



OS-06-055-11-BM

March 2, 2011

Infrastructure and Recreation Committee
Town of the Blue Mountains
Box 310, 26 Bridge Street East
THORNBURY, ON
N0H 2P0

Re: Town of The Blue Mountains
Thornbury Water Treatment Plant Upgrades
Contract No. TBM-2008-01
Request for Additional Engineering Costs

Dear Chairman McKinlay and Members of Committee:

We thank you for this opportunity to make the following deputation in support for our request for additional engineering costs for the Thornbury Water Treatment Plant Upgrade project.

On October 6, 2006, Henderson Paddon & Associates Limited (HPA), (subsequently acquired by GENIVAR in August, 2008), submitted a proposal to provide engineering services to the Town as per the Town's RFP and Terms of Reference (TOR). The engineering services to be provided were to design, inspect and administer an upgrade for the Thornbury Water Treatment Plant by the addition of two (2) Pall Corporation of Canada "trains" of membrane filters which would replace the smaller two (2) existing mixed media filters in the plant. As we understand it, our proposal costs for engineering at \$126,835.00 were significantly less than the second lowest proposal. We are not aware of the second lowest proposal cost.

As the Town was concerned that our proposal cost may be too low and in subsequent discussions requested that we confirm that we were satisfied with our proposal and associated cost. On November 1, 2006, HPA provided a letter to the Town (copy attached) stating that we were satisfied with our proposed costs based on 12.7% of the "civil works" (i.e. Pall equipment costs removed) as outlined in the Terms of Reference and McViro report of June, 2006.

In our recent discussions with the Town, it has been stated that GENIVAR's failure to comply with the terms of the "Agreement", signed January 17, 2007 (copy attached) is the reason that the Town is reticent to pay any further engineering costs that we have incurred. Specifically, the Town staff have informed us that under Section 2 (e), we failed to request and receive approval from the Town before any "Additional

Services” were carried out that were not in Schedule A and therefore, are technically not entitled to any monies from the Contingency Allowance. As we understood the Town’s position, it agreed to pay the entire contingency allowance in recognition of work carried out on behalf of the Town. We thank the Town for this consideration. In addition, it is the Town’s position under Section 3 (Compensation) (a) (i), GENIVAR failed to provide in writing and receive the Town’s approval for changes to the estimated fees and disbursements beyond our proposal and Terms of Reference and are therefore, not technically entitled to compensation for additional work carried out on behalf of the Town.

We wish it to be noted that under Section 7 of the Agreement (Changes and Alterations and Additions Services), the Town could, in writing, delete, extend, increase, vary or otherwise alter the services in the agreement with our consent. This section goes on to state that if such actions by the Town necessitate additional staff or services, we shall be “paid at the established rate(s)”. We did not receive any written requests to carry out additional works beyond the original Scope of Work.

It is our opinion that both parties to the Agreement did not follow the letter of Agreement, and that given the historical, good relations between the Town staff and GENIVAR, it was mutually understood that we could carry out the verbally requested additional services at a reasonable cost and be compensated for the same.

We would wish that the Committee be aware that we began our request for additional engineering costs in September of 2009 and have provided extensive details with respect to our engineering cost connected with:

1. Services beyond the Scope of Work outlined in the RFP.
2. Services provided as a result of the change of Scope of Work.

The first point is for the provision of additional engineering services we provided as requested by the Town (11 items outlined in our previous submissions). These additional services were not requested in writing by the Town, nor were cost estimates provided by GENIVAR prior to the undertaking of the services. Nonetheless, these services were requested and the services were provided. We believe there is no dispute about the request or the provision of the services. We did not provide these services without the direction of the Town.

The second point reflects the services provided as a result of the significant change in the Scope of Work resulting from the Town’s decision to proceed with a full membrane facility rather than just providing two

(2) Pall filtration units to replace the oldest two (2) mixed media filters. The membrane filtration system has been designed, and subsequently constructed with three (3) Pall filter train units with an ultimate design of five (5) Pall membrane filter trains. All the piping, valving, etc. have been designed and installed to enable the addition of the final two (2) Pall membrane trains without disruption in the future. The building has been reconfigured to provide a safe electrical room, provide new laboratory facilities and provide staff amenities as a direct result of requests from the Town.

We have met with the Town Project Manager numerous times to discuss our request and provided all the documentation that has been requested of us. As you may appreciate, we were surprised and disappointed when we met with Mr. Russwurm and Mr. Caswell on February 10, 2011 and were informed that only a small amount of our extra engineering costs were going to be paid. In addition there was not to be any compensation for all the additional engineering undertaken for the five (5) membrane train design. As the committee is aware, the Town is offering to provide total compensation of only \$180,789.16 plus \$10,930.60 for reimbursement of specialized sub-consultants that we retained and other third party disbursements.

To put our request for additional costs into perspective, our November 1, 2006 letter stated we were satisfied with a fee of approximately 12.7% of the civil works for this project. With the civil works being \$2,570,852.25 for this project, including all of the extra works (Arrowhead, Peel Street, etc.), our total requested cost, including third party disbursements paid by GENIVAR (\$10,930.60), is \$340,342.25. This figure (less \$ 10,930.60) represents 12.81% of the value of the civil works.

If the Committee considers our total requested cost of \$340,342.25 as a percentage of the construction cost of the total project at \$4,407,538.98, (including the cost of the three (3) membrane units), the cost of engineering for this project would be 7.72%. It is our opinion that this percentage fee is far less than one would find in the profession for a project of this complexity.

In summary, we wish the Committee to consider the following:

1. The letter of the "Agreement" was not followed by either party. This was in part due to the longstanding trust relationship between the Town of The Blue Mountains and HPA (GENIVAR).
2. GENIVAR completed a complex plant design, which Wellington Construction successfully constructed, resulting in a well functioning, "first class" full membrane facility without any disruption to the residents of the Town of The Blue Mountains.

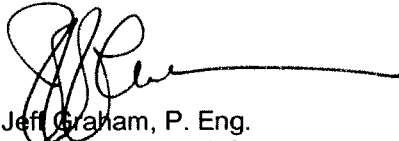
3. GENIVAR expeditiously undertook the requested additional design of works at the Arrowhead Water Booster Station, which now enables the Town to utilize the potable water from Collingwood for the entire Town of The Blue Mountains water service area.
4. GENIVAR designed upgrades to the water feed system supplying the 10th Line Water Booster Station and therefore, provided capacity to the Lora Bay Service Area.
5. GENIVAR provided a design that improved the safety of the Town's operators by providing a new electrical room and other amenities at the plant.
6. GENIVAR provided a design that now enables the Town to add the ultimate number of membrane filters resulting in future cost savings in both design and construction.
7. GENIVAR provided the concept and the design that kept one of the existing larger mixed media filters to function as a filter for process (wastewater) generated by any membrane filter system. This has saved the Town hundreds of thousands of dollars that would have been required to either expand the wastewater tankage at the plant or provide treatment of this wastewater. In addition, our design has reduced the volume of wastewater being sent to the Thornbury Sewage Treatment Plant.
8. There were requests for additional engineering to be provided, which were clearly outside of the original Scope of Work.
9. The Scope of Work described in the RFP and Terms of Reference therein, changed significantly resulting in increased engineering costs.
10. When questioned about our proposed fee after the submission of the proposals, we stated in November, 2006 that we were satisfied with our costs at approximately 12.7% of the civil works for the project. The presently requested cost is 12.81% of the civil works completed in this project.
11. The requested overall costs of engineering for this project at 7.72% of the total construction cost is far below the normal professional services standard for engineering costs for a project of this complexity.

Given all of the above, we respectfully request that the Committee approve our request for engineering costs of \$340,342.35 for this project.

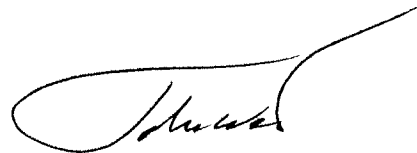
We thank you for allowing this deputation to be made and appreciate your consideration of our request.

Yours truly,

GENIVAR Inc.



Jeff Graham, P. Eng.
Director – Urban Infrastructure
JTG/lem



John S. West, CET



HENDERSON PADDON & ASSOCIATES LIMITED

CIVIL & ENVIRONMENTAL ENGINEERING CONSULTANTS

Clarksburg Schoolhouse Properties
103 Hillcrest Drive
P.O. Box 308
Clarksburg, Ontario
N0H 1J0

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Fax: 519-599-2878
Email: hpa3@hp.on.ca
Website: www.hp.on.ca

306055

November 1, 2006

Mr. John Caswell, Environment Services Manager
Town of The Blue Mountains
26 Bridge St. E
Thornbury, Ontario
N0H 2P0

Re: Town of The Blue Mountains
Thornbury Water Treatment Plant
Request for Proposal
Additional Information

Dear Sir,

This letter is to inform you that in your absence, Mr. Jeff Graham, President of Henderson Paddon & Associates Limited and the writer met with Mr. Reg Russwurm on Monday, October 30, 2006. The purpose of that meeting was to discuss our proposal and in particular, our proposed fee in order to clarify what Henderson Paddon & Associates Limited is to provide the Town to assure them we can successfully carry out the project for that fee.

We wish to reiterate with this letter that we believe our proposed engineering cost (\$126,835.00, which includes all fees and disbursements) is indeed sufficient for us to complete the design of this important project and also complete all the construction inspection and administration with no compromise to the quality of our engineering work. As detailed later in this letter, we feel that our engineering fee is actually quite sufficient for the actual amount of design and true engineering that needs to be done for this project once the very significant Pall equipment purchase cost and 30 percent contingency is subtracted from the MacViro's estimated project cost of \$2,762,500.00.

We also wish to confirm with this letter, our President's commitment that no extra engineering costs will be requested unless there is a clear assignment of new work, which we do not anticipate at this time. Mr. Graham will also personally review costs expended each month and provide an independent report to your office on the amount of the budget consumed each month compared with the overall budget. This will confirm that we are not exhausting the available engineering design funds at the expense of funds required for construction inspection and administration.

We would like it to be noted that the Feasibility Study identified a capital cost of \$2,762,500.00 exclusive of engineering and GST. If one removes the estimated \$1,400,000.00 to supply the membrane equipment and the \$637,500.00 contingency from the total capital costs, the remaining civil design works would be approximately \$725,000.00. By adding a reasonable contingency of approximately 15% (108,750.00), these civil works would be approximately \$834,750.00. Given our proposed total costs of design, tendering and construction management, our fee would be approximately 12.7% of the civil works. We find this to be an acceptable percentage based on our previous experiences. We presently have a large portion of the plant floor plans and piping required to be altered on AutoCAD within our office. This will enable us to start the project quickly.

Attached to this letter, we have also provide a refreshed Table 2 that summarizes the number of person days assigned to each of the main tasks. For instance, we guarantee that Mr. Art Smith, our Senior Construction Inspector, will be on site for at least 34 days as the major part of our construction inspection effort. For those times when non-complicated work is being undertaken, we would provide intermittent daily (if required) site visits by our staff from the Clarksburg office. Mr. Smith will be there at all times during the commissioning, etc., to ensure that the works are functioning properly and are as per design.

As discussed in our original letter and further explained in our meeting with Mr. Russwurm, a number of factors have helped keep our proposed costs relatively low, compared perhaps with other consultants. These include the following:

1. Minimal travel time, kilometres, etc., given the fact we are in very close proximity to the Town office and the Water Treatment Plant;
2. Extensive familiarity with the existing filter units, given our previous work at the Water Treatment Plant; and,
3. Extensive understanding of the challenges with backwash treatment and options available for refinement of backwash handling, given our involvement with filter-to-waste piping components we installed with the UV upgrade.

Our approach to this project has been to determine what we believe to be the required time and therefore cost of each of the tasks we understood to be required to be completed. These tasks were described in our Technical Proposal and costed in Table No. 2 which was attached to our Fee Proposal. We have refreshed Table 2 so that it is easier to read and understand as far as individual tasks and total project engineering costs are concerned. The total proposed fee remains unchanged at \$126,835.00.

We considered that Task Nos. 1 (assessment of existing systems) and 3 (determination of ultimate capacity of building footprint) shared a number of common elements in that the existing systems need assessments in order to determine, in part, what capacity could be obtained from the existing plant footprint. For this reason, we placed the two (2) tasks to be carried out in parallel at the very beginning of our work program. We still believe that an allowance of \$20,600.00 for the evaluation of the existing works and the determination of the potential capacity at the site, to be appropriate, given our existing knowledge of the plant itself.

As you are aware, the proposed system is to consist of providing two (2) new trains of Pall membrane filter and retain the existing two (2) Trident units. As is noted in the Feasibility Study and in your Request for Proposal, the provision of the Pall filters in conjunction with the existing Trident units may require some upgrading of the existing backwash system in the plant. We believe we have innovative ideas as how to divert / redirect the reverse filtration wastewater and volume of water generated during the air scrub of the Pall filters without having to significantly increase/modify the existing backwash tankage. This could save the Town significant funds and yet have a facility capable of producing the original 13, 536 m³/day with the largest unit (Pall filter) out of service.

In order to further assure the Town that our design is feasible, comprehensive and cost effective, we respectfully suggest that in addition to the 60% and 90% reviews by the Town, we meet informally every two (2) weeks for an hour or so with Mr. Russwurm, you and your senior staff. At these proposed meetings, we will review our concepts, design and drawings with the Town. This will ensure that the Town will be intimately involved with the design, equipment and suggested processes. By creating this project team approach which we advocated in our proposal, there will not be surprises or incorrect assumptions made as all parties will be directly involved.

In summary, we strongly believe that we have sufficient budget and engineering expertise in order to complete this project to the Town's requirements without compromise, all for the proposed fee as previously submitted to the Town of The Blue Mountains.

We wish to thank you for this opportunity to further clarify our position with respect to our technical and fee proposals. Should you have any further questions or require more information, please contact the writer.

Very truly yours,

HENDERSON PADDON & ASSOCIATES LIMITED



J.S. West, CET, Vice President
JSW/jlk
Encl.

c.c. Mr. Reg Russwurm, M.BA., P.Eng., Director of Engineering and Public Works
Mr. Jeff Graham, P.Eng., President, Henderson Paddon & Associates Ltd.

THIS AGREEMENT made on *January 17, 2007*
BETWEEN:

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

hereinafter called the "Town"

- and -

HENDERSON PADDON & ASSOCIATES LIMITED

hereinafter called the "Consultant"

WHEREAS, the Town intends to engage the services of the Consultant in connection with the project described as "The Town of The Blue Mountains Thornbury Water Treatment Plant Request For Proposal for Engineering Services Terms of Reference" as described in the Consultant's Proposal, attached as Schedule "A";

AND WHEREAS the Town desires to have the Consultant perform services in connection with the Project;

NOW THEREFORE WITNESSETH that in consideration of the covenants herein, the Town and the Consultant mutually agree as follows:

1. **Retainer**

The Town hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the professional services for the Project described in the Consultant's Proposal, attached as Schedule "A", under the general direction and control of the Town.

2. **Fees and Disbursements**

(a) The Consultant shall be paid a fee, calculated on a time basis, for the Services. Fees calculated on a time basis shall be as defined in Schedule A.

(b) In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 5% for all reasonable expenses properly incurred by them in connection with the Services, including but not limited to: vehicle use charges, traveling and living expenses, long distance telephone charges, report production costs, photography, special delivery charges, supplies and equipment, field equipment costs, laboratory costs. Computer and office charges are considered part of overhead and shall not be invoiced as disbursements.

(c) Notwithstanding Subsections (a) and (b) of this Section, the total fees and disbursements paid by the Town to the Consultant for the Services shall not exceed the total upset amount of \$146,835.00 plus applicable taxes made up as follows:

(i) \$126,835.00 plus applicable taxes for Core Services as described in Schedule A; and,

(i) \$20,000.00 plus applicable taxes as a Contingency Allowance for Additional Services that may be required but are not included in Schedule A.

(d) Notwithstanding Subsections (a) and (b) of this Section, the Town, at its sole discretion, may limit the fees and disbursements paid by the Town to the percentage equivalent to the project complete in the opinion of the Town.

(e) The Consultant must request and receive the written approval of the Town before any Additional Services are carried out that are not included in Schedule A. The Consultant shall not be entitled to any payment from the Contingency Allowance unless the Consultant has satisfied this condition. When approving Additional Services that are not included in Schedule A, the Town, at its sole discretion, may, in writing, set a limited on the monies from the Contingency Allowance that may be permitted for the requested Additional Services.

3. Compensation

(a) The Consultant will require prior approval, in writing, by the Town for any of the following changes:

(i) Any increase in the estimated fees and disbursements beyond those approved under Schedule "A"; and

(ii) Any change in the schedule of progress which results in a longer period than approved in Schedule "A"

4. Staff and Methods

(a) Unless otherwise agreed, the Consultant shall use current state of the art principles and shall skillfully and competently perform the Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff with the approval of the Town.

(b) The Consultant shall inform himself of applicable procedures and standards established by the Town including the Town's Health and Safety Policy and shall comply with such procedures and standards in the performance of the Services.

(c) The Consultant shall obtain the prior agreement of the Town before making any changes to the staff list after commencement of the Project.

5. Ownership and Use of Documents

(a) Drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis.

(b) Where the parties have not otherwise agreed, all drawings, plans, information, mathematical or computer models, statistical data and reports compiled or prepared by the Consultant pursuant to this Agreement shall be the exclusive property of the Town whether the Project be executed or not. The Town shall own all rights of copyright therein and they are not to be used by anyone without the permission of the Town.

(c) In the event that the said documents and models are used by the Town for purposes other than in connection with the Project, or if the said documents and models have been amended, altered or revised in any manner whatsoever without notice to the Consultant and without receiving its prior written consent, the Consultant does not warrant the fitness of same for the Town's use, and the Town agrees to indemnify and hold harmless and defend the Consultant from and against all claims, demands, losses or damages, liability and costs associated with such use by the Town.

6. **Patents and Trademarks**

(a) All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in performance of its Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant unless the concepts, products or processes were conceived by, or jointly conceived with, the Town.

(b) The Town shall have permanent non-exclusive royalty-free license to use the concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from Services rendered by the Consultant in connection with the Project.

7. **Changes and Alterations and Additions Services**

With the consent of the Consultant, the Town may in writing at any time after the execution of the Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the subject of the Agreement, and if such action by the Town necessitates additional staff or services, the Consultant shall be paid at the established rate(s).

8. **Suspension or Termination**

(a) The Town may at any time, by notice in writing to the Consultant, suspend or terminate this Agreement or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out its Services. In such an event, the Consultant shall be entitled to payment for the Services rendered to the date of termination and for the work reasonably necessary to close out its Services in accordance with the time and cost allocations set out in the Budget Outline, attached ~~as Schedule "C"~~ *JTB* *AK* *JTB* *AK*

(b) If the Consultant is practicing as an individual and dies or becomes incapacitated before the Services have been completed, this Agreement shall terminate as of the date of death, or incapacity, as applicable, and the Town shall pay for the Services rendered by the Consultant to the date of such termination in accordance with the time and cost allocations set out in the Budget Outline, attached ~~as Schedule "C"~~ *JTB* *AK*

9. **Indemnification**

(a) The Consultant shall indemnify and save harmless the Town, its officers, employees or agents from and against any and all claims,

actions, losses, expenses, costs or damages of every nature and kind whatsoever resulting from or connected with the Project to the extent that they are caused by:

(i) negligent acts, errors or omissions of the Consultant, its officers, employees or agents in providing the Services on the Project;

(ii) failure of the Consultant, its officers, employees or agents to comply in material respects with federal, provincial, and local laws and regulations applicable to Services undertaken by the Consultant hereunder;

(iii) breach of this Agreement by the Consultant, its officers, employees or agents; or

(iv) a willful misconduct on the part of the Consultant, its officers, employees or agents.

(b) Without limiting the generality of the foregoing, the Consultant shall also indemnify and save harmless the Town from and against all actions, claims and demands whatsoever which may be brought against or made upon the Town for the infringement of or use of any intellectual property rights including any copyright or patent arising out of the reproduction or use in any manner of information of any kind whatsoever furnished by the Consultant in the performance of this Agreement.

10. Insurance

(a) The Consultant shall ensure that all insurance coverage including all provisions relating to insurance coverage set out in this section are in place prior to the commencement of services pursuant to this Agreement.

(b) During the Term of this Agreement, and any renewal or extension thereof, the Consultant will, at its expense (including the cost of deductibles) maintain in effect, with an insurer licensed in Ontario:

(i) a contract of general liability insurance for its operations, with limits of not less than Two Million (\$2,000,000) Dollars, in addition to coverages for defense and claimants' costs, all for any one occurrence, including coverages for:

- personal injury including death;
- property damage or loss (direct or indirect and including loss of use thereof);
- broad form property damage;
- contractual liability;
- non-owned automobile liability;
- products – completed operations;
- contingent employers liability;
- cross liability;
- severability of interest; and
- blanket contractual liability.

The policy of insurance shall name the Town of The Blue Mountains as an additional insured with respect to its interest in the operations of the Consultant; shall provide that the policy shall be non-contributing with, and apply only as primary and not as excess to any other insurance available to the Town; and shall also provide

that neither the Consultant nor the insurer shall cancel, materially change or allow the policy to lapse without first giving the Town thirty days prior written notice.

(ii) a policy of professional liability insurance or other errors and omissions insurance covering claims and expenses for liability for loss or damage arising from negligence in the administration or application of professional services or guarantee or work rendered, of standard wording, with coverage of no less than Two Million (\$2,000,000) Dollars; and

(iii) a policy of motor vehicle liability insurance of standard wording, covering:

- motor vehicles owned, leased or operated by or on behalf of the Consultant, in connection with the Services provided or to be provided under this Agreement, with coverage of not less than Two Million (\$2,000,000) Dollars per claim; and
- equipment leased, borrowed, rented or operated by or on behalf of the Consultant, with coverage of not less than Two Million (\$2,000,000) Dollars.

Every policy of insurance shall contain either no deductible amount or a deductible amount which is reasonable considering the financial circumstances of the Consultant. The Consultant shall be responsible to pay all deductible amounts.

No policy shall contain any provision which would contravene the obligations of the Consultant hereunder or otherwise be to the detriment of the Town.

The Consultant shall provide or cause to be provided to the Town a certificate from its insurer, in the Town's standard form, which shows that the policy or policies placed and maintained by it complies with the requirements of this agreement. No review or approval of any such insurance certificate by the Town shall derogate from or diminish the Town's rights or the Consultant's obligation contained in this Agreement.

(c) If at any time the Town is of the opinion that the insurance taken out by the Consultant is inadequate in any respect, it shall forthwith advise the Consultant of the reasons therefore and the Consultant shall forthwith take out additional insurance satisfactory to the Town.

(d) The taking out of insurance shall not relieve the Consultant of any of its obligations under this agreement or limit its liability hereunder.

11. Non-Assignment

The Consultant shall not assign this Agreement or any part thereof, without obtaining the prior written approval of the Town, which approval may be withheld by the Town in its sole discretion, or given subject to such terms and conditions as the Town may impose.

12. Approval by Other Authorities

Unless otherwise provided in this Agreement, where the work of the Consultant is subject to the approval or review of an authority, department of government, or

agency other than the Town, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the Town and unless authorized by the Town in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of government or agency.

13. **Specialized Services and Sub-consultants**

The Consultant may engage others for specialized services provided that prior approval is obtained, in writing, from the Town and may add a mark up of not more than 5% of the cost of such services to cover office administrative costs when claiming reimbursement from the Town.

14. **Inspection**

The Town, or persons authorized by the Town, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

15. **Publication**

The Consultant shall obtain the consent in writing of the Town before publishing or issuing any detailed information regarding the Project.

16. **Confidential Information**

The Consultant shall not divulge any confidential information communicated to or acquired by him, or disclosed by the Town in the course of carrying out the Services provided for herein. No such information shall be used by the Consultant on any other project without the approval in writing of the Town, as required by law.

17. **Arbitration**

(a) Any dispute, difference or disagreement between the parties hereto regarding the Services provided by the Consultant or arising from the application or interpretation of this Agreement may with the consent of both parties, be referred to arbitration.

(b) No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Town or the Consultant.

(c) If the parties elect to refer to arbitration any dispute, difference or disagreement:

(i) The award of the arbitrator shall be final and binding upon the parties;

(ii) The provisions of the Arbitration Act, S.O., 1991, Chapter 17, as amended shall apply, unless the parties agree otherwise.

18. Time

(a) The Consultant shall perform the Services expeditiously to meet the requirements of the Town and shall complete any portion or portions of the Services in such order as the Town may require and the Town 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.

(b) The Consultant shall perform all the Services required under this Agreement by the date or dates set out in this Agreement or as otherwise approved, in writing, by the Town. Requests for extensions of the completion date shall be submitted, in writing, by the Consultant no later than twenty (20) days prior to the completion date.

(c) The Town shall give due consideration to all reports, proposals and other information submitted by the Consultant, and shall make any decisions which it is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

19. Complete Agreement

(a) The contents of any invitation by the Town for proposals, any proposal to provide services that is accepted by the Town, and any schedules attached hereto shall be deemed to be part of this Agreement.

(b) In the event of any inconsistency or conflict in the provisions of this Agreement, such provisions shall take precedence and govern in the following order:

(i) this signed Agreement between the Consultant and the Town;

(ii) the proposal that has been accepted by the Town;

(iii) the invitation for proposals made by the Town;

(iv) any schedule(s), other than the accepted proposal and the invitation for proposals, attached hereto.

(c) This Agreement constitutes the sole and entire agreement between the Town and the Consultant relating to the Project, and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether express or implied, shall form a part thereof.

(d) If one or more of the phrases, sentences, clauses, paragraphs, sections or subsections contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court of competent jurisdiction, this Agreement shall be construed as if such phrase(s), sentence(s), clause(s), paragraph(s), section(s) or subsection(s), had not been inserted.

(e) This Agreement may be amended only by written instrument signed by both the Town and the Consultant, or by a court order pursuant to subsection (d) hereof.

20. **Gender and Number**

Words importing the masculine gender shall include the feminine and neuter, and the singular shall include the plural where the meaning or context so requires.

21. **Headings**

Section headings contained herein are included solely for convenience, and are not intended to be full or accurate descriptions of the content hereof and shall not be considered part of this Agreement.

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

**THE CORPORATION OF THE TOWN OF
THE BLUE MOUNTAINS**

Per:



Mayor, Ellen Anderson

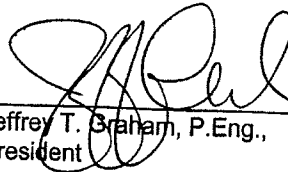


Stephen Keast, Clerk

- and -

**HENDERSON PADDON & ASSOCIATES
LIMITED**

Per:



Jeffrey T. Graham, P.Eng.,
President

I/We have authority to bind the Corporation

SCHEDULE "A"

Services To Be Provided By The Consultant

The Project shall be undertaken in accordance with the following documents in order of precedence:

1. Town's Terms of Reference issued on September 15, 2006 *JTG* ~~SA~~
2. Consultant's Detailed Workplan and Upset Fee Estimate dated on October 06, 2006 *JTG* ~~SA~~ *AK*

Note to Contract Preparer: Ensure that i) project schedule, ii) fee schedule are clearly provided in documentation or are attached to this Schedule A.