

**TOWNSHIP OF WEST LINCOLN**

**REQUEST FOR PROPOSAL FOR A  
REVIEW OF THE SPRING CREEK HEIGHTS  
SECONDARY PLAN**

**Release Date: November 9, 2017**

**RFP Closing Date: November 24, 2017**

## **I INTRODUCTION**

The Township of West Lincoln, through its Planning Department, is seeking consultants to undertake a review of the land use designations within the area known as the Spring Creek Heights Secondary Plan. These lands were recently re-designated in an effort to include a better transition/buffer between residential and employment lands.

The nature of the employment area and uses has changed and the remnant residential area is not attractive or functional and therefore a review is in order. These lands were added to Smithville in the 1980's for future residential development but a transition/buffer was not provided. Now, Staff and Council wish to revisit designations so that the entire area gets developed for appropriate uses.

The Secondary Plan Review will be achieving the following:

- Determine, in consultation with a qualified engineer, whether there have been any changes to how the MOE regulations and guidelines should be implemented since 2009;
- Determine if any new empirical measurements are necessary based on information from the Township of current industrial operations;
- Interview representatives of Stanpac to determine the nature of their current and planned operations;
- Review zoning permissions in the industrial area especially where Niagara Grain and Feed has closed;
- Determine if there are any industrial operations left or opened since the original study, conforming or non-conforming, that would attract the requirement for a setback, and;
- Determine if there are any non-conforming permissions that could allow a new heavy industrial operation to open.

All aspects of the Secondary Plan Review must build on recent efforts to advance key growth management objectives, and where appropriate, shall integrate key components of other Township documents, including the Township Economic Development Strategy as well as work in conjunction with consultants concurrently undertaking additional studies for the Township, including the Municipal Comprehensive Review.

This call for RFP outlines the scope of the required work, responsibilities of the Proponents, requirements for the RFP submission, the selection process and related conditions and specifications. The Township reserves the right, in its sole discretion, to disqualify Proponents who fail to provide all mandatory information as required in this call for RFP.

## **II INFORMATION TO PROPONENTS AND GENERAL CONDITIONS**

### **1. Intent of this Request for Proposal (RFP)**

The Township of West Lincoln, through the Planning Department, is seeking consultants to undertake a Secondary Plan Review of the Spring Creek Heights Secondary Plan. Staff Report PD-113-17 outlines the intent and status of the Secondary Plan Review in more detail. The Secondary Plan design will need to be compliant with growth management and intensification

targets, as well as propose a high-level of urban design. In addition to the technical components of the Secondary Plan Review, the consultant will be asked to facilitate an engagement process with the property owners and neighbours to produce an appropriate revised overall plan for the area. The ideal submission will have a mix of urban design, growth management, servicing planning, traffic engineering and Ministry of the Environment noise compliance expertise.

## **2. Date and Place for Receiving Proposal**

- i. All proposals must be received by the Clerks Department, the Township of West Lincoln, 318 Canborough Street, Smithville, Ontario no later than 2 p.m. local time, **Friday, November 24, 2017**.

Proposals received after this deadline will not be accepted and will be returned, unopened, to the Proponent. Please note that Proponents are solely responsible to ensure that their Proposals are received by the Clerks Department on or before the deadline. The Township Clerk will not accept any Proposal after this deadline notwithstanding the reason for its late receipt. It shall be the responsibility of the Proponent to ensure timely delivery by courier, should this be the chosen form of delivery.

- ii. Please also note, that in the event of any question regarding the timely receipt of any Proposal, the time on the clock designated by the Clerks Department will absolutely prevail over any other time piece regardless of any discrepancies between the time on the Clerks Office's designated clock and actual time.
- iii. A Proposal may be withdrawn, unopened, after it has been deposited, if such request is received in writing by the Clerks Department prior to the Closing Date/Time. Requests for withdrawal received after the Closing Date/Time will not be accepted. Withdrawal of a Proposal must be made in writing to the Clerks Department and delivered by email, facsimile, registered mail, courier or in person. Any type of verbal request will not be considered. The withdrawal of a Proposal shall not preclude a Proponent from submitting another Proposal prior to the Closing Date/Time. Once opened, the Proposals become the property of the Township.

## **3. Form of Proposal**

Proposals shall be submitted in a sealed envelope addressed to the Clerks Department, at the address noted above. The envelope shall clearly identify the document(s) enclosed as a Proposal, give note of the Proposal Name and Number (if the proposal has a number) and the name and address of the Proponent.

The Township bears no responsibility for any Proposal(s) which are lost, misplaced or are not considered as a result of failure to follow the instructions for the exterior of the envelope.

Adjustments by fax or letter to a Proposal already submitted will not be considered.

#### **4. Documentation**

- i. Please provide sets of your Proposal as per the following:
  - One (1) set of documents carrying original signatures and to be marked as “ORIGINAL”.
  - 6 additional sets marked “DULPlicate”.
  - One (1) electronic version (example CD, Memory Stick).
- ii. Supplementary Information is allowed, providing that this information is clearly identified and kept separate from the technical and financial Proposal. Examples of supplementary information includes: descriptive literature for the sole purpose of amplifying the bid; catalogues; resumes; brochures and bulky documents. This information will assist the evaluation team in evaluating all proposals.
- iii. Final agreement with the Successful Proponent will include the Successful Proponent’s Technical and Financial Proposals, but not the Supplementary Information.

#### **5. Proposal Information**

The Proponent shall provide a brief Proposal, either in text or tabular format. The Proposal to undertake this assignment shall include a clear outline, including the following general items, in a brief letter to undertake this assignment. The Proposal should include items listed hereunder, but also include other considerations based on the Proponent’s understanding of the project.

- The Proponent’s interest in carrying out the project and an understanding of the objective(s) of this project.
- The Proponent’s proposed methodology for carrying out the work.
- A detailed work plan and project schedule which will identify all major components of this project and their anticipated start and completion dates. The work plan shall address the tasks outlined in the Scope of Work.
- A description of the consulting team, the lead persons, and the relevant experience and qualifications of each individual along with an estimate of the percentage of time each key member will dedicate to this project (the individual’s hours divided by total project hours).
- Identification of all sub-Proponents, their qualifications and experience, as well as their specific role in the project.
- Commitment (time and resources) expected to be provided by the Township.
- Disclosure of any perceived conflict of interest.
- Total costs for the consulting staff on the project team for all components of the project, including optional items, broken down by components, staff person’s hourly rate and total hours on project including the costs for sub-Proponents.
- Disbursement costs which may include mileage, telephone charges, printing and reproductions, fax charges, courier services, and computer services, etc.
- A fee schedule indicating a per diem rate or hourly rate for each Proponent and sub-Proponent staff on the project team for the entire project duration.

- A detailed time and cost breakdown of the workload by staff and hours required.

The Township will consider the estimated total service for this project as an upset limit based on the work plan and the project duration assumed and will not consider extra items unless prior written approval is obtained from the Township.

Upset Limit: Once the Successful Proponent has been approved, minor revisions to the scope of the assignment may be negotiated. Where such work has been requested and approved by the Township, the Proponent shall submit proper documentation of any additional service to support invoices beyond the upset limit.

No invoice for services rendered will be honoured if that invoice puts the total cost of the job over the upset limit set out in the Agreement. If additional costs are to be incurred over the upset limit, the Proponent shall obtain written authorization from the Township to proceed with these additional costs prior to the additional charges being incurred. Further, the Township will not honour any work that was not authorized in accordance with Township policy. Verbal authorization, regardless of the source, will not be honoured in considering invoices. Any invoice received that do not meet the above requirements will be returned unpaid and no late payment charges can be claimed.

#### **6. Additional Requirements**

Proponents are encouraged to submit any value added recommendations for consideration by the Township.

In the event that a prepared Proposal does not precisely and entirely meet the requirements of this Request for Proposal, the Township reserves the right to enter into negotiations with the selected Proponent(s) to arrive at a mutually satisfactory arrangement with respect to any modifications to the Proposal.

#### **7. Joint Proposals**

In the event that a joint Proposal is submitted on behalf of two or more companies, the name and role of each partner in the joint Proposal must clearly be identified and the document signed by an authorized officer of each company.

If a joint Proposal is to be considered it will be necessary for one of the companies listed in the document to be named as the prime contractor and to accept responsibility for the level and quality of Service provided and coordinate Services as required by the Township.

#### **8. Withdrawal of Proposals**

A Proposal may be withdrawn, unopened, after it has been deposited, if such request is received in writing by the Clerks Department prior to the time specified for the opening of Proposals.

**9. Clarification**

It will be the Proponent's responsibility to clarify any details in question before submitting a bid. All official correspondence in regard to the specifications should be directed to and will be issued by Brian Treble, Director of Planning and Building. The Township of West Lincoln bears no responsibility for any oral communications, instructions or suggestions.

Any questions must be received in writing no later than noon, **November 17, 2017**.

**10. Acceptance or Rejection of Proposals**

The Township reserves the right in its total discretion to accept or reject any Proposal, for any reason whatever and to accept or reject any bid if considered in its best interest, and to award by justification to one or more Proponents. The lowest or any Proposal will not necessarily be accepted.

**11. Proposal Expiry Date**

Proponents hereby acknowledge that offers contained within the Proposal shall be in Canadian funds and will remain open for acceptance by the Township for a period not less than ninety (90) days from the closing date established for Proposals.

**12. Award Announcement**

No announcement or Award is made until a written recommendation is prepared and approved in accordance to the Purchasing By-law. The Award is also contingent upon the availability of approved funds.

**13. Progress Payments**

Payments will be made on a monthly basis.

**14. Billing**

Invoicing addresses and other billing information will be supplied to the Successful Proponent.

**15. Intent and Scope of Work**

It is the intent of the attached scope of work to describe specific details of services required. It is the responsibility of the Successful Proponent to supply any service not described in the scope of work but which may be reasonably implied to discharge the scope of work covered in this Request for Proposal.

**16. Harmonized Sales Tax (HST)**

All base prices shall exclude HST. Payment under the Contract shall be subject to value added taxes in effect at the time of invoicing.

## **17. Liability Insurance Policy**

The Consultant and all Sub-Consultants shall purchase and maintain at all times during the term of this Agreement, or as otherwise set out in this Agreement, the insurance coverage listed below:

### **1) Commercial General Liability Insurance**

Commercial General Liability insurance insuring the Consultant and covering all Services as described in the Agreement to a limit of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and in the aggregate.

The policy will be extended to include:

- a) bodily injury, death and property damage;
- b) cross liability and severability of interest;
- c) blanket contractual;
- d) premises and operations;
- e) personal and advertising injury;
- f) broad form property damage;
- g) products and completed operations;
- h) The Township's and contractors protection;
- i) non-owned Automobile to a limit of not less than TWO MILLION DOLLARS (\$2,000,000.00).

The policy shall be endorsed to:

- a) include the Township as an additional insured; and
- b) contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

### **2) Automobile Insurance**

- a) Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than TWO MILLION DOLLARS (\$2,000,000.00)
- b) Proof of automobile insurance will not be required if the Successful Proponent provides a signed letter stating that they do not own or lease any vehicles.

### **3) Errors and Omissions Liability**

- a) Errors and Omissions liability insurance insuring the Consultant in an amount no less than TWO MILLION DOLLARS (\$2,000,000.00) per claim and in the aggregate.
- b) The coverage under the policy shall be maintained continuously during the term of this Agreement and for two (2) years after the termination or expiration of this Agreement and shall cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to render the Services. If coverage under the Errors and Omissions policy is cancelled within the two (2) year period after the termination or expiration of this Agreement, the Consultant shall provide the Township with notice within thirty (3) days of cancellation and shall

be required to purchase an extended reporting endorsement to confirm that coverage is maintained.

4) Other Insurance

Any other type (e.g. Environmental), form or as otherwise may be required from time to time as identified at any time by either party.

5) Policy Requirements

All policies of insurance shall:

- a) be written with an insurer licensed to do business in Ontario;
- b) be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the Township.

**18. Certificate of Insurance**

Immediately upon Award, the Successful Proponent shall provide the Township with a Certificate of Insurance acceptable to the Township. A blank form is included as Appendix B. If requested by the Township, certified copies of the insurance policies will be provided by the successful proponent.

The Certificate of Insurance must comply with the insurance requirements outlined in this Bid Solicitation and must be on the Township's form of Certificate of Insurance. If the Certificate of Insurance is provided in a non-original form (e.g. a facsimile, photocopy or scanned electronic copy), the Proponent acknowledges and agrees that the Township is fully entitled to treat any such Certificate as an original and that the Proponent will be responsible for the accuracy and validity of the information contained therein.

**19. Workplace Safety and Insurance Board Clearance**

Upon Award, the Proponent shall provide a valid, current Clearance Certificate indicating that the Proponent is registered with Workplace Safety and Insurance Board ("WSIB"), and has an account in good standing, or, if WSIB coverage is not required by law to be carried by the Proponent, either:

- (a) an Exemption Letter from WSIB, satisfactory to the Clerk; or
- (b) an Independent Operators Status Certificate issued by WSIB.

In addition to the indemnification provided by the Proponent herein, the Proponent agrees to indemnify the Township for all losses, claims, expenses (including reasonable legal fees) or other charges related to the Proponent's status with WSIB.

**20. Failure to Perform**

Failure to comply with all terms and conditions of this Proposal, and failure to supply all documentation as required herein, within the specified time period, shall be just cause for cancellation of the Award. The Township shall then have the right to Award to any other Proponent, or call new Proposals.

**21. Collusion**

A reasonable suspicion or collusion between two or more Proponents will be sufficient cause for the rejection of all Proposals so affected. It will be the responsibility of the Township to determine if collusion has occurred.

**22. Error and Correction**

The Township reserves the right in its total discretion to make all necessary corrections to any Proposal which contains mathematical errors and may refer to the unit price in making such corrections.

**23. Ability and Experience of Proponents**

Each Proponent shall satisfy the Township, as to their ability and experience in providing the Services offered in their Proposal. The Township will not Award a Contract to any company that cannot furnish evidence satisfactory to the Township, in its sole discretion, that they have the necessary ability, dedication, equipment, capital and experience to provide the Services required.

**24. Incurred Costs**

The Township will not be liable nor reimburse any Proponents for costs incurred in the preparation of Proposals, attendance at meetings/related travel costs, or any other services that may be requested as part of the evaluation process.

**25. Access to Information/Confidentiality of Information**

The disclosure of information received relevant to Proposals or Awards shall be made by the appropriate officers in accordance with the provisions of all relevant privacy legislation including primarily the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

All Proponents who contract with the Township shall adhere to or exceed the standards set in the *Municipal Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A, or other relevant Ontario or Federal privacy legislation or common law as may be passed or amended from time to time, as if they were agents of the Township as relates to the confidential and secure treatment, including collection, use, disclosure or retention, of personal (health) information, other confidential information of the Township, and all records thereof which they come into contact with in the course of performing Services or providing Goods to the Township.

**26. Vendor Performance**

The Township may, in its sole discretion, reject a Proposal if a Proponent:

- i. has, at any time, threatened, commenced or engaged in legal claims or litigation against the Township;
- ii. is involved in a claim or litigation initiated by the Township;

- iii. previously provided Goods or Services to the Township in an unsatisfactory manner;
- iv. has failed to satisfy an outstanding debt to the Township;
- v. has a history of illegitimate, frivolous, unreasonable or invalid claims;
- vi. provides incomplete, unrepresentative or unsatisfactory references; or
- vii. has engaged in conduct that leads the Township to determine that it would not be in the Township's best interest to accept the Proposal.

**27. Assignment of Contract**

The Successful Proponent shall not make any assignment, or any sub-contract for the supply of material or the execution of any of the work hereby proposed, nor engage in brokering or franchising or any other such practice, unless the Township, in its' own absolute discretion, expressly consents in writing.

Failure of the Successful Proponent to obtain the express written consent of the Township, prior to engaging in any of the practices noted in the above paragraph, shall constitute a fundamental breach of the Contract, and in such circumstance the Township may, in its' own absolute discretion, cancel the Contract and Award to any other Proponent, or re-issue the Proposal.

Further, the Successful Proponent shall be liable for all damages sustained by the Township as a result of the Successful Proponent's breach of the Contract, regardless of whether or not the Township chooses to cancel the Contract. Any Contract payments outstanding at the time of the Contractor's breach will be forfeited to the Township in full or partial payment of said damages.

Any outside costs associated with making a decision on whether to assign a Contract will be responsibility of the Successful Bidder.

**28. Indemnification**

The Successful Proponent shall indemnify and save harmless the Township, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines and costs (including any legal costs), interest or damages of every nature and kind whatsoever arising out of the negligence, errors, omissions, fraud or wilful misconduct of the Successful Proponent, its officers, employees, agents and subcontractors, or any of them, attributable to or in connection with the delivery or performance of the Goods and Services contemplated in this Request for Proposal, except to the extent that same is attributable to this or caused by the negligence of the Township, its officers, employees and agents, or any of them. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Successful Proponent in accordance with this Request for Proposal.

**29. Evaluation**

- i) Method

Proposals received on time will be reviewed and deviations and/or exceptions to the requirements of this RFP will be noted and assessed. Proponents may be contacted to explain

or clarify their Proposal, however, they will not be permitted to alter information as submitted. The Proposals will be evaluated and scored based on the listed criteria.

ii) Criteria:

Proposals will be scored based on the following:

Criteria		Components	Points
1.	Overall clarity/understanding of requirements	<ul style="list-style-type: none"> <li>Proposal is complete, organized and presented in a clear manner according to the Request for Proposal.</li> <li>Proposal demonstrates a comprehensive understanding of the project, requirements and objectives.</li> <li>Proposal includes a clear and appropriate timeline that is broken down by phase, staff resources and task.</li> <li>Timeline includes approximate start and end state for each task.</li> </ul>	15
2.	Outline of services to be provided	<ul style="list-style-type: none"> <li>Proposal clearly outlines the approach the consultant proposes to take in achieving the required deliverables, including work plan and engagement strategy.</li> <li>Proposed methodologies for completing tasks are described in detail.</li> <li>Description of consulting and sub-consulting team includes all relevant information, including lead staff, relevant experience, qualifications and an estimate of the percentage of time each key member will dedicate to this project.</li> <li>The proposal meets all the service requirements of the Request and within an appropriate timeframe.</li> </ul>	20
3.	Project Cost	<ul style="list-style-type: none"> <li>Full cost of services, including estimated expenses, are provided.</li> <li>Cost is evaluated based on the strength of staff and allocated resources.</li> </ul>	20
4.	Knowledge of the Planning Context	<ul style="list-style-type: none"> <li>Proponent clearly demonstrates an understanding of the planning context in the Township and associated relationship with the Region, partners, public and stakeholders and priority to engage these groups and understand their range of interests.</li> </ul>	15
5.	Value Added	<ul style="list-style-type: none"> <li>Suggestions regarding innovative approaches for the work plan and engagement strategy</li> </ul>	15
6.	Experience with Similar Projects	<ul style="list-style-type: none"> <li>Identify Secondary Plan projects that the Proponent has lead and provide time frames for completion.</li> </ul>	15
<b>TOTAL</b>			<b>100</b>

### **30. Clarification of Submissions**

The Township reserves the right in its sole discretion to clarify any bid after the Proposal submission deadline. The response received by the Township from a Proponent shall, if accepted by the Township, form an integral part of that Proponent's Proposal. The Township

reserves the right to interview any or all Proponents to obtain information about or clarification of their Proposals. In the event that the Township receives information at any stage of the evaluation process which results in earlier information provided by the Proponent being deemed by the Township to be inaccurate, incomplete or misleading, the Township reserves the right to revisit the Proponent's evaluation result.

**31. Award**

The first ranked Proponent, having acceptable terms and conditions, will be recommended for Award. If approved, the Township will notify the Successful Proponent in writing of the acceptance with the Township within fourteen (14) days of Contract Award. The date of the Contract Award shall be taken as the date on which the Proponent is notified of the acceptance of its Proposal. A blank form is included as Appendix C.

**32. Contract Award Document**

The issue of letter to the successful Proponent outlining the intent of the Township to enter into a Contract between the Township and the Successful Proponent in accordance with the terms and conditions set out in the Proposal, the Specifications, any applicable Addenda and any other related documents.

**33. Negotiations**

In the event that a prepared Proposal does not precisely and entirely meet the requirements of this Request for Proposal, the Township reserves the right to enter into negotiations with the selected Proponent(s) to arrive at a mutually satisfactory arrangement with respect to any modifications to the Proposal.

**34. Written Agreement**

A written agreement shall be executed by the Successful Proponent and the Township. See sample agreement Appendix C. The final terms and conditions of the agreement will be negotiated between the Successful Proponent and the Township in accordance with clause #33, Negotiations.

**35. Performance Unsatisfactory**

The Contract will be deemed to be in default when the Proponent fails to:

- Perform any specification, term or requirement included herein, in a good and proper manner.
- Provide any deliverable(s) in accordance with the requirements incorporated in the Contract.
- Adhere to specified delivery requirements and/or dates.

**36. Force Majeure**

Neither party shall be responsible for delays or non-performance of this Contract resulting directly or indirectly from impediments beyond its reasonable control (other than financial inability or by application of applicable law), including, without limitation, any delay caused by fire or other impediment beyond the reasonable control of such party and not caused by an act

or omission of such party, provided in the event of such delay or non-performance, the party continues to act reasonably to resolve such delay or non-performance.

**37. Purchasing By-law**

Proposals will be solicited, received, evaluated, accepted and processed in accordance with the Township's Purchasing Policy, as amended from time to time.

**38. De-Briefing**

After the selection has been made, an unsuccessful Proponent may request a debriefing session to discuss their Proposal by contacting the project manager. The project manager will conduct a debriefing, by telephone, for the purpose of the explaining the evaluation process, discussing only the Proponent's Proposal, its ranking, and explaining why they were not selected. The following is the project manager contact information:

Name: Brian Treble, Director of Planning and Building  
Phone Number: 905-957-5138 (direct line)

Only the Proposal of the unsuccessful applicant will be reviewed.

**39. Limitation of Damages**

By submitting a Proposal, the Proponent agrees that in no event will the Proponent claim damages in excess of an amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for matters relating to any agreement or concerning the competitive process, and, the Proponent, by submitting a Proposal, waives any claim for loss of profits if no agreement is made with the Proponent.

**40. Minor Non-Compliance**

Proposals which fail to conform to the requirements of this invitation in form or content may be disqualified as non-compliant. However, the Township may, in its sole discretion, waive minor non-compliance and retain, for consideration and possible Award, Proposals which do not conform to the requirements of the invitation in form or content, where such Proposals appear to offer the best value to the Township. Proponents are cautioned that any such retention of non-conforming Proposals for evaluation and possible Award will be a rare event and solely at the Township's discretion. Proponents are urged to ensure their bid is fully compliant with all requirements of the invitation.

**41. Unbalanced or Unreasonable Cost Estimates**

Proposals that contain costs which appear to be unbalanced or unreasonable as likely to adversely affect the interests of the Township may be rejected.

**42. Dispute Resolution**

a) The Township encourages competitive bidding and an open, accountable and transparent process for the Purchase of Goods and/or Services.

- b) To maintain the integrity of the process, Proponents who believe they have been treated unfairly shall submit a Substantive Objection to the Clerk providing sufficient detail regarding the complaint.
- c) The Clerk will arrange a debriefing with the Proponent to explain the evaluation process that led to the selection of the Successful Proponent.
- d) The Clerk will investigate the complaint and will make a recommendation to the CAO or Council, as appropriate.
- e) To ensure that the complaint process is seen to be fair and impartial, elected officials shall not advocate on behalf of Proponents who have submitted a Substantive Objection.
- f) Should a Proponent continue to have concerns respecting the Award and the decision, the Proponent may then request, in writing to the Director of Planning, a mediator, to assist in resolving any outstanding issues between the Proponent and the Township.
- g) The recommended mediator will be approved by both the Proponent and the Township.
- h) The mediator shall make his/her best efforts to assist the parties to reach a mutually acceptable solution.
- i) Costs for the mediator shall be equally shared by the Proponent and the Township.
- j) Any resolution reached through the mediation process shall remain confidential if requested by either of the parties.

**43. Lobbying Restrictions**

- a) Proponents, their staff members or anyone involved in preparing Proposals shall not engage in any form of political or other lobbying whatsoever or seek to influence the outcome of the purchasing process or subsequent Award. This restriction extends to all of the Township's staff and members of Council.
- b) The Township may reject any bid by a Proponent that engages in such lobbying, without further consideration, and may terminate that Proponent's right to continue in the purchasing process.
- c) During a bid solicitation process, all communications shall be made through the Clerks Department. No Proponent or person acting on behalf of a Proponent or group of Proponents, shall contact any elected official, consultant or any employee of the Township to attempt to see information or influence the Award.
- d) Elected officials shall refer any inquiries about a bid solicitation process to the Clerk.

**44. Subcontractors and Consultants**

The Successful Proponent shall not make any assignment, or subcontractor for the supply of material or the execution of any of the work hereby proposed, nor engage in brokering or franchising or any other such practice, unless the Township, in its' own absolute discretion, expressly consents in writing.

Failure of the Successful Proponent to obtain the express written consent of the Township, prior to engaging in any of the practices note in the above paragraph, shall constitute a fundamental breach of the Contract, and in such circumstance the Township may, in its' own absolute discretion, cancel the Contract and award to any other Proponent, or re-issue the Proposal.

Further, the Successful Proponent shall be liable for all damages sustained by the Township as a result of the Successful Proponent's breach of the Contract, regardless of whether or not the Township chooses to cancel the Contract. Any Contract payments outstanding at the time of the Proponent's breach will be forfeited to the Township in full or partial payment of said damages.

Any outside costs associated with making a decision on whether to assign a contract will be the responsibility of the Successful Proponent. The Successful Proponent shall be liable to the Township for costs or damages arising from errors or omissions of the subcontractors and/or consultants affecting the Township.

**45. Personnel and Performance**

The Successful Proponent shall be responsible for its own staff resources and for the staff resources of any subcontractors and/or consultants engaged by them, and shall ensure that all personnel acting on behalf of the Township comply with all applicable laws.

**46. Laws and Regulations**

The Successful Proponent shall be governed by the laws and regulations of Ontario, including without limitation:

- a) *The Municipal Act, 2001* and its regulations;
- b) *The Insurance Act* and its regulations;
- c) *The Workplace Safety and Insurance Act* and its regulations;
- d) *The Occupational Health and Safety Act* and its regulations; and,
- e) *The Planning Act* and its regulations.

**47. Non-Exclusivity**

The entry into a Contract by the Township shall not be a guarantee of exclusivity to the Successful Proponent.

**48. Intellectual Property Rights and Indemnification**

The Successful Proponent shall indemnify and save harmless the Township, its elected officials, officers, employees and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from infringement, actual or alleged, by the Proposal, its use or misuse, by any of the deliverables developed or provided or supplied under or used in connection with the services (including the provision of the services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

The Successful Proponent shall pay all royalties and patent license fees required for the services.

If the services, or any part thereof is in any action or proceedings held to constitute an infringement, the Successful Proponent shall forthwith either secure for the Region the right to

continue using the services or shall at the Successful Proponent's expense, replace the infringing items with non-infringing services or modify them so that the services no longer infringe.

All information and data in any form, which are prepared by the Successful Proponent pursuant to the delivery of the services contemplated in the RFP, together with all designs or materials capable of intellectual property protection, prepared, developed or created by the Successful Proponent, its employees or agents during the performance of the services pursuant to the RFP and Contract shall automatically become the property of the Township unless specifically noted otherwise.

The Proponent hereby waives its moral rights to any such work as defined in the *Copyright Act*, R.S.C. 1985, c. C.42, as amended, or successor legislation.

**49. Agreements in Writing**

In all cases of misunderstanding and disputes, verbal arrangements will not be considered. The Successful Proponent must produce written authority in support of its contentions and shall advance no claim in the absence of such written authority, or use, or attempt to use any conversation with any parties against the Township or in prosecuting any claim against the Township.

**50. Termination**

Unless the Township agrees in writing to termination on a different basis, the following termination condition would apply to any Contract following an Award.

Upon giving the Successful Proponent not less than thirty (30) days' prior written notice, the Township may, at any time and without cause, cancel the Contract, in whole or in part. In the event of such cancellation, the Township shall not incur any liability to the Successful Proponent apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Successful Proponent at the time of cancellation.

Failure of the Successful Proponent to perform its obligations under the Agreement shall entitle the Township to terminate the Contract upon ten (10) days' written notice to the Successful Proponent, if a breach which is not remediable is not rectified at that time. In the event of such termination, the Township shall not incur any liability to the Successful Proponent apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Successful Proponent at the time of termination.

All rights and remedies of the Township for any breach of the Successful Proponent's obligations under the Contract shall be cumulative and not exclusive or mutually exclusive alternatives and under the Contract or otherwise at law.

No delay or omission by the Township in exercising any right or remedy shall operate as a waiver of them or any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or any other right or remedy.

**51. Right to Audit**

The Township or anyone designated in writing by it may audit and inspect all financial and related records associated with the terms of the Contract including timesheets, accounts, records, receipts, vouchers, and other documents relating to the services and shall have the right to make copies thereof and take extract therefrom. The Successful Proponent shall make available all facilities, physical and otherwise, for such audits and inspections and shall furnish the Township and its authorized representatives with all such information as it, or they, may from time to time require with reference to such timesheets, accounts, records, receipts, vouchers, and other documents. The Successful Proponent shall cause all such timesheets, accounts, records, receipts, vouchers, and other documents, as aforesaid, to be preserved and kept available for audits and inspection at any reasonable time, and from time to time, until the expiration of **five (5)** years from the later of:

- a) The date of termination of the Successful Proponent or cancellation of the Contract;
- b) The date of completion of the services hereunder; or
- c) The expiration of such lesser or greater period of time as shall be approved in writing by the Township.

**52. Evaluation of Performance**

At any time during the course of, and completion of the Contract, the Township may complete an evaluation of the Successful Proponent's performance, which may be made available to persons requesting references from the Township for the Contract and also may be reviewed and may form part of the criteria when awarding future Proposals by the Township.

The Successful Proponent hereby authorizes the maintenance and release of this information.

**53. Quality and Value**

The Successful Proponent shall provide a preferred standard of service and value to the Township. the Township shall be the sole judge of the adequacy of such service and value, and may suggest changes as necessary.

**54. Meetings**

The Successful Proponent's representative(s), as requested by the Township, shall attend all meetings required prior to and during the Contract. This shall include all regular meetings and emergency meetings.

The Successful Proponent's representative(s) attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

A meeting may proceed by conference call, or may require personal attendance of the Successful Proponent.

**55. Liability for Errors**

While the Township has used considerable efforts to insure an accurate representation of information in this RFP, information contained in this RFP is supplied solely as a guideline for the Successful Proponent. The information is not guaranteed or warranted to be accurate by the Township nor is necessarily comprehensive or extensive. Nothing in this RFP is intended to relieve Successful Proponent from forming its own opinions and conclusions with respect to the matter addressed in the RFP.

**56. Non-Waiver**

No condoning, excusing or overlooking by the Township of any default, breach or non-observance by the Successful Proponent at any time or times in respect of any provision herein contained shall operate as a waiver of the Region's right hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Township herein in respect of any such continuing or subsequent default or breach. No waiver shall be inferred from or implied by anything done or omitted by the Township save only for an express waiver in writing. Any work completed by the Township required by this Contract to be done by the Successful Proponent, after reasonable notice, shall not relieve the Successful Proponent of its obligations to do that work or to reimburse the Township for its actual cost to the Township of having done it, including an allowance for normal overheads.

**57. Notices**

Any notice herein required or permitted to be given shall be delivered personally or shall be sent by facsimile or prepaid registered mail addressed to the parties at the designated addresses.

Any notice delivered personally as aforesaid shall be deemed to have been given on the day of delivery and shall be considered to have been received by the addressee on the date of delivery by hand to an employee or an officer of the party for whom they are intended at the specified address.

Any notice delivered by facsimile shall be deemed to have been given on the day of delivery and shall be considered to have been received by the addressee on the date of delivery by facsimile to an employee or officer of the party for whom they are intended at the specified facsimile number.

Any notice sent by prepaid registered mail as aforesaid shall be deemed to have been received by the addressee within five (5) days of the date of mailing, regardless of whether the addressee actually receives the notice or not.

Either party hereto may at any time give notice under this section to the other of a change of address and thereafter such changed address shall be substituted for the previous address set out herein.

**58. Township not Employer**

The Proponent agrees that the Township is not to be understood as the employer to the Successful Proponent nor to the Successful Proponent's personnel or staff for any work, services or supply of any products or materials that may be awarded as a result of this Proposal. It is understood that the Successful Proponent will act as an independent contractor.

### **III SPECIFICATIONS AND SCOPE OF WORK**

#### **Objectives**

The objectives of the review of the Spring Creek Heights Secondary Plan are:

- Determine, in consultation with a qualified engineer, whether there have been any changes to MOE regulations and guidelines since 2009;
- Determine if any new empirical measurements are necessary based on information from the Township of current industrial operations;
- Interview representatives of Stanpac to determine the nature of their current and planned operations;
- Review zoning permissions in the industrial area especially where Niagara Grain and Feed has closed;
- Determine if there are any industrial operations left or opened since the original study, conforming or non-conforming, that would attract the requirement for a setback, and;
- Determine if there are any non-confirming permissions that could allow a new heavy industrial operation to open.

#### **Proposed Work Plan**

In order to complete the Secondary Plan Review, it is anticipated that the project will be completed in four phases:

1. Background Research
2. Technical Analysis and Issues and Opportunities
3. Public Consultation
4. Preferred Secondary Plan

Proposals for undertaking the Secondary Plan Review will outline an estimated timeframe and cost for the completion of each phase/task and outline how the consultant's proposed work plan will address the tasks outlined in each phase:

#### **Phase 1 – Background Research**

The overall objective of Phase 1 is to review, collect and create policy and data to support the comprehensive review. This will be achieved through:

- Review of Provincial Plans and relevant legislation.
- Review of the Township's Official Plan, growth management policies and consolidation of policies from other growth management initiatives.
- Review of the Township's Urban Design Manual, Parks and Recreation Master Plan, Trails and Corridors Master Plan, Growth Management Reports and Economic Development Strategy.
- Preparation of reports that highlight the findings of Phase 1.

#### **Phase 2 – Technical Analysis and Issues and Opportunities**

Phase 2 is to review the issues and opportunities in developing the lands in the Spring Creek Heights Secondary Plan area. Phase 2 will review the opportunities for the development of

these lands, as well as any limitations and restrictions to the development. This will be achieved through:

- A review of the Official Plan Amendment 26 document and the Background consultant report.
- An evaluation of the Ministry of the Environment guidelines, current uses, and provincial and regional policy expectations.
- Calculate appropriate setbacks between residential and employment uses.
- Explore possible buffer uses between the residential and employment intensification.

### **Phase 3 – Public Consultation**

Phase 3 is to undertake public consultation to review the findings and proposals for the Secondary with the public and other agencies. The public review will include:

- Identification of possible revisions to the planned land uses and identification of where these uses will be located within the Secondary Plan area.
- Review of the Ministry of the Environment noise guidelines and appropriate uses for the Secondary Plan area.

### **Phase 4 – Preferred Option**

Phase 4 is to present the final option for revision of the Spring Creek Heights Secondary Plan based on the previous research and public consultation. The final preferred option will be provided through:

- Final recommendation report prepared by the Proponent.
- Presentation to Township Council outlining the preferred option.
- Preparation of an Official Plan Amendment as well as all documents to be submitted to the Region of Niagara for their approval, if required.

### **Engagement Strategy**

A fundamental component of the Secondary Plan will be an engagement strategy/program that will highlight how and at what points Township Council, agency stakeholders, and residents will be engaged throughout all stages of the process. Engagement methods may include:

- Maps and visual guides to assist in outlining the project intent, options and implications.
- Use of innovative techniques for engagement is required throughout each phase of the Secondary Plan.

Printing of all materials, including briefs, reports, workshop materials, etc., will be done by the Proponent.

### **Data and Mapping**

All data (tabular and spatial) and mapping generated by the Successful Consultant shall be made available to the Township. Data and mapping will be provided in the following formats:

#### *Tabular Data*

- Excel (.XSL) or Comma Separated Values (.CVS)

#### *Spatial Data*

- ESRI Geodatabase (.GDB) or Shapefile (.SHP)

#### *Mapping*

- Portable Document Format (.PDF) or Map Document (.MXD)

### **Additional Criteria**

In the event of an appeal, Proponents may be asked to provide expert opinion at the Ontario Municipal Board.

**IV FORM OF PROPOSAL**

I/We, the undersigned, having the authority to bind the company, certify that I/We have examined all Sections of this Request for Proposal (Introduction, Information to Proponents & General Conditions, Scope of Work, Form of Proposal, and all Appendices), do hereby submit a Proposal to enter into an Agreement with the Township of West Lincoln, in accordance with the Terms and Conditions specified in this Request for RFP document, subject to amendment by any Addendum/Addenda which are acknowledged below:

**ADDENDUM/ADDENDA** (If applicable **must** be filled in by Proponent)

I/We, the undersigned, acknowledge that I/We have received Addendum/Addenda Numbers \_\_\_\_\* to \_\_\_\_\* inclusive, and that all changes specified therein have been included in the prices submitted.

WSIB ACCOUNT # \_\_\_\_\_

COMPANY: <b>(Must Show Correct Legal Company Name)</b>	<b>CONTACT NAME:</b> (please print)
ADDRESS:	SIGNATURE: (I/We have the authority to bind the Corporation)
	TITLE:
	<b>WITNESS:</b>
POSTAL CODE:	SIGNATURE:
TELEPHONE NUMBER:	TITLE:
FAX NUMBER:	DATE:
E-MAIL ADDRESS <b>(Must supply if available):</b>	

# APPENDIX A

## Related Reports and Materials

- Official Plan Amendment 26
- Staff Report PD-113-17
- Air Quality and Environmental Impact Assessment Study (2009)
- Transportation Analysis
- Municipal Comprehensive Review
- EDC Report

## APPENDIX B

## APPENDIX C

**THIS AGREEMENT** made in triplicate this \_\_\_ day of (month) 2017.

**-BETWEEN-**

**THE TOWNSHIP OF WEST LINCOLN**  
318 Canborough Street, P.O. Box 400  
Smithville, Ontario  
L0R 2A0

Hereinafter called the "Township" (of the first part)

**-AND-**

**CONSULTANT NAME**  
Address

Hereinafter called the "Consultant" (of the second part)

**WHEREAS** on (date), the Township issued Request for Proposal # (insert number) if applicable and Addendum # (insert number) dated (insert date) for (enter the description of work) (the "RFP");

**AND WHEREAS** on (enter date of Consultant's proposal) the Consultant submitted a bid in response to the RFP (the "Bid");

**AND WHEREAS** the Township wishes to enter into an agreement with the Consultant for the services, as more particularly in the RFP and the Bid, attached hereto as Schedule "A" and forming part of this Agreement (the "Services");

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and other good and valuable consideration, the sufficiency whereof is acknowledged hereby by the parties, the parties hereto agree with each other as follows:

1. The Consultant shall provide the Services pursuant to all the terms and specifications set out in Schedule "A". If there should be any conflict between the provisions of this Agreement and the provisions of Schedule "A", the provisions of this Agreement shall prevail.
2. The term of this Agreement shall commence \_\_\_\_\_.
3. The Township shall pay the Consultant for Services as outlined in Schedule "A".

4. If either party, acting reasonably, determines that the other party has failed to perform its obligations pursuant to this Agreement, then such party may terminate this Agreement upon giving at least thirty (30) days written notice to the other party.
5. The Consultant shall indemnify and save harmless the Township, its elected officials, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest, or damages of every nature and kind whatsoever arising out of the negligence, errors, omissions, fraud or wilful misconduct of the Consultant its officers, employees, agents and sub-consultants, or any of them, attributable to or connected with the performance, non-performance of the Consultant obligations pursuant to this Agreement, except to the extent that same is attributable or caused by the negligence of the Region, its officers, employees and agents, or any of them. Further, this indemnity shall survive the expiration or early termination of this Agreement and continue in full force and effect.
6. This Agreement together with its schedule constitutes the entire understanding between the parties. Any change, addition to, or waiver of the terms hereof must be specifically agreed upon, in writing, and signed by both parties. Failure on the part of either party to insist upon the strict observance of any of the terms and/or conditions herein shall not operate as a waiver of such party's right to require the future observance of any such terms or conditions.
7. This Agreement shall not be assigned, in whole or in part, by either party hereto without the prior written consent of the other party. This Agreement, all its covenants, promises and conditions shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.
8. Either party may terminate this Agreement at any time, without notice, for just cause which shall include, without limitation, dishonesty, fraud, wilful deceit or failure to properly fulfill the obligations hereunder where such failure is not remedied within ten (10) days after notice of same is given.
9. This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario, Canada.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement.

**THE CORPORATION OF THE TOWNSHIP OF  
WEST LINCOLN**

Per: \_\_\_\_\_  
**MAYOR DOUGLAS JOYNER**

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

Per: \_\_\_\_\_  
**CAROLYN LANGLEY, CLERK**

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

**THE TOWNSHIP OF WEST LINCOLN**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

I have the authority to bind the Corporation

## APPENDIX D