

THIS AGREEMENT made the 30th day of July, 2004.

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

500 George Street North
Peterborough, ON K9H 3R9

hereinafter called the "City"

of the First Part

- and -

UMA ENGINEERING LTD.

5080 Commerce Boulevard
Mississauga, ON L4W 4P2

hereinafter called the "Consultant"

of the Second Part

WHEREAS the Consultant is retained to provide the services as outlined below in order to assist the City in preparing a Full cost of Services Report and Cost Recovery Plan for the Sanitary Sewer System as required under the *Sustainable Water and Sewage Systems Act*, 2002, as required pursuant to Document No. P-04-04;

NOW THEREFORE IN CONSIDERATION of the mutual covenants hereinafter contained the parties hereto do covenant and agree with each other as follows:

SECTION 1: DEFINITIONS

In this Agreement

- 1.1 "City" means the Municipality of the Corporation of the City of Peterborough.
- 1.2 "Consultant" means the Consultant, and its agent, servants and employees.
- 1.3 "Services" means all professional services required to prepare the Study, according to the proposal and work program as mutually agreed upon by the Consultant and the City, attached hereto as Schedule A and forming part of this agreement.
- 1.4 "Study" means the Full cost of Services Report and Cost Recovery Plan for the Sanitary Sewer System.

SECTION 2: THE CONSULTANT'S SERVICES

2.1 Services

The City hereby retains the Consultant to perform the Services.

2.2 Performance

The Consultant shall exercise reasonable care, skill and diligence in performing the Services.

2.3 Confidentiality

The Consultant shall keep strictly confidential any personal or confidential information communicated to or acquired by the Consultant during the course of completing the Study.

SECTION 3: THE CITY'S RESPONSIBILITY

3.1 Access to Municipal Documents and Statistics

The City shall make available at no cost to the Consultant any relevant municipal documents, plans or similar information as may be required by the Consultant to assist in the preparation of the Study and that are available to and under the control of the City. Upon completion of the Study, the relevant municipal documents shall be returned to the City.

3.2 City's Decisions

The City shall give due and reasonably expeditious consideration to all matters arising in the course of the performance of the Services that require direction or a decision by the City in order that the Consultant will not be unreasonably delayed in performing the Services provided for herein.

SECTION 4: FEES AND DISBURSEMENTS

4.1 Consultant's Fees

The City shall pay to the Consultant for the Services a total amount not to exceed Seventy-Four Thousand and Ninety-Seven and 50/100 Dollars (\$74,097.50), inclusive of PST and GST.

4.2 Disbursements

The Consultant's Fee shall include all disbursement costs normally associated with professional services required to perform the prescribed Services as set out in the proposal.

4.3 Remuneration to The Consultant

Payment of invoices shall be made by the City within thirty (30) days of receipt of same.

4.4 Additional Services

If, during the term of the Consultant's obligation as described in Section 2 hereof, the City makes a decision which would require additional services or expenses not normally incurred in providing the Services, the Consultant will immediately advise the City in writing that such extra services will be necessary. Any additional fee for the provision of such extra services shall be approved, in writing, by the City prior to the Consultant proceeding with the additional services.

SECTION 5: GENERAL CONDITIONS

5.1 Indemnity

The Consultant shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages which the City may suffer as a result of negligence by the Consultant, his employee or agents, in the performance or rendering of, or the failure to perform or render, or the failure to exercise reasonable care, skill or diligence in the performance or rendering of the Services.

5.2 Right of Use

All material used in connection with the Study and prepared by the Consultant are instruments of service for the execution of the Work, and as such are the property of the Consultant. The City is entitled to use copies of said material, but only for its intended purpose in connection with the Study. If the material is altered in any manner whatsoever without the Consultant's prior consent, the Consultant does not warrant the fitness of same for the City's use, and the City agrees to indemnify, hold harmless and defend the Consultant against all claims and losses associated with such use by the City.

5.3 Adherence to Time Schedules

The Consultant shall carry out the work with the utmost dispatch and, subject to delays beyond its control, shall complete the Services in accordance with the approved time schedule as set forth in the proposal, or any subsequent revision that may be agreed upon by the Consultant and the City in writing.

5.4 The Consultant's Staff

The Consultant's Project Supervisor shall be responsible to ensure the full performance of the terms and provisions of this Agreement on behalf of the Consultant. The Project Supervisor may only be replaced with the consent of the City, such consent not to be unreasonably denied.

5.5 Arbitration

In the case of any dispute arising between the City and the Consultant as to their respective rights and obligations under this Agreement, either party hereto shall be entitled to require arbitration with

respect to the dispute by giving a written notice to arbitrate one to the other. In that event, both the City and the Consultant, within five (5) days after the giving of notice to arbitrate, shall give notice to the other nominating one arbitrator on behalf of the party giving the notice, and, the two arbitrators so nominated shall, within five (5) days, nominate a third arbitrator. The three arbitrators so nominated shall determine the dispute having regard to all of the provisions of this Agreement (provided that if either party shall fail to nominate an arbitrator in accordance with the foregoing or if the two arbitrators who have been nominated fail to agree on the nomination of the third arbitrator, either the City or the Consultant may apply, upon notice to the other, to a Justice of the Supreme Court to Ontario who shall have jurisdiction to nominate such arbitrator or arbitrators). The decision of any two of the three arbitrators shall be binding and final upon the parties. The cost of such arbitration shall be as awarded by the arbitrators. Except as to matters otherwise provided herein, the provisions of the Arbitrations Act of Ontario (or any successor statute thereof) shall apply.

5.6 Notices

All notices, requests and other communications required in writing in this Agreement shall be deemed to have been duly given at the time of delivery or two days after the day of mailing if mailed by first class mail postage prepared and addressed:

a) to the City at:

500 George Street North
Peterborough, Ontario K9H 3R9

and,

b) to the Consultant at:

5080 Commerce Boulevard
Mississauga, Ontario L4W 4P2

5.7 City's Right to Terminate Contract

The City shall have the right to terminate this Agreement, forthwith, on written notice to the Consultant, in the event that:

- a) The Consultant makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or an order is made for the winding-up of the Consultant; or
- b) The Consultant refuses or fails to supply sufficient properly skilled workmen or proper materials at all times to perform the Services 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 Services or the conduct of the Consultants' business at the Site; or

