



**Town of Hay River**  
**Solid Waste Facility Management Plan and Design**  
**Town Reference Number 2009-C0905**

**REQUEST FOR PROPOSALS**

**Town of Hay River – Solid Waste Facility  
Management Plan and Design  
Reference Number 2009-C0905**

**PROJECT DESCRIPTION**

The Town of Hay River wishes to provide a Management Plan and Design for their Solid Waste Facility.

Closing Date: Proposals will be received until **3:00 PM (15:00 hrs.)** Hay River local time October 28, 2009 at:

Town of Hay River  
73 Woodland Drive  
Hay River, NT  
X0E 1G1

**Attention: Terry Molenkamp**

Phone: (867) 874-6522

Fax: (867) 874-3237

Email: [molenkamp@hayriver.com](mailto:molenkamp@hayriver.com)



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**Solid Waste Facility Management Plan and Design**  
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## **GENERAL INSTRUCTIONS TO PROPONENTS**

Proposals will be received until October 28, 2009, 3:00 PM Hay River local time on at:

**Town of Hay River**  
73 Woodland Drive  
Hay River, NT  
X0E 1G1

**Attention: Terry Molenkamp, SAO**  
**Phone: (867) 874-6522**  
**Fax: (867) 874-3237**

Technical Inquiries can be directed in writing to:

Terry Molenkamp  
Phone: (867) 874-6522  
Fax: (867) 874-3237  
Email: [molenkamp@hayriver.com](mailto:molenkamp@hayriver.com)

**Five (5) copies** of the proposal are to be submitted, quoting Reference Number 2009-C0905 and the title **Solid Waste Facility Management Plan and Design** on the outside of the envelope.

The Town will not be responsible for Proposals received after the exact time and date noted will be rejected and returned to the proponent unopened.

1. The Town will not be responsible for any proposal that:

- Does not indicate the Request for Proposal reference, closing date and proponent's name;
- Does not arrive prior to the date & time displayed on the official tender clock; and
- Is delivered to any address other than that provided above.

2. Facsimile transmitted proposals will be accepted under the following conditions:

- The proposal is received before the submission deadline at the facsimile number stated;
- The Town shall not be liable for any claim, demand or other actions for any reason should a facsimile transmission be interrupted, not received in its entirety, received after stated closing time and date, received by any other facsimile unit other than that stated herein, or for any other reasons;
- The Town cannot guarantee the confidentiality of information contained in the proposal;
- In accordance with Paragraph 1, original copies of the proposal are to be submitted immediately following the transmission of the facsimile.

3. All questions or inquiries concerning this Request for Proposals must be in writing and be submitted to the address provided by **no later than five (5) business days prior to the proposal deadline**. Verbal responses to any enquiry cannot be relied upon and are not binding on either party.



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4. Any available resources noted in the Terms of Reference, can be obtained at the Town office.
5. This is not a Request for Tenders or otherwise an offer. The Town is not bound to accept the proposal that provides for the lowest cost or price to the Town nor any proposal of those submitted.
6. If a contract is to be awarded as a result of this request for proposals, it shall be awarded to the Proponent who is responsible and whose proposal provides the best potential value to the Town. The determination of best potential value shall be in the sole discretion of the Town. Responsible means the capability in all respects to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations.
7. Notice in writing to a Proponent and the subsequent execution of a written agreement shall constitute the making of a contract. No Proponent shall acquire any legal or equitable rights or privileges whatever until the contract is signed.
8. The contract will contain the relevant provisions of this Request for Proposals, the accepted proposal as well as such other terms as may be mutually agreed upon, whether arising from the accepted proposal or as a result of any negotiations prior or subsequent thereto. The Town reserves the right to negotiate modifications with the successful Proponent.
9. In the event of any inconsistency between this Request for Proposal, and the ensuing contract, the contract shall govern.
10. The Town has the right to cancel this Request for Proposals at any time and to reissue it for any reason whatsoever, without incurring any liability and no Proponent will have any claim against the Town as a consequence.
11. Any addenda made by the Town to the Request for Proposals will be issued in writing and sent by fax to all who have received the documents no less than 3 days prior to proposal deadline.
12. The Town is not liable for any costs of preparation or presentation of proposals.
13. An evaluation committee will review each proposal. The Town reserves the exclusive right to determine the qualitative aspects of all proposals relative to the evaluation criteria.
14. Proponents may not amend their proposal after the proposal deadline but may withdraw their proposal at any time prior to acceptance.
15. Proposals may be short-listed. Proponents who are short-listed may be requested to make a formal presentation. Such presentations shall be made at the cost of the Proponent.
16. The proposal and accompanying documentation submitted by the Proponent are the property of the Town and will not be returned.

**END OF GENERAL INFORMATION AND INSTRUCTIONS**



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## **TERMS OF REFERENCE**

### **Overview**

The Town of Hay River Solid Waste facility is in need of innovative practices in order to extend the life of the site. The Town is further interested in managing the facility more efficiently and diverting non-hazardous and bulk metals from the facility.

### **Background**

All municipal solid wastes are disposed at the Hay River Landfill, which is located approximately 7.5 km south of the town. The site has been used since 1973 and the site occupies 6 hectares between Highway 5 and Hay River.

The Town uses a trench type system for burying the municipal waste portion of the solid waste. Bulky goods (including metals, woods, and tires) are segregated and are not disposed of in the trenches.

The estimated annual generation rate for municipal solid waste is 21,000 m<sup>3</sup>/year. An annual rate of bulky wastes is estimated at approximately 4,500 m<sup>3</sup>, with a distribution of 70% metals, 25% woods and 5% tires

The Town of Hay River has contracted the operation of the solid waste facility to Robbie Jameson of Hay River Disposals. Mr. Jameson runs and operates all working aspects of the Facility including the soil remediation facility. The Hay River Soil Treatment Facility is a registered hydrocarbon contaminated soil treatment facility designed to accept and bio-remediate soils containing hydrocarbons.

### **Operation and Maintenance Protocols**

#### General Operation

Solid waste is accepted by the facility during its hours of operation, which are 12:00 pm – 8:00 pm Monday through Friday, and 10:00 am – 6:00 pm Saturday and Sunday.

The site is operated as a modified trench method, as defined in “Guidelines for the Planning, Design, Operation and Maintenance of Solid Waste Modified Landfill Sites” prepared by Municipal and Community Affairs (MACA). Waste not disposed of in trenches includes car bodies, bulky metals, wood, tires, white goods, and household hazardous waste. Separate areas have been designed for the disposal of these items.

Wastes are deposited to trenches and compacted by making multiple runs over the open face with a 140 HP D6C CAT. Periodically, and when weather permits; the compacted layer is covered with native soil. When a trench has been completed, a final cover of 0.5 m of native soil is used to prevent the dispersion of litter and encourage the shedding of water.

The contractor is responsible to arrange for the removal of household hazardous waste to the Swan Hills, Alberta disposal site.



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Recycling

All liquor containers are returned to the bottle depot and are shipped to the Alberta Brewers Association (ABA) in Edmonton.

All recyclable material can be taken to Tri R Recycling located at 76 Capital Drive.

Scavenging

Scavenging of the active trench at the landfill site is prohibited under Bylaw No. 619E (1996). The supervisor of the facility enforces this Bylaw. However, removal of parts from the cars disposed of on site is permitted during the operating hours of the facility.

Windblown Material

Windblown material is reduced by the placement of 0.5 m of native soil over the waste in the compacted trench. Multiple runs over the waste by a 140 HP D6C CAT also helps to prevent any material from being scattered by the wind. The site also includes perimeter fencing, which acts as a barrier to any windblown material from leaving the site.

Site Maintenance

Maintenance of the sorting facility and the landfill site will be minimized by total control of access and dumping activities. Spills and mishaps are cleaned up immediately. Bailed landfill material is stored on an advancing face principle with dirt cover being placed as soon as a row is complete. Burning when permitted will be clean material only and when the wind is right. Consideration may be given for shredding trees and brush for landfill cover and burning of clean construction material in a waste heat boiler utilizing the recovered heat to heat the sorting facility in winter.

Hazardous Waste

Hazardous waste other than hydrocarbon contaminated soils would be brought to the sorting facility, separated and properly stored until sufficient quantities accumulated to warrant shipping to Swan Hills, Alberta for final disposal at a Class II landfill. Appliances using regulated substances are placed in the waste stream after appropriate recovery of the hazardous materials in them. Materials prohibited by the waste facility's license would be refused and authorities alerted to ensure proper disposal.

Maps

There are no existing engineered drawings of the Hay River Solid Waste Site.

**SCOPE OF WORK**

The Town wishes to retain a consultant to work with the Town Administration to plan and design the management of the existing Hay River's Solid Waste Facility. The following items are the

- Meet with Town of Hay River Public Works and Administrative personnel to discuss program and budget
- Gather information related to existing and past waste practices
- Determine the engineering requirements necessary to meet typical Water Board licence provisions
- Follow applicable CCME guidelines during the development of all deliverables
- Draft Report
- Final Report



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This project does not include any of the following items:

- Design of a new facility
- Decommissioning plan
- Inspection, operation or management services

**Budget**

The Town has budgeted \$30,000.00 for this project in the 2009 fiscal year.

**Local Involvement**

The Successful Proponent is expected to utilize local resources whenever possible in order to maximize the benefits of this project to the community.

**Project Team**

Identify key members and their relevant experience, qualifications and project duties. The proponent shall present the firm(s) who shall comprise the Project Team. The prime consultant and, if applicable, the sub-consultant shall be identified and the roles of all firms shall be described.

Preference shall be given to those consultants who are able to staff the project with qualified personnel resident in the NWT.

**Past Relevant Experience and References:**

Proponents should describe similar services they have provided in the past five (5) years. Identify the location and dates of the work performed. Projects for the Town are of particular interest; however other projects that indicate the proponent's experience and ability to undertake the work should also be described.

Two references are required from previous projects that relate to this RFP. The names and contact information are required for each reference.

**Work Plan/Methodology**

Proponents should demonstrate their understanding of the work involved and explain their approach. The consultants should detail the proposed methodology to achieve the project objectives. The consultant should demonstrate their understanding of the work involved by addressing the following factors: objectives, information gathering, client input, public consultation, schedules, budget, significant milestones or activities.



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**Schedule**

The proposed schedule for this project is with key dates are as follows:

<b>Important Milestones</b>	<b>Dates</b>
Distribution of RFP To Proponents	September 28, 2009
Proposal Closing	October 28, 2009
Award of Proposal	November 11, 2009
Start Up Meeting	November 18, 2009
Presentation of Draft Report to Administration & Works Personnel	January 6, 2010
Final Report	January 20, 2010

The proponent shall indicate if changes to the proposed schedule are anticipated and provide an alternate schedule.

**END OF TERMS OF REFERENCE**



## **PROPOSAL EVALUATION**

The following information should be provided in each proposal. As this information will be utilized in evaluating each responsive proposal submitted, Proponents are encouraged to use the same headings to present their offer.

### **Team**

Describe the team in terms of responsibilities, decision-making and the role each member of the team will play. In particular:

- Who will have the overall responsibility for managing the project team (ie: Project Manager)?
- What experience does this person have managing a team on similar projects? In particular, describe the manager's experience on at least two similar projects. What experience does this person have managing a fixed fee contract?
- Identify the amount of time key members are expected to put into this project.
- Identify who will be backup to key personnel. (i.e: Project Manager / Discipline Design Team Lead)
- Provide resumes for key members of the project team, including back-up members.

### **Methodology**

Proponents should demonstrate their understanding of the work involved; explain their approach to meeting the stated objectives, identifying significant factors, objectives, site trips, meetings, schedule, budget, various concerns, client reporting, and other significant events or activities.

### **Proponent's Past Relevant Experience**

Proponents should describe similar services they have provided in the past five (5) years. Identify the location and dates of the work performed. Projects for the Town are of particular interest; however other projects that indicate the proponent's experience and ability to undertake the work should also be described. Note to users, this section focuses on the Firm's experience whereas the Team section focuses on the team's individuals.

The Proponent should include references and contact information from two (2) previous projects that relate to this RFP.

### **Project Schedule**

The proponent shall provide a detailed schedule and work plan that identifies how and when the services shall be conducted, individual responsibility for each service, and demonstrate the project can be completed within the allotted time frame and within budget.

The project schedule will be evaluated based on how closely it meets the project requirements, and how it demonstrates a logical approach to delivering the required services.



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### **Fees and Disbursements**

The Town intends to enter into a contract as appended to this RFP. Provide a breakdown of the proposed fee for each portion of work in a table format:

- Disbursements for Travel: Identify the place of work for each team member, and where travel will be billed from for each team member, for each phase of the work.
- The proposal must propose a stipulated sum fee for the total cost of the project.
- Provide hourly rates for each team member.
- Prices bid must be stated in actual dollars and cents expressed in Canadian funds.
- Prices should not include GST.

The Town will recognize minor disbursements with a mark-up on fees of 3%. This will apply to the following:

- Local communication costs (phone, cell phone, fax, etc.)
- Long distance phone expenses
- Routine production of drawings and documents
- Local travel expenses (up to 20 km from office)
- Courier and messenger services
- The Town will reimburse the consultant for other justified disbursements at cost plus an administrative mark-up of 5%. Examples of other disbursements to be reimbursed under these terms include:
  - Travel from or outside the consultant's local area. Identify the place of work for each team member, and where travel will be billed from for each team member, for each phase of the work.
  - Living expenses for personnel while on duty travel approved by the client.
  - Project related advertising costs.
  - Specialized, project specific computer software and/or services.
  - Use of specialized equipment.
  - Printing of documents.

### **Northern/Local Content**

Preference will be made for Northern or Local content. The dollar value of the goods and services provided by the Proponent's own forces should be declared, as should the dollar value of goods and services to be provided by all sub-contractors with whom contracts will be entered into for this project. If this information is not submitted with a Proposal or is incomplete, the Proponent will not receive appropriate credit.

### **Mandatory Requirements**

The following are mandatory requirements for all proposals. Proposals that do not clearly demonstrate compliance with these requirements will result in disqualification of the proponent's proposal and removal of the proposal from further considerations during the evaluation process.



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- Must be received by the closing time and date.
- Must clearly state proposed fees and expenses.

**Rating**

Proposals shall be evaluated and rated by an evaluation committee, using predetermined criteria to determine which proposal potentially provides the best value to the Town.

Detailed ratings and comments will be confidential however, once the contract has been executed, a proponent can ask for their own detailed rating and comments and the names and total rating of the other proponents.

In terms of relative importance, each criterion is given a pre-assigned weight, as outlined on the Proposal Rating Schedule, to which each proposal will be evaluated.

Each criterion is rated on a scale of 0 to 10. Each criterion's rating is then multiplied by the assigned weight to yield a total for that element. Summation of the individual totals yields a total score, which represents the overall degree of satisfaction for the respective submission.

This procedure is repeated for each of the responsive proposals. The highest total score will determine the proposal that potentially provides the best value to the Town.

**Proposal Rating Schedule**

Item	Rating Criteria	Assigned Weight (A)	Unit Points Awarded (B)	Total Points (A) x (B) = (C)
1	Team – Personnel to be assigned to or made available to the contract	30		
2	Methodology or approach proposed by the proponent	20		
3	Proponent's Past Relevant Experience	15		
4	Project Schedule	5		
5	Fees and Expenses	20		
6	Northern/Local Content	10		
Totals		100	N/A	

**Legend**

Unless stated otherwise herein, Unit Points will be assigned as follows:

- Deficient      0 points
- Poor            1 – 3 points
- Fair             4 – 6 points
- Good            7 – 8 points
- Excellent      9 – 10 points

## THIS AGREEMENT

made in duplicate this      day of      , 2009.

## BY AND BETWEEN

The Municipal Corporation of the Town of Hay River, (hereinafter called the "Client")

## AND

, (hereinafter called the "Engineer")

**WHEREAS** the Client intends to engage the professional services of the Engineer in connection with the project as hereinafter described (the "Project"):

The Town of Hay River Solid Waste facility is in need of innovative practises in order to extend the life of the site. The Town is further interested in managing the facility more efficiently and diverting non-hazardous and bulk metals from the facility.

**AND WHEREAS** the Client desires to have the Engineer perform the engineering services in connection with the Project as set out in Schedule A annexed hereto;

**NOW THEREFORE**, the Client and the Engineer, in consideration of their mutual duties and responsibilities to one another as hereinafter set forth, **AGREE AS FOLLOWS:**

### 1. ARTICLE ONE

#### DEFINITIONS

- 1.1. **Agreement** – is this Prime Agreement for professional services, including Schedules A, B, C and D annexed hereto.
- 1.2. **Consultant** – shall mean registered/licenced professional engineers, architects or other specialists other than the Engineer, engaged by the Client directly.
- 1.3. **Contractor** – is the party contracting with the Client for the provision of labour, materials and equipment for the execution of the Work.
- 1.4. **Contract** – is the agreement between the Client and the Contractor for the provision of labour, materials and equipment for execution of the Work by the contractor.
- 1.5. **Contract Documents** – shall mean all documents relating to the Work issued by or through the Engineer which are incorporated into the Contract, and all variations and modifications thereto issued by or approved by the Engineer.
- 1.6. **Contract Time** - shall mean the period from the notice to proceed with the work to the projected completion date for the Contract agreed to between the Client and the Contractor in the Contract.
- 1.7. **Cost of the Work** – for the purposes of fee computation under this Agreement, shall mean the total cost to the Client of the Work, (including all materials, equipment, labour, taxes, Contractor's overhead and profit provided in accordance with the Contract Documents)

#### AND SHALL INCLUDE:

- 1.7.1. The cost of all installations carried out by parties other than the Contractor, as required by the Client;
- 1.7.2. The cost of all Work carried out under the Contract;
- 1.7.3. Refunds or sales tax exemptions on any materials and/or equipment.
- 1.7.4. The cost of Work carried out by direct labour or direct purchase of materials or equipment by the client at prices pertaining during the Contract Time;
- 1.7.5. The provision of new or old materials by the Client;
- 1.7.6. The value of all deletions made by the Client from the Work after the Engineer has completed a design for the deleted items as a part of the Work;
- 1.7.7. The value of any monetary damages or setoffs retained by the client from the Contractor with respect to the Work;

#### BUT SHALL NOT INCLUDE:

- 1.7.8. Professional fees, including engineering fees, or the fees of other Consultants or disbursements or the salary of the Client's representative or other Client's salary cost or other Client's administrative costs;
- 1.7.9. The cost of land purchase and easements;
- 1.7.10. The costs of items which do not form part of or are required for the function of the Work.
- 1.8. **Field Services** – shall mean making such visits to the Project

site at intervals appropriate to the stage of construction as the Engineer, in the Engineer's sole professional discretion, considers necessary to enable him/her to ascertain whether the Contractor is carrying out the Work in general conformity with the Contract Documents for the Project.

- 1.9. **Project** - shall mean the Project described in the recitals to this Agreement.
- 1.10. **Services** - shall mean the Engineer's Basic Services and Additional Services as set forth in Schedule A.
- 1.11. **Shop Drawings** - shall mean drawings, diagrams, illustrations, schedules, performance charts, technical brochures and other data which are to be provided by the Contractor or by others to illustrate details of a portion of the Work.
- 1.12. **Substantial Performance** - shall have the meaning set out in the lien legislation at the place of the Work, or if such legislation shall not contain such definition, it shall mean that the Work is ready to be used or is being used for the purpose intended and is so certified by the Engineer.
- 1.13. **Sub-Consultant** - shall mean any registered/licenced professional engineers, architects or other specialists engaged by the Engineer in connection with the Project.
- 1.14. **Termination Expenses (Suspension Expenses)** - shall mean expenses incurred by the Engineer which are directly attributable to termination or suspension of the Services for reasons beyond the control of the Engineer, and shall include the Engineer's expenses reasonably and necessarily incurred in winding down his/her Services.
- 1.15. **Total Performance** - shall mean that the Work as appraised by the Engineer has been performed to the requirements of the Contract Documents, and is so certified by the Engineer.
- 1.16. **Work** - shall mean all labour, materials and equipment to be supplied and incorporated into the Project by the Contractor as required by the Contract Documents.

geotechnical reports, quantity surveyor and all appropriate testing services. Such Consultants engaged by the client and the Engineer, and contracts for the provision of such services, whether arranged by the Client or the Engineer, shall be deemed to be direct contracts with the Client unless expressly provided otherwise.

- 2.4. Authorize the Engineer in writing to act as the Client's agent for such purposes as are necessary to the Engineer's rendering on Services pursuant to this Agreement.
- 2.5. Give prompt consideration to all sketches, drawings, specifications, tenders, proposals, contracts and other documents relating to the Project prepared by the Engineer, and whenever prompt action is necessary, inform the Engineer of the Client's decisions in such reasonable time so as not to delay the Services of the Engineer, or to prevent the Engineer from forwarding drawings or instructions to the Contractor or to Consultants or to Sub-Consultants.
- 2.6. Pay the Engineer as provided for in this Agreement.
- 2.7. Provide necessary advertising incidental to obtaining tenders, and provide or reimburse the Engineer for obtaining necessary legal, accounting, insurance, bonding and other counselling services in connection with the Project.
- 2.8. Arrange and make provision for the Engineer's entry and ready access to property (public and private) as well as to the Project site, as necessary to enable the Engineer to perform his/her Services.
- 2.9. Designate in writing an individual to act as the Client's representative, such person to have complete and exclusive authority to transmit instructions to and receive information from the Engineer.
- 2.10. Give prompt written notice to the Engineer whenever the Client or the Client's representative become aware of any defects or deficiencies in the Work or in the Contract Documents.
- 2.11. Obtain required approvals, licences and permits from municipal, governmental or other authorities having jurisdiction over the Project so as not to delay the Engineer in the performance of Services.

- 2.12. Expressly undertake not to enter into contracts in connection with the Project with Contractors or Consultants which describe duties and responsibilities of the Engineer which are inconsistent with the duties and responsibilities of the Engineer provided for in this Agreement, without obtaining the Engineer's prior written agreement thereto.
- 2.13. Attach and initial any additional duties and responsibilities of the Client to the Engineer which shall form a part of this Article 2: (attach, initial and date any additions)

## 2. ARTICLE TWO

### CLIENT'S DUTIES AND RESPONSIBILITIES TO THE ENGINEER

#### THE CLIENT SHALL:

- 2.1. Instruct the Engineer fully in writing as to the Client's total requirements in connection with the Project, including the Client's Project budget and time constraints.
- 2.2. Make available to the Engineer all relevant information or data pertinent to the Project which is required by the Engineer. The Engineer shall be entitled to rely upon the accuracy and completeness of all information and data furnished by or through the Client, including information and data originating with the Client's Consultants, whether such Consultants are engaged at the request of the Engineer or otherwise. Where such information or data originates either with the Client or with the Client's Consultants, then the Engineer shall not be responsible to the Client for the consequences of any error or omission contained therein.
- 2.3. When required by the Engineer in Writing, engage specialist Consultants directly to perform services necessary to enable the Engineer to carry out his/her Basic Services as set forth in Schedule A, such services to include but not be restricted to an accurate survey of the building site, site services report,

## 3. ARTICLE THREE

### CONSTRUCTION ADMINISTRATION AND CO-ORDINATION

THE ENGINEER'S CONSTRUCTION ADMINISTRATION AND CO-ORDINATION FUNCTIONS PROVIDED FOR IN ARTICLES 3.1 THROUGH 3.5 INCLUSIVE SHALL PERTAIN ONLY TO THE EXTENT THAT THE SERVICES CONTEMPLATED BY PARAGRAPH A.7.1 IN SCHEDULE A HAVE BEEN RENDERED ON THE PROJECT.

IT IS UNDERSTOOD AND AGREED BY THE CLIENT AND THE ENGINEER THAT ONLY WORK WHICH HAS BEEN SEEN DURING THE

CONSTRUCTION PERIOD BY THE ENGINEER CAN BE SAID TO HAVE BEEN APPRAISED, AND COMMENTS ON THE BALANCE OF THE WORK ARE ASSUMPTIONS ONLY, BASED UPON EXTRAPOLATION BY THE ENGINEER.

THE PERFORMANCE OF THE CONTRACT IS NOT THE ENGINEER'S RESPONSIBILITY NOR ARE THE ENGINEER'S FIELD SERVICES RENDERED FOR THE CONTRACTOR'S BENEFIT. THE CONTRACTOR ALONE IS RESPONSIBLE FOR THE QUALITY CONTROL OF THE WORK.

- 3.1. Authority for general administration and co-ordination of the Project shall reside in the Engineer to the extent provided for in this Agreement.
- 3.2. All notices, instructions, requests, claims or other communications by the Contractor, by the Consultants or by the Client to one another shall be made by or through the Engineer.
- 3.3. The Engineer shall make decisions on all claims of the Client and of the Contractor under the Contract, and on all matters relating to the interpretation of the Contract Document.
- 3.4. The Engineer shall coordinate the activities of the Engineer's Sub-Consultants as well as those of the Client's Consultants on the Project to the extent that the Engineer is empowered to do so in the Consultants' contracts with the Client.
- 3.5. No acceptance by the Engineer of the Work or of the services of the Contractor or the Consultants, whether express or implied, shall relieve the Contractor or the Consultants from their responsibilities to the Client for the proper performance of such Work or services, and further, the Engineer shall not be responsible to the Client or to the Contractor or the Consultants for the means, methods, techniques, sequences, procedures and use of equipment, of any nature whatsoever, whether reviewed by the Engineer or not, which are employed by the Contractor or by the Consultants in executing, designing or administering any phases of the Work, or for placing into operation any plant or equipment or for safety precautions and programs incidental thereto.

## **4. ARTICLE FOUR**

### **CERTIFICATIONS BY THE ENGINEER**

- 4.1. The Engineer shall issue certifications as set forth in Paragraph A.7.9 in Schedule A only where Field Services have been performed by the Engineer as defined in Article 1.8.
- 4.2. In the event that the Engineer attends at the site of the Project in accordance with Paragraph A.7.2 of Schedule A, then the Engineer shall issue qualified certificates only in respect of such attendances.

## **5. ARTICLE FIVE**

### **COST OF THE WORK AND CONTRACT TIME ESTIMATES**

- 5.1. The parties expressly acknowledge and agree that the Cost of the Work and Contract Time estimates provided by the Engineer to the Client under this Agreement are subject to change and are contingent upon factors over which the Engineer has no control. The Engineer does not guarantee the accuracy of such estimates. Exact costs and time will be determined only when tenders have been received for the Work and when the Work has been performed.

## **6. ARTICLE SIX**

## **TERMINATION AND SUSPENSION**

### **BY THE CLIENT:**

- 6.1. If the Engineer is shown to be in default in the performance of any of the Engineer's material obligations set forth in this Agreement, then the Client may, by written notice to the Engineer, require such default to be corrected. If within 30 days after receipt of such notice such default shall not have been corrected or reasonable steps to correct such default shall not have been taken, the Client may, without limiting any other right or remedy the Client may have, immediately terminate this Agreement and make settlement for the cost of the Services rendered and disbursements incurred by the Engineer pursuant to this Agreement and remaining unpaid as of the effective date of such termination.
- 6.2. If the Client is unwilling or unable to proceed with the Project, the Client may suspend or terminate this Agreement by giving 30 days prior written notice to the Engineer. Upon receipt of such written notice, the Engineer shall perform no further Services other than those reasonably necessary to suspend or close out the Project. In such event the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension or termination, plus the Engineer's Suspension or Termination Expenses as defined in Article 1.14.
- 6.3. If the Engineer is practising as an individual and is unable to satisfactorily perform Services for a period of 30 consecutive days or for an aggregate of 45 days in any 3 month period, the Client may terminate this Agreement upon giving 7 days written notice to the Engineer, and shall pay for the Services rendered and disbursements incurred by the Engineer to the date of such termination.

### **BY THE ENGINEER**

- 6.4. If the Client is shown to be in default in the performance of any of the Client's material obligations set forth in this Agreement, including payment of the Engineer's fee as required herein, then the Engineer may, by written notice to the Client, require such default to be corrected. If within 30 days after receipt of such notice such default shall not have been corrected, the Engineer may, without limiting any other right or remedy he may have, immediately terminate this Agreement. In such event, the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such termination plus the Engineer's Termination Expenses as defined in Article 1.14, in addition to any other rights or remedies the Engineer may have.
- 6.5. If the Engineer's Services are suspended by the Client at any time for more than 30 consecutive or non-consecutive days through no fault of the Engineer, then the Engineer shall have the right at any time until such suspension is lifted by the Client, without limiting any other right or remedy the Engineer may have, to terminate this Agreement upon giving written notice thereof to the Client. In such event the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension, plus the Engineer's Suspension Expenses as defined in Article 1.14.

## **7. ARTICLE SEVEN**

### **OWNERSHIP AND USE OF DOCUMENTS,**

## PATENTS AND TRADEMARKS

- 7.1. All drawings, plans, models, designs, specifications, reports, photographs, computer software, surveys, calculations and other data, including computer print-outs, contained in the Contract Documents or which are otherwise used in connection with the Project, and prepared by or on behalf of the Engineer, are instruments of service for the execution of the Work and as such are the property of the Engineer, whether the Work is executed or not, and the Engineer reserves the copyright therein and in the Work executed therefrom, and they are not to be used on any other work without the prior written agreement and remuneration of the Engineer. The Client is entitled to a copy of the said documents and models for record and maintenance purposes, but only in connection with the Project. In the event that the said documents and models are used by the Client 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 Engineer and without receiving the Engineer's prior written consent, the Engineer does not warrant the fitness of same for the Client's use, and the Client agrees to indemnify, hold harmless and defend the Engineer from and against all claims, demands, losses, damages, liability and costs (including costs between solicitor and own client) associated with such use by the Client.
- 7.2. Subject to Article 6, the Client and the Engineer agree that the Engineer's fee shall be payable by the Client even in the event that the Client does not, for any reason, proceed with the Work as described in the Contract Documents. The Client and the Engineer further agree that payment of the Engineer's fee by the Client pursuant to this Agreement shall be condition precedent to the Client's right to the use of the Contract Documents and models for all purposes in connection with the Project or under this Agreement.
- 7.3. All concepts, products or processes produced by or resulting from the Services rendered by the Engineer in connection with the Project, or which are otherwise developed or first reduced to practise by the Engineer in the performance or Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Engineer, and other than as hereinafter set forth in Article 7.4 the Client shall not use, infringe upon or appropriate such concepts, products or processes without the express written agreement and remuneration of the Engineer.
- 7.4. The Client shall have a permanent non-exclusive royalty to use any concept, product or process which is patentable or capable or trademark, produced by or resulting from the Services rendered by the Engineer in connection with the Project, for the life of the Project, and for no other purpose or project.
- 7.5. The parties agree that the Engineer shall, for all purposes, be deemed to hold in his/her possession the original of the Contract documents, including any computer-generated designs related thereto.

## 8. ARTICLE EIGHT

### BUILDING CODES AND BY-LAWS

- 8.1. The Engineer shall, to the best of his/her ability, interpret building codes and by-laws as they apply to the Project at the time of design, but it is expressly acknowledged and agreed by the Client that as the Work progresses, the building codes and by-laws may change or the interpretation by any public authority may differ from the interpretation of the Engineer, through no fault of the Engineer, and any extra cost necessary to conform to such changes or interpretations during or after execution of the Work will be paid by the Client in the event that the Engineer has received a prior authorization from such authorities in respect of such changes or interpretations.

## 9. ARTICLE NINE

### MEDIATION AND ARBITRATION

- 9.1. If requested in writing by either the Client or the Engineer, the Client and the Engineer 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. Failing such agreement, the mediator shall be appointed by reference to a Judge of the Northwest Territories Court.
- 9.2. If a dispute cannot be settled within a period of thirty (30) calendar days by the mediator appointed under Article 9.1, or such longer period as may be agreed to by the parties, the dispute may, with the prior written concurrence of both the Client and the Engineer, be referred to and finally resolved by way of binding arbitration by a single arbitrator. The arbitrator shall be appointed by agreement of the parties. Failing such agreement, the arbitrator shall be appointed by reference to a Judge of the Northwest Territories Court.
- 9.3. The place of the mediation/arbitration shall be the city closest to the location of the Project, unless the parties agree otherwise.
- 9.4. No one shall act as a mediator/arbitrator who is in any way financially interested in the conduct of the Project or in the business affairs of either the Client or the Engineer.
- 9.5. The laws of the Province where the Project is located shall govern this Agreement and any mediation/arbitration or litigation in respect thereof.
- 9.6. The award of an arbitrator under Article 9.2 shall be final and binding upon the parties, and shall be enforceable by them in any Court of competent jurisdiction.

## 10. ARTICLE TEN

### SUCCESSORS AND ASSIGNMENT

- 10.1. This Agreement shall enure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors and assigns.
- 10.2. If a party to this Agreement who is an individual should desire to bring in a partner or partners, or if a party who is a partnership should desire to bring in a new partner or partners to share the benefits and obligations of this Agreement, they may do so by promptly notifying the other party in writing of such intended action.
- 10.3. If a party to this Agreement is a partnership, and a partner thereof either dies or retires then the remaining parties therein shall form a new successor partnership to share the benefits and obligations of this Agreement.
- 10.4. Except as set forth in this Article 10, neither party may assign this Agreement without the prior consent in writing of the other.

## 11. ARTICLE ELEVEN

### NOTICES

- 11.1. All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within three (3) business days if made in writing to the other party by certified mail, telegram, facsimile or personal delivery, addressed to the regular business address of such other party.

## 12. ARTICLE TWELVE

### ENTIRE AGREEMENT

12.1. This Agreement constitutes the sole and entire agreement between the Client and the Engineer relating to the Project, and supersedes all prior agreements between them, whether written oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether express or implied, shall form a part hereof. This Agreement may be amended only by written instrument signed by both the Client and the Engineer.

### **13. ARTICLE THIRTEEN**

#### **ADDITIONAL TERMS**

13.1. Attach and initial any additional terms which shall form part of this Agreement

**Proposal for Solid Waste Facility Management and Design**

**Town Reference Number 2009 – C0905**

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the day and first above written by their duly authorized officers and representatives.

The Corporate Seal of the Municipal Corporation of the Town of Hay River was hereunto affixed in the presence of:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Senior Administrative Officer

The Corporate Seal of \_\_\_\_\_ is hereunto affixed in the presence of:

\_\_\_\_\_

\_\_\_\_\_

# A. SCHEDULE

## ENGINEER'S BASIC SERVICES AND ADDITIONAL SERVICES

### GENERAL:

A.1 The Engineer shall render Basic Services and Additional Services to the Client under this Agreement with that degree of care, skill and diligence normally provided in the performance of such services in respect of projects of similar nature to that contemplated by this Agreement at the time and place that such services are rendered.

A.1.1 In rendering Basic Services and Additional Services on the Project, the Engineer may, at any stage of such services, engage Sub-Consultants to perform services necessary to enable the Engineer to carry out duties and responsibilities as set forth in this Agreement, subject to the agreement of the Client, which agreement shall not be unreasonably withheld

### THE BASIC SERVICES SHALL CONSIST OF:

A.2 Advisory and Consulting Services:

A.2.1 With the Client's written authorization, acting as the Client's agent as required in connection with the Project;

A.2.2 Preparing an engineering program based upon the Client's written instructions as set forth in Article 2.1:

A.2.3 Assisting the Client by assessing and advising upon the appropriateness of the program of construction reviews and testing services which may be required by the Engineer or imposed by law in connection with the execution of the Work by the Contractor;

A.2.4 Should the Client fail to provide the information required by the Engineer pursuant to Articles 2.2 and 2.3, then the Engineer shall advise the Client in writing as to further investigative work which in the Engineer's opinion is necessary prior to the preparation of the Contract Documents, and as agent for and on behalf of the Client, and with the Client's prior written approval, the Engineer shall engage Consultants to perform such investigative work at the Client's expense;

A.2.5 If required by the Client, preparing and periodically updating a Cost of the Work estimate.

A.3 Conceptual Design Services:

A.3.1 Preparing preliminary concept sketches and developing preliminary specification notes.

A.4 Preliminary Design Services:

A.4.1 When required by the Engineer, obtaining advice and information from any Consultants retained directly by the Client to enable the Engineer to carry out duties and responsibilities as set forth in this Agreement;

A.4.2 Preparing preliminary design drawings;

A.4.3 Preparing outline specifications;

A.5 Final Design Services:

A.5.1 Preparing working drawings;

A.5.2 Preparing Project specifications.

A.6 Construction and Contract Administration Services:

IT IS UNDERSTOOD AND AGREED BY THE CLIENT AND THE ENGINEER THAT ONLY WORK WHICH HAS BEEN SEEN DURING THE CONSTRUCTION PERIOD BY THE ENGINEER CAN BE SAID TO HAVE BEEN APPRAISED, AND COMMENTS ON THE BALANCE OF THE WORK ARE ASSUMPTIONS ONLY, BASED UOPN EXTRAPOLATION BY THE ENGINEER.

A.6.1 Tender Call Services:

A.6.1.1 Assisting in the preparation of pre-qualification documents for bidding Contractors, if required;

A.6.1.2 Preparing tender call Contract Documents and bidding proposal documents;

A.6.1.3 Coordinating all Contract Documents prepared by the Engineer, the Consultants and Sub-Consultants on the Project;

A.6.1.4 Reviewing tenders submitted and advising as to Contractor selection;

A.6.1.5 Assisting in the preparation of the Contract.

A.7 Field Services:

A.7.1 <sup>2</sup>Making such visits to the Project site at intervals appropriate to the stage of construction as the Engineer, in the Engineer's sole professional discretion, considers necessary to enable him/her to ascertain whether the Contractor is carrying out the Work in general conformity with the Contract Documents for the Project.

A.7.2 Field Services are NOT to be provided under this Agreement, but should the Client request the Engineer in writing to attend at the Project site for any reason, then the Engineer may do so, but the Engineer's Services shall not include those described in Article 1.8. In such event, the Contractor shall remain solely responsible for any defects or deficiencies in the Work, and the Engineer's sole responsibility to the Client shall be as set forth in the Engineer's written response to the Client's request, in the form of a qualified report, letter or certificate.

A.7.3 Where required by the Engineer during this phase of the Services, obtaining advice, data and information from any Consultants retained directly by the Client.

A.7.4 Subject to Article 3.4, coordinating the activities of all Consultants and Sub-Consultants on the Project.

- A.7.5 Reviewing Shop Drawings submitted by the Contractor or by others for the sole purpose of ascertaining that the information set forth therein generally conforms with stated design intent for the Work. Responsibility for the detailed design inherent in such Shop Drawings shall remain with the Contractor and with any other party submitting same.
- A.7.6 Monitoring compliance with the program of construction reviews and testing referred to in Paragraph A.2.3 in Schedule A, and keeping the Client informed through periodic reports.
- A.7.7 Interpreting the Contract Documents when requested to do so by the Client or by the Consultants or the Contractor.
- A.7.8 Subject to any applicable lien legislation at the place of the Work, conducting Substantial and Total Performance reviews of the Work, noting defects and deficiencies observed in the Work and reviewing the correction of same when completed by the Contractor.
- A.7.9 Subject to Article 4, certifying the Cost Of The Work, the Contractor's Substantial and Total Performance of the Work and the Contractor's periodic applications for payment.
- A.7.10 Attending meetings necessary to the coordination of the design, Field Services and execution of the Work.
- A.7.11 Preparing and issuing notices of change, change orders and other necessary Project documentation during the course of the execution of the Work.
- A.8 Post-Construction Services:
- A.8.1 Conducting final overall Project review prior to the expiration of the contractor's warranty period and advising the Contractor and the Client in writing as to continuing or newly observed defects or deficiencies in the Work.
- A.9 Attach and initial any additional Basic Services of the Engineer to the client which shall form a part of the Agreement: (attach, initial and date any additions)**
- <sup>1</sup> One of the two sub-paragraphs A.7.1 or A.7.2 must be deleted and initialled.**
- 2 By law, in some jurisdictions only A.7.1 may be rendered.
- A.10 ENGINEER'S ADDITIONAL SERVICES
- The following Additional Services which shall be considered to be additional to the Engineer's Basic Services set forth in this Schedule A, and which are not considered to be typical or customary services, that may be provided by the Engineer to the client at the written request of the Client, and for which the Engineer shall be paid an additional fee pursuant to Schedule B:
- A.10.1 Preparing reports relating to the client's long-range or other plans not included in the Basic Services.
- A.10.2 Preparing an alternative design or systems design not included in the Basic Services.
- A.10.3 Assisting in the preparation of detailed pre-construction Project operation cost budgets, or whole life cost estimates.
- A.10.4 Revising reports, estimates, preliminary studies and design development studies provided by the Engineer pursuant to the Basic Services, for reasons over which the Engineer has no control.
- A.10.5 Revising, designs, drawings, plans, specifications or any of the Contract Documents after their initial completion for reasons over which the Engineer has no control.
- A.10.6 Preparing designs not included in the tender set of Contract Documents.
- A.10.7 Preparing Contract Documents for alternative prices requested by the client relating to portions of the Work not awarded.
- A.10.8 Providing special analysis of the Client's needs, such as operational analysis and preparing operating or maintenance manuals, operating drawings or charts.
- A.10.9 Preparing for special reviews and testing of the Work.
- A.10.10 Preparing bills of materials, measuring quantities of Work performed and preparing Shop Drawings.
- A.10.11 Performing scheduling and expediting services during construction.
- A.10.12 Providing Additional or extended Services made necessary by:
- A.10.12.1 Work damaged by fire or other causes during the term of the Contract;
- A.10.12.2 Defective Work of the Contractor;
- A.10.12.3 Unreasonable prolongation of the Contract Time due to strikes, or for other reasons beyond the control of the Engineer.
- A.10.12.4 The Contractor's default under the Contract arising out of the Contractor's delinquency or insolvency or of those employed by him;
- A.10.12.5 Deficient or defective services, information or operations provided by the client pursuant to Article 2.
- A.10.12.6 Additional services necessitated by the occurrence of emergencies on site.
- A.10.13 Providing Additional Services arising out of separate contracts, cost-plus contracts and pre-tendered contracts.
- A.10.14 Providing advice and instructions to the Client beyond the scope of advice and instructions referred to in the Basic Services.
- A.10.15 Preparing record drawings.
- A.10.16 Providing furnishing drawings.

- A.10.17 Assisting in litigation, arbitration, negotiations or other legal or administrative proceedings on behalf of the Client, and all Necessary preparation in respect thereof.
- A.10.18 Preparing applications and supporting documents for governmental grants, loans or advances in connection with the Project.
- A.10.19 Subject to Schedule D, preparing or reviewing environmental assessments and impact studies, and assisting in obtaining approvals of authorities having jurisdiction over the environmental aspect of the Project.
- A.10.20 Providing renderings or models for the Client's use.
- A.10.21 Obtaining, on the Client's behalf, required approvals, licences and permits from municipal and governmental authorities having jurisdiction over the Project.

## B. SCHEDULE

### ENGINEER'S FEES FOR BASIC SERVICES AND ADDITIONAL SERVICES

#### B.1 Payment of Fees for Basic Services:

B.1.1 The Client shall pay to the Engineer when invoiced for the Basic Services set forth in Schedule A, a fee as hereinafter set forth. The Engineer's accounts are due when presented and accounts unpaid by the client 30 days after presentation shall bear monthly interest at chartered bank prime rate of interest plus 2% which is equivalent to an annual rate of interest of 24%.

B.1.2 The Client agrees that it shall pay to the engineer, in addition to the fee agreed to in this Agreement, the amount of any goods and services or other taxes on the said fee, including any taxes which first came into effect after the date of this Agreement.

B.1.3 The fee for the engineer's Basic Service set forth in Schedule A is as follows: A fixed fee of \$ based on the accepted scope of work for options analysis and contract documentation and an hourly fee to an estimated upset of \$ for Tender and Contract Administration services. This fee is subject to 5% GST.

B.1.4 In the event that the Client disputes any portion of the Engineer's fees, the Client shall provide the Engineer with written notice of such dispute within 30 calendar days following receipt of the invoices for disputed fees and the reasons there for. The Client shall be entitled to withhold only the amount of the fees in dispute and the balance of the fees not in dispute shall be paid by the Client without deduction or set-off. The parties agree to use their best efforts to diligently pursue resolution of any fees in dispute within 30 calendar days of the Client's written notice of dispute. If resolution is not achieved, the fees in dispute shall be referred to mediation and arbitration in accordance with Article 9 of this Agreement. The Client's failure to dispute the Engineer's fees within 30 calendar days of receipt of any invoice shall be deemed to be a waiver of all claims which the Client has with respect to such invoice.

#### B.2 Reimbursable Expenses for Basic and Additional Services;

The Client shall pay to the Engineer when invoiced the following disbursements made by the Engineer in carrying out Basic and Additional Services pursuant to Schedule A, which shall be increased to cover office services and handling by 2 % where such expenses are incurred by the Engineer.

The Expense of transport, subsistence and lodging in connection with the Project beyond 0 kilometres of the Engineer's office. Car expenses shall be charged at \$0 per kilometre, and other means of travel cost.

The expense of long distance telephone calls, telegrams, telex and facsimile.

The expense of reproduction and delivery of information, drawings, specifications and other documents necessary to the Project, and fees paid for securing approvals, permits or licences from regulatory agencies having jurisdiction over the Project.

The expense of providing and maintaining Project site offices, telephones, facsimile as required for use by the Engineer and the Engineer's Sub-Consultants.

The expense of all advertising incidental to the Project and obtaining all necessary legal, accounting, insurance, bonding and other counselling services pertaining to the Project as well as computer charges and related expenses as agreed to between the Client and the Engineer.

The expense of any federal, provincial, territorial or municipal tax payments required to be made by the Engineer in respect of the Services, including any goods and services, customs, excise or any other taxes, including any taxes which may first become payable in respect of the Services after the execution of this Agreement

The expense of any special or increased insurance coverage required by the Client according to paragraph 4 in Schedule C.

All other costs reasonably incurred by the Engineer in the performance of Basic and Additional Services in connection with the Project where the Engineer has obtained the prior written approval of the Client there for.

#### B.3 Payment of Fees for Additional Services:

B.3.1 The Client shall pay to the Engineer when invoiced for the Additional Services set forth in Schedule A, a fee as hereinafter set forth. The Engineer's accounts are due when presented and accounts unpaid by the Client 30 days after presentation shall bear monthly interest at chartered bank prime rate plus 2% which is equivalent to an annual fee payable of interest of 24%.

B.3.2 No deduction or set-off shall be made by the Client from the fee payable to the Engineer.

B.3.3 The fee for the Engineer's Additional Services set forth in Schedule A is as follows:

- a payment based upon an hourly rate for the Engineer's Personnel as hereinafter set forth: A copy of the tender proposal with rates and fees is attached.

## C. SCHEDULE

### INSURANCE, DAMAGES AND LIABILITY OF THE ENGINEER

C.1 In consideration of the provision of the Services by the Engineer to the Client under this Agreement, the Client agrees that any and all claims which the Client has or hereafter may have against the Engineer, the Engineer's servants, employees, Sub-consultants and representatives, in respect of the Services, howsoever arising, whether in contract or in tort, shall be absolutely limited to:

C.1.1 Claims brought within a period of six years from the date of the termination or suspension of the Engineer's Services or of the date of the Certificate of Substantial Performance, whichever shall first occur, or within such shorter period as may be prescribed by any limitation statute in the Province where the Project is located.

C.1.2 The amount of the Engineer's (Project) professional liability insurance available at the date that a claim is brought against the Engineer by the Client, including the deductible portion therein. If for any reason such insurance shall not be available or shall not apply to any claim made by the Client against the Engineer in respect of the Services, then the liability of the Engineer to the Client under this Agreement shall be absolutely limited to the re-performance at the Engineer's own cost of those Services which are proven at law to constitute errors, omissions or negligent acts on the part of the Engineer or anyone for whom the Engineer may be responsible at law.

C.2 For all purposes of this limitation of liability provision, it is agreed by the Client and the Engineer that as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued, including any final confirmation thereof, in any and all events not later than the date of the termination or suspension of the Engineer's Services or of the date of the Certificate of Substantial Performance of the Work, whichever shall first occur, and as to any acts or failures to act occurring after the date of Substantial Performance, not later than the date of issuance of the final certificate for payment on the Project by the Engineer.

C.3 The Engineer's liability with respect to any claims arising out of this Agreement shall be absolutely limited to direct damages arising out of the Services, and the Engineer shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the Client, including but not limited to claims for loss of profits and loss of markets.

It is further agreed that the Engineer shall not be liable for damages, interest, costs or any other expense arising out of the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer's specifications, advertizing, product literature or written documentation on which the Engineer reasonably relied in the preparation of the design or Contract Documents.

C.4 The Engineer's (Project) professional liability insurance policy certificate of coverage (shall apply exclusively to the Project

and to no other project and) shall be available for inspection by the Client at all times upon request. Prior to the date of the execution of this Agreement, if the Client wishes, because of particular circumstances or otherwise, to increase the amount of the coverage of such policy, or to obtain other special or increased insurance coverage, then the Engineer shall cooperate with the Client to obtain such increased or special insurance coverage at the Client's expense.

C.5 The Engineer's (Project) professional liability insurance policy shall remain in force from the date of execution of the Agreement and, subject to availability at reasonable cost, for years after the date of Substantial Performance of the Work, and shall contain a cancellation clause requiring the insurer to give the Client 30 calendar days prior written notice of any cancellation of such policy.

C.6 This Schedule C shall survive the completion of the Project and the completion of the Engineer's Services under this Agreement.

## D. SCHEDULE

### POLLUTANTS AND HAZARDOUS WASTES

D.1 The Client recognizes that projects involving pollutants and hazardous wastes, as defined below, create extraordinary risks. In consideration of the said extraordinary risks and in consideration of the Engineer providing the Services to the Client in connection with the Project on which pollutants and hazardous wastes are involved, the Client agrees that the Engineer's liability to the Client with respect to any matter in any way arising out of the Engineer's involvement with pollutants and hazardous wastes associated with this Agreement shall be limited to or otherwise protected against as provided in paragraphs A and B below.

A. The Engineer's liability to the Client in connection with pollutants and hazardous wastes is absolutely limited, both in contract and in tort, for any and all claims arising out of or in connection with the Project to a total maximum aggregate amount not to exceed the cost of re-performance of the Services at the sole cost of the Engineer for that portion of the Services proven to be in error. It is further agreed that such limitation shall be exclusive of the liability of the Engineer to the Client which may otherwise be provided for in this Agreement for claims unrelated to pollutants and hazardous wastes.

B. In further consideration of the Engineer providing the Services to the Client in connection with the Project in which pollutants and hazardous wastes are involved, the Client agrees that in connection with incidents and claims initiated by third parties involving pollutants and hazardous wastes, the Client (to the extent that the Engineer is not covered by insurance in respect thereof) shall indemnify, defend and hold harmless the Engineer of and from any and all suits, actions, legal, administrative or arbitration proceedings, claims, demands, damages, penalties, fines, losses, costs and expenses of whatsoever kind or character, arising or alleged to arise out of the Services of the Engineer or any claims against the Engineer arising or alleged to arise from the acts, omissions or work of others. Such indemnification shall apply to the fullest extent permitted by law, regardless of fault or breach of contract by the Engineer and shall include the fees and charges of lawyers in defending or advising the Engineer as to such claims under the Agreement. Without limiting the

generality of the foregoing, such indemnity extends to claims which arise out of the actual or threatened disbursement, discharge, escape, release or saturation (whether sudden or gradual) of any pollutant or hazardous waste in or into the atmosphere, or on, on to, upon, in or into the surface or subsurface soils, water or water courses, persons, objects or any other tangible matter.

D.2 Nothing herein shall relieve the Engineer from obligations to provide the Services required by this Agreement, and generally as required by standard engineering practice current as of the date of performance of the Services, and nothing herein shall apply to claims, damages, losses or expenses which are finally determined at law to result from the Engineer's intentionally wrongful acts.

D.3 For all purposes of this Schedule D, 'pollutants and hazardous wastes' shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste, including, without limitation, pollutants, hazardous or special wastes as defined in any federal, provincial or municipal laws.