

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 06-002

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT WITH UMA ENGINEERING LTD.

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 with UMA Engineering Ltd., attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 16th day of January, 2006

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

SCHEDULE "A"

THIS AGREEMENT made this day of , 2005.

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 as required pursuant to the Project Implementation Plan for Curtis Creek and Jackson Creek Detailed Flood (Damage) Reduction Study and Environmental Assessment, Phase 2 Detailed System Analysis, Recommendations & Conceptual Preliminary Engineering Designs (hereinafter Schedule "A");

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 Phase 2 – Detailed System Analysis, Recommendations and Preliminary Engineering Designs attached as Schedule "A" and forming part of this Agreement

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 Five Hundred Thousand Dollars (\$500,000.00), plus 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 Payment of Invoices

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

5.2.1 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.

5.2.2 The City acknowledges that, in the course of performing the Services, the Consultant may obtain information which is supplied to the Consultant either expressly or impliedly in confidence. Any such information shall remain the sole property of the Consultant, unless or until it is provided to the City by the Consultant.

5.2.3 Drawings and Documents

Notwithstanding subsections 5.2.1 and 5.2.2, any drawings and documents or copies thereof required for the Study shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant for the City may be used by the City for the Study, including “as built” records. The City shall have ownership of the drawings.

5.2.4 Survey Data and Plans

Notwithstanding subsections 5.2.1 and 5.2.2, the survey data and plan(s) collected and produced as a part of the Study 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.

5.2.5 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 Study.
- b) The City may inspect and audit the books, payrolls, accounts and records of the Consultant during regular office hours with respect to any item which the City is required to pay on a time scale or disbursement basis as a result of this Agreement.
- c) The Consultant, when requested by the City, shall provide copies of receipts with respect to any disbursement for which the Consultant claims payment under this Agreement.

5.2.6 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 City 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 City as an additional insured thereunder and the Consultant shall forward proof of insurance as the City 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 City proof of Professional Liability Insurance carried by the Consultant.

c) **Change in Coverage**

If the City requests to have the amount of coverage increased or to obtain other special insurance for the Study, then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the City's expense.

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 City.

5.2.7 **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 Study, or have an interest either directly or indirectly in the construction of the Study.

5.2.8 **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 City, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the City and unless authorized by the City 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.

5.2.9 **Inspection**

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

5.2.10 **Publication**

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

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

(a) 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.

(b) It is specifically understood, acknowledged and agreed that the Consultant is an independent contractor and that a business relationship exists with the City. Therefore, the Consultant will not be covered by the City under the provisions of the *Workplace Safety Insurance Board Act, 1997*. Furthermore, the Consultant is responsible for all statutory deductions in respect of the Consultant's employees

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:

City Clerk
500 George Street North
Peterborough, Ontario K9H 3R9

and,

b) to the Consultant at:

Brian Worsley

5080 Commerce Boulevard
Mississauga, ON 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
- c) The Consultant 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 Consultant to comply with any of the terms and specifications of this Agreement notwithstanding that such failure is the result of any cause beyond the Consultant's control.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals.

SIGNED, SEALED AND DELIVERED)	THE CORPORATION OF THE
in the presence of:)	CITY OF PETERBOROUGH
)	
)	_____
)	Sylvia Sutherland, Mayor
)	
)	
)	_____
)	Nancy Wright-Laking, Clerk
)	
)	
)	_____
)	Name:
)	Office:
)	

) _____
) Name:
) Office:

I have authority to bind the Consultant