

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 06-109**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND CAPITAL COMMERCIAL PIPE SERVICES FOR CITYWIDE FOG TESTING OF MUNICIPAL SEWERS CITY OF PETERBOROUGH (P-14-06)**

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 Capital Commercial Pipe Services 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 3<sup>rd</sup> day of July, 2006.

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

**AGREEMENT**

**FOR**

**PROFESSIONAL CONSULTING SERVICES**

**MEMORANDUM OF AGREEMENT** dated the      day of July, A.D. 2006

**- BETWEEN -**

**THE CORPORATION OF THE CITY OF PETEBOROUGH**

Hereinafter called the "Client"

**THE PARTY OF THE FIRST PART**

**- AND -**

**CAPITAL COMMERCIAL PIPE SERVICES**

Hereinafter called the "Consultant"

**THE PARTY OF THE SECOND PART**

**WHEREAS** the Client intends to have completed the city-wide fog testing of municipal sewers in various locations; 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, and such services as changed, altered or added to under Section 1.6 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 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 patentable, capable of trademark or otherwise, shall be and remain the property of the Client.

### 1.6 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.

#### 1.7 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 3.2.3.

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.

#### 1.8 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.

#### 1.9 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 \$1,000,000.00 and automobile insurance for both owned and non-owned vehicles in an amount not less than \$1,000,000.00. 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 3.2.3.

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.

1.10 Assignment

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

1.11 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.

1.12 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.

1.13 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.

1.14 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.

1.15 Publication

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

1.16 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.

1.17 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.

1.18 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.

1.19 Appendices

Appendix A – Proposal submission (cover letter, title page and fifteen pages) dated June 2006; Capital Commercial Pipe Services, attached.

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

1.20 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.

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 COMPLETION OF CITYWIDE FOG TESTING OF MUNICIPAL SEWERS – VARIOUS LOCATIONS (UPSET FEE LIMIT)**

**ARTICLE 2 b) - 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; and
- provide background information to the consultant, as requested.

## ARTICLE 3 - FEES AND DISBURSEMENTS

### 3.1 Fees During the Contract

- a) The field component of the Project consists of the services as described in Article 2 a) of this Agreement.
- b) The total fees and disbursements paid by the Client to the Consultant for the design phase shall not exceed the total amount of \$166,511.00 plus applicable taxes made up as follows:
  - i) \$161,511.00 plus applicable taxes for engineering services as described in Article 2 a.
  - ii) \$ 5000.00 plus applicable taxes as a contingency allowance for additional engineering services that may be required but are not included in Article 2 a.
- c) 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). The Consultant shall not be entitled to any payment from the contingency allowance of \$ 5000.00 plus applicable taxes unless the Consultant has satisfied this condition.
- e) When approving additional engineering services that are not included in Article 2 a), the Client, at its sole discretion, may, in writing, set a limit on the monies from the contingency allowance of \$ 5000.00 plus applicable taxes that will be permitted for the requested additional services.

### 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 \_\_\_\_\_, Ontario, this \_\_\_\_ day of June, 2006.

**CONSULTANT:**        **NAME:**            Capital Commercial Pipe Services  
**ADDRESS:**            389 Kenora Avenue  
                                         Hamilton, ON L8E 2W3

\_\_\_\_\_  
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