

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 05-261

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN
AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF
PETERBOROUGH AND UPPER CANADA FUELS LIMITED**

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

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

By-law read a first, second and third time this 5th day of December, 2005

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made in duplicate this 5th day of December, 2005.

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH

hereinafter called the "City"

OF THE FIRST PART

- and -

UPPER CANADA FUELS LIMITED

hereinafter called the "Contractor"

OF THE SECOND PART

WHEREAS the City has retained the Contractor to supply and deliver premium unleaded gasoline, unleaded regular gasoline, clear diesel fuel and coloured diesel fuel to various municipalities and commissions, in accordance with the Contractor's submission to Tender T-41-05, dated November 9, 2005, all of which is attached hereto as Schedule "A" and forming part of this Agreement (hereinafter referred to as the "Work");

AND WHEREAS the Contractor agrees to fully perform the Work in accordance with the provisions of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements herein contained, and subject to the terms and conditions hereinafter set out the parties hereto agree as follows:

ARTICLE 1 - RETAINER AND TERM

1.01 The City retains the Contractor to perform and, subject to early termination of this Agreement by the City hereinafter provided, to complete all the services comprising the Work.

1.02 This Agreement shall commence on the 1st day of January, 2006, and continue for a term of two (2) years, ending the 31st day of December, 2007. Subject to council approval, the City shall have the right to renew this Agreement for a further term of one (1) year, on the same terms and conditions as are herein contained, save and except the compensation, which shall be renegotiated. The City shall provide at least ninety (90) days written notice to the Contractor of its desire to renew this Agreement.

ARTICLE 2 - COMPENSATION AND FEES

2.01 The fuel costs and the payment of same are set out in Schedule "A".

ARTICLE 3 - STANDARD OF SERVICE TO BE PROVIDED TO THE CITY

3.01 The Contractor shall skillfully and competently perform the Work, and shall employ only skilled and competent staff and subcontractors, if any.

ARTICLE 4 - INDEMNIFICATION

4.01 The Contractor shall indemnify and save the City harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the City, its agents, servants or officers, may suffer as a result of the errors, omissions or the negligence of the Contractor, their agents, servants or officers, in the performance of the services hereunder.

ARTICLE 5 - INSURANCE

5.01 The Contractor shall obtain and maintain in full force and effect during the term of this Agreement public liability and property damage insurance in the minimum amount of Two Million Dollars (\$2,000,000.00). The insurance shall contain a cross-liability provision, and the City shall be named as an additional insured party. The Contractor shall, upon request, provide particulars of its insurance to the City.

ARTICLE 6 - NOTICES

6.01 Any notice as provided for under this Agreement may be served or given by one party to the other by serving the notice personally, mailing it by prepaid registered mail, or sending it by facsimile transmission to the following addresses:

- a) To the Contractor:

660 The Queensway
Peterborough, Ontario K9J 7H2
Telephone: 705.742.8815
Facsimile: 705.742.8003

- b) To the City:

The Corporation of the City of Peterborough
500 George Street North
Peterborough, ON K9H 3R9
Attention: Director, Finance & Administrative Services
Telephone: 705.742-7777
Extension 1860
Facsimile: 705.748-8839

ARTICLE 7 - CITY'S RIGHT TO TERMINATE CONTRACT

7.01 In the event that:

- a) The Contractor makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or an order is made for the winding-up of the Contractor; or
- b) The Contractor refuses or fails to supply sufficient properly skilled workmen or proper materials at all times to perform the Work in the manner and to the standards required under this Agreement, or it fails to observe and comply with any provisions of law, including, without limiting the generality of the foregoing, all requirements of all governmental authorities including federal, provincial and municipal legislative enactments, by-laws and other regulations now or hereafter in force which pertain to or affect the Work or the conduct of the Contractor's business at the Site; or
- c) The Contractor fails to institute appropriate corrective action forthwith after verbal notification by the City (which shall be confirmed subsequently in writing) of any failure on the part of the Contractor to comply with any of the terms and specifications of this Agreement notwithstanding that such failure is the result of any cause beyond the Contractor's control;

then the City has the right to terminate this Agreement on written notice to the Contractor.

ARTICLE 8 - SUCCESSORS AND ASSIGNMENT

8.01 This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, and their executors, administrators, successors and assigns.

8.02 This Agreement may not be assigned by either party without the written consent of the other.

IN WITNESS WHEREOF this Agreement has been duly executed by parties hereto.

SIGNED, SEALED AND DELIVERED)

in the presence of:)

**THE CORPORATION OF THE
CITY OF PETERBOROUGH**

Sylvia Sutherland, Mayor

Nancy Wright-Laking, Clerk

LIMITED

UPPER CANADA FUELS

Name:
Office:

Corporation

I have authority to bind the

SCHEDULE "A"

Contractor's Submission to Tender T-41-05