

The Corporation of the City of Thorold

## **Request for Proposal**

For

**Consulting Services:**

**Mausoleum Conceptual Design**

Request for Proposal No. 2019-20

RFP Issue Date: March 18<sup>th</sup>, 2019

Proposal Submission Deadline: 2:00pm **Wednesday, April 3, 2019** Local Time  
Thorold, ON

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## **INVITATION TO PROPONENTS**

This Request for Proposal (“RFP”) is an invitation to qualified, professional consultants (the “Proponent”) to submit Proposals for Consulting Services (“Services”), to support The Corporation of the City of Thorold (the “Purchaser”).

The Preferred Proponent shall be required to enter into an Agreement (“Agreement”) substantially in the form of the Agreement attached as Appendix A - Form of Agreement for the provision of the Deliverables.

The Purchaser intends to award Agreement(s) to only one (1) Proponent. The Agreement will be signed in December 2018 and no obligation on the part of the Purchaser to purchase Services shall arise until such time as the Agreement is signed.

### **PURPOSE**

The Purchaser is seeking to satisfy the following objectives in issuing the RFP.

- Achieve the best and most innovative solution for the needs of the Purchaser.
- Obtain quality Services at best overall value.
- Enhance customer satisfaction and improvements in Services.
- Facilitate the Purchaser’s purchases without limiting the Purchaser’s choice or negate any other requirement.

### **1.0 RULES OF INTERPRETATION**

The information contained in the RFP is supplied solely as a guideline to Proponents. Such information is not guaranteed, represented, or warranted to be accurate, nor is it necessarily comprehensive or exhaustive.

Nothing in this RFP is intended to relieve the Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

The Agreement executed with the Proponent will not be an exclusive Agreement for the provision of the Deliverables. The Purchaser may contract with others for the same or similar Deliverables to those described in this RFP.

This RFP shall be interpreted according to the following provisions, unless the context requires a different meaning:

- Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.
- Words in the RFP shall bear their natural meaning.
- References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- In construing the RFP, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

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- Unless otherwise indicated, time periods will be strictly applied.
- The following terminology applies in the RFP:
  - i. Whenever the terms “must” or “shall” are used in relation to the Purchaser or the Proponents, such terms shall be construed and interpreted as synonymous and shall be construed to read “the Purchaser shall” or the “Proponent shall”, as the case may be.
  - ii. The term “should” relates to a requirement that the Purchaser would like the Proponent to address in its Proposal.

The terms “shall”, “will” or “must” describes a procedure that is intended to be followed.

## **2.0 DEFINITIONS**

The following definitions apply:

“Agreement” has the meaning set out in Appendix A.

“Applicable Law” and “Applicable Laws” means any common law requirement and all applicable and enforceable statutes, regulations, directives, policies, administrative interpretations, orders, by-laws, rules, guidelines, approvals and other legal requirements of any government and/or regulatory authority in effect from time to time.

“Business Day” or “Business Days” means Monday to Friday between the hours of 7:30 a.m. to 4:00 p.m., except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario), or as otherwise agreed to by the parties in writing.

“Conflict of Interest” means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Proponent’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of its obligations under the Agreement.

“Days” means calendar days.

“Eligible Proposal” means a Proposal that meets or exceeds a prescribed requirement, allowing it to proceed to the next phase.

“Evaluation Team” means the individuals who have been selected by the Purchaser to evaluate the Proposals.

“Personal Information” means recorded information about an identifiable individual or that may identify an individual.

“Preferred Proponent” means the Proponent(s) that the Purchaser has identified as the highest-ranked Proponent(s) in accordance with the evaluation process.

“Proponent” or “Proponents” means an entity that submits a Proposal in response to this RFP and, as the context may suggest, refers to a potential Proponent.

“Proposal” or “Proposals” means all of the documentation and information submitted by a Proponent in response to the RFP.

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“Proposal Submission Deadline” means the Proposal submission date and time as set out in Section 5.1.1 and may be amended from time to time in accordance with the terms of this RFP.

“Purchaser” means The Corporation of the City of Thorold.

“Request for Proposals” or “RFP” means this Request for Proposals issued by the Purchaser for the purchase of the Services, and all addenda thereto.

“RFP Coordinator” means the individual identified in Section 5.2.1.

“Services” means the services intended to be procured pursuant to this RFP.

“Unfair Advantage” means any conduct, direct or indirect, by a Proponent that may result in gaining an unfair advantage over other Proponents, including but not limited to (i) possessing, or having access to, information in the preparation of its Proposal that is confidential to the Purchaser and which is not available to other Proponents, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFP process, or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFP process and result in any unfairness.

### 3.0 SCOPE OF WORK

#### 3.1 Overview

For this RFP project, the successful bidder is to work with applicable staff, departments and community groups to create a Mausoleum Conceptual Design that meets the needs of our Community and Future Growth. The site for this future Mausoleum will be the Lakeview Cemetery on Thorold Townline Road

#### 3.2 Project Tasks

To become familiar with the City of Thorold’s Cemetery Services, changing / developing neighborhood character and the services they provide.

- To prepare three (3) preliminary design concept options for presentation review with City Staff, the local Councilors and stakeholder groups. The preliminary design will be revised as necessary to result in one (1) preferred design concept. The preliminary designs will include a review of like municipalities to review best design practices
- To prepare a minimum of two (2) rendered presentation panels 24” X 30” based on the preferred concept following review that conveys the design intent thoroughly. This would be presented at City Council and two (2) public meeting/open house.
- To revise the preferred design concept based off the public / staff review, identifying this as the final design.
- To prepare conceptual drawings (renderings) of a final design into a comprehensive package which will be the basis to provide council an estimated budget to facilitate construction / design costs in the future.
- The intention of this tender is to create a rendering of a new Mausoleum for the City of Thorold in the future. Upon completion of the design the successful bidder is to provide **estimated pricing** for the full range of contract administration and site supervision services as required, to eventually deliver the project through to completion.
- The estimated pricing the successful bidder will include is as follows; tender documents, contract administration, design costs, project management, construction fees, and site

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supervision. The City of Thorold does not have the internal resources to oversee any project management or construction elements, **estimated** pricing from initial design documents to final occupancy are to be provided by the successful bidder as part of the project scope.

**Additional Cost Estimating –**

Based on the approved final accepted rendering, a high level annual operating cost for utilities, and maintenance is to be provided for future budgetary consideration.

- a) **Schedule** – The City must be provided with a schedule of activities. This includes public, staff and other applicable meetings to accomplish this assignment. Date, time (if applicable) and brief explanation of the activity shall be the main components of the schedule. The City holds the right to change the schedule at their own discretion.
- b) **Meetings and Correspondence** – The Consultant shall document all correspondence/contact with relevant agencies and provide copies/reports to the City. The Consultant shall maintain regular contact with the City and provide written monthly, or as requested, Project Status Reports. In addition to the specific meetings previously indicated, the Consultant shall make allowance for project coordination meetings, as required;
- c) **Sub-Consultant Requirements** – The respondent will identify any Sub-Consultants and Sub-Contractors that will be involved in components of these projects. Documentation is to be provided from the Sub-Consultants and Sub-Contractors stating that they have reviewed all parts of the detailed project schedule where their skills or expertise are required and are able to meet the timelines/milestones provided in the detailed project schedule;

**3.3 Project Management and Reports**

The work undertaken by the Consultant will be overseen and directed by the City of Thorold's Manager of Community Services to which all draft and final reports, cost estimates, and scheduling information will be submitted.

The Consultant shall schedule and chair all project meetings and be responsible for:

- a) The preparation and distribution of meeting agendas prior to the meeting;
- b) The taking of minutes of all meetings and the distribution of the same to all parties within one week of the meeting;

**4.0 PROJECT TIMING**

The following schedule applies to the submission of proposals and the award and execution of this service assignment:

Proposal Submission	April 3 <sup>rd</sup> , 2019
Council Approval	April 16 <sup>th</sup> , 2019
Commencement of Assignment	Approximately two weeks following Council approval

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## 5.0 PROPOSAL SUBMISSION REQUIREMENTS

The Consultant's proposal shall be no more than ten (10) pages, not including the cover letter, figures/tables, resumes and company credentials. The proposal shall include the following:

- a) A work program outlining project understanding, project implementation strategies and methodologies and issues affecting the project;
- b) As project timelines are very critical to the City, a detailed project schedule with key milestones shall be outlined in Gantt Chart format;
- c) Quality assurance and control methods;
- d) A description of the Consultant's related experience. This will include a list of similar studies and relevant contact persons with whom successful completion may be discussed;
- e) A brief description of the project team and the relevant experience and qualifications of individuals including their intended participation and contributions to the project;
- f) The Consultant shall list all sub-Consultants to be included as part of the team and shall provide their intended scope of work for each sub-Consultant;
- g) A description of any municipal resources or efforts expected to be provided by the City;
- h) All proponents must declare whether they perceive any conflict of interest by undertaking the project in response to this Request for Proposal;

**Note: The Consultant shall not include any component cost or person hour details with the Proposal document (Envelope 1). All cost information shall be contained in Envelope 2.**

- i) An estimated breakdown of costs including itemized costs of various phases or components of the assignment and a schedule of person hours for each component of the project; and
- j) All disbursement costs, which may include mileage, telephone charges, printing and reproduction costs, fax charges, courier services, computer services, etc.

## 6.0 SUBMISSION LOGISTICS

Written Proposals must be delivered in a sealed envelope to the City by no later **than 2:00 p.m. local time on April 3<sup>rd</sup>, 2019** and **must** be addressed as follows:

**ATTENTION: The Corporation of the City of Thorold**  
c/o Donna Delvecchio, City Clerk  
3540 Schmon Parkway  
Thorold, ON L2V 4A7

**RE: Request for Mausoleum Conceptual Design**

The City will respond to any inquiries submitted by the respondent through:

**Curtis Dray**  
**Manager, Community Services Department**  
City of Thorold

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Email: [Curtis.Dray@thorold.com](mailto:Curtis.Dray@thorold.com)

The Proposal shall be submitted in two (2) envelopes as identified below. All envelopes required for bid submission shall be supplied by the bidder and labelled as specified. (See submission label page provided).

**Envelope 1 shall contain:**

- (i) Four (4) copies of the Proposal for Services excluding Summary of Fees and Disbursements, but including any addenda. At least one proposal must be with original signatures and be marked as "ORIGINAL"; and
- (ii) Form of Offer, included as Appendix A
- (iii) Envelope 2

**Envelope 2 shall contain:**

A completed Summary of Fees and Disbursements in the form included as **Appendix B**, as well as a time-task cost breakdown.

**LATE OR MISDIRECTED PROPOSALS WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED TO THE RESPONDENT. SUBMISSIONS BY FACSIMILE WILL NOT BE ACCEPTED**

All Proposals must be legibly signed by an authorized officer. In addition, officers are requested to attach to their Proposal, a covering letter detailing any features of their company that they feel should be taken into consideration when evaluating Proposals.

Following the expiry of the deadline date for submissions, all Proposals will be evaluated and the successful respondents, if any, will be notified following Council acceptance of the Proposal. Council acceptance is tentatively scheduled for **April 16<sup>th</sup>, 2019**.

## **7.0 COMMITMENT TO NEGOTIATE**

The successful respondent shall execute any documentation, drafted in accordance with the terms of the successful respondent's quotation and any subsequent negotiations, within thirty (30) days of the date of notification of the successful respondent's selection. Respondents not initially selected as the successful respondent hereby commit themselves, subject to notification by the City to execute documentation as aforesaid up to sixty (60) days following the date of submission of their quotation.

## **8.0 PREPARATION OF PROPOSALS**

It is the intent of the City of Thorold to enter into an agreement for the completion of services. However, award of this contract is conditional on the Council of the City of Thorold approving funds for this project. All costs and expenses incurred by the respondent relating to its Proposal will be borne by the respondent. The City is not liable to pay for such costs and expenses, or to reimburse or to compensate the respondent in any manner whatsoever for such costs and expenses under any circumstances, including the rejection of any or all proposals or the cancellation of this RFP.

## **9.0 GENERAL TERMS AND CONDITIONS OF THE RFP**

The City does not bind itself to accept any Proposal and may proceed as it, in its sole discretion, determines, following receipt of the Proposals. The City reserves the right to accept any Proposal in whole or in part or to discuss with any respondent different or additional terms to those envisaged in this RFP or in such respondent's quotation.

If it becomes necessary to revise any part of this RFP or, if the respondents require additional data to interpret any of its provisions, the revisions or additional data will be provided to all respondents participating in the RFP process at that stage. If revisions or additional data are necessary after the closing date for Proposals, revisions or additional data will be provided only to those respondents who have submitted responses and met the basic requirements. Such respondents will then have the opportunity to modify their Proposal.

## **10.0 RIGHT TO ACCEPT OR REJECT SUBMISSIONS**

The City has the right to:

- (i) Accept or reject any or all of the Proposals;
- (ii) If only one Proposal is received, elect to reject it; or
- (iii) Elect not to proceed with the project as it so determines in its sole and absolute discretion.

## **11.0 NATURE OF REQUEST FOR PROPOSAL**

This RFP does not constitute an offer of any nature or kind whatsoever by the City to the respondent.

## **12.0 AMENDMENTS**

The City may modify, amend or revise any provision of this RFP or issue any addendum at any time. Any modification, amendment, revision or addenda will be in writing and will be provided to all respondents.

The City reserves the right to vary the scope of work prior to the award of the contract.

## **13.0 CLARIFICATION OF PROPOSAL**

The City reserves the right to request the clarification of the contents of any Proposal. The City may choose to meet with some or all of the respondents to discuss aspects of their respective Proposal. The City may require respondents to submit supplementary documentation clarifying any matters contained in their Proposal and seek the respective respondent's acknowledgment of that interpretation. The supplementary documentation accepted by the City and written interpretations which have been acknowledged by the affected respondent shall be considered to form part of the Proposal of that respondent. After the time and date set for receipt of Proposals, only the supplementary documentation specifically requested by the City for the purpose of clarification shall be considered as part of a Proposal. The City is not obliged to seek clarification of any aspect of a Proposal.

## **14.0 FINALIZING TERMS**

This RFP will not constitute a binding agreement, but will only form the basis for the finalization of the terms upon which the City and the successful respondent will enter into the contract documentation, and does not mean that the successful respondent's proposal is necessarily totally acceptable in the form submitted. After the selection of the successful respondent's proposal, the City reserves the right to negotiate with the successful respondent and, as part of that process, to negotiate changes, amendments or modifications to the successful respondent's proposal without offering the other respondents, the right to amend their proposals.

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### 15.0 PUBLICATION OF NAMES OF RESPONDENTS

The City may, at any time, make public the names of all respondents. Additional information may be released in accordance with the **Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31**, as amended. Any proprietary or confidential information contained in the quotation should be clearly identified.

### 16.0 APPOINTMENT OF SUCCESSFUL CONSULTANT

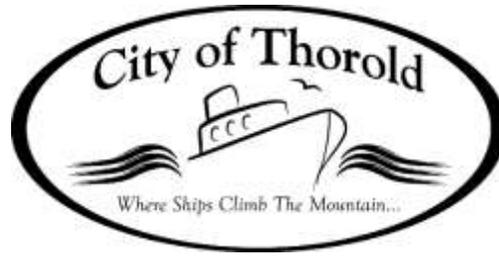
The City of Thorold Purchasing and Tendering Policy will be followed for appointment of this project. The successful respondent will be required to enter into an Agreement in the form of the standard agreement attached as **Appendix C**, containing an upset limit clause. The City of Thorold will only contract for services with one (1) primary Consultant. The respondent is required to stipulate the name of sub-Consultants (if any) to be used, in the quotation submission.

The successful respondent shall carry Professional Liability Insurance in the minimum amount of \$2,000,000 satisfactory to the City.

### 17.0 CONSULTANT PROPOSAL EVALUATION CRITERIA

An evaluation team consisting of Staff from the City will conduct an evaluation of the proposals.

Envelope	Consultant Proposal Evaluation Criteria	Weight	Points	Maximum Total
1	Understanding of Scope	10	___/10	100
1	Work Plan	30	___/10	300
1	Quality Assurance Plan	10	___/10	100
1	Corporate Experience/Qualifications	10	___/10	100
1	Direct Staff Experience/Goal	15	___/10	150
1	Schedule	5	___/10	50
2	Fees	20	___/10	200
	<b>TOTAL POINTS</b>			<b>1000</b>



**REQUEST FOR PROPOSAL  
FOR CONSULTING SERVICES**

**MAUSOLEUM CONCEPTUAL DESIGN**

**CONTRACT # 2019-20**

**APPENDIX - A**

**FORM OF OFFER**

# FORM OF OFFER

**Each Proposal must include this form completed and signed by the Proponent.**  
 To: The Corporation of the City of Thorold

## 1. Proponent Information

The full legal name of the Proponent is:	
Any other relevant name under which the Proponent carries on business is:	
The jurisdiction under which the Proponent is governed is:	
The name, address, telephone and fax numbers, and email address of the contact person for the Proponent is:	
Whether the Proponent is an individual, a sole proprietorship, a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:	
<p>If the Proponent is an incorporated consortium or a consortium that is a partnership or other legally recognize entity, the Proponent must:</p> <ul style="list-style-type: none"> <li>• Identify the single legal entity, which is solely liable and responsible to the Purchaser for the provision of the Deliverables Describe the consortium members.</li> <li>• Describe the contingency plan if a consortium member is no longer part of the consortium.</li> </ul>	

**2. Offer**

The Proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required under the RFP. By submitting its Proposal, the Proponent agrees and consents to the terms, conditions and provisions of the RFP, including the Form of Agreement, except as otherwise noted, and offers to provide the Services in accordance therewith at the Pricing set out in the Summary of Pricing.

**3. Prices**

The Proponent has submitted its Pricing in accordance with the instructions in the RFP and in the form set out in Appendix B – Summary of Fees & Disbursements.

**4. Mandatory Forms**

The Proponent encloses herewith as part of the Proposal, the mandatory forms as set out below:

Mandatory Forms	Include in Proposal as set out in Section 7.0	Yes, Enclosed
Appendix A – Form of Offer	Envelope 1	
Appendix B – Summary of Fees & Disbursements	Envelope 2	

**5. Addenda and Questions/Answers**

The Proponent is deemed to have read and accepted all addenda and question/answer documents issued by the City prior to the Deadline for Issuing Final Addenda.

The onus remains on Proponents to make any necessary amendments to its Proposals based on this information.

The Proponent is requested to confirm that it has received all addenda and question/answer documents, if any, by completing the applicable column in the below table:

Addenda and Question/Answers	Complete this column by inserting the number/quantity received:
The number of addenda received =	
The number of question/answer documents received =	

**6. Proposal Irrevocable**

The Proponent agrees that its Proposal shall be irrevocable for sixty (60) Days following the Proposal Submission Deadline.

**7. Disclosure of Information**

The Proponent hereby agrees that any information provided in this Proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or if required by order of a court or tribunal. The Proponent hereby consents to the disclosure, on a confidential basis, of its Proposal to the Purchaser’s advisors retained for the purpose of evaluating or participating in the evaluation of this Proposal.

**8. Proof of Insurance and Good Standing under the Workplace Safety and Insurance Act (Ontario)**

By signing this Form of Offer, the Proponent agrees, if selected, that it has verified its capability to do so and will provide proof of insurance coverage and a Certificate of Good Standing under the Workplace Safety and Insurance Act (Ontario) as set out in the Form of Agreement.

**9. Unfair Advantage and Conflict of Interest Statement**

Prior to completing this Form of Offer, the Proponent is advised to review the definitions of Unfair Advantage and Conflict of Interest set out in Section 6 (h) of this RFP.

Conflict of Interest	Conflict of Interest (Yes or no)	If yes, please set out the details of the actual or potential Conflict of Interest below:
Is there an actual or potential Unfair Advantage or Conflict of Interest, relating to the preparation of its Proposal, or if the Proponent foresees an actual or potential Unfair Advantage or Conflict of Interest in performing the contractual obligations contemplated in the RFP?		

The Proponent agrees to provide any additional information, which may be requested by the RFP Coordinator, in the form prescribed by the RFP Coordinator. Where, in its sole discretion, the Purchaser concludes that an Unfair Advantage and/or Conflict of Interest arises, it may, in addition to any other remedy available to it at law or in equity, disqualify the Proponent’s Proposal, or terminate any Agreement awarded to the Proponent under the RFP.

**10. Execution of Agreement**

If its Proposal is selected by the Purchaser, the Proponent agrees to finalize and execute the Agreement substantially in the form set out in the Form of Agreement in accordance with the terms of the RFP.

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Signature of Witness

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Signature of Proponent Representative

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Name of Witness

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Name and Title

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

I have authority to bind the Proponent



**REQUEST FOR PROPOSAL  
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**MAUSOLEUM CONCEPTUAL DESIGN**

**CONTRACT # 2019-20**

**APPENDIX - B**

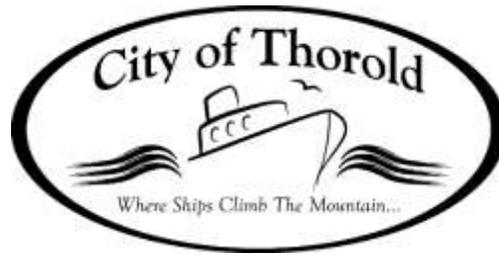
**SUMMARY OF FEES AND DISBURSEMENTS**

## **Appendix B: SUMMARY OF FEES**

***The Summary of Fees and Disbursements to be submitted in Envelope '2'.*** The City will not accept the proposal if this condition is not met. The City Reserves the right to correct a proposal's fees and disbursements schedule containing mathematical errors. Each proponent is to attach a time-task fee breakdown to be included in envelope 2. The City reserves the right to undertake a portion of or all the project components. Use of the Contingency Allowance will be at the discretion of the City of Thorold only.

<b><u>Report Preparation</u></b>	Fee	H.S.T.	Upset Limit (incl. 13% HST)
<ul style="list-style-type: none"> <li>• Concept Design Fees based on man hours applied to design</li> </ul>			
<ul style="list-style-type: none"> <li>• Community Meetings Fees (after hours assume 4 hrs total)</li> </ul>			
<ul style="list-style-type: none"> <li>• Council Presentation Fees (After hours assume 3 hrs)</li> </ul>			
<ul style="list-style-type: none"> <li>• Cost to provide Annual Operating Estimates based on the design</li> </ul>			
<ul style="list-style-type: none"> <li>• Cost to provide estimated construction fees based on the design</li> </ul>			
<b>Total (Upset Limit)</b>			

The City holds the right to select all or partial elements of the submitted Report Preparation fees as outlined above in order to meet the budgetary requirements as approved by council



**REQUEST FOR PROPOSAL  
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**MAUSOLEUM CONCEPTUAL DESIGN**

**CONTRACT # 2019-20**

**APPENDIX - C**

**STANDARD FORM OF  
AGREEMENT**

AGREEMENT FOR PROFESSIONAL  
SERVICES

MEMORANDUM OF AGREEMENT Dated this \_\_\_\_\_ day of \_\_\_\_\_

**- B E T W E E N -**

**The Corporation of the City of Thorold**

**Hereinafter called the "City"**

**THE PARTY OF THE FIRST PART**

**-AND-**

\_\_\_\_\_

**Hereinafter called the "Contractor"**

**THE PARTY OF THE SECOND PART**

**WHEREAS** the "City" intends to carry out Consulting Services for:

**Mausoleum Conceptual Design, CONTRACT # 2019-20**

Hereinafter called the "Scope" and has requested the Contractor to furnish professional services in connection therewith;

**NOW THEREFORE WITNESSETH** that in consideration of the covenants contained herein, the City and the Contractor mutually agree as follows:

## ARTICLE 1. DEFINITIONS

- 1.1 **AGREEMENT** – is this Prime Agreement for professional services including all Schedules and Appendices annexed hereto.
- 1.2 **CONSULTANT** – shall mean qualified and licenced professionals and specialists, other than the Engineer, engaged by the City directly.
- 1.3 **CONTRACTOR** – is the party contracting with the City for the provision of labour, materials and equipment for the execution and quality control of the Work.
- 1.4 **CONTRACT** – is the agreement between the City and the Contractor for the provision of labour, materials and equipment for the execution of the Work by the Contractor.
- 1.5 **CONTRACT DOCUMENTS** – shall comprise all documents relating to the Project, issued by or through the Contractor, including the plans, drawings, specifications and schedules, and all variations and modifications thereto approved by the Contractor.
- 1.6 **CONTRACT TIME** – shall refer to the projected date for Substantial Performance of the Contract agreed to between the City and the Contractor in the Contract.
- 1.7 **FIELD SERVICES** – shall mean applying such selective sampling procedures at the Project site as the Contractor, in his sole professional discretion, considers necessary to enable him to ascertain whether staff is carrying out the Work in general conformity with the design / scope concept.
- 1.8 **PROJECT** – shall refer to the Project described in the recital clauses to this Agreement.
- 1.9 **SERVICES** – shall mean the Contractor's duties and responsibilities to the City as set forth in Article 4.
- 1.10 **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.
- 1.11 **SITE** –shall include the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.
- 1.12 **SUBSTANTIAL PERFORMANCE** –shall mean that the Work is ready to be used or is being used for the purpose intended, and is so certified by the Contractor.
- 1.13 **SUB-CONSULTANT** – shall mean any registered professional, or other specialists engaged by the Contractor in connection with the Project.
- 1.14 **TOTAL PERFORMANCE** – shall mean that the entire Work has been performed to the requirements of the Contract Documents, and is so certified.
- 1.15 **WORK** – is the totality of all labour, materials and equipment used or incorporated into the Project by the Contractor pursuant to the Contract Documents.
- 1.16 **UPSET LIMIT** – shall mean the maximum amount of fees and disbursements that the Contractor may charge the City for work under this agreement unless otherwise agrees in writing.

## ARTICLE 2. GENERAL CONDITIONS

### **2.1 Ownership of Documents**

All plans, drawings, specifications, designs, construction data and documents prepared by the Contractor shall be and remain the property of the City.

The Contractor may with the consent of the City, which consent shall not be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Works.

The Contractor does not assume any responsibility in the event the City uses or permits the use of such documents for other works not described in the Service Agreement without the Contractor's prior written consent.

### **2.2 Drawings**

The City and the Contractor agree that any CADD documents prepared by either party shall be done on Auto Cadd and shall conform to the City's standard specifications. The electronic files submitted by the Contractor to the City are submitted for an acceptance period of 30 calendar days. Any defects the City discovers during this period will be reported to the Contractor and will be corrected as part of the Contractor's Basic Scope of Services.

The City shall not reuse or make or permit to be made any modification to the plans and specifications without the prior written authorization of the Contractor. The City agrees to waive any claim against the Contractor arising from any unauthorized reuse or modification of the plans and specifications by the City.

It is understood that sealed and signed mylars or vellum drawings govern over electronic files.

### **2.3 Confidential Data**

The Contractor shall not divulge any confidential information communicated to or acquired by him or her disclosed by the City in the course of carrying out the services provided for herein. No such information shall be used by the Contractor on any other project without approval in writing by the City.

This requirement shall not prohibit the Contractor from acting to correct or report a situation which the Contractor may reasonably believe to endanger the safety or welfare of the public or City, provided that the Contractor notifies the City of his or her intent to so act or report.

### **2.4 Insurance**

The Contractor shall supply to the City a summary of insurance coverage presently being maintained by the Contractor including but not limited to Professional Liability Insurance, Comprehensive General Liability and Automobile Insurance. Such summary shall include the name of the Insurance Company, type of insurance and amount of such coverage.

If the City requests that the amount of coverage of the Contractor's Insurance be increased or special insurance be obtained for this Project then the Contractor shall co-operate with the City to obtain such increased or special insurance coverage at the City's expense.

It is understood and agreed that the coverage provided by either of those policies named in the aforementioned summary or specially required will not be changed or amended in any way nor cancelled by the Contractor until sixty (60) days after written notice of such changes or cancellations has been delivered to the City.

The City also warrants that the Contractor shall be made an additional insured under the General Contractor's general liability insurance policy.

## **2.5 Dispute Resolution**

This Agreement is based upon mutual obligation of good faith and fair dealing between the parties in its performance and enforcement. Accordingly, both parties, with a commitment to honesty and integrity, agree to the following:

- That each will function within the laws and statutes that apply to its duties and responsibilities; that each will assist in the other's performance; that each will avoid hindering the other's performance; that each will work diligently to fulfill its obligations; and that each will cooperate in the common endeavor of the contract.
- Both parties to this Agreement shall attempt to resolve all claims, disputes and other matters in question arising out of or relating to this Agreement or breach thereof first through negotiations between the Contractor or representative and the City or representative by means of discussions built around mutual understanding and respect.
- Failing resolution by negotiations, all claims, disputes and other matters in question shall attempt to be resolved through mediation, under the guidance of a qualified mediator.
- Failing resolution by mediation, all claims, disputes and other matters in question shall be referred to arbitration.
- 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 City or the Contractor.
- The award of the arbitrator shall be final and binding upon the parties.
- The provisions of the Ontario Arbitrations Act, shall apply.
- Construction agreement between the City and the Contractor shall follow same process of dispute resolution.

## **2.6 Successors and Assignment**

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.

If a party to this Agreement who is an individual should desire to bring in a partner or partners or if a party which 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 properly notifying the other party in writing of such intended action.

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 the Agreement.

Except as aforesaid, neither party shall assign this Agreement without the proper consent in writing of the other.

## **2.7 Termination and Suspension**

The City may at any time by notice in writing to the Contractor suspend or terminate the Services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Contractor shall perform no further Services other than those reasonably necessary to close out the Contractor's Services. In such event the Contractor shall be paid by the City for all services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such termination.

If the City is in default in the performance of any of the City's obligations set forth in this Agreement, then the Contractor may, by written notice to the City, require such default be corrected. If, within thirty (30) days of receipt of such notice, such default shall not have been corrected the Contractor may immediately terminate this Agreement. In such event the Contractor shall be paid by the City for all services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such termination.

## **2.8 Records and Audit**

In order to provide data for the calculation of fees on a time basis, the Contractor and the sub-consultants shall keep a detailed record of the hours worked by and the salaries paid to the Contractor's staff employed on the Project.

The City may inspect and audit the books, payrolls, accounts and records of the Contractor and the sub-consultants during regular office hours with respect to any item, which the City is required to pay on a payroll multiplier bases as a result of this agreement.

The Contractor, when requested by the City, shall provide copies of receipts with respect to any disbursements for which the Contractor claims payment under this Agreement.

## **2.9 Indemnification**

The Contractor shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the City, the employees, officers or agents of the City may suffer as a sole result of the negligence of the Contractor, the employees, officers or agents of the Contractor in the performance of this Agreement.

The City agrees to hold harmless, indemnify and defend the Contractor from and against any and all claims, losses, damages, liabilities and costs of defense arising out of or in any way connected with the presence, discharge, release or escape of hazardous materials or contaminants of any kind, excluding only such liability as may solely arise out of the

negligence of the Contractor in the performance of consulting services to the City within this project.

### **2.10 Contracting for Construction**

The Contractor or any person, firm or corporation associated with or subsidiary to the Contractor shall not tender for any or all of the execution of the Services or have an interest either directly or indirectly in the construction of the Project without the prior written consent of the City.

### **2.11 Approval by Other Authorities**

Unless otherwise provided in this Agreement, where the work of the Contractor is subject to the approval or review of an authority, department or agency other than the City, the Contractor shall assist the City in applying for those approvals typically required by law for projects similar to the one for which the Contractor's services are being engaged. This assistance relates to completing and submitting forms as to the results of certain work included in the scope of services. If required by the Approval Agency(ies), the Contractor may with the approval of the City in writing also provide additional services as needed, these to include, but not limited to, conducting special tests, performance of special research studies, preparation of special documentation, development and delivery of testimony.

The City and the Contractor agree to discuss the scope of these additional services and the fees and expenses relating thereto before the Contractor performs them on the City's behalf.

### **2.12 Changes and Alterations and Additional Services**

After giving notice to the Contractor, the City 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 City necessitates additional staff or services, the Contractor shall be paid in accordance with Article 5 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Article 5 or as negotiated between parties whichever is lesser amount. In the case of a reduction in the requirement for services any reduction in the Contractor's fee will be subject to negotiation. No such change shall require the execution of a formal amendment to this Agreement.

If it shall become necessary for the Contractor to make any changes in any designs, drawings, plans or specifications for any part of the Services for reasons over which he has no control, or if the Contractor is put to any extra work, cost or expense by reason of any act or matter over which he has no control, the City shall pay to the Contractor a fee for such changes or extra work calculated on a time basis in accordance with Article 5, provided that prior to the commencement of such changes or extra work, the Contractor shall notify the City in writing of his intentions to make such changes or to carry out such extra work and that the Contractor shall keep separate cost records in respect to such changes or extra work. The extra work or charges will not be affected by the Contractor unless the City first agrees in writing to the proposed work and a fee is negotiated to the satisfaction of the parties.

### **2.13 Plans, Specifications, Designs & Cost Estimates**

Any and all plans, specifications, drawings and designs furnished by the Contractor will be prepared on the assumption that all information supplied by the City or on behalf of the City by any person or persons other than the Contractor is correct and the Contractor shall not be liable for any loss or damage arising from any inaccuracy in such information. The City shall immediately notify the Contractor of any discrepancies or inaccuracies in such information as they become apparent. The Contractor shall be entitled to make any necessary change or changes in his plans, specifications, drawings or designs at the City's expense if any such information should be erroneous or inaccurate.

Construction cost estimates provided by the Contractor are opinions of probable construction costs based on the judgement of design professionals and are provided for the City's general guidance. Cost estimates are contingent upon factors over which the Contractor has no control. Exact costs will be determined only when tenders have been received for the project.

#### **2.14 Shop Drawing Review**

The City agrees that the Contractor shall review shop-drawing submissions solely for the conformance with the Contractor's design intent and conformance with information given in the construction documents. The Contractor shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operations of construction, safety precautions and programmes incidental thereto, all of which are the contractor's responsibility.

#### **2.15 Observation of the Work**

The Contractor will provide construction administration and field review services sufficient to control the work and the services and ensure construction is in compliance with the approved plans and specifications as detailed in Article 4.0.

#### **2.16 Job Site Safety**

The Contractor is responsible solely for his or her own and his or her own employees' activities on the job site, but this shall not be construed to relieve the City or any construction contractors from their responsibility for maintaining a safe job site. Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and subcontractors, shall be construed to imply the Contractor has any responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the job site. The City acknowledges that the contractor shall be deemed the constructor.

The Contractor shall be familiar with relevant safety policies regulations and procedures. In the event of non-compliance the Contractor shall advise the staff or Sub-Consultant and immediately notify the City and the appropriate governing authority. Should the Contractor report what he deemed to be non-compliance to the appropriate authorities in error the City would save harmless the Contractor if in fact the Ministry of Labour overruled the Contractor and a claim for delay was filed.

#### **2.17 Emergencies During Construction**

In the event of any emergencies during construction which, in the opinion of the Contractor, requires immediate action in the City's interests, the Contractor shall have the authority to

issue such orders and to take such steps on behalf, and at the expense of the City as he shall deem necessary or expedient.

## **2.18 Administration and Co-ordination**

The Contractor's administration and co-ordination functions provided herein shall pertain only to the extent that the services contemplated in Article 4 have been rendered on the project.

Authority for general co-ordination of the Services shall reside in the Contractor only to the extent provided for in this Agreement.

All notices, instructions, requests, claims or other communications by the Consultants or by the City to one another shall be made by or through the Staff.

The Contractor shall make decisions on all claims of the City and of the Staff, and on all matters relating to the interpretation of the Contract Documents, all in accordance with the requirements of the Contract Documents.

No acceptance or approval by the Contractor of the Work or the Staff, whether expressed or implied, shall relieve the Contractor or the Staff from their responsibilities to the City for the proper performance of such Work or services, and further, the City shall not be responsible to the Contractor or the Staff for the means, methods, techniques, sequences, procedures and use of equipment, of any nature whatsoever, whether approved by the Contractor or not, which are employed by the Contractor in executing or designing any phases of the Services, or for placing into operation any plan or equipment, or for safety precautions and programs incidental thereto.

## **2.19 Contract Time Estimates**

The parties expressly acknowledge and agree that the Contract Time estimates provided by the Contractor to the City under this Agreement are subject to change and are contingent upon factors over which the Contractor has no control. The Contractor will endeavour to adhere to said schedules in a "timely manner" and will provide notice to the City as soon as such factors arise.

## **2.20 Certifications by the Contractor**

The Contractor's certification functions provided for shall pertain only to the extent that the services contemplated in Article 4 have been rendered on the project.

The Contractor shall issue certifications as set forth in Article 4 only where Field Services have been performed by the Contractor as defined in Article 1.7, have been performed by the Contractor, or should have been performed by the Contractor in the normal course of his duties hereunder, as set for the in the proposal for Services prepared by the Contractor dated \_\_\_\_\_ and attached hereto.

## **2.21 Building Codes and By-Laws**

The Contractor shall, reasonably interpret building codes and by-laws as they apply to the Services, but it is expressly acknowledged and agreed by the City that as the Service

progresses, the interpretation of building codes and by-laws by any public authority may differ from the interpretation of the Contractor, through no fault of the Contractor, and any extra cost necessary to conform to the interpretation placed upon the codes and by-laws or to conform to changes or differences in interpretation by such authorities during or after execution of the Work will be paid by the City in the event that the Contractor has received a prior approval or authorization from such authorities in respect of such interpretations.

## **2.22 Notices**

All notices required by this Agreement to be given by either party shall be deemed to be properly given and received if made in writing to the other party by certified mail or facsimile, addressed to the regular business address of such other party.

## **2.23 Entire Agreement**

This Agreement constitutes the sole and entire agreement between the City and the Contractor relating to the Service, and no other terms, conditions or warranties, whether expressed or implied, shall form a part hereof.

## **2.24 Hazardous Materials**

It is acknowledged by both parties that the Contractor's scope of services does not include any services related to hazardous or toxic materials. In the event the Contractor or any other party encounters hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of the Contractor's services, the Contractor may, at his or her option and without liability for consequential or any other damages, suspend performance of services on the project until the City retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.

The City agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Contractor, his or her officers, partners, employees, agents and consultants from and against any and all claims, suits, demands, liabilities, losses, or costs, including reasonable attorneys' fees and defence costs, resulting or accruing to any and all persons, firms and any other legal entity, caused by, arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any hazardous or toxic substances, products or materials that exist on, about or adjacent to the job site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, unless the breach of contract or warranty, tort, strict liability or otherwise be as a result of the actions or caused by fault of the Contractor, his or her officers, partners, employees, agents or consultants.

## **2.25 Voluntary Partnering**

The City will encourage participation in a formalized Partnering process that evolves the City and the Contractor. This partnering relationship will be structured to draw on the strengths of each organization to identify and achieve common goals. The objectives are effective and efficient contract performance and completion of the Services within budget, on schedule, in accordance with drawings and specifications and without litigation.

Participation in partnering will be totally voluntary and all participants will have equal status. Any costs associated with partnering will be agreed to in advance by all parties.

## ARTICLE 3. RESPONSIBILITIES OF THE CITY

### **The City shall:**

- 3.1 Make available to the Contractor all relevant information required by the Contractor, and shall instruct the Contractor fully as to the City's requirements including design objectives, constraints and criteria, special equipment and systems, site requirements and construction budget. Unless otherwise advised, the Contractor shall be entitled to rely upon the accuracy and completeness of all such information and the data furnished through the City or the City's Consultants, whether such Consultants are engaged at the request of the Contractor or not.
- 3.2 When so required by the Contractor, engage Consultants directly to perform services necessary to enable the Contractor to fully carry out his or her duties, such services to include but not be limited to a legal survey of the site, site services data, geotechnical reports and appropriate testing. The Consultant so engaged shall carry Professional Liability Insurance in a minimum amount of \$500,000 per occurrence and be satisfactory to the Contractor.
- 3.3 Give the Contractor authority to act as his or her agent in all matters falling within the scope of the Contractor's services.
- 3.4 Promptly review all documentation submitted by the Contractor, and inform the Contractor of his or her decisions in time for the orderly progress of the Contractor's services and of the work.
- 3.5 Obtain all required consents, approvals and licences and permits from authorities having jurisdiction.
- 3.6 Arrange and make provision for the Contractor's entry and access to public and private property and Service site in the performance of his or her duties.
- 3.7 Arrange and pay for tender advertising, application fees, and any necessary legal, financial or insurance counselling services required for the Service.
- 3.8 Designate in writing a representative to have authority to transmit instructions to and receive information from the Contractor and, in the event the said representative is changed, advise the Contractor immediately of such change.
- 3.9 Immediately notify the Contractor whenever the City or the City's representative become aware of a defect or deficiency in the work or the Contract Documents.
- 3.10 Use its best efforts to include the Contractor as an additional insured under the General Contractor's Public Liability insurance policy.
- 3.11 Not enter into Contracts in connection with the Services, which describe duties and responsibilities of the Contractor which are inconsistent with the duties and responsibilities of the Contractor provided for in this Agreement, without obtaining the Contractor's prior written agreement thereto.
- 3.12 Co-operate fully and expeditiously with the Contractor in securing the required approvals and in adhering to the proposed schedule.
- 3.13 Contract with only those Contractors who have demonstrated, on similar projects, the knowledge, skill, experience and business expertise to construct the works pursuant to the designs and specifications.

## ARTICLE 4. SERVICES PROVIDED

### **UNDER THIS AGREEMENT**

#### **4.1 General**

The Contractor shall render Services to the City "in a timely manner" under this Agreement with that degree of care, skill and diligence normally provided in the performance of Services in respect of Projects of a similar nature to that contemplated by this Agreement at the time and place that such services are rendered.

#### **4.2 The Contractor Shall Perform the Following Services in Connection with the Project:**

Provide services for, perform tasks associated with, and provide deliverables for the MAUSOLEUM CONCEPTUAL DESIGN # 2019-20 as set out in the Request for Services and the Proposal for Services dated \_\_\_\_\_ submitted by the Contractor, attached hereto as Schedule 'A', respectively, and forming part of this agreement.

## ARTICLE 5. FEES AND DISBURSEMENTS

### **5.1 Basis of Payment**

#### **5.1.1 Fees**

5.1.1.1 The City shall pay the Contractor a fee to the upset limit, as shown in the Summary of Fees and Disbursements, appended as Schedule 'A', for the services described in Article 4.

5.1.1.2 All time expended on the assignment, whether in the Contractor's office, at the City's premises, or elsewhere, and including travel time, shall be chargeable. This also included, but is not limited to, stenographic and clerical staff engaged in the preparation of documents such as reports, specifications and correspondence directly relating to the Services. All time expended shall be subject to the upset limit.

#### **5.1.2 Fee for Additional and Special Services**

The fee for Additional and Special Services provided by the Contractor, if any, shall be calculated on a time basis. Additional and Special Services, if any, and the corresponding fees payable, shall be clearly itemized under Schedule 'B' attached to this Agreement (if applicable).

#### **5.1.3 Expenses and Disbursements**

5.1.3.1 The Contractor shall be reimbursed for all expenses properly incurred by him in connection with the Services including, but not limited to, automobile mileage, reasonable travelling and living expenses, long distance telephone and facsimile charges, teletype and telegraph charges, printing and reproductions, progress photography, advertising for tenders, special delivery, courier and express

charges, overtime premium payments and the cost of maintaining site offices, supplies, equipment and computer usage, to the upset limit set out in Schedule 'A'.

5.1.3.2 Computer services, except where a computer is used for design under the percentage fee scale or for the Contractor's normal office administration, shall be considered a reimbursable expense, to the upset limit set out in Schedule 'A'.

5.1.3.3 The Contractor shall also be reimbursed at cost plus a charge of 10% of such cost as an administrative charge for approved special consultations such as sub-surface investigations, legal surveys and chemical and physical tests and sub-consultants, to the upset limit set out in Schedule 'A'.

## **5.2 Terms of Payment of Fees**

5.2.1 The Contractor will forward an invoice for his services monthly. Payment of fees and disbursements in Canadian dollars is due within 30 calendar days upon receipt of invoice by the City.

ARTICLE 6. SUCCESSION

The General Conditions of the Unit Price Contract hereto annexed, and the other aforesaid Contract Documents, are to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

**In witness whereof** the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers thereunto duly authorized.

SIGNED, SEALED AND DELIVERED  
in the presence of:

OWNER  
The Corporation of the City of Thorold  
Name

\_\_\_\_\_  
Signature

Terry Ugolini, Mayor  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Donna Delvecchio, City Clerk  
Name and Title

\_\_\_\_\_  
Date

CONTRACTOR

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date