Company, upon request by the Region, shall make good every such defect, deficiency or failure without cost to the Region. Failure to remedy the defect, deficiency, or failure within a reasonable time line may result in termination of the balance of the contract term by the Region pursuant to the Contract provisions.

The Consultant / Company shall pay all transportation costs for parts and/or equipment both ways between the Consultant's / Company's factory (or authorized repair depot), and the point of use.

#### **4.40 Contract Renewal Options**

The Region shall have the sole and absolute right to extend the term of the Contract for any or all optional extension terms identified in the Contract Documents (the Region will advise the Consultant / Company of this in writing or by means of a change order to the Contract). Pricing for such extensions shall be in accordance with Pricing Provisions of the Contract. There is no automatic renewal option under this, or any other provision of the Contract.

#### **4.41 CSA Approval**

All electrically powered equipment, components and/or supplies to be provided under this Contract must be fully C.S.A. approved.

#### **4.42 Permits and Approvals**

The Consultant / Company will be responsible for obtaining all necessary permits and approvals required for the various projects except for the building permit, and shall ensure that all Work performed will be in strict accordance with all applicable building codes, all applicable municipal bylaws and authorities having jurisdiction over the Work to be provided and any government mandated standards. All fees payable in respect of these permits and approvals shall be at the Consultant's / Company's expense. The Region of Durham shall obtain and pay for the building permit, if required, unless otherwise stipulated elsewhere in the Contract Documents.

SECTION 5  
BACKGROUND AND SCOPE OF WORK

5.01 About the Regional Municipality of Durham

The Region is the largest geographical jurisdiction in the Greater Toronto Area. The Region stretches from Lake Ontario in the south to Lake Simcoe in the north and from as far West as Pickering and East as Newtonville. The Region encompasses an area of approximately 2,532 square kilometers and is home to over half a million residents. It is expected that the population will increase to 850,000 by 2021. The vast majority of the residents live in the five southern municipalities of Pickering, Ajax, Whitby, Oshawa and Clarington.



The Region is a leading Canadian community in the delivery of residential solid waste management services and the implementation of aggressive waste minimization and diversion programs. In 2015, it diverted fifty-five percent (55%) of its waste from landfill through its various recycling, composting and reuse programs.

The Region is responsible for all aspects of non-hazardous municipal solid waste management programs including collection, processing, diversion, haulage and disposal, with the Town of Whitby and City of Oshawa maintaining responsibility for local collection of garbage, kitchen organics, leaf and yard waste.

In 2008, the Council of the Region of Durham set a goal of reaching 70% diversion by the end of 2010. The Region's 2015 actual waste diversion rate was 55%, having been achieved through the implementation of three of the main planks of the *Region's Long Term Waste Management Strategy Plan* (LTWMSP), approved in 1999. Significant accomplishments since 1999 include the upload and expansion of waste services in six local municipalities, including establishment of standardized service levels for weekly collection of two stream blue box and household organics, collection programs for seasonal yard waste, bulky and metal items, and bi-weekly residual garbage collection based on a 4 bag limit every two weeks. The Region and the City of Oshawa and Town of Whitby also partnered to ensure expanded and standardized curb-side waste collection services across the Region.

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Total annual residential non-hazardous municipal solid waste generated from 2009 to 2015 was as follows:

YEAR	TOTAL ANNUAL TONNES DISPOSED
2009	109,999
2010	108,888
2011	107,670
2012	107,722
2013	112,042
2014	110,417
2015	110,498

Under its current residential curbside collection contracts, the Region's collection contractors co-collect residual waste with source separated organics. Because these materials are co-collected, a central transfer station serving the Regional Municipality of Durham and located at 4600 Garrard Road, in the Town of Whitby, must have the ability to accept source separated organics and residual waste with pre-sorting capabilities for the residual waste. It does not need to accept recyclables because recyclables are collected separately from source separated organics and residual waste and the Region's Material Recovery Facility (MRF) is also located at 4600 Garrard Road, Whitby.

A significant majority of Region's waste is generated in the lakeshore municipalities. The following table breaks down the residual waste and source separated organics collected from Durham Region's curbside and multi-residential operations as generated by area municipality and Regional Waste Management Facility (WMF) in 2010.

**Breakdown of 2015 tonnages by source:**

	Curbside Residual Tonnes	Curbside SSO Tonnes	Curbside Yard Waste Tonnes	Multi-Res Residual Tonnes	WMF Residual Tonnes	WMF Yard Waste Tonnes	MRF Residual Tonnes
2005	118,403	2,883	16,735	13,479	16,827	1,602	-
2006	100,826	13,976	18,454	13,974	19,046	2,036	-
2007	82,949	26,211	17,757	13,493	19,844	1,650	-
2008	80,736	25,907	22,031	13,881	19,660	1,722	1,554
2009	74,348	27,958	22,084	14,413	19,991	1,736	2,046
2010	73,198	27,593	21,427	13,808	19,161	1,647	2,151
2011	73,776	26,865	22,149	13,798	18,378	1,595	2,603
2012	76,702	27,034	24,063	13,932	17,517	1,728	2,582
2013	76,125	27,486	23,593	13,739	17,926	1,675	1,289
2014	77,350	27,007	30,033	13,626	17,734	2,090	1,677
2015	79,401	26,796	25,588	13,492	17,605	1,966	2,326
<b>Source Separated Organics (SSO)</b>							
<b>Waste Management Facility (WMF)</b>							

**TONNAGE INFORMATION IN THIS DOCUMENT IS PROVIDED AS A GUIDE ONLY. THE REGION PROVIDES NO GUARANTEES, IMPLIED OR OTHERWISE, AS TO THE QUANTITIES OF WASTE THAT WILL BE MANAGED UNDER THIS CONTRACT.**

The Region is approaching organic processing capacity limits which constrain diversion plans necessary to achieve seventy percent (70%) diversion. Expanded organics capacity through AD and pre-sort technologies would allow the extraction of organics from both single family households and the multi-residential residual stream, and significantly increase Durham Region's diversion rate. Additional operations and/or capital investments may be required to facilitate this expansion.

Region's "green bin program" currently accepts all food wastes, household plant clippings, paper fibre wastes, and potting soils. The residual waste stream also includes up to twenty percent (20%) uncaptured green bin organics and additional organic materials that are not suitable for the Region's existing green bin program because of health and safety issues, lowered compost quality and processing constraints. These materials include pet waste, diapers, sanitary and incontinence products.

A comprehensive waste composition analysis of multi-residential households in Durham Region determined that the multi-residential waste stream is comprised of up to fifty percent (50%) organic materials, which could potentially be diverted through AD. The aerobic composting technology the Region currently uses for its green bin program is unable to properly process these materials and staff is currently analyzing potential to divert these organics through AD.

Region's source separated organics (SSO) are currently processed aerobically in an in-vessel technology to generate compost that meets the current Ontario Composting Guidelines for "AA" grade compost. Aerobic composting introduces limitations because, in order to produce "AA" compost, it cannot accept difficult to compost materials such as animal waste, and hygiene and incontinence products cannot be processed. It also cannot accept more heavily contaminated organics that could be generated in the multi-residential sector or from community centres, civic facilities, fairs and festivals and other sources of organics with relatively high contamination. This limits the Region's ability to reach its waste diversion goals by limiting the amount of waste the Region can divert from disposal.

The Region has explored options to use AD technology to process organic materials while producing energy and beneficial products. Kelleher Environmental Inc. was retained in 2012 to complete a technical review and an options analysis of AD technologies for the Region of Durham (the Kelleher Report). That report titled: "Pre-Feasibility Study on Anaerobic Digestion" ("the Kelleher Report") confirmed that AD technology could provide a processing solution to expand its current organics program to include more problematic materials and to introduce source separated organics collection to the Region's multi-residential sector. The successful Consultant shall have full access to these studies and reports for their review and consideration.

The Region built on the findings of the Kelleher Report and retained the services of HDR Corporation to conduct initial technical feasibility and due diligence analysis of available technologies that could potentially deliver more comprehensive organics processing beyond the current forecast. This investigation concluded that AD and pre-sort technologies have reached a maturity level that ensures its reliability to meet the Region's needs and that the Region generates sufficient organic waste to support an AD facility.

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In 2016, Council approved report # 2016-J-7 directing the Region to obtain consulting expertise in Anaerobic Digestion and to prepare a report to Joint Committee in the spring of 2016 to award the RFP(s) including:

- i. Technical advisor, with experience and expertise in AD processing facilities that is capable of processing Regional organics waste streams, to assist the Region in defining suitable potential AD options, and service delivery models, and associated regulatory, market and other requirements, costing and potential risks;
- ii. Financial advisor, with adequate knowledge of AD-type processing facilities, potential partnerships and related fuel input and energy output sales markets and expertise in business case, risk and service delivery analysis, in order to assist the Region in conducting an options analysis, including reviewing all recent studies, to confirm that an enhanced integrated waste management system and AD is the best waste management option for the Region and assessing identified technical options and identifying net benefits/costs, potential budgetary and property tax implications; and
- iii. The Region shall prepare a joint report back to Regional Council by December 2016 outlining the business case analysis and recommended next steps.

## **5.02 Scope of Work**

### **Assessment of Organics Waste Management Options for Durham Region:**

*Parts 1 and 2: "Background Research and Technical Analysis" and "Options Analysis, Business Case and Service Delivery Analysis":* the Consultant shall provide a sufficiently detailed draft report to the Regional project team by November 1, 2016 related to the components and calculations required for.

*Deadline:* The final report, which addresses Regional staff project team questions, comments and concerns on the draft will be due no later than **November 14, 2016**.

The report must clearly provide analysis of options presented based on the requirements for Parts 1 and 2 noted below, with sufficient supporting documentation for recommended options. The report will be accompanied by the Excel Workbook containing all quantitative analysis, so that staff can review detailed work sheets, formulae, calculations and linkages which backup and result in the business case recommendation of the preferred organics management option for the Region's long-term organics management plan.

*Part 3: "Procurement, Site Evaluation, Legislative Review and Project Implementation Schedule,"* is subject to additional approvals by the Joint Works and Finance and Administration Committee and Regional Council related to the reporting and approval of recommendations related to the conclusion of Part 1 and 2 work, as shall be reported in a Joint Works and Finance and Administration Committee Report submitted by the Commissioners of Works and Finance based on the requirements of Regional Report 2016-J-7, (reference Section 1, Article 1.23).



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Throughout the work on this engagement, the Consultant will be available for periodic progress reviews and meetings as follows:

- ½ hour weekly teleconference call; and,
- A minimum of one (1) progress review meeting per month with Region staff with the project team.

*Deadline:* Part 3 is due by early summer, **2017**

**Part 1: Background Research and Technical Analysis and Report**

- a) Collect background information and define the Region's status quo integrated waste management systems, including organics management process with a review of existing anaerobic digestion (AD), waste transfer and related studies and Solid Waste Management Servicing and Financing studies already completed by the Region. Consider, at minimum, the contents and recommendations of the following reports:
- Golder Associates' 70% Waste Diversion Study;
  - Golder Associates' GIS study, "GIS-based Waste Transfer Logistics Modelling for the Proposed Energy-from-Waste (EFW) Facility in the Region of Durham;"
  - Maria Kelleher report titled, "Pre-Feasibility Study on Anaerobic Digestion;"
  - AECOM study titled, "Waste Optimization Study for 4600 Garrard Road;"
  - AET curbside waste audit results in report titled, "Region of Durham Large Blue Box Container Study: Waste Audit and Trend Analysis Report, December 2011;"
  - AET multi-residential waste audit results in report titled, "2013 Multi-residential Waste Composition Study;"
  - AET Waste Management Facility audit titled, "Waste Audit & facility Review: Oshawa Waste Management Facility Audit & Review of Operations;"
  - 2015 HDR report titled, "Region of Durham Anaerobic Digestion Implementation / Organics Plan Development;"
  - Regional Report 2016-J-7, "The 2016 Solid Waste Management Servicing and Financing Study." and,
  - The Region's regulatory requirements under the Region's EFW Environmental Agreement (EA) and Environmental Certificate of Approval (ECA) as well as any other EA or ECA documents relevant to completion of this scope of work.

The Region will provided copies of the reports listed above within 48 hours of written request by the successful Consultant.

- b) Based upon the review noted within a), industry best practice, expertise and experience in the field of municipal solid waste pre-sorting/pre-treatment and AD technologies/facilities, identify, define and compare available waste pre-sorting/pre-

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treatment AD technical options and determine the most appropriate options (one to five) available to Durham Region to manage its single family and multi-family organics and residential wastes (including the organic and recyclable fractions of the residual wastes), based on an assessment of requirements related to:

- Feedstock materials, comparing existing Regional residual waste, recycling and organics volumes, potential growth and other potential external organics sources within an acceptable proximity and which could assist in optimizing pre-sorting/pre-treatment/AD/economies of scale;
- Right-sizing/economies of scale - review sizing and potential implications related to various sized pre-sorting/pre-treatment and AD facilities on capital and operational costs, and potential opportunities and/or risks related to operating efficiency, idle capacity and/or partnerships etc.
- Capital pre-sort, storage and transfer options and other broader infrastructure considerations, which could assist the Region in optimizing the introduction of AD into the Region's existing integrated waste management system at the lowest overall life-cycle costs;
- Potential for production and marketing of suitable end-products with the greatest positive impact to reducing Regional net costs of AD operations, including consideration of the Provincial Large Renewable Project program, carbon trading or other opportunities (e.g. electricity or gas sales, recovered materials etc.), including consideration of utility frameworks and requirements (e.g. connection requirements, capacity and agreements, sales agreements etc.) and changes related to provincial policy changes, available external funding opportunities and longer term utility planning processes;
- Potential for maximizing the diversion of the Region's solid wastes;
- Regulatory parameters affecting or potentially affecting successful waste pre-sorting/pre-treatment and/or AD implementation, risk mitigation, net capital and/or operational costs, or providing opportunities, including consideration of available funding and pending regulatory frameworks including *The Waste Free Ontario Act*, Ontario's proposed cap and trade system, and changes to the *Development Charges Act* etc.
- Estimated life-cycle costs (operations and capital) associated with the identified options, including providing costing or other financial implications related to associated pre-sort haulage and transfer requirements or other aspects of the integrated waste management system affected by the potential introduction of an AD facility.

**Part 2: Options Analysis, Business Case and Service Delivery Analysis**

- a) Develop a reasonable set of alternative waste management options for the Region, including the status quo Regional management processes and the preferred technology(ies) identified through Part 1 work, in addition to other viable management options.

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- b) Develop evaluation criteria to analyze and compare the identified waste management options in a) on a consistent basis using qualitative and quantitative information and considering: environmental implications including diversion potential; implications for control and/or flexibility afforded the Region; components of risk for each option; and financial implications, including estimated costs per tonne.
- c) Utilize the options analysis to identify the top two waste management options based upon the evaluation criteria developed in b). Conduct a more detailed business case analysis of these two preferred options against the status quo, considering Regional costs and benefits over a 20-year horizon, based on nominal cash streams reflecting impacts to the Region's integrated waste management system (including life-cycle costs and benefits, with all capital, operating and revenue assumptions identified) and calculate a discounted Net Present Value for each organics management option.
- d) Conduct sensitivity analysis of key variables and assumptions.
- e) Summarize and provide all assumptions, data and sources to the Region staff project team ensuring all calculations are provided in a Microsoft Excel workbook which is unlocked to allow Regional staff to review and verify formulae, detailed analyses and calculations.
- f) Assumptions will be required to be identified separately and summarized in a linked Excel input sheet to allow for additional sensitivity analysis by Regional staff (e.g. inputs would include but are not limited to the forecast organics tonnages, capital and operating costs and revenues in the years they are assumed to be incurred and inflation adjustments and benchmarks used within the analysis, etc.
- g) Assess available potential service delivery models for new infrastructure, including 1. municipal ownership and operation, 2. Design Build Operate (D/B/O) with a single contract 3. Design/Build then Operate/Maintain with the Region retaining ownership of the facility(ies) (2 contracts) 4. Design Build Operate Finance and Transfer (D/B/O/F/Transfer) and 5. Private Ownership models. Explore the technical and financial implications of these or hybrid service delivery models and recommend an appropriate model for the Region of Durham including consideration of:
- Magnitude of risk (development/implementation risks, financial, operational, regulatory, etc.) and the degree to which risks can be mitigated and/or transferred to the private sector;
  - Required capital and annual operational investment levels and life-cycle replacements versus the magnitude of benefits available to the Region and other potential stakeholders;
  - Case study review of waste pre-sorting/pre-treating and AD industry best practices;

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- Level of proprietary information within pre-sorting/pre-treating and/or AD technology (implications for operations and hand back etc.);
  - Level of ownership and control required – future waste system in Ontario, loss or gain in ability to meet requirements across the entire waste system; and
  - Consistency with roles, responsibilities and mandate of Region – and available expertise.
- h) Based upon the investigations of Part 1 and Part 2, recommend suitable potential partners, monetary and minimum thresholds and/or infrastructure or other requirements and potential next steps for the Region, in terms of contract development, procurement strategies, sources of funding and eligibility requirements.

**Part 3: Procurement, Site Evaluation, Legislative Review and Project Implementation Schedule**

Subject to future approvals by Regional Council based on Part 1 and Part 2 work and resulting direction (as referenced in Article 1.23), if awarded Part 3, the Consultant will assist with advancing the implementation of the preferred waste management option, including reporting to the project team regarding:

- a) Completion of a detailed review of suitable potential waste management system locations related to the preferred waste management system, including providing recommended locations for required organics management infrastructure, including any pre-sort equipment requirements, based upon the comparison, associated transfer/hauling implications, financial and risk implications, potential for enhanced efficiency and optimization and potential environmental or neighbourhood impacts and required mitigations (e.g. traffic, noise, odour, air, water, other).
- b) Assist in the development of required contractual and purchasing documents, including those required to procure qualified bidders, solicit proposals, develop suitable evaluation criteria and evaluate submissions through a potential Request for Qualifications (RFQ) and subsequent Request for Proposals (RFP) and participate in the evaluation process and any negotiations that may be required.
- c) Confirmation of all regulatory requirements for the construction and operation of required organics management and associated infrastructure, as approved by Regional Council.

In consultation with the Region, the Consultant shall also finalize and submit required application(s) to obtain required Environmental Certificates of Approval (ECAs) and shall also propose the level of design required for the ECA application.

**APPENDIX 'A'**  
**FORM OF PROPOSAL**

THE REGIONAL MUNICIPALITY OF DURHAM  
REQUEST FOR PROPOSAL NO. RFP-602-2016

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FORM OF PROPOSAL

FINANCIAL AND TECHNICAL CONSULTING FOR REGION'S WASTE MANAGEMENT SYSTEM  
UTILIZING ANAEROBIC DIGESTION

PLEASE  
USE INK

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Postal Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-Mail

\_\_\_\_\_  
Name of Person Signing for Company

\_\_\_\_\_  
Position of Person Signing for Company

\_\_\_\_\_  
Name of Contact Person

PROPOSALS RECEIVED BY:

The Director, Legislative Services – Regional Clerk or  
Designate  
The Regional Municipality of Durham  
605 Rossland Road East,  
1<sup>st</sup> Floor, Corporate Services-Legislative Services  
Division  
Whitby, ON L1N 6A3  
**UNTIL 2:00 P.M., June 30, 2016**

**INCLUDE WITH PROPOSAL SUBMISSION**

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**SECTION 1.0 PRICING:**

Pricing will be evaluated on a weighted factor of **60% for PARTS 1 & 2**, and a weighted factor of **40% for PART 3**, as described in **Article 3.03**, section V – Pricing.

Please indicate the **Total Contract Upset Limit** for PARTS 1 and 2, and PART 3 in the spaces below. The total will be used to evaluate pricing as per **Article 3.03 – Section V- Pricing**. Failure to bid on all PARTS 1 and 2 and PART 3 will result in the Proposal being disqualified.

Each Respondent must include this form completed according to the instructions contained in the RFP, as well as those instructions set out below:

- Prices shall be in Canadian Funds, F.O.B. the point specified therein.

All prices bid shall include applicable customs duty, excise tax, freight, insurance, and all other charges of every kind attributable to the Work, and where applicable, **Harmonized Sales Tax (“HST”)** shall be extra and not shown; and

- **Total Contract Upset Limit** quoted by the Respondent shall be all inclusive and shall include all direct and indirect costs and all other overhead including but not limited to any fees or other charges required by law.

**A Proposal that includes conditional, optional, contingent or variable rates that are not expressly requested in the Form of Proposal may be disqualified.**

**By submitting a proposal, the Respondent is deemed to confirm that it has prepared its Proposal with reference to and has factored all of the provisions of SECTION 4 – Agreement Terms and Conditions and the Form of Agreement attached as Appendix ‘B’ and the RFP, including the insurance requirements, into its pricing assumptions and calculations and into the proposed costs indicated on the Form of Proposal.**

Total cost to be charged based on the scope of work of this RFP in the pricing schedule below.

<b>PART 1 and PART 2 – Total Upset Limit</b>	<b>\$</b>	<b>_____ (excluding HST)</b>
<b>PART 3 – Total Upset Limit</b>	<b>\$</b>	<b>_____ (excluding HST)</b>

The *Total Contract Upset Limit* for PARTS 1 & 2 combined and PART 3 will be used to evaluate pricing as per **Article 3.03 – (V) Pricing**.

**Note:** the Total Upset Limit for PART 1 & 2, and PART 3 above should equal the hourly rate(s) provided in **Work Team Breakdown** for each resource multiplied by the number of hours each resources will contribute to the total number of hours required to complete the Work, proposed in **Article 2.04, Section I – Knowledge, Understanding and Methodology of Project Requirements**.

Name of Company: \_\_\_\_\_

**THIS PAGE MUST BE INCLUDED OR PROPOSAL WILL BE REJECTED**

**THE REGIONAL MUNICIPALITY OF DURHAM  
REQUEST FOR PROPOSAL NO. RFP-602-2016**

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**SECTION 2.0 – SIGNATURE PAGE**

**Received Addenda                      No.:** \_\_\_\_\_ **to No.:** \_\_\_\_\_ **Inclusive**

The undersigned hereby agrees to perform the Work specified in this Request for Proposal No. **602-2016** in accordance with all the terms and conditions, for the prices submitted in the above pricing schedule.

Furthermore, it is certified that the undersigned is/are authorized and empowered to sign and submit this bid. Executed by me/us and bearing date this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The undersigned hereby declares that, to its knowledge, (i) no Councillor, official or employee of the Region has any direct or indirect beneficial interest, whether financial or otherwise, in the undersigned, or in their performance of the Work; and (ii) the undersigned is not engaged in any other Works nor is it providing Work to any other Party that would give rise to an actual or potential conflict of interest.

The undersigned hereby declares that they have no direct or indirect financial interest that would give rise to an actual or potential conflict of interest.

The undersigned hereby declares that they have received and either signed or acknowledged all Addenda issued by the Region in accordance with **Article 1.06** and that they have been taken into account in the formation of their Proposal.

The undersigned hereby declares that the Region reserves the right to cancel the Award or Agreement if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Contracted Consultant / Company in completing the Work, and that the Region's determination regarding any questions of conflict of interest shall be final.

The undersigned hereby declares that, in submitting a Proposal, they acknowledge, understand and accept all the conditions noted herein.

\_\_\_\_\_  
Signed (I have the authority to bind the Corporation)

\_\_\_\_\_  
Print Name of Above Signing Officer

\_\_\_\_\_  
Position

\_\_\_\_\_  
Name of Firm

The signature of a signing officer with the authority to bind the Corporation is required for the Proposal to be valid. Failure to provide the signature will result in the Proposal being rejected.

**THIS PAGE MUST BE INCLUDED OR PROPOSAL WILL BE REJECTED**



**APPENDIX 'B'**  
**CONSULTING / PROFESSIONAL SERVICES AGREEMENT**

**AGREEMENT FOR  
CONSULTING / PROFESSIONAL SERVICES**

**THIS AGREEMENT is dated the [ ] day of [ ]**

**- BETWEEN -**

THE REGIONAL MUNICIPALITY OF DURHAM  
(the 'Region')

**- AND -**

[ ]  
(the 'Consultant / Company')

WHEREAS the Region has requested the Consultant / Company to furnish Services set out in Article 2 hereof in connection with the [ ], for the [ ] in the [City/Municipality/Town/Township] of [ ] (the 'Project');

**NOW THEREFORE** the Region and the Consultant / Company agree as follows:

## **Definitions**

In this Agreement,

- (a) "Commissioner of Finance" means the Region's Commissioner of Finance, his or her designate and, unless the context otherwise requires, Region management staff responsible for the activities to which the Services relate;
- (b) "Confidential Information" means
  - (i) all financial, statistical, personnel, technical and general data pertaining to any individual or legal entity which comes to the attention of the Consultant / Company in the course of carrying out the Services;
  - (ii) information disclosed to or obtained by the Consultant / Company in connection with the performance of the Services and which has been identified by the Region as information which should be treated as confidential, notwithstanding the manner or medium in which same is/are made available to or received or stored by the Consultant / Company, or the form or format thereof, including (where applicable)
  - (iii) any and all concepts, techniques, ideas and know-how embodied and expressed therein (including their structure, sequence and organization); and
  - (iv) any and all information relating to third parties contained therein or supplied by third parties, that is directly or indirectly disclosed by the Region or its employees or agents to the Consultant / Company or learned by the Consultant / Company from the Region or its employees or agents or through inspection of the Region's property, whether before, on or after the effective date of this Agreement, as well as
  - (v) and any and all Documents (and copies thereof) related to what is described in any of foregoing sub-clauses (i) to (iv) prepared by or on behalf of the Consultant / Company;
  - (vi) the terms and conditions of this Agreement; and
  - (vii) the existence of any discussions between the Consultant / Company and the Region related to what is described in any of foregoing sub-clauses (i) to (vi),

but does not include information that,

- (viii) is now or subsequently becomes generally available to the public through no act, omission, misconduct, failure or neglect on the part of the Consultant / Company, whether through breach of this Agreement or otherwise;
- (ix) the Consultant / Company lawfully acquires prior to disclosure to the Consultant / Company by the Region;

- (x) is independently developed by the Consultant / Company without the use of or reference to any Confidential Information, as long as it does not otherwise contravene the terms and conditions of this Agreement;
  - (xi) the Consultant / Company rightfully obtains from a third party who in so transferring or disclosing it is acting by right without breach of any restriction or condition;
  - (xii) is approved for release by written authorization of the Region, but only to the extent of such authorization; or
  - (xiii) is disclosed in response to a valid order of a court or other governmental body, but only to the extent of and for the purposes of such order, and only if the Consultant / Company first notifies the Region of the order and permits the Region to seek an appropriate protective order and pursuant to section 2 of this Agreement;
- (c) "Consultant / Company Agreement" means the hereinbefore-recited Agreement between the Consultant / Company and the Region;
  - (d) "Documents" means documents and records of any type, including all information and data fixed in any medium of expression, regardless of form or format;
  - (e) "MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act*;
  - (f) "Personal Information" means Confidential Information that is "personal information" or "personal health information" as defined in MFIPPA, PHIPA and/or PIPEDA;
  - (g) "PHIPA" means the *Personal Health Information Protection Act, 2004*;
  - (h) "PIPEDA" means the *Personal Information Protection and Electronic Documents Act*;
  - (i) "Services" means the hereinbefore-recited services of the Consultant / Company, which the Consultant / Company obliged itself to provide to the Region.

## **ARTICLE 1. GENERAL CONDITIONS**

### **1.01 Services – Commencement and Completion of Work**

The Region retains the services of the Consultant / Company in connection with the Project and the Consultant / Company agree to provide the services described herein under the general direction and control of the Region.

The services to be provided by the Consultant / Company and by the Region for the Project are set forth in **Article 2**. Such services as changed, altered or added to under **Section 1.06** are hereinafter called the 'Services'.

The work shall be started within 7 days of the issue date of the fully signed agreement and carried on to completion and full possession thereof given to the Region in accordance with such schedule and timelines as agreed upon by the Region and the Consultant / Company. Any extension of time must be granted by the Region in writing, in accordance with **Section 1.20.2**.

### **1.02 Staff and Methods**

The Consultant / Company shall perform the services under this agreement with that degree of care, skill and diligence normally provided in the performance of such services as contemplated by the agreement at the time such services are rendered. The Consultant / Company shall employ only competent staff who will be under the supervision of a senior member of the Consultant / Company's staff.

### **1.03 Drawings and Documents**

Drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant / Company for the Region, including record drawings, may be used by the Region, for the Project, herein described. The Region has ownership of the drawings. The Consultant / Company shall be entitled to retain a copy of all documents and drawings produced or gathered for the project.

### **1.04 Intellectual Property**

The Region shall own, solely and exclusively, the copyright and all copyright rights to any written or otherwise copyrightable material deliverable under this Agreement. The Consultant / Company warrants that all creators of copyrightable material delivered under this Agreement to the Region are, at the time of the material's creation, bona fide employees or subcontractors of the Consultant / Company, and that such creation is within the course and scope of the creator's employment.

All concepts, products or processes produced by or resulting from the Services rendered by the Consultant / Company in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant / Company in the performance of his Services, and which are patentable, capable of trademark, copyright or otherwise, shall be considered as Intellectual Property and remain the property of the Consultant / Company.

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

The Consultant / Company shall pay all royalties and patent license fees for any patented, copyright protected, or other proprietary concepts, products or processes it requires to provide the Services. If the concepts, products or processes produced by or resulting from the Services rendered or any part thereof are in any action or proceeding held to constitute an infringement, the Consultant / Company shall forthwith either secure for the Region the right to continue using the patented, copyright protected, or other proprietary concepts, products or processes or shall at the Consultant's / Company's expense, replace the infringing items with non-infringing items or modify them so that the concepts, products or processes produced by or resulting from the Services rendered or any part thereof no longer infringe.

#### **1.05 Records and Audit**

- (a) In order to provide data for the calculation of fees on a time basis, the Consultant / Company shall keep a detailed record of the hours worked by and salaries paid to his staff employed for the Project.
- (b) The Region may inspect and audit the books, payrolls, accounts, Documents and records of the Consultant / Company during regular office hours with respect to any item which the Region is required to pay on a time scale or disbursement basis as a result of this Agreement.
- (c) The Consultant / Company, when requested by the Region, shall provide copies of receipts with respect to any disbursement for which the Consultant / Company claims payment under this Agreement.

#### **1.06 Changes and Alterations and Additional Services**

The Region 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. When additional work is requested, the Consultant / Company shall submit a schedule and price for completing the additional Services within 10 working days. The Consultant / Company will not commence the additional Services until the Region secures all necessary approvals for amending the Agreement and advises the Consultant / Company in writing. If such action by the Region necessitates additional staff or services, the Consultant / Company shall be paid in accordance with **Section 3.02.1** for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under **Section 3.02.2**.

Any amendment of this Agreement must be in writing and signed by the Consultant / Company and Commissioner of Finance for the Region or it shall have no effect and shall be void.

## **1.07 Suspension**

The Region may at any time by notice in writing to the Consultant / Company suspend the Services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Consultant / Company shall perform no further Services other than those reasonably necessary to close out the Services. In such an event, the Consultant / Company shall be entitled to payment in accordance with the Agreement for any of the Consultant / Company 's staff employed directly thereon together with such expenses and disbursements allowed or other negotiated settlement. The Region shall not be liable to the Consultant / Company for loss of anticipated profit, interest lost or any other damages or loss occasioned to the Consultant / Company on the suspended portion or portions of the Services.

Any suspension of the Agreement by the Region, as aforesaid, shall be without prejudice to any other rights or remedies the Region may have.

If the Region suspends the Agreement, it is entitled to withhold any further payments to the Consultant / Company until the resumption of the Services.

The resumption and completion of the Services after a suspension shall be governed by the schedule established by the Region.

## **1.08 Termination**

The Region may at any time by providing notice in writing to the Consultant / Company terminate for breach of contract the Services or any portion thereof at any stage of the undertaking. In the event of a termination for breach, the Consultant / Company shall not be entitled to any further payment under this Agreement.

Upon receipt of such notice as set out above, the Consultant / Company shall perform no further Services other than those reasonably necessary to close out the Services. The Region shall not be liable to the Consultant / Company for loss of anticipated profit, interest lost or any other damages or loss occasioned to the Consultant / Company on the terminated portion or portions of the Services.

If the Consultant is practicing as an individual and dies before the Services have been completed, this Agreement shall terminate as of the date of their death, and the Region shall pay for the Services rendered and disbursements incurred by the Consultant to the date of such termination.

If the Consultant / Company commits any act of bankruptcy; or if a receiver is appointed on account of its insolvency or in respect of any of its property; or if the Consultant / Company makes a general assignment for the benefit of its creditors; then, in any such case, the Region may terminate the Agreement without notice.

Any termination of the Agreement by the Region, as aforesaid, shall be without prejudice to any other rights or remedies the Region may have.

If the Region terminates the Agreement, it is entitled to:

- (a) take possession of all of the Services in progress and complete the Services by whatever means the Region may deem appropriate under the circumstances;
- (b) withhold any further payments to the Consultant / Company until the completion of the Services; and
- (c) recover from the Consultant / Company loss, damage and expense incurred by the Region by reason of the Consultant / Company 's default (which may be deducted from any monies due or becoming due to the Consultant / Company, or added to any balance to be paid by the Consultant / Company to the Region).

**1.09 Acknowledgement, Indemnity and Release**

- (1) The Consultant / Company hereby acknowledge that the remuneration for the Services is provided for under the Consultant / Company Agreement.
- (2) The Consultant / Company hereby acknowledges and agrees that it shall be solely responsible and liable to the Region for any breach of the confidentiality obligations herein by any person to whom access to the Confidential Information was provided.
- (3) The Consultant / Company hereby irrevocably and unconditionally releases the Region and its members of Council, officers, employees and agents from any claims the Consultant / Company may have against the Region for any and all costs (including legal fees and disbursements), expenses, losses, liabilities, claims, demands, actions or causes of actions, or direct, indirect, general, special, incident or consequential damages suffered or incurred by the Consultant / Company (including claims of third parties made through the Consultant / Company) arising from
  - (a) any negligence or wilful misconduct in the performance of the Services; and/or
  - (b) the disclosure of Confidential Information or use thereof by the Consultant / Company.
- (4) The Consultant / Company shall defend, indemnify and save harmless the Region and its members of Council, officers, employees and agents against any and all costs (including legal fees and disbursements), expenses, losses, liabilities, claims, demands, actions or causes of action, or direct, indirect, general, special, incidental or consequential damages suffered or incurred by the Region (including claims made by third parties against the Region) as a result of a breach of a term or provision of this Agreement by the Consultant / Company or otherwise, under any theory of liability, except to the extent those resulting from the negligence or wilful misconduct of the Region or those for whom it is in law responsible.
- (5) The Consultant / Company covenants and agrees that they will take any and all



action and will do and provide the services herein required to be provided in compliance with all laws, regulations or orders, including the order of any board or court of competent jurisdiction, rule, regulation or requirement of the Canadian Government or the Government of the Province of Ontario or any competent local government, board, commission, department or officer (“Compliance Requirements”) and hereby indemnifies and holds harmless the Region from any and all claims, payments, injury or loss and for any and all legal costs (including fees and disbursements) or administrative costs incurred by the Region relating to any failure of the Consultant / Company, their employees, agents or contractors to comply with any Compliance Requirements.

### **1.10 Insurance**

The Consultant / Company shall continuously maintain throughout the term of the Contract and pay for the following insurance coverage:

- Commercial General Liability insurance including personal injury, broad form contractual liability, owners and contractors protective, completed operations, and non-owned automotive liability in an amount of not less than **five million dollars (\$5,000,000.00)** applying to all contracts for claims arising out of one occurrence, and,
- Automobile Liability Insurance in respect to licensed vehicles owned and / or leased, with limits of not less than **two million dollars (\$2,000,000.00)** inclusive per occurrence for bodily injury, death and damage to property.
- Professional Liability (Errors and Omissions) in an amount of not less than **two million dollars (\$2,000,000.00)** per claim with an aggregate limit of **four million dollars (\$4,000,000.00)**.

The Commercial General Liability policy shall include the Region of Durham as an additional insured in respect of all operations performed by or on behalf of the Consultant / Company in relation to the Contract requirements and be endorsed to provide the owner with not less than thirty (30) days written notice in advance of any cancellation, change or amendment restricting coverage.

The Consultant / Company shall provide an updated Certificate of Insurance on the Region’s standard form, or on a form acceptable to the Region of Durham, by no later than thirty (30) days prior to the expiry date of any required coverage. Notwithstanding this provision, where any required insurance coverage is due to expire within thirty (30) days, the Consultant / Company shall submit an updated Certificate of Insurance upon ten (10) business days of written notice by the Region.

Failure to provide the required insurance certificates within ten (10) business days of the Region’s written request and continuously maintain the required insurance coverage throughout the entire term of the Contract will constitute a default by the Consultant / Company.

#### **Change in Coverage**

If the Region requests to have the amount of coverage increased or to obtain other special insurance for this Project then the Consultant / Company shall endeavour forthwith to obtain such increased or special insurance at the Region's expense as a disbursement allowed under **Section 3.02.2**.

It is understood and agreed that the coverage provided by these policies will not be changed or amended in any way nor cancelled by the Consultant / Company until 30 days after written notice of such change or cancellations has been personally delivered to the Region.

### Workplace Safety and Insurance Board

All Company's that employ workers, including a Company's personnel and owners must be covered by an insurance plan under the Workplace Safety and Insurance Act, 1997. Upon award of a Contract, prior to the commencement of the Work or upon a request by the Region, the Company must supply to the Region:

A valid Clearance Certificate (for Schedule 1 employers) or A letter of Good Standing (for Schedule 2 employers) indicating the Company has an active account with WSIB in good standing; or,

Alternatively, where appropriate, a letter from WSIB stating the Company is not required to register with WSIB; or,

A letter that confirms the Company falls under a "By-Application" industry, where WSIB confirms a Company (that employs workers) is exempt from coverage based on their business activity.

Prior to final payment, a Clearance Certificate must be received by the Region indicating all payments by the Company to the Board in conjunction with the subject Contract have been made and that the Region will not be liable to the Board for future payments in connection with the Company's fulfillment of the contract. Further WSIB Certificates of Clearance or other types of certificates shall be provided upon request.

### **For Independent Contractors / Owners / Operators:**

For Independent Contractors / Owners / Operators a letter along with an identification number from the WSIB verifying their status as an "Independent Operator" must be provided to the Region. To obtain this, contractors must complete the form "Determining worker/Independent Operator status", issued by the Workplace Safety & Insurance Board. (For more information, please contact your local Workplace Safety & Insurance Board Office and refer to this clause.)

Single Independent Contractors / Owners / Operators where required by the Region of Durham must also carry optional WSIB insurance coverage and must also provide a clearance certificate from WSIB verifying they have purchased the optional WSIB coverage, and indicating the Company has an active account with WSIB in good standing.

### **1.11 Contracting for Construction**

For agreements involving project managers for development of the Region's construction contracts, neither the Consultant / Company nor any person, firm or corporation associated or affiliated with or subsidiary to the Consultant / Company shall tender for any required construction of the Project, or have an interest either directly or indirectly in any required construction of the Project.

### **1.12 Assignment and Subcontracting**

The Consultant / Company may not assign or subcontract this Agreement or any portion thereof without the prior consent in writing of the Region. Subcontracting agreements made by the Consultant / Company will not release the Consultant / Company from any obligation to the Region with respect to the performance of the Services. A written statement from an officer of the proposed subcontractor(s) must be provided, indicating a willingness to comply with the terms and conditions proposed by the Consultant / Company.

This agreement shall enure to the benefit of and be binding upon the parties, and their respective successors, administrators and assigns.

### **1.13 Previous Agreements**

This Agreement constitutes the entire Agreement between the parties with respect to the engagement of the Consultant / Company and any and all previous agreements, written or oral, express or implied, between the parties or on their behalf relating to the engagement of the Consultant / Company by the Region are terminated and canceled and each of the parties releases and forever discharges the other of and from all manner of actions, causes of actions, claims or demands whatsoever under or in respect of any agreement.

### **1.14 Approval by Other Authorities**

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

### **1.15 Principals and Executives**

The use of Principals and Executives on a time basis by the Consultant / Company shall be in accordance with **Section 1.21.1 (c)**.

### **1.16 Specialized Services**

The Consultant / Company may engage others for specialized services provided that prior approval is obtained, in writing, from the Region.

### **1.17 Inspection and Modification**

The Region, or persons authorized by the Region, shall have the right, at all reasonable times, to inspect, evaluate, approve or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed. The Region may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the Agreement.

Should the Region determine that corrections or modifications are necessary in order to accomplish its intent, the Region may direct the Consultant / Company to make such changes. The Consultant / Company will not unreasonably withhold such changes. The Region shall have the right to withhold from any sum otherwise payable to the Consultant / Company such amount as may be sufficient to remedy any defect or deficiency in the Services, pending correction of the same.

Substantial failure of the Consultant / Company to perform the Agreement may cause the Region to terminate the Agreement. In this event, the Region may require the Consultant / Company to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

### **1.18 Publication**

The Consultant / Company shall obtain the consent in writing of the Region before publishing or issuing any information regarding the Project.

### **1.19 Dispute Resolution**

The Parties shall use their best efforts to settle amicably and timely any disputes arising out of or in connection with this Agreement or the interpretation thereof in accordance with the following procedures:

#### **Notice of Dispute**

Either party may notify the other of a dispute in writing and provide such notice in accordance with the notice provisions of this Agreement. The notice of dispute must describe the specific incident or incidents giving rise to the dispute including any relevant times, dates, locations and persons or witnesses involved. The notice of dispute must also set out the amount in dispute and the nature of the relief or resolution sought by the notifying party.

#### **First Level Negotiations**

Within Ten (10) days of receiving the notice of dispute the parties shall seek to resolve same by referring the matter to its appointed representatives for negotiations as set out below:

Durham Representative  
Company/Consultant Representative

At the conclusion of this negotiation and no later than 24 hours after such negotiation, the party providing the notice of dispute shall prepare a report in writing certifying that the negotiation passed or failed. Where the negotiations have passed the notifying party shall provide a Full and Final Release in respect of all matters identified in the notice of dispute. In the event the notifying party fails to provide such report or provides a report indicating a passed negotiation but fails to provide such release the notifying party will be deemed to have released the other party from any and all claims arising from the matters identified in the notice of dispute.

### **Senior Level Negotiations**

In the event the negotiations set out above have failed the dispute shall within Ten (10) days be referred to the parties' senior representatives for further negotiations as set out below:

Durham Senior Representative  
Company/Consultant Senior Representative

At the conclusion of this negotiation and no later than 24 hours after such negotiation, the party providing the notice of dispute shall prepare a report in writing certifying that the negotiation passed or failed. Where the negotiations have passed the notifying party shall provide a Full and Final Release in respect of all matters identified in the notice of dispute. In the event the notifying party fails to provide such report or provides a report indicating a passed negotiation but fails to provide such release the notifying party will be deemed to have released the other party from any and all claims arising from the matters identified in the notice of dispute.

In the event the negotiations set out above have failed the dispute negotiations shall be deemed to have been exhausted and the dispute shall then be referred to arbitration as provided for herein. The matter must be referred to Arbitration by either party within 30 days of the conclusion of Senior Level negotiations.

### **Right to Arbitration**

Any dispute between the Parties as to matters arising under this Agreement which cannot be settled amicably as provided for as above may be referred to arbitration by one Party giving written notice to the other of its desire to go to arbitration and such arbitration shall be conducted by a single arbitrator, if such parties agree upon one arbitrator, or otherwise by three arbitrators, of whom one shall be appointed by the Buyer and one shall be appointed by the Seller and the third shall be chosen by the first two named arbitrators. The arbitration and the appointment of the arbitrator shall, unless expressly provided for in this Agreement, be conducted in accordance with the Arbitration Act, 1991, S.O. 1991, c.17, as amended. The award and determination of such arbitrator, arbitrators or any two of such three arbitrators shall be binding upon the parties and their respective successors and permitted assigns. The parties shall co-operate in completing any arbitration as expeditiously as possible and the arbitrator or arbitrators may hire such experts as may appear to him, her or them appropriate.

## **1.20 Time**

### **1.20.1 Expeditious Completion**

The Consultant / Company shall perform the Services expeditiously to meet the requirements of the Region and shall complete any portion or portions of the Services in such order as the Region may require and the Region shall have the right to take possession of and use any completed or partially completed portions of the Work notwithstanding any provisions expressed or implied to the contrary.

The Region shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant / Company, and shall make any decisions which he is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant / Company.

### **1.20.2 Extension**

An extension of time may be granted in writing by the Region in the event of the work being delayed beyond the prescribed time for completion as a result of causes beyond the Consultant's / Company's control. Any extension of time shall be in accordance with **Section 1.06**.

Such extensions shall be for such time as the Region may prescribe and the Region shall fix the terms on which the said extension may be granted. An application by the Consultant / Company for an extension of time as herein provided shall be made to the Region in writing at least 15 calendar days prior to the date of completion fixed by the contract.

## **1.21 Services, Schedules and Staff Lists**

### **1.21.1 Preparation of Schedule of Progress and Staff Lists**

When requested by the Region, the Consultant / Company shall within fourteen days of the execution of this Agreement provide, for approval by the Region:

- (a) The Services broken down into work packages and/or tasks for the scope of work described herein as per the upset limit;
- (b) A Schedule showing an estimate of the portion of the Services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month;
- (c) A Staff List showing the number, classifications and hourly rates for each member of the project team, for which the Consultant / Company will seek payment on a time basis. The Consultant / Company shall relate such information to the particular type of work that such staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's /

Company's staff who is to be the liaison person between the Consultant / Company and the Region.

#### **1.21.2 Subsequent Changes in the Services, Schedules and Staff Lists**

The Consultant / Company will require prior written approval from the Region for any of the following changes:

- (a) Any increase in the fees beyond those approved under **Subsection 1.21.1 (a)**.
- (b) Any change in the schedule at progress that results in a longer period than provided in **Subsection 1.21.1 (b)**.
- (c) Any change in the number or classification of the Staff provided under **Subsection 1.21.1 (c)**.

Personnel changes that are not approved by the Region in advance may be grounds for the Region to terminate the Agreement.

#### **1.21.3 Monthly Reporting of Progress**

The Consultant / Company shall provide the Region with a written report showing the portion of the Services completed in the preceding month, in a form specified by the Region.

### **1.22 Laws and Regulations**

The Consultant / Company shall comply with all relevant federal, provincial and municipal statutes, regulations and by-laws pertaining to the Services. The Consultant / Company shall be responsible for ensuring similar compliance by its suppliers and subcontractors.

Any reference in this Agreement to all or any part of any statute, regulation, by-law or rule shall, unless otherwise stated, be taken as a reference to that statute, regulation, by-law or rule or the relevant part thereof, amended, replaced or re-enacted from time to time.

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

### **1.23 Health and Safety**

The Consultant / Company shall comply with all governing regulations related to employee health and safety, including the Region's Policy on Occupational Health and Safety (copy available upon request). The Consultant / Company shall keep employees and subcontractors informed of such regulations.

The Consultant / Company shall fully indemnify and save harmless the Region from any and all charges, fines, penalties and costs that may be incurred or paid by the

Region if the Region or any of its employees shall be made a party to any charge under the Occupational Health and Safety Act as a result of any violation of the Act by the Consultant / Company.

#### **1.24 Severability**

If any provision of the Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

#### **1.25 Unpaid Accounts**

The Consultant / Company shall indemnify the Region from all claims arising out of unpaid accounts relating to the Services. The Region shall have the right at any time to require satisfactory evidence that the Services in respect of which any payment has been made or is to be made by the Region is free and clear of mechanics or other liens, attachments, claims, and demands, charges or other encumbrances.

#### **1.26 Independent Contractor**

Both parties expressly acknowledge and agree that they are Independent Contractors and no Agency, partnership, or employment relationship is intended or created by this Agreement. The Consultant / Company shall be solely responsible for all matters relating to statutory deduction of all taxes, employment insurance, Canada pension, Worker's Compensation, insurance premiums of its employees and discipline/supervision of its employees. The Consultant / Company acknowledges and agrees that while it shall remain fully responsible for the method and completing the Services, the Region may supervise the performance of the Services for a) compliance with the Region's policies, procedures, directives and guidelines and for b) compliance with all safety, security, and environmental laws, regulations, guidelines and procedures. Both parties agree that any such supervision by the Region shall not in any way relieve the Consultant / Company from its obligations and responsibilities under this Agreement or at law nor shall such supervision be considered interference by the Region with the Consultant / Company's performance of the Services.

#### **1.27 Waiver**

Waiver or non-enforcement by either party of a term or condition shall not constitute a waiver or a non-enforcement of any other term or condition or any subsequent breach of the same or similar term or condition.

#### **1.28 Force Majeure**

**1.28.1** The term "Force Majeure" as used herein shall mean an act of God, strike, lockout or other industrial disturbance, act of public enemy, war, public riot, lightning, fire, storm, flood, explosion, governmental restraint or judicial restraint, provided that any such restraint does not result from any action or failure to act by the Consultant / Company or the Region,



and any other cause, whether of the kind specifically enumerated above or otherwise, which is not and could not reasonably be in the control of such party.

**1.28.2** If either party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder, the obligations of such party, so far as they are affected by such Force Majeure, shall be suspended during, but no longer than, the continuance of such Force Majeure. The party rendered unable to carry out its obligations by Force Majeure shall use all reasonable diligence to remedy or overcome such Force Majeure as quickly as possible, provided that such requirement shall not require the settlement of strikes, lockouts or other labour difficulties by such party contrary to its wishes.

**1.28.3** If the Consultant / Company can demonstrate to the reasonable satisfaction of the Region that in remedying or overcoming such Force Majeure its cost of providing the Services has increased, the parties shall forthwith, upon such demonstration, undertake in good faith negotiations with a view to agreeing on an adjustment to the terms of the Agreement, as appropriate, as of the date when the Force Majeure occurred, which adjustment shall not exceed the amount of such increased costs which are directly caused by the Force Majeure. The provisions of **Section 1.19** apply mutatis mutandis if, despite good faith efforts, the parties are unable to agree to an adjustment within thirty (30) days of the demonstration referred to above.

### **1.29 Notice**

Any notice, demand, acceptance or request required to be given hereunder in writing, shall be deemed to be given if personally delivered or mailed by registered mail, postage prepaid, (at anytime other than during a general discontinuance of postal services due to a strike lockout or otherwise) and addressed to the party to whom it is given as follows:

**REGION:** The Regional Municipality of Durham  
Finance Department, Purchasing Section  
605 Rossland Road, Box 623, 4<sup>th</sup> Floor  
Whitby, Ontario, L1N 6A3  
Fax: 905-666-6210

### **CONSULTANT / COMPANY:**

Any notice shall be deemed to have been given to and received by the Party to whom it is addressed:

- (a) if delivered, on the date of delivery; or

(b) if mailed, then on the fifth day after the mailing thereof.

### **1.30 Contract Documents**

The Contract Documents consist of the Documents listed below. If there is a conflict with the Contract Documents, the order of priority of Documents, from highest to lowest, shall be:

- 1) This Agreement for Consulting / Professional Services
- 2) [The Region's Request for Proposal for Consulting Services ]
- 3) The Consultant / Company's Proposal for Consulting Services

## ARTICLE 2. SERVICES

The Consultant / Company shall carry out the work as outlined in [**the Request for Quotation for Consulting / Professional Services [ ]** as issued by the Region, dated [ ] and included as **Attachment A**, and as further outlined in the **Consultant / Company's Proposal submission**, dated [ ] prepared by the Consultant / Company and submitted to the Region, included as **Attachment B.**]

## ARTICLE 3. FEES AND DISBURSEMENTS

### 3.01 Definitions

- (a) Hourly rates include: salary, benefits, bonuses, overtime, profit, internal printing and reproduction services. No charges shall be allowed for corporate administration, senior corporate personnel not actively engaged in the project, corporate accounting, payroll personnel, corporate secretarial.
- (b) 'Site' includes the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.

### 3.02 Basis of Payment

The Region shall pay the Consultant / Company in accordance with the provisions set forth in this Article. The upset limit for the Services is provided in **Section 3.04**. This Agreement does not provide any minimum guaranteed amount of payment to the Consultant / Company.

The fee paid to the Consultant / Company shall not exceed the amount as set out in **Section 3.04**. Where the fee paid to the Consultant / Company is based on time and materials such fee shall be calculated as set out below.

#### 3.02.1 **Calculation of Time and Materials Fee**

The fee shall be calculated on a time basis for that part of the Services described in **Article 2**. Fees on a time basis for all staff shall be hourly rates based on job classification. Upset limits noted in **Section 3.04** are inclusive of all escalation.

##### **Time Expended**

All time expended on the assignment, whether in the Consultant / Company's office, at the Region's premises, or elsewhere, and including travel time, shall be chargeable. For further clarity, travel time between home and the site shall not be chargeable. Travel time between the site and the corporate office shall be chargeable.

#### 3.02.2 **Reimbursable Expenses**

In addition to the fee, the Consultant / Company may be reimbursed at cost for all expenses properly incurred by them and with prior approval by the Region in connection with the project, including but not limited to: subcontractors, specialized services related to the Agreement, vehicle mileage charges, traveling and living expenses, long distance telephone charges, facsimile charges, external printing and reproductions, special delivery and express charges, project specific Regulatory approvals, permits and licenses. In any event, the total for fees and reimbursable expenses **shall not** exceed the upset limit detailed in **Section 3.04** without prior written consent of the Region. Computer services and roadway toll charges are not considered reimbursable expenses.

### **3.03 Payment**

Unless otherwise agreed to in writing by the Consultant / Company and the Region, the Consultant / Company shall submit an invoice to the Region for all Services completed in the immediately preceding month. Under no condition shall the Region be liable for the payment of any interest charges associated with the Services. Upon approval by the Region of a submitted invoice, payment will be made within 60 days.

Payments made hereunder, including final payment, shall not relieve the Consultant / Company from its obligations and liabilities under the Agreement.

Acceptance by the Consultant / Company of the final payment shall constitute a waiver of claims by the Consultant / Company against the Region, except those previously made in writing in accordance with this Agreement and still unsettled.

The sub-Consultant / Company's shall be contracted by the Consultant / Company. The Consultant / Company shall be responsible to direct the activities of their sub-Consultant / Company's, review and approve their invoices, and make payment to their sub-Consultant / Company's. The Consultant / Company shall provide detailed supporting documentation with their sub-Consultant / Company's invoices, to the extent requested by the Region.

The Consultant / Company is solely responsible for remitting payments for Employment Insurance, Canada Pension, Ontario Health, and Harmonized Sales Tax, H.S.T. etc., to the appropriate offices.

The Consultant / Company agrees to maintain detailed and accurate records of time spent and services rendered and to submit such records to Expenditure Management Section of the Region on a monthly basis, with a copy to the Region's Departmental project manager.

### **3.04 Upset Limits**

Notwithstanding any other provisions contained in this Agreement, upset limits have been agreed to by the Consultant / Company and the Region with respect to the consulting fees and reimbursable expenses, which are to be paid to the Consultant / Company for the Services to be performed by the Consultant / Company under **Article 2 – Services** and that the upset limit, including all incidental costs, disbursements and applicable duty and excise taxes, but **excluding** Harmonized Sales Tax (H.S.T.), is \$ [ ] Further, the consulting fees and reimbursable expenses shall not exceed the agreed upset limits unless prior written approval is received from the Region.

## **ARTICLE 4. NON-DISCLOSURE AND CONFLICT OF INTEREST AGREEMENT**

The Consultant / Company acknowledges that they will acquire information about certain matters and things which are confidential to the Region and which information is the exclusive property of the Region.

The Consultant / Company agrees that neither they, nor their employees, agents or contractors shall divulge information communicated to them or acquired by them or disclosed by the Region, its employees, agents or contractors in the course of carrying out the services required to be provided herein, without the prior written consent of the Region. Furthermore, the Consultant / Company shall not use, at any time during the term of this agreement, or thereafter, any of the information acquired by the Consultant / Company during the course of carrying out the services provided herein for any purposes other than the purposes authorized in writing by the Region.

The Consultant / Company shall maintain proper records of all costs and Services performed during the performance of this Agreement and for a period of not less than three (3) years following the completion of the Services. Such records shall be made available to the Region upon written notice, for the Region or its agents to examine and audit. Personal information received and maintained as a result of this Agreement will be handled in accordance to the Personal Health Information and Protection Act (PHIPA).

### **4.01 Non-Disclosure and Restricted Use of Confidential Information**

- (1) Upon completion or other termination of the Services, the Consultant / Company shall ensure that:
  - (a) all written or descriptive matter, including but not limited to drawings, prints, descriptions or other papers, documents or any other material which contains any Confidential Information is returned to the Region;
  - (b) all electronic versions of Confidential Information in the Consultant / Company's possession is destroyed; and
  - (c) written confirmation that the requirements of this sub-article have been complied with is provided to the Commissioner of Finance promptly after being requested.
- (2) The Consultant / Company shall collect, use, disclose, retain and dispose of Personal Information and Personal Health Information only in accordance with applicable law including the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F-31 (FIPPA), the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M-56 ("MFIPPA"), the Personal Health Information Protection Act, 2004, S.O. 2004, c. 3 (PHIPA) and the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 ("PIPEDA") respectively, as amended.
- (3) The Consultant / Company, acknowledging that the Region is bound by all the provisions of MFIPPA, shall with respect to all Confidential Information:

- (a) abide strictly by the instructions of the Region concerning those provisions;
- (b) except to the extent that any of sub-clauses 1(b)(viii) to (xi) of this Agreement apply thereto, hold same in trust and confidence for the Region and
  - (i) not disclose any part thereof, by publication or other means, to any person, company or other government agency other than to those employees of the Consultant / Company who actually need to have knowledge of the Confidential Information for the purpose of the provision of the Services referenced above; nor
  - (ii) not use same for any other purpose except for performance of the Services or otherwise for the benefit of the Region, without the Commissioner of Finance's prior written approval, and shall
  - (iii) not rely upon or use same in any claims, suits, actions or proceedings against the Region;
- (c) in making any request for approval by the Commissioner of Finance pursuant to clause (b) hereof specifically state the benefit to the Region of the proposed disclosure/use;
- (d) limit any disclosure/use pursuant to an approval by the Commissioner of Finance to the recipients/ purposes described in the approval;
- (e) take appropriate precautions against any disclosure/use contrary to this article 2;
- (f) provide to the Region copies of any Confidential Information held by the Consultant / Company within Seven (7) Working Days of receipt of a request for same from the Region;
- (g) ensure that
  - (i) no original or copied Confidential Information leaves the Region's premises;
  - (ii) no personal information is transmitted by means of conventional mail or (other than internally within the Region's own network to persons authorized by the Commissioner of Finance) electronically; and
  - (iii) no Confidential Information is copied or transcribed (except on the Region's premises in the ordinary course of performance of the Services),  
  
as a result of his/her actions or omissions, without the Commissioner of Finance's prior written approval and in any case only in a securely encrypted manner;
- (h) ensure that the physical security of all Confidential Information held by him/her off the Region's premises is maintained notwithstanding the medium in which same are made available, received or stored (including

facsimile transmissions), and that the Region's Commissioner of Finance is advised immediately in the event of a breach of such security;

- (i) ensure that physical access to areas off the Region's premises containing, as a result of his/her actions or omissions, Confidential Information is limited to authorized persons;
  - (j) take reasonable precautions to protect all Confidential Information held by him/her off the Region's premises from fire, theft, vandalism, deterioration, accidental destruction or loss and other hazards;
  - (k) forthwith provide the Region with a true copy of any
    - (i) court Order;
    - (ii) Order of the Information and Privacy Commissioner of Ontario or any successor; or
    - (iii) other demand purporting to have the force of law,directed to the Consultant / Company and requiring the disclosure of any Confidential Information;
  - (l) not, except in accordance with a competently issued Order or binding demand described in preceding clause (k), comply with any request by any non-party for copies of or access to any Confidential Information, but rather shall forward such request to the Commissioner of Finance, within Seven (7) Days of receipt thereof, together with copies of all Documents in the custody of the Consultant / Company related thereto that are not already in the possession of the Region.
- (4) The duties, liabilities and obligations of the Consultant / Company under this Agreement shall be perpetual and irrevocable.

#### **4.02 Ownership of Confidential Information**

- (1) All Confidential Information and derivatives of any Confidential Information as described in sub-article (2) hereof, whether created by the Region or the Consultant / Company in performance of the Services for or for the benefit of the Region, shall remain the sole and exclusive property of the Region, and the access thereto granted to and/or made possible for the Consultant / Company in connection with and/or resulting from the performance of the Services shall not constitute or form the basis for any assignment or transfer thereof or licence or other rights there.
- (2) The derivatives referred to in clause (1) above shall be every translation, abridgment, revision, modification or other form in which an existing work consisting of such material may be recast, transformed or adapted.



#### **4.03 Conflict of Interest**

- (1) The Consultant / Company declares that, to its knowledge, (i) no Councillor, official or employee of the Region has any direct or indirect beneficial interest, whether financial or otherwise, in the Consultant / Company, or in their performance of the Services; and (ii) the Consultant / Company is not engaged in any other projects nor is it providing services to any other client that would give rise to an actual or potential conflict of interest; and (iii) the Consultant / Company is not engaged in any direct or indirect beneficial interest, whether financial or otherwise with any other Consultant / Company retained by the Regions of Durham.
- (2) The Consultant / Company declares that he has no direct or indirect financial interest in any matter in which the Region is concerned that would give rise to an actual or potential conflict of interest.
- (3) The Consultant / Company agrees to notify the Commissioner of Finance immediately of any material change in the declarations described in this section, and acknowledges that any of the following will entitle the Region to terminate all or any part of the Services of the Consultant / Company.
- (4) The Consultant / Company represents that it will not attempt to improperly influence or interfere financially, politically or otherwise with the Region's employees, officers or Council members with respect to the provision of the services under this Agreement.
- (5) If a conflict of interest exists or arises pursuant to this section during the term of the Agreement, the Region may, at its discretion, suspend any Services being performed until the matter is resolved to the Region's sole satisfaction or terminate the Agreement.

#### **4.04 Duration of Obligations**

The obligations of maintaining the confidentiality of the Confidential Information set forth herein, shall survive and be binding upon the Consultant / Company for a period of time which is the greater of ten years from the date of execution of this agreement, or a period ending seven years after the award of a contract by the Region for the Services.

**IN WITNESS WHEREOF** the Consultant / Company and the Region have executed this Agreement.

**CONSULTANT / COMPANY**

Per: \_\_\_\_\_

Date: \_\_\_\_\_

**THE REGIONAL MUNICIPALITY OF DURHAM**

Per: \_\_\_\_\_  
Commissioner of Finance and Treasurer

Date: \_\_\_\_\_

**APPENDIX 'C'  
CERTIFICATE OF INSURANCE**



**THE REGIONAL MUNICIPALITY OF DURHAM**  
**FINANCE – PURCHASING SECTION**

**CERTIFICATE OF INSURANCE**

**PROOF OF LIABILITY INSURANCE WILL BE ACCEPTED ON THIS FORM ONLY.**  
**THIS FORM MUST BE COMPLETED AND SIGNED BY YOUR AGENT, BROKER OR INSURER**  
**ALL INSURERS SHOWN MUST BE LICENSED TO OPERATE IN CANADA**

*This is to certify that the Named Insured hereon is insured as described below*

Named Insured	Address of the Named Insured
Location and Operations of the Named Insured for which Certificate is issued: ALL OPERATIONS PERFORMED FOR THE REGION OF DURHAM	

**AUTOMOBILE LIABILITY INSURANCE**

INSURING COMPANY	POLICY NUMBERS	LIMIT OF COVERAGE	EFFECTIVE DATE	EXPIRY DATE
	Automobile Liability	Deductible, if any:	D/M/Y	D/M/Y
	Excess Liability (if applicable)		D/M/Y	D/M/Y

The above policy(ies) must cover all vehicles owned in whole or in part and licensed in the name of the insured including all vehicles leased on a long term basis for which the insured is required by contract to provide bodily injury and property damage insurance.

**COMMERCIAL GENERAL LIABILITY**

INSURING COMPANY	POLICY NUMBERS	LIMIT OF COVERAGE	EFFECTIVE DATE	EXPIRY DATE
	Commercial General Liability	Per Claim / Annual Aggregate Deductible, if any:	D/M/Y	D/M/Y
	Excess Liability (if applicable)	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

Provisions of Amendments or Endorsements of Listed Policy(ies)

**PROFESSIONAL LIABILITY – Claims Made Basis – YES/NO**

INSURING COMPANY	POLICY NUMBERS	LIMIT OF COVERAGE	EFFECTIVE DATE	EXPIRY DATE
	Professional Liability	Per Claim / Annual Aggregate Deductible, if any:	D/M/Y	D/M/Y
	Excess Professional Liability (if applicable)	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

- IS THE LIMIT INCLUSIVE OF INDEMNITY AND CLAIMS EXPENSES - **YES/NO**

- IF THE POLICY IS ON A CLAIMS MADE BASIS HAVE THERE BEEN ANY CLAIMS NOTICES GIVEN FOR THIS POLICY TERM – **YES/NO**

**ENVIRONMENTAL LIABILITY – Claims Made Basis – YES/NO Occurrence Basis – YES/NO**

INSURING COMPANY	POLICY NUMBERS	LIMIT OF COVERAGE	EFFECTIVE DATE	EXPIRY DATE
	Environmental Liability	Per Claim / Annual Aggregate Deductible, if any:	D/M/Y	D/M/Y
	Excess Environmental Liability (if applicable)	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

- IS THE LIMIT INCLUSIVE OF INDEMNITY AND CLAIMS EXPENSES - **YES/NO**

- IF THE POLICY IS ON A CLAIMS MADE BASIS HAVE THERE BEEN ANY CLAIMS NOTICE GIVEN FOR THIS POLICY TERM – **YES/NO**

COMMERCIAL GENERAL LIABILITY is issued on an 'occurrence' basis form and is extended to include Personal Injury Liability, Contractual Liability, Non-Owned Automobile Liability, Owner's and Contractor's Protective Coverage, Products/Completed Operations, Contingent Employer's Liability, Cross Liability Clause and Severability of Interest Clause.

With respect to Comprehensive General Liability insurance, THE REGIONAL MUNICIPALITY OF DURHAM [and ] is/are added as an Additional Insured but only with respect to its liability arising out of the operations of the Named Insured.

The policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to The Regional Municipality of Durham.

If cancelled or changed so as to reduce the coverage as outlined on this certificate, during the period of coverage as stated herein, thirty (30) days, prior written notice by registered mail will be given by the Insurer(s) to: **The Regional Municipality of Durham, Attention: Purchasing Section, Finance Department, 605 Rossland Road East, Whitby, ON, L1N 6A3**

I certify that the insurance is in effect as stated in this certificate and that I have authorization to issue this certificate for and on behalf of the insurer(s).

Date	Name, Address, Fax and Telephone Number of Certifying Party	Signature of Authorized Representative or Official
		Print Name of above Authorized Representative or Official

**APPENDIX 'D'**

**CONFIRMATION OF FAVOURABLE HEALTH AND SAFETY PRACTICE FORM**

**THE REGIONAL MUNICIPALITY OF DURHAM  
REQUEST FOR PROPOSAL NO. RFP-602-2016**

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**CONFIRMATION OF FAVOURABLE HEALTH AND SAFETY PRACTICE FORM**

**To Contractor(s):**

The Region of Durham is committed to:

1. The prevention of workplace injury and illness to all workers at Regional work locations.
2. The belief that contractor safety is compatible with the safety policy of the Region and is good business.
3. Assuming a leadership role by citing contractors for any violations of the Contract.

To ensure the Regional workplace is a healthy and safe working environment, contractors, constructors and sub-contractors must have knowledge of and operate in compliance with the Occupational Health and Safety Act and any other legislation pertaining to employee health and safety.

For long term Contracts, or Contracts involving pre-selected contractors, the Region reserves the right to cancel (or place on probation) the Contract of any contractor who is charged and/or convicted of offences under the Occupational Health and Safety Act while carrying out any part of a project with the Region.

**Contractor's Statement of Responsibility**

As a contractor retained to perform work for the Region of Durham, I/we accept the following health and safety responsibilities:

I/we will comply with all procedures and requirements of the Occupational Health and Safety Act, Regional safety policies and procedures, department and site specific policies and procedures and all applicable legislation or regulations.

I/we will work safely with skill and care so as to prevent accidental injury to ourselves, fellow employees and all other persons on the site of the work.

For Contracts or sub-contracts that involve commercial motor vehicles as defined by the Highway Traffic Act, I/we acknowledge possession of a current Carrier CVOR abstract with one of the following safety ratings: Excellent; Satisfactory; Conditional; or Satisfactory – Unaudited.

I/we will advise the Region if the CVOR safety rating of our firm is changed to "Unsatisfactory" at any time during the course of the Contract and, upon request, will provide the Region with a copy of the most recent Carrier CVOR abstract indicating the sanctions imposed by the Ministry of Transportation.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Name of Person Signing for Company

\_\_\_\_\_  
Signature of Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Company

**\*RETURN UPON FIVE (5) DAYS OF THE REGION'S REQUEST\***

**APPENDIX 'E'**  
**SUBCONTRACTOR FORM**

<b>Sub-Trade Category</b>	<b>Proposed Subcontractor</b>

**INCLUDE WITH BID SUBMISSION**

Name of Firm: \_\_\_\_\_