

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 05-150**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND KMK CONSULTANTS LIMITED TO COMPLETE A DETAILED DESIGN AND CONTRACT ADMINISTRATION SERVICES FOR CAPACITY UPGRADES TO THE PARKHILL ROAD SEWAGE PUMPING STATION.**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute an agreement between the Corporation of the City of Peterborough and KMK Consultants Limited in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 4<sup>th</sup> day of July, 2005

By-law read a third time and finally passed this 4<sup>th</sup> day of July, 2005

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) Leigh Doughty, Deputy Clerk

**AGREEMENT**

**FOR**

**PROFESSIONAL CONSULTING SERVICES**

**MEMORANDUM OF AGREEMENT** dated the 4<sup>th</sup> day of July A.D. 2005

**- BETWEEN -**

**THE CORPORATION OF THE CITY OF PETEBOROUGH**

Hereinafter called the "Client"

**THE PARTY OF THE FIRST PART**

**- AND -**

**KMK CONSULTANTS LIMITED**

Hereinafter called the "Consultant"

**THE PARTY OF THE SECOND PART**

**WHEREAS** the Client intends to have completed the design and construction of the necessary upgrades to increase the capacity of the Park hill Road Sewage Pumping Station, within the City of Peterborough, to 76 litres per second, not later than December 31, 2005, hereinafter called the "Project" and has requested the Consultant to furnish professional services in connection therewith;

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

## ARTICLE 1 - GENERAL CONDITIONS

### 1.1 Retainer

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

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

### 1.2 Services

The services to be provided by the Consultant and the Client for the Project are set forth in Article 2, as supplemented pursuant to Section 1.26, and such services as changed, altered or added to under Section 1.9 are hereinafter called the "services".

### 1.3 Compensation

The Client shall pay the Consultant in accordance with the provisions set forth in Article 3.

### 1.4 Staff and Methods

The Consultant shall use current state of the art principles and shall skilfully and competently perform the Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff with the approval of the Client. The Consultant shall have the prior agreement of the Client before making any changes to the staff list after commencement of the Project.

### 1.5 Drawings and Documents

Subject to Section 3.2.4 of Article 3, drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the consultant for the Client may be used by the Client, for the Project herein described, including "as built" records. The Client has ownership of the drawings.

### 1.6 Survey Data and Plans

The survey data and plan(s) collected and produced as a part of this assignment may be incorporated into the City's Geographical Information System and this data will be made available to all users of the City's Geographical Information System.

1.7 Intellectual Property

All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in the performance of their services, and which are patent able, capable of trademark or otherwise, shall be and remain the property of the Client.

1.8 Records and Audit

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

1.9 Changes and Alterations and Additional Services

- a) The Client, in consultation with the Consultant, may in writing, at any time after the execution of this Agreement, delete, extend, increase, vary or otherwise alter the Services required under this Agreement.
- b) In the event that the Client increases the overall Services required, the Client shall either:
  - i) where appropriate, pay the Consultant for its additional fees and disbursements in accordance with Article 3 of this Agreement from the contingency allowance under Subsection 3.2.2 c) ii); or
  - ii) increase any of the amounts prescribed under Subsections 3.2.2 c) or 3.2.3 c), as required, and pay the Consultant for its additional fees and disbursements in accordance with Article 3 of this Agreement.
- c) In the event that the Client decreases the overall Services required under this Agreement, the Client may reduce the amounts prescribed, at its sole discretion, under Subsections 3.2.2 c) or 3.2.3 c) of this Agreement.

1.10 Suspension or Termination

The Client may at any time by notice in writing to the Consultant suspend or terminate the services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the consultant shall perform no further Services other than those reasonably necessary to close out their Services. In such an event, the Consultant shall be entitled to payment for work related to the close out of services in accordance with Subsection 3.2.1.1 for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.4.

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

1.11 Indemnification

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

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

1.12 Insurance

a) Comprehensive General Liability and Automobile Insurance

The Consultant shall maintain insurance for the duration of the contract. Coverage shall consist of a comprehensive policy of public liability and property damage insurance acceptable to the Client in an amount not less than \$2,000,000.00 and automobile insurance for both owned and non-owned vehicles in an amount not less than \$2,000,000.00. The liability policy shall name the Client as an additional insured thereunder and the Consultant shall forward proof of insurance as the Client may direct. The said policy shall contain a cross-liability clause.

b) Professional Liability Insurance

The Insurance Coverage shall be in the amount of \$1,000,000.00. When requested, the Consultant shall provide to the Client proof of Professional Liability Insurance carried by the Consultant.

c) Change in Coverage

If the Client requests to have the amount of coverage increased or to obtain other special insurance for the Project, then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the Client's expense as a disbursement allowed under Section 3.2.4.

It is understood and agreed that the coverage provided by these policies will not be changed or amended in any way nor cancelled by the Consultant until (30) days after written notice of such change or cancellations has been personally delivered to the Client.

1.13 Contracting for Construction

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

1.14 Assignment

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

1.15 Previous Agreements

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

1.16 Approval by Other Authorities

Unless otherwise provided in this Agreement, where the work of the Consultant is subject to the approval or review of an authority, department of government, or agency other than the Client, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the Client and unless authorized by the Client in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of government or agency.

1.17 Principals and Executives

The use of Principals and Executives on a time basis by the Consultant will be in accordance with Subsection 3.2.1.1.

1.18 Specialized Services

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

1.19 Inspection

The Client, or persons authorized by the Client, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

1.20 Publication

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

1.21 Confidential Data

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

1.22 Time

The Consultant shall perform the Services expeditiously to meet the requirements of the Client and shall complete any portion or portions of the services in such order as the Client may require and the Client shall have the right to take possession of and use any completed or partially completed portions of the Work notwithstanding any provisions expressed or implied to the contrary.

The Client shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, and shall make any decisions which they are required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

1.23 Estimates, Schedules and Staff List

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

When requested by the Client, the Consultant shall, prior to the execution of this Agreement provide, for approval by the Client:

- a) A Schedule of the fees and disbursements to be paid for the Services described in Article 2.
- b) A Schedule showing an estimate of the portion of the services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month.
- d) A Staff list showing the number, classifications and salary ranges of staff and/or hourly rate ranges for Principals and Executives that will be providing services for this project. The Consultant shall relate such information to the particular type of work that such staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's staff who is to be the liaison person between the Consultant and the Client.

1.23.2 Subsequent Changes in the Schedule of Fees, Schedule of Progress, Staff List and Expenditure of Contingency Allowance

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

- a) Any increase in the fees beyond those approved under Subsections 3.2.1, 3.2.2 and 3.2.3.
- b) Any change in the schedule of progress which results in a longer period than provided in the Schedule referred to in Subsection 1.23.1 b).
- c) Any change in the number, classification and salary ranges of the staff provided in the staff list referred to under Subsection 1.23.1 c).
- e) Expenditure of any portion of the contingency allowance as outlined under Subsection 3.2.2.

1.23.3 Monthly Reporting of Progress

When requested by the Client, the Consultant shall provide a monthly report to the Client (descriptive and fee value) showing:

- a) The portion of the Services completed in the preceding month.
- b) Services completed to date.
- c) Remaining Services to be completed.

1.24 Federal and Provincial Requirements

The Consultant shall abide by all applicable Federal and Provincial Legislation and Regulations thereto as these may relate to, but not limited to, the employment of staff, compensation, Workplace Safety & Insurance Board (WSIB), etc.

1.25 Term of Project

- a) The Term of the Project will be defined in the Schedule of Progress described in 1.23.1 b), and from that, the term of this Agreement expires on December 31, 2006 or as otherwise approved by the Client and subject to 1.25 b).
- b) The term of the Agreement and the Project to date will be reviewed at the end of each calendar year by the Client and the Consultant. A recommendation for Project continuation and budget provision in the following year will be prepared for approval by the Client.

1.26 Appendices

Appendix A – Proposal for Parkhill Road Sewage Pumping Station (SPS) Upgrades in the City of Peterborough dated May 27, 2005, attached.

Appendix A is intended to supplement Articles 2 a) and 2 b) ("Services to be Provided by the Consultant"). If any conflicts exist between Appendix A and Articles 2 a) and 2 b), Articles 2 a) and 2 b) shall prevail.

1.27 Conflict of Interest

The Consultant shall disclose to the Client prior to accepting an assignment, any potential conflict of interest. If such a conflict of interest does exist, the Client may, at its discretion, withhold the assignment from the Consultant until the matter is suitably resolved, and further

That if during the conduct of an assignment with the Client the Consultant is retained by another client giving rise to a potential conflict of interest, then the Consultant shall so inform the Client. If a significant conflict of interest is deemed to exist, then the Consultant shall refuse the new assignment or shall take such steps as are necessary to remove the conflict of interest.

1.28 Arbitration

All matters in dispute under this Agreement may with the consent of both parties be referred to arbitration.

No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Client or the Engineer.

The award of the arbitrator shall be final and binding upon the parties.

The provisions of the Ontario Arbitrations Act shall apply.

## ARTICLE 2 - SERVICES

Services to be provided as part of this agreement include the following:

**ARTICLE 2 a) - SERVICES TO BE PROVIDED BY THE CONSULTANT DURING THE DESIGN PHASE OF THE PARKHILL ROAD SEWAGE PUMPING STATION (SPS) UPGRADES (UPSET FEE LIMIT)**

Refer to Consultant proposal dated May 27, 2005, attached as Appendix A.

**ARTICLE 2 b) - SERVICES TO BE PROVIDED BY THE CONSULTANT DURING THE CONSTRUCTION PHASE OF THE PARKHILL ROAD SEWAGE PUMPING STATION (SPS) UPGRADES (UPSET FEE LIMIT)**

Refer to Consultant proposal dated May 27, 2005, attached as Appendix A.

**ARTICLE 2 c) - SERVICES TO BE PROVIDED BY THE CLIENT**

- attendance at Project Team meetings, as requested;
- review, approval and payment of monthly client invoices in accordance with this Agreement;
- review and approval of on-going consultant work in a timely manner;
- advertising costs related to the project (material to be prepared by consultant), if necessary;
- provide meeting room space to Project Team;
- MOE Application fees; and
- provide background information to the consultant, as requested

## ARTICLE 3 - FEES AND DISBURSEMENTS

### 3.1 Definitions

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

a) Payroll Costs:

Payroll Cost is defined as hourly salary plus payroll burden.

- i) The following formula shall be used to calculate the hourly salary for billing purposes. Salary per hour equals:

$$\frac{\text{Annual Salary}}{\text{Hours Per Week} \times 52 \times .85}$$

- ii) Payroll burden equals fringe benefits expressed as a percentage of salary that provides for health and medical insurance, group life and disability insurance, company and Canada pension employer contributions, Workplace Safety & Insurance Board (WSIB) and Employment Insurance, but excludes bonuses or profit sharing. For the purposes of this Agreement, payroll burden is actual payroll burden up to a maximum of 15%, before the application of overhead and profit.

b) Site

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

### 3.2 Basis of Payment

#### 3.2.1 Fees Calculated on a Time Basis

3.2.1.1 The Client shall pay the Consultant a fee, calculated on a time basis, for engineering services. Fees calculated on a time basis shall be determined as follows:

- a) Principals and Executives \$ 150.00 per hour,  
b) Staff - Payroll Cost plus 100% of payroll cost,

- c) Services During Construction
  - i) For all services except for staff full-time continuously on site:  
 Principals and Executives \$ 165.00 per hour.  
 Other Staff: Payroll Cost plus 100%.
  - ii) For site staff working full time continuously:  
 Payroll Cost plus 80%.
- d) All the above rates may be reviewed annually and adjusted accordingly.

3.2.1.2 All time expended on this Project, whether in the Consultant's office, at the Client's premises, or elsewhere, and including travel time, is chargeable to the project, subject to the Articles of this agreement. This also includes, but is not limited to, clerical staff engaged in the preparation of documents such as reports, and specifications.

3.2.2 Fees During the Design Phase of the Parkhill Road Sewage Pumping Station Upgrades

- a) The design phase of the Project consists of the services as described in Article 2 a) - Services to be provided by the Consultant during the design phase of the Parkhill Road Sewage Pumping Station (SPS) Upgrades (Upset Fee Limit).
- b) The Consultant shall be paid fees for its services on a time basis in accordance with Section 3.2.1.1 of this Agreement.
- c) Notwithstanding Subsection b) of this section, the total fees and disbursements paid by the Client to the Consultant for design services related to the Parkhill Road Sewage Pumping Station (SPS) Upgrades shall not exceed the total amount of \$ 20,250.00 plus applicable taxes made up as follows:
  - i) \$ 20,250.00 plus applicable taxes for engineering services as described in Article 2 a) - Services to be provided by the Consultant during the design phase of the Parkhill Road Sewage Pumping Station (SPS) Upgrades (Upset Fee Limit); and
  - ii) \$ 0.00 plus applicable taxes as a contingency allowance for additional engineering services that may be required but are not included in Article 2 a).

- d) The Consultant must request and receive the written approval of the Client before any additional engineering services are carried out that are not included in Article 2 a) - Services to be provided by the Consultant during the design phase of the Parkhill Road Sewage Pumping Station (SPS) Upgrades (Upset Fee Limit). The Consultant shall not be entitled to any payment from the contingency allowance of \$ 0.00 plus applicable taxes unless the Consultant has satisfied this condition.
- e) When approving additional engineering services that are not included in Article 2 a) - Services to be provided by the Consultant during the design phase of the Parkhill Road Sewage Pumping Station (SPS) Upgrades (Upset Fee Limit), the Client, at its sole discretion, may, in writing, set a limit on the monies from the contingency allowance of \$ 0.00 plus applicable taxes that will be permitted for the requested additional services.

3.2.3 Fees During the Construction Phase of the Parkhill Road Sewage Pumping Station Upgrades

- a) The construction phase of the Project consists of the services as described in Article 2 b) - Services to be provided by the Consultant during the construction phase of the Parkhill Road Sewage Pumping Station (SPS) Upgrades (Upset Fee Limit).
- b) The Consultant shall be paid fees for its services for the construction phase on a time basis in accordance with Section 3.2.1.1 of this Agreement. The Consultant shall be paid for its reasonable disbursements for the construction phase in accordance with Section 3.2.4 of this Agreement.
- c) Notwithstanding Subsection b) of this section, the total fees and disbursements paid by the Client to the Consultant for the construction phase shall not exceed the Consultant's total estimated amount of \$ 17,500.00 plus applicable taxes unless the Client, at its sole discretion and in writing, agrees to an increased amount.
- d) Any request by the Consultant for an increased amount under Subsection c) of this section shall:
  - i) be in writing;
  - ii) state the reasons why the Consultant's estimated sum of \$ 17,500.00 plus applicable taxes should be increased; and
  - iii) be made before the Consultant's total fees and disbursements exceed the Consultant's estimated sum of \$ 17,500.00 plus applicable taxes.
- e) Under no circumstances whatsoever shall the Consultant's total fees and disbursements exceed the sum of \$ 17,500.00 plus applicable taxes without the prior written approval of the Client.

### 3.2.4 Reimbursable Expenses

The Consultant shall be reimbursed at cost plus an administrative charge of 5% for all reasonable expenses properly incurred by them in connection with the Project, including but not limited to: vehicle use charges, traveling and living expenses, long distance telephone charges, teletype and telegraph charges, printing and reproductions, progress photography, special delivery and express charges, overtime premium costs, and the cost of providing and maintaining site offices, supplies and equipment, approved special consultations, subsurface investigations, legal surveys, chemical and physical tests; all of which, for the purpose of the Project, are considered to be included in the total fee.

### 3.3 Payment

#### 3.3.1 Fees Calculated on a Time Basis

The Consultant shall submit an invoice to the Client for all services completed in the immediately preceding month. Payment of the invoice by the Client will be made within 30 days after the Client has received the Consultant's invoice.

IN WITNESS THEREOF the parties hereto have caused to be executed those presents by their officers properly authorized in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED at \_\_\_\_\_, this \_\_\_\_\_ day of July, 2005.

**CONSULTANT:**            NAME            KMK Consultants Limited  
                                 ADDRESS        1099 Kingston Road, Suite 200  
                                                            Pickering, Ontario L1V 1B5

\_\_\_\_\_  
WITNESS (required if the  
Consultant is not a Corporation)

Signature of Authorized  
Official or Principal

\_\_\_\_\_  
(Print Name and State Title)

\_\_\_\_\_  
WITNESS (if required)

Signature of Authorized  
(Corporate Seal)  
Official or Partner

I/We have authority to bind the corporation

**THE CORPORATION OF THE CITY OF PETERBOROUGH:**

Mayor

City Clerk