

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT dated _____ day of _____, 20_____, Between:

Andrew F, Melchers (Operating as IN Engineering)
5273 County Rd 46
Lyn, ON, K0E 1M0
613-803-9899
andrew@ineng.ca

Hereinafter called
the "Engineer"

AND

Business Name, Name of Authorized Representative
Street Address, City, Province, Postal Code

Phone Number, Email

Hereinafter called
The "Client" The Client and Engineer are collectively referred to as the "Parties".
The Engineer will provide services outlined in This Proposal, hereinafter referred to as the "Project".

The Client and Engineer agree as follows:

Article I. The Contract Documents

- 1.01 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:
- The written Agreement.
 - This Proposal.
 - Terms of Service by Sub-Consultants/Contractors to the Engineer.
 - The Construction Act.
 - Any additional documents signed by both the Client and Engineer during the completion of this agreement.
 - The Request for Proposal.
- 1.02 Subsequent Charges: The Parties may in writing at any time after execution of this Agreement or the commencement of the services delete, extend, increase, vary, or otherwise alter the services forming the scope of services. The Parties further agree that such changes shall alter the scope of services, schedule and/or the costs. Any such changes shall be made in writing through a Change Order with reference to this Agreement and accepted in writing by both Parties.

Article II. Scope of Services

- 2.01 Scope of Services: In Connection with the Project, the Engineer shall perform only the work outlined in This Proposal.
- Excluded Services: the Parties agree that the Engineer's Scope of Service does not include exclusions and assumptions as outlined in This Proposal.

Article III. Engineer's Responsibilities

- 3.01 Standard of Care: The Engineer shall perform the services described in the Scope of Services pursuant to this Agreement in accordance with the applicable Building Code requirements and the degree of care and skill ordinarily exercised by members of the profession providing comparable services that are contemplated by this Agreement at the time such services are rendered. No representations outside of this Agreement, shall increase the standard or care imposed by the Engineer by law.
- 3.02 Insurance: The Engineer agrees to the following insurance requirements:
- To carry commercial general liability insurance of \$2,000,000 per claim and Errors & Omission liability insurance of \$1,000,000 per claim.
 - The Engineer shall provide the Client with proof of such insurance upon written request; and

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- (c) If the Client requests that the Engineer increase the amount of insurance coverage or obtain other special insurance for the Project, the Engineer will cooperate with the Client to obtain such additional insurance at the Client's expense.

3.03 The Engineer is only responsible for the Scope of Work outlines in this Agreement. Scheduling of all required site visits, inspections and reports shall be completed by the Client. The Engineer is not the reviewing engineer unless specifically contracted by the Client.

3.04 No Time Guarantee: The Engineer does not guarantee a time for delivery services.

Article IV. Client's Responsibilities

4.01 The Client agrees to complete the following responsibilities on a timely basis:

- (a) Instruct the engineer fully as to the Client's requirements and make available to the Engineer all relevant information the Engineer requires, including design objectives, constraints and criteria, special equipment and systems, site requirements and project budget. The Engineer shall be entitled to rely upon the accuracy and completeness of all such information and data furnished through the Client, or the Client's consultants, whether such consultants are engaged at the Engineer's request or not.
- (b) Engage others directly where required by the Engineer, to perform the specialized services (e.g. cadastral and topographic surveys, stormwater management, geotechnical report, testing etc.) necessary to enable the Engineer to carry out fully the Engineer's duties. The retention of such specialized by the Client shall be subject to the joint approval of the Client and the Engineer.
- (c) Give the Engineer the authority to act as the Client's agent in all matters falling within the scope of the Engineer's services;
- (d) Review promptly all documentation submitted by the Engineer and inform the Engineer of decisions in time for the orderly progress of the Engineer's services and of the Project.
- (e) Obtain and pay for all required consents, approvals, licenses, and permits from authorities having jurisdiction;
- (f) Arrange and make provision of the Engineer's entry and access to public and private property and the Project site in the performance of the duties;
- (g) To have authority to transmit instructions to and receive information from the Engineer.
- (h) Notify the Engineer immediately whenever the Client becomes aware of a defect or deficiency in the work.
- (i) Contract an engineer to be the reviewing engineer and provide a minimum of 2 weeks' notice for any required site visits, inspections, reviews or reports.

Article V. Fees and Disbursements

5.01 The Client shall pay the Engineer a lump sum payment upon receipt of an invoice as outlined in This Proposal. The Client agrees that the fixed price is based on the estimate at the time of entering into this Agreement and is subject to change if extra work is required.

5.02 The Client understands the Prompt Payment clauses and procedures of the Construction Act. The Client has 28 days to pay the invoice from the date it was issued.

5.03 Additional scope of work will be billed at the Engineer's hourly rate or as agreed upon in a Change Order.

5.04 Reimbursable Expenses: The Engineer shall be reimbursed at cost plus an administrative charge of 15% for all reasonable expenses properly incurred by the Engineer in connection with the Project, including applicable sales taxes. The reimbursable expenses include but are not limited to: vehicle use, travelling and living expenses, telecommunications charges, printing and reproductions, overtime premium costs, and the costs of increased insurance coverage.

5.05 Extra Fees: The Engineer shall be paid in full for all of its services under the Agreement, including any extension of services authorized by the Client and any unforeseen need to exceed any prior estimate for fees and expenses. The Engineer shall advise the Client in advance of any prior estimates of fees and expenses are to be exceeded.

5.06 Payment for Changes in Scope of Services: Notwithstanding term 1.02 of this Agreement, if extra work is required to preserve the integrity and safety of the Project but is not stated in this Agreement and the same has not been reduced in writing, the Engineer shall be entitled to compensation for this extra work.

5.07 Invoices that are 30 days overdue will be charged an interest charge of 1.5% per month.

Article VI. Indemnification and Limitation

6.01 No Personal Liability: The Client expressly acknowledges and agrees that the Engineer's employees, officers, directors and agents shall have no personal liability to it in respect to any claim whatsoever, where in contract, tort and/or any other cause of action in law. Accordingly, the Client expressly agrees that it will bring no proceedings whatsoever and take no action in any court of law, arbitration, or similar proceeding against any of the Engineer's employees, officers, directors or agents in their personal capacity.

6.02 Indemnity: The Client shall defend, indemnify and save harmless the Engineer and its subcontractors, consultants, agents, officers, directors and employees from and against all claims,

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damages, losses, injury (including but not limited to reasonable lawyer fees and related costs) made by the Client or any other person arising out of, or in any way related to, the design or construction of the Project, unless such claims are caused by the Engineer's own negligent acts, errors or omissions during the provision of its services for the Project.

- 6.03 Indemnity for Client's Responsibilities: All designs, drawings and specifications prepared by the Engineer are prepared on the assumption that all information supplied by the Client or on behalf of the Client is comprehensive, correct and the Client has obtained the consent or approval of the prepare of such information for use by the Engineer in discharging its duties. The Engineer shall not be liable for any loss or damage arising from any inaccuracies in information provided to it. The Client shall indemnify and hold the Engineer harmless from any claim for damages, injury or loss as well as the costs of defending such a claim arising because of inaccurate information supplied to the Engineer.
- 6.04 Limitation of Liability: The Parties agree as follows with respects to the limits of Liability:
- (a) The Client Expressly agrees to limit the Engineer's liability to the Client for all claims arising out of the performance of this Agreement, or in any way relating to the Project, will be limited to direct damages and/or to the specific performance of any Services not meeting the Standard of Care set forth herein and such liability will, in the aggregate, not exceed the limits of insurance stated in GC11.1. the sum of the greater of the total fees charged by the Engineer for the Project or the sum of Five Thousand Dollars (\$5,000).
 - (b) Where claims are not covered by insurance, the Client expressly agrees to limit the Engineer's liability to the Client for all claims arising out of the performance of this Agreement, or in any way relating to the Project, will be limited to direct damages and/or to the specific performance of any Services not meeting the Standard of Care set forth herein and such liability will, in the aggregate, not exceed the greater of total fees charged by the Engineer for the Project or the sum of Five Thousand Dollars (\$5,000).
 - (c) The Client hereby agrees that the Engineer has no responsibility and no liability to it for any indirect, incidental, consequential, special, exemplary or punitive damages, including any claim for loss of business, loss of income, business interruption, loss of goodwill, costs of overhead, aggravation, mental anguish or costs. This limitation shall apply regardless of the cause of action, including those arising from breach of contract and tort, or legal theory pled and regardless of the forum for adjudication or negotiation.
 - (d) The Client hear by agrees that no claim may be brought against the Consultant more than 2 years after the Services were completed under this agreement.
 - (e) The provisions of clause 11.5 take precedence over any conflicting provisions of the Agreement or any document incorporated into it or referenced by it.
- 6.05 No Liability for Construction: The Engineer has no control over the contractor's means, methods, sequence, technique or procedures in construction the work for the Project. The Client agrees that the Engineer has no responsibility and no liability for construction deficiencies arising from poor and/or negligent construction.
- 6.06 Delays: Neither Party shall be liable or penalized for delays or failure to perform its services if same is caused directly or indirectly by circumstances beyond a Party's reasonable control. The Client shall not hold the Engineer responsible for damages or delays in performance caused by the Client, contractors, subcontractors, other consultants, Act of God, acts and/or omissions of governmental authorities and regulatory agencies or other events with are beyond the reasonable control of the Parties.

Article VII. General Terms and Conditions

- 7.01 Safety: The Engineer is only responsible for the activities of its own employees and takes no responsibility for job site safety. Nothing in these terms and conditions shall be construed to relieve the Client, contractors, subcontractors, or other consultants from their responsibilities for maintaining a safe job site.
- 7.02 Ownership: The Engineer shall retain copyright ownership of all work product prepared by it or on its behalf, which include, but is not limited to the follow: drawings, designs, plans, reports, specifications, calculations and data. The same shall not be used by the Client on any other project, without prior written agreement and remuneration for the Engineer. The Client is hereby granted a non-exclusive license to use such work or the sole purposes of the subject Project.
- 7.03 Dispute Resolution: Any disagreement arising between the Parties of this Agreement shall be resolved through the procedures in the Construction Act.
- 7.04 Termination: This agreement may be terminated by the Engineer with 7 days written notice or upon mutual agreement. Upon receipt of such written notice upon mutual agreement, the Engineer shall perform no further services other than those reasonably necessary to close out its services. The Engineer is entitled to be paid for all services performed prior to the termination date and to close out its services, including any reasonable expenses directly attributable to the termination for which the Engineer is not otherwise compensated.

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- 7.05 Entire Agreement: This agreement constitutes the entire agreement between the Parties and supersedes any prior understanding and agreements between the Parties. There are no representations, warranties, forms, conditions, undertakings, or collateral agreements, express or implied or statutory between the Parties other than as expressly set out in the Agreement.
- 7.06 Amendments: The Parties may in writing at any time after the execution of this Agreement or the commencement of the services delete, extend, increase, vary or otherwise alter the services forming the scope of services. The parties further agree that such changes may alter the scope of services, schedule and/or costs as agreed between the parties. Any such changes shall be made in writing with reference to the Agreement and accepted in writing by both Parties.
- (a) Subsequent Changes: In accordance with Section 1.02 of this Agreement, this Agreement may not be modified except in writing signed by both Parties.
- 7.07 Severability: If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.
- 7.08 Enurement: This agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and assigns provided that it may not be assigned by either Part without the consent of the other, which consent shall not be unreasonably withheld.
- 7.09 Applicable Law: This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in the Province of Ontario and the Laws of Canada, as applicable.

IN WITNESS WHEREOF the Parties have executed this Agreement on the date first written above.

CLIENT:

The signatory shall have the authority to bind the corporation or individual for purposes of this Agreement:

Signature

Name

Title

ENGINEER:

The signatory shall have the authority to bind the corporation for purposes of this Agreement:

Signature

Name

Title