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Manager of Public Works

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REPORT RE: COW October 5, 2010 REPORT NO: PW 56-2010

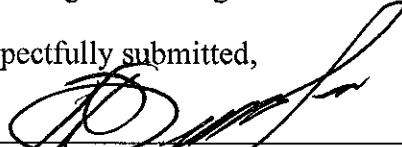
SUBJECT: AGREEMENT WITH GENIVAR TO COMPLETE THE ENVIRONMENTAL ASSESSMENT AND DRAFT DESIGN COMPONENT FOR ADDENDUM NO. 3 FOR THE WATER AND SEWAGE WORKS STUDY SAUBLE BEACH

RECOMMENDATION: THAT Council enter into an agreement with Genivar Consultants LP to complete the Environmental Assessment and Draft Design component for Addendum No. 3 for the Water and Sewage Works Study Sauble Beach;

AND FURTHER THAT the necessary Signatory By-Law and Agreement be placed on an upcoming Council agenda, for consideration.

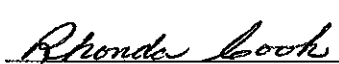
BACKGROUND: As Council is aware, the present work being undertaken by Genivar has been ongoing for a number of years. To avoid the perception of working without an agreement in place, the Manager of Public Works recommends to Council that the attached agreement and associated schedules be entered into and that the necessary Signatory By-Law be placed on an upcoming Council agenda.

Respectfully submitted,



Phil Dwyer, C.E.T., DPA
Manager of Public Works

Date: Sept 29, 2010



Rhonda Cook, CMO
CAO

Date: Sept 29, 2010

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

BY-LAW NUMBER XXX-2010

A By-Law to Authorize the Mayor and Clerk to Sign an Agreement for Professional Consulting Services with Genivar Consultants LP to Complete the Environmental Assessment and Draft Design for Addendum No. 3 for the Water and Sewage Works Study Sauble Beach

WHEREAS Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

AND WHEREAS Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

AND WHEREAS the Town of South Bruce Peninsula has deemed it expedient to enter into an Agreement for Professional Consulting Services with Genivar Consultants LP to complete the Environmental Assessment and Draft Design for Addendum No. 3 for the Water and Sewage Works Study Sauble Beach.

NOW THEREFORE THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA ENACTS AS FOLLOWS:

1. **THAT** the Mayor and Clerk are hereby authorized to sign an Agreement for Professional Consulting Services with Genivar Consultants LP to complete the Environmental Assessment and Draft Design for Addendum No. 3 for the Water and Sewage Works Study Sauble Beach.
2. **THAT** the Agreement for Professional Consulting Services with Schedules referred to herein shall be attached hereto and form part of this by-law.

READ a FIRST and SECOND time this day of October, 2010.

_____ **MAYOR**

_____ **CLERK**

READ a THIRD time and FINALLY PASSED this day of October, 2010.

_____ **MAYOR**

_____ **CLERK**

**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

MEMORANDUM OF AGREEMENT dated the _____ day of _____

A. D. 2010

-BETWEEN-

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

Hereinafter called the 'Client'

THE PARTY OF THE FIRST PART

-AND-

GENIVAR CONSULTANTS LP

Hereinafter called the 'Consultant'

THE PARTY OF THE SECOND PART

WHEREAS the Client intends to complete a Class Environmental Assessment process for a new wastewater system in Sauble Beach and preliminary design of sewers, pumping stations, treatment plant, outfall, etc., and potentially to proceed with final design, approvals, and construction of the new wastewater system.

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

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

ARTICLE 1 - GENERAL CONDITIONS

1.01 Retainer

The Client hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the services described herein under the general direction and control of the Client.

In this Agreement the word Consultant shall mean professionals and other specialists engaged by the Client directly and whose names are party to this Agreement.

1.02 Services

The services to be provided by the Consultant and by the Client for the Project are set forth in Article 2 and such services as changed, altered or added to under Section 1.08 are hereinafter called the 'Services'.

1.03 Compensation

The Client shall pay the Consultant in accordance with the provisions set forth in Article 3. For purposes of this agreement, the basis of payment shall be as specified in Article 3.2.

1.04 Staff and Methods

The Consultant 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 and as required by the Professional Engineers Act (RSO 1990, Chapter P. 28) and regulations therein. The Consultant shall employ only competent staff who will be under the supervision of a senior member of the Consultant's staff.

1.05 Drawings and Documents

Subject to Section 3.2.4 of Article 3, 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 for the Client, including record drawings, may be used by the Client, for the Project herein described. In accordance with Article 1.06, the client indemnifies the Consultant for unauthorized use of the documents and deliverables.

1.06 Intellectual Property

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

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

1.07 Records and Audit

- (a) In order to provide data for the calculation of fees on a time basis, the Consultant shall keep a detailed record of the hours worked by staff employed for the Project.
- (b) The Client may inspect timesheets and record of expenses and disbursements of the Consultant during regular office hours with respect to any item which the Client is required to pay on a time scale or disbursement basis as a result of this Agreement.
- (c) The Consultant, when requested by the Client, shall provide copies of receipts with respect to any disbursement for which the Consultant claims payment under this Agreement.

1.08 Changes and Alterations and Additional Services

With the consent of the Consultant the Client may in writing at any time after the execution of the Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the subject of the Agreement, and if such action by the Client necessitates additional staff or services, the Consultant shall be paid in accordance with Section 3.2.1 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Section 3.2.4. In the event that the client delays the project then the consultant shall have the right to renegotiate the agreement.

1.09 Suspension or Termination

Either party may at any time by notice in writing to the other party, suspend or terminate the Services or any portion thereof at any stage of the project. Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out his Services. In such an event, the Consultant shall be entitled to payment in accordance with Section 3.2. for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.

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

1.10 Indemnification

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

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

1.11 Insurance

The Client will accept the insurance coverage amount specified in this clause section (a) as the aggregate limit of liability of the Consultant and its employees for the Client's damages.

a) Comprehensive General Liability and Automobile Insurance

The Insurance Coverage shall be \$5,000,000 per occurrence and in the aggregate for general liability and \$2,000,000 for automobile insurance. When requested, the Consultant shall provide the Client with proof of Comprehensive General Liability and Automobile Insurance (Inclusive Limits) for both owned and non-owned vehicles.

b) Professional Liability Insurance

The Insurance Coverage shall be in the amount of \$2,000,000 per claim and in the aggregate. When requested, the Consultant shall provide to the Client proof of Professional Liability Insurance carried by the Consultant, and in accordance with the Professional Engineers Act (RSO 1990, Chapter P. 28) and regulations therein.

c) Change in Coverage

If the Client requests to have the amount of coverage increased or to obtain other special insurance for this Project then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the Client's expense as a disbursement allowed under Section 3.2.

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 until thirty (30) days after written notice of such change or cancellations has been personally delivered to the Client.

1.12 Contracting for Construction

Neither the Consultant nor any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall tender for the construction of the Project, or have an interest either directly or indirectly in the construction of the Project.

1.13 Assignment

Neither party may assign this Agreement without the prior consent in writing of the other.

1.14 Previous Agreements

This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the Project.

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

1.16 Principals and Executives

The use of Principals and Executives on a time basis by the Consultant, will be in accordance with Section 1.23.1 (c).

1.17 Sub-Consultants

The Consultant may engage others as sub-consultants for specialized services provided that prior approval is obtained, in writing, from the Client and may add a mark-up of not more than 5% of the cost of such services to cover office administration costs when claiming reimbursement from the Client plus the cost of the additional insurance incurred by the Consultant for the specialized services.

1.18 Inspection

The client, or persons authorized by the Client, 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.

1.19 Publication

The Consultant agrees to obtain the consent in writing of the Client before publishing or issuing any information regarding the Project.

1.20 Confidential Data

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by him, or disclosed by the client in the course of carrying out the Services provided for herein. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the Consultant by a third party without obligation of confidentiality which is independently developed by the Consultant without access to the Client's information, or which is required to be disclosed by law or by court order. No such information shall be used by the Consultant on any other project without the approval in writing of the client.

1.21 **Dispute Resolution**

- (a) If requested in writing by either the Client or the Consultant, the Client and the Consultant shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of ninety (90) calendar days with the mediator, the dispute shall be referred to and finally resolved by arbitration under the rules of the province having jurisdiction or by an arbitrator appointed by the agreement of the parties.
- (b) No person shall be appointed to act as mediator or arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Client or the Consultant.
- (c) The award of the arbitrator, including an award for costs if applicable, shall be final and binding upon the parties.
- (d) The provisions of The Arbitration's Act, R.S.O., 1991, Chapter 17, as amended shall apply.

1.22 **Time**

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

The Client shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, 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.

1.23 **Estimates, Schedules and Staff List**

1.23.1 **Preparation of Estimate of Fees, Schedule of Progress and Staff List**

When requested by the Client and where payment is calculated on a time basis, the Consultant shall provide, for approval by the Client:

- (a) An estimate of the total fees to be paid for the Services. **See Schedule A attached.**
- (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. **See Schedule B attached.**
- (c) A Staff list showing the number, classifications and hourly rate ranges for staff, Principals and Executives, for which the Consultant will seek payment on a time basis. The Consultant 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 staff who is to be the liaison person between the Consultant and the Client. **See Schedule C attached.**

1.23.2 **Subsequent Changes in the Estimate of Fees, Schedule of Progress and Staff List**

The Consultant will require prior written approval, from the Client for any of the following changes:

- (a) Any increase in the estimated fees beyond those approved under Subsection 1.23.1 (a).
- (b) Any change in the schedule at progress which results in a longer period than provided in Subsection 1.23.1 (b).
- (c) Any change in the number, classification and hourly rate ranges of the staff provided under Subsection 1.23.1 (c).

1.23.3 **Monthly Reporting of Progress**

When requested by the Client, the Consultant shall provide the Client with a written report showing the portion of the Services completed in the preceding month.

1.24 Additional Conditions

None

ARTICLE 2 - SERVICES

2.01 Services to be provided by Consultant

The following summarizes the services to be provided by the Consultant in point form only, and does not form a detailed list of all of the services to be provided, but does summarize the scope of services to be provided by the Consultant:

- Initiate Class Environmental Assessment Addendum process to existing Class Environmental Assessment for wastewater system in Sauble Beach;
- In capacity as coordinators for the Class Environmental Assessment, prepare all public meeting information material, evaluate all reasonable alternatives, prepare and coordinate placement of advertisements, notices, etc., for mailing to review agencies and coordinate same with local media;
- Attend all meetings with Client and represent Client at all public meetings, and provide presentations at public meetings, etc., and other normal services as necessary to complete successful public meeting(s);
- Provide general advice to Client on an on-going basis as to notifications, contacts, etc., for public meetings and public contact, including recommendations on steps to be taken during Class Environmental Assessment process;
- As part of the Class Environmental Assessment process, prepare and evaluate environmental, social and economic impacts of all reasonable alternatives, including estimating the approximate construction costs and project costs for preferred, recommended alternative. Such cost estimates will include estimate of operating costs and recommendations for additional costs to be collected for building up reserve funds for the new wastewater system;
- Assessment of an expanded municipal water system throughout Sauble Beach is not specifically part of this Class Environmental Assessment process;
- As part of completing Class Environmental Assessment process, Consultant will prepare preliminary schematic design of new sewer system, sewage pumping stations and forcemains and wastewater treatment plant and outfalls;
- Will evaluate various locations for pumping station, wastewater treatment plant and outfall, and provide recommendation for levels of wastewater treatment appropriate for discharge to various receiving waters;
- Consultant will recommend the hiring of third party geotechnical consulting firms or other third party consulting firms for any specialized consulting services. The hiring of such third party Consultants will be approved in advance by the Client. The Client will normally reimburse such third party consulting firms directly.

2.02 Services to be provided by Client

- The Client will pay all third party disbursements for advertising in local newspapers, both mailing costs and any fees payable to review agencies;
- The Client will undertake any additional liaison or consultation with local First Nation organizations or bands who may have an interest in the project;
- Client will coordinate all bulk mailing, if undertaken, to residences within proposed service area of wastewater system;
- Staff of Client will be responsible normally for keeping other members of staff and municipal Council aware of project progress, unless the client specifically asks the Consultant to assist with such communication;

ARTICLE 3 - FEES AND DISBURSEMENTS

3.1 Definitions

For the purpose of this Agreement, the following definitions shall apply:

(a) **Cost of the Work:**

- (i) The "Cost of the Work" shall mean the total cost of the Project including all materials, equipment, sales taxes, labour and contractor's overhead and profit, necessary to complete the work for which the Consultant prepares designs, drawings or specifications, for which he is responsible. Where sales taxes are not included in the cost of the work, the fee shall be adjusted upwards by the factor equivalent to the sales taxes. The adjusted fee may be computed to the nearest one-tenth of one percent (1/10%).
- (ii) Wherever the client furnishes labour or other service which is incorporated in the work, the current price of labour or other service when the work was executed shall be used to compute the Cost of the Work.
- (iii) Whenever used materials or equipment is furnished by or on behalf of the Client, the fair market value of such materials or equipment, as though it was purchased new, shall be used to compute the Cost of the Work.
- (iv) In computing the Cost of the Work, no deductions shall be made on account of any penalties or damages claimed by the Client from any contractor or on account of any other sum withheld from any contractor.
- (v) The Cost of the Work shall not include any fees and disbursements due to the Consultant, the Client's engineering and office expenses, or cost of land.

(b) **Site:**

Site includes the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.

3.2. 2 Fees Calculated on a Time Basis

The Client shall pay the Consultant a fee, 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 classifications as follows:

Classification: See staff list with classification and hourly rates attached as Schedule C.

For a project of over one (1) year duration, or for projects which become extended beyond one (1) year in duration, the consultant may from time to time seek approval from the client to adjust hourly rates and such approval shall not be unreasonably withheld.

3.2.2.2 Time Expended

All time expended on the assignment, whether in the Consultant's office, at the Client's premises, or elsewhere, and including travel time, shall be chargeable. This also includes, but is not limited to, stenographic and clerical staff engaged in the preparation of documents such as reports and specifications.

3.2.4 Reimbursable Expenses

In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 0%, plus the cost of additional insurance incurred by the Consultant, for all expenses properly incurred by him in connection with the project, including but not limited to: vehicle use charges, travelling and living expenses, long distance telephone charges, facsimile transmission charges, printing and reproductions, progress photography, advertising for tenders, special delivery and express charges, overtime premium costs, and the cost of providing and maintaining site offices, supplies and equipment, chemical and physical tests.

3.2.4.1 Information Technology and Reprographic (ITR) costs incurred by the Consultant shall be reimbursed at a standard charge rate of \$0 per labour hour expended. The assessment shall include all information technology resources required for purposes of providing the services contemplated under this agreement, including: computer equipment/systems, computer software, computer supplies, networking (local and wide area), and labour associated with computer management, administration and support. Computer systems include all types of computers, such as: general purpose microcomputers, PC-CADD microcomputers, graphic design workstations, and notebooks. The ITR charge shall also include all regular in-house convenience copying and printing. Cost for reproducing specifications and drawing set shall not be included in this rate.

3.2.4.2 Telecommunication costs (COM) other than video-conferencing incurred by the Consultant shall be reimbursed at a standard charge rate of \$0 per labour hour expended. The assessment shall include in-house costs for use of telephone/telecommunication services (including maintenance and support) and facsimile transmissions.

3.3 Payment

3.3.1 Fees Calculated on a Time Basis

The Consultant shall submit an invoice to the Client for all Services completed in the immediately preceding month. Interest at the annual rate of 6 percent (0.5 percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultant's invoice.

Following Completion of the Work, the Consultant shall recalculate his fee on the basis of the actual cost of the work and upon such recalculation the amount paid to the Consultant shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Consultant of any overpayment to the Consultant.

SIGNED, SEALED AND DELIVERED

in the presence of:) _____
) _____
) _____
) _____
) _____
) _____
) _____

CONSULTANT

The signatory shall have the authority to bind the corporation or company for purposes of this agreement

(Signature)

Jeff Graham

(Name)

P.Eng., Director – Urban Infrastructure

(Title)

THE CORPORATION OF TOWN OF SOUTH BRUCE PENINSULA

The signatory shall have the authority to bind the municipality or its agency for purposes of this agreement

MAYOR

CLERK

Schedule A

Estimate of Total Fees (to be paid for the services)

Sauble Beach Wastewater System

Town of South Bruce Peninsula

OS-05-142-11-OS

A. Initiation and Completion of Class Environmental Assessment Process	\$57,000
B. Preparation of Preliminary Designs of Sewers, Pumping Station, Treatment Plant, Etc.	\$27,000
C. Other Work As Deemed Necessary to Complete Project	\$6,000
D. Total	\$90,000

Notes: The above total includes disbursements but excludes taxes.

The above does not include final design, obtaining approvals, construction administration or construction supervision.

Schedule B

Allotment of Engineering Fees on a Monthly Basis

Sauble Beach Wastewater System

Town of South Bruce Peninsula

OS-05-142-11-OS

Month/Year	Portion of Services to be Completed in Month (%)	Portion of Fees Paid in Each Month (Estimate Only) (\$)
April, 2010	4%	\$3,500
May, 2010	4%	\$3,500
June, 2010	19%	\$17,000
July, 2010	19%	\$17,000
August, 2010	9%	\$7,000
September, 2010	22%	\$20,000
October, 2010	11%	\$10,000
November, 2010	4%	\$4,000
December, 2010	4%	\$4,000
January, 2011	4%	\$4,000
Total	100%	\$90,000

Note: Above costs include disbursements but exclude taxes.

Schedule C

Staff Assigned to Project Including Hourly Rates

Sauble Beach Wastewater System

Town of South Bruce Peninsula

OS-05-142-11-OS

Staff Name	Position	Hourly Rate	Description of Work to be Employed
Jeff Graham	Project Manager	\$125	Client liaison, overall manager
Mike Meyers	Project Engineer	\$95	Analysis of options, costing
Sheila Douglas	Environmental Scientist	\$60	GIS drafting and field survey
Elwood Koo	Senior Technologist	\$85	Drafting
Kris Coburn	Senior Technologist	\$85	Surveying
Bob Henderson	Senior Engineer	\$155	Senior engineering
Michelle Robinson	Administration	\$45	Filing, copying, etc.
Marcia Oakley	Administrative Assistant	\$55	All client notification/reports/comments

Note:

Jeff Graham, P.Eng., will serve as Liaison Person (Project Manager) between the Consultant and the Client for this assignment.

Additional staff, other than shown above, may be assigned to this project on a case by case basis, and as needed. Additional staff will be approved, however, prior to involvement on the project by the client, and if the additional staff's charge-out rate for the position assigned is similar to other staff approved, the client shall not withhold such approval, acting reasonably. Such approval may be requested by the Consultant to the Client after the additional staff have already worked on the project.