

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 09-004**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF PETERBOROUGH AND DRAIN BROTHERS EXCAVATING LIMITED FOR THE DETAILED STRUCTURAL DESIGN AND THE CONSTRUCTION OF THE FIRST PHASE OF THE OTONABEE RIVER TRAIL AT THE HOLIDAY INN (P-46-08)**

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 Drain Brothers Excavating Limited in the form attached hereto as Schedule "A", and to affix the Seal of the Corporation thereon.

By-law read a first, second and third time this 19<sup>th</sup> day of January, 2009.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

**THIS AGREEMENT** made in triplicate this 30 day of January 2009.

**B E T W E E N:**

**THE CORPORATION OF THE CITY OF PETERBOROUGH**  
(the "City")

- and -

**DRAIN BROS. EXCAVATING LTD.**  
(the "Contractor")

**WHEREAS** the City desires the Contractor to provide the labour, materials, plant, equipment, landscaping and related items, in a careful and workmanlike manner, to design and construct Phase I of the Otonabee River Trail along the water frontage of The Holiday Inn in the City of Peterborough, in accordance with the plans and specifications prepared by Baste field and Associates with Kirkland Engineering Ltd., D. M. Wills Associates Ltd. and Sander & Associates Ltd., identified as Tender # P-46-08, filed with the City and more particularly identified in Schedule "A" (hereinafter referred to as the "Work").

**AND WHEREAS** the Contractor agrees to fully perform the Work;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants and agreements herein contained the parties agree as follow:

#### **ARTICLE 1 – TERMS OF PERFORMANCE**

- 1.1 The Contractor agrees to complete the Work in accordance with Schedule "A" attached hereto.
- 1.2 The City warrants that the Work can lawfully be undertaken at the Otonabee River adjacent to The Holiday Inn, in the City of Peterborough (hereinafter referred to as the "Place of Work"), and that there are, and will be, no legal or physical impediments to constructing the Work.
- 1.3 Time is of the essence of this Agreement. In particular, the Contractor acknowledges that all in-water work must be completed on or before March 31<sup>st</sup> 2009, and that the entire project must be substantially completed by May 31<sup>st</sup> 2009.
- 1.4 Prior to commencement of the Work, the Contractor shall prepare and submit to the City a construction schedule indicating the timing of the major activities of the Work and provide sufficient detail of the critical events and their inter-relationship to demonstrate that the Work will be performed within the periods set out in the immediately preceding sub clause.

- 1.5 The Contractor shall monitor the progress of the Work relative to the construction schedule and update it on a weekly basis or as stipulated in the Contract Documents and shall advise the City of any revisions required to the schedule as a result of ADDITIONAL SERVICES / CHANGES IN WORK.

## **ARTICLE 2 – RETAINER AND CONTRACTING SERVICES TO BE PROVIDED**

- 2.1 The City retains the Contractor to perform and, subject to early termination of this agreement by the City as hereinafter provided, to complete all the services comprising the Work.
- 2.2 The services provided by the Contractor include design of the Work (other than the landscaping component) by a structural engineer licensed to practice in the province of Ontario. The Contractor's structural engineer will certify the structural design and the steel components thereof.
- 2.3 All aggregates supplied will be tested by a CCIL certified laboratory and the results delivered to the City.
- 2.4 The Contractor's Structural Engineer and Landscape Architect will carry out regular inspections of the installations to enable them to confirm conformance to the plans, and will provide regular written reports to the City in connection therewith.
- 2.5 Any required variation from the initial plans shall be subject to the prior approval of the City and shall be indicated on the as-built drawings. Any necessary structural changes will be certified by the structural engineer, will be subject to the prior approval of the City, and will be indicated in the as-built drawings.

## **ARTICLE 3 – CONTRACT PRICE**

- 3.1 The Project Contract Price payable to the Contractor for the services to be performed hereunder shall not exceed the sum of **One Million One Hundred and Eighty-Seven Thousand, Six Hundred and Eleven Dollars** (\$1,187,611.00), which amount is exclusive of GST. Included in the Project Contract Price are all applicable Provincial Taxes, customs, duties, freight, exchanges, patent fees, royalties, and all other charges, all as detailed in the Contractor's Bid.
- 3.2 In the event that services are required which are in addition to the Work, the Contractor shall receive as payment for such additional services such amounts as may be negotiated between the Contractor and the City and agreed in writing in accordance with Article 6 hereof.
- 3.3 Unless otherwise expressly agreed by the parties, the Project Contract Price includes all disbursements sustained by the Contractor in completing the project.

- 3.4 When the Work is substantially performed the Contractor shall prepare and submit to the City's Site Supervisor and Contract Administrator (hereinafter called "the Contract Administrator"), a comprehensive list of items to be completed or corrected and apply for a review by the Planner, Urban Design to establish substantial performance of the Work or substantial performance of the designated portion of the Work. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the Contract.
- 3.5 No later than five (5) working days after the receipt of the Contractor's application, the Contract Administrator will review the Work to verify the validity of the application, and no later than five (5) working days after completing the review, will notify the Contractor whether the Work or the designated portion of the Work was substantially performed as of the application date.
- 3.6 The Contract Administrator shall state the date of substantial performance of the Work or designated portion of the Work in a certificate and immediately following the issuance of the certificate of substantial performance of the Work, the Contractor, in consultation with the Contract Administrator, will establish a reasonable date for finishing the Work.
- 3.7 The City will use its best efforts to pay the holdback funds for all work completed on or before the date of substantial performance on the forty-sixth (46<sup>th</sup>) day following the date of substantial performance. The City will use its best efforts to pay the finishing holdback for all work completed after the date of substantial performance on the fourth-sixth (46<sup>th</sup>) day following the date of the total performance.
- 3.8 Prior to release of the finishing holdback in respect of the portion of the Work performed after the date of substantial performance, the Contractor shall submit to the City an application for final payment containing the following documentation:
  - 3.8.1 a statutory declaration certifying that all accounts of all sub-contractors and suppliers relative to the project have been paid in full, less only the part of the holdback monies due to them; and
  - 3.8.2 a notarized signed statement that the Contractor, sub-contractors or suppliers have not worked on the project or supplied goods or services to the project during the forty-five (45) day lien period, other than for necessary correction of defects or deficiencies as defined herein.
- 3.9 Prior to release of the finishing holdback the Contractor shall deliver as-built drawings prepared and stamped by a structural engineer, together with a written certification from the structural engineer that construction has been completed in conformity with the approved drawings.
- 3.10 Prior to release of the finishing holdback the Contractor shall deliver a written certification from the landscape architect that landscape work has been completed in accordance with the Planting Plan.

#### **ARTICLE 4 – PROGRESS PAYMENTS**

- 4.1 The Contractor may submit progress billings to the Contract Administrator not more frequently than once in each calendar month. The first progress billing can include a charge of up to thirty (30) percent of the general requirements amount from the project breakdown supplied by the Contractor.
- 4.2 Upon receipt of any progress billing from the Contractor, the Contract Administrator shall prepare a Payment Certificate in the form set forth in Schedule D attached hereto, within five (5) working days.
- 4.3 The City shall pay to the Contractor the amount set out on each Payment Certificate, within twenty (20) working days of the date of the Certificate, subject to the holdback required by the ***Construction Lien Act***.

#### **ARTICLE 5 – PERMISSION FOR LATE COMPLETION NOT A WAIVER**

- 5.1 If the Contractor fails to complete the Work within the time specified but is permitted by the City to proceed and complete the Work, such permission shall not constitute a waiver in respect of any responsibility of the Contractor for damages arising from the Contractor's default hereunder in failing to comply with its obligations to perform.

#### **ARTICLE 6 – ADDITIONAL SERVICES / CHANGES IN WORK**

- 6.1 The City may furnish, as necessary for the execution of the Work, additional requests consistent with this Agreement in the form of a Change Order set out in Schedule “B”, or Additional Instructions, as set out in Schedule C. The Work shall be completed in conformity with any Change Order or Additional Instructions which have been issued. Any additional instructions or changes in Work which will result in a change in the Project Contract Price or the Term of Performance shall be agreed upon by the parties and shown on the written Change Order.
- 6.2 The City has the right, for the purpose of further describing the Work, to furnish to the Contractor such other documents and drawings as may be requisite from time to time and the Contractor shall conform to such other documents and drawings as if they were contained in Schedule A.
- 6.3 Upon receipt of a Change Order, the Contractor shall proceed promptly with the change in the Work. The adjustment in the Contract Price for a change carried out by way of a Change Order shall be determined on the basis of the cost of expenditures and savings to perform the work attributable to the change, plus a charge of fifteen percent (15%) on any net cost increase to cover overhead and profit.
- 6.4 If a change in the Work results in a net decrease in the Contract Price, the amount of the credit shall be the net cost, without deduction for overhead or profit. When both additions and deletions covering related work or substitutions are involved in a change in the Work, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the Work.

- 6.5 The Contractor shall keep and present, in such form as the City may require, an itemized accounting of the cost of expenditures and savings. The cost of performing the work attributable to the Change Order shall be limited to the actual cost of all of the following, unless specifically referred to elsewhere:
- 6.5.1 wages and benefits paid for labour in the direct employ of the Contractor under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the City and Contractor;
  - 6.5.2 salaries, wages and benefits of the Contractor's office personnel engaged in a technical capacity and other personnel at shops or on the road, engaged in expediting the production or transportation of materials or equipment;
  - 6.5.3 contributions, assessments, or taxes incurred for such items as unemployment insurance, provincial health insurance, workers' compensation and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Contractor and included in the cost of the work.
  - 6.5.4 the cost of all products including cost of transportation thereof;
  - 6.5.5 the cost of materials, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed; and cost less salvage value on such items used but not consumed, which remain the property of the Contractor;
  - 6.5.6 rental cost of all tools, machinery and equipment, exclusive of hand tools, whether rented from or provided by the Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
  - 6.5.7 deposits lost;
  - 6.5.8 the amounts of all subcontracts;
  - 6.5.9 the cost of quality assurance such as independent inspection and testing services;
  - 6.5.10 charges levied by authorities having jurisdiction at the Place of Work;
  - 6.5.11 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the Contractor's obligations to indemnify the City;
  - 6.5.12 any adjustment in taxes and duties for which the Contractor is liable;

6.5.13 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred;

6.5.14 the cost of removal and disposal of waste products and debris; and

6.5.15 cost incurred due to emergencies affecting the safety of persons or property.

6.6 The Contractor shall not be entitled to any additional compensation for additional Work, services, disbursements or materials unless such changes are confirmed by a Change Order signed by the City.

6.7 The City reserves the right to delete certain items from the Work, provided that it must so advise the Contractor of the deletion in writing. An adjustment in compensation arising from the deletion shall be reflected in a Change Order, or, failing Agreement, submitted to Arbitration.

## **ARTICLE 7 - DELAYS**

7.1 If the Contractor is delayed in the performance of the Work by an action or omission of the City, the Planner, Urban Design or anyone employed or engaged by them directly, or by members of the public using the Place of Work during performance of the Work, then the Term of Performance shall be extended for such reasonable time as the City may recommend in consultation with the Contractor. The Contractor shall be reimbursed by the City for reasonable costs incurred by the Contractor as a result of such delay.

7.2 If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority and providing that such order was not issued as a result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Term of Performance shall be extended for such reasonable time as the City may agree with the Contractor, or failing such agreement, shall be equivalent to the actual stoppage in work.

7.3 If the Contractor is delayed in the performance of the Work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractor's association, of which the Contractor is a member or to which the Contractor is otherwise bound), fire, delay in production, delivery, commencement of operation or inspection of the elevator unusual delay by common carriers or unavoidable casualties, or without limit to any of the foregoing, by a cause beyond the Contractor's control, then the Term of Performance shall be extended for such reasonable time as the City may recommend in consultation with the Contractor. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment for costs incurred by such delays unless such delays result from actions or omissions by the City.

- 7.4 No extension shall be made for delay unless notice in writing is given to the City not later than ten (10) working days after the commencement of delay, providing however, that, in the case of a continuing cause of delay, only one notice shall be necessary.
- 7.5 In the event the Contractor is claiming the existence of a delay, the Contractor shall notify the Contract Administrator at the commencement of the alleged delay, and the Contract Administrator shall have ten (10) working days to resolve the delay prior to the Contractor becoming eligible for reasonable compensation.

## **ARTICLE 8 - CONCEALED OR UNKNOWN CONDITIONS**

- 8.1 If the City, the Contract Administrator or the Contractor discovers conditions at the Place of Work that are:
- 8.1.1 subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract Documents; or
- 8.1.2 physical conditions of a nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents;

then the observing party shall notify the other party in writing before conditions are disturbed and in no event later than five (5) working days after first observance of the conditions.

- 8.2 The Contract Administrator will promptly investigate such conditions and make a reasonable finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the Contractor's cost or time to perform the Work, the City shall issue appropriate instructions for a change in the Work.
- 8.3 If the City finds that the conditions at the Place of Work are not materially different or that no change in the Contract Price or the Term of Performance is justified, the City shall report the reasons for this finding to the Contractor in writing. If the Contractor disagrees with that finding, the matter shall be referred to arbitration

## **ARTICLE 9 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS**

- 9.1 If the Contractor encounters toxic or hazardous substances or materials at the Place of Work, or has reasonable grounds to believe that toxic or hazardous substances or materials are present at the Place of Work, the Contractor shall immediately report the circumstances to the City in writing.

## **ARTICLE 10 – INDEMNIFICATION**

- 10.1 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, its agents, servants or officers, in the performance of the services hereunder.

## **ARTICLE 11 – INSURANCE AND WORKPLACE SAFETY & INSURANCE BOARD**

- 11.1 The Contractor shall provide, maintain, and pay for all insurance coverage and the duration of each insurance policy shall be from the date of commencement of the Work until the date of the final certificate for payment. Prior to commencement of the Work and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Contractor shall promptly provide the City with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.
- 11.2 Without limiting the generality of the foregoing the Contractor, at its expense, shall be responsible for Workplace Safety and Insurance Act contributions and other incidental expenses, and no extras will be allowed for such items.
- 11.3 Without limiting the generality of the foregoing the Contractor, at its expense, shall obtain and file with the City prior to commencement of the Work and shall keep in force until the date of the final certificate of payment comprehensive general liability insurance in respect of the Work (including all risks insurance for personal injury and property damage in respect of all equipment and all motor vehicles used or to be used in connection with the Work and contractual liabilities, with minimum inclusive limits of Three Million (\$3,000,000.00) Dollars.
- 11.4 Prior to the commencement of the execution of the Work, the Contractor shall file a copy or certificate of such insurance policy or policies with the City. If the Contractor fails to provide or maintain the required insurance the City shall have the right to provide and maintain such insurance and give evidence to the Contractor. The Contractor shall pay the cost thereof to the City on demand or the City may deduct the amount which is due or may become due to the Contractor.
- 11.5 The Contractor shall be responsible for deductible amounts under the policies of insurance.

## **ARTICLE 12 – PERFORMANCE BOND**

- 12.1 In order to secure the due performance of the Contractor's obligations hereunder, the Contractor shall forthwith deposit a performance bond, or some other acceptable form of security, in satisfactory form, acceptable to the City, in the amount of 100% of the value of the Project Contract Price. The performance security shall provide for payment to the City of such sums as may be requested from time to time to the maximum limit of the credit without recourse, and shall remain in full force and effect until the obligations of the Contractor, pursuant to this Agreement, have been completed..

**ARTICLE 13 – WARRANTY**

- 13.1 Notwithstanding Article 10, the warranty period for defects and deficiencies in the Work is two years from final completion, and the City shall promptly notify the Contractor in writing of observed defects and deficiencies in the Work.
- 13.2 The Contractor shall promptly correct, at the Contractor's expense, defects or deficiencies in the Work which appear prior to and during the warranty period.
- 13.3 Any warranties on any specific part of the Work provided by a manufacturer or supplier shall be provided or assigned to the City, and such specific warranty shall apply to such part of the Work.
- 13.2.1 For greater certainty, the warranty period for plant materials is also two years. The City will be responsible for routine watering and maintenance during the warranty period.

**ARTICLE 14 – RECORDS AND AUDIT**

- 14.1 For the purpose of determining the fees calculated on a time basis, the Contractor shall keep a detailed record of the hours worked by the staff employed to provide the Services.

**ARTICLE 15 – COVENANTS OF THE CONTRACTOR**

- 15.1 Whenever possible, the Contractor shall give consideration to the use of local labour, building products suppliers and subtrades.
- 15.2 The Contractor shall endeavour to use Canadian made products where price and quality are comparable to corresponding foreign made products.
- 15.3 The Contractor agrees to provide all necessary labour, materials, plant, equipment, and services required for the execution and completion of the entire Work, inclusive of all trades, for the construction and completion of the Work as defined in this Agreement as consideration for payment of the contract price.
- 15.4 The Contractor shall skilfully and competently perform the services set forth in the project description and shall employ only skilled and competent staff and sub-contractors who will be under the supervision of the Contractor's project supervisor.
- 15.5 The Contractor shall exercise control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with this agreement.
- 15.6 The Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and for co-ordinating the various parts of the Work under this Agreement.

- 15.7 When separate contracts are awarded for other parts of the project, or when work is performed by the City's own staff, the Contractor shall assist the City in the coordination and scheduling with other contractors and of the Work.
- 15.8 The Contractor shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the City, other contractors or their employees.
- 15.9 The Contractor shall remove construction waste products and debris, other than that resulting from actions by the City, other contractors or their employees
- 15.10 The Contractor shall comply with the requirements of all regulatory agencies having jurisdiction.

#### **ARTICLE 16 – TEMPORARY SUPPORTS, STRUCTURES, AND FACILITIES**

- 16.1 The Contractor shall, at its expense, design, erect, operate, maintain, and remove any temporary supports, structures, and facilities necessary for the construction of the Work.

#### **ARTICLE 17 – (Reserved)**

#### **ARTICLE 18 – CONSTRUCTION SAFETY**

- 18.1 The Contractor shall be solely responsible for construction safety in respect of the performance of this Agreement in the area where the Work is being performed at the Place of Work and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work, provided that there is no other work being performed by the City or its contractors or agents in the area where the Work is being performed.
- 18.2 The Contractor shall protect the Work, the City's property, and property adjacent to the Place of Work from damage which may arise as a result of the Contractor's operations under this Agreement, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by the City, other Contractors, their agents and employees.

#### **ARTICLE 19 – SHOP DRAWINGS**

- 19.1 Shop drawings, which are drawings, diagrams, illustrations, schedules, performance charts, brochures, product and other data which the Contractor provides to illustrate details to a portion of the Work, shall be provided as required.

- 19.2 The Contractor shall review all shop drawings prior to submission to the City. The Contractor represents by this review that the Contractor has determined and verified all field measurements and field construction conditions, or will do so; product requirements, catalogue numbers, and similar data; and that the Contractor has checked and co-ordinated each shop drawing with the requirements of the Work and of the Contract Documents. The Contractor shall confirm this review of each shop drawing by stamp, date, and signature of the person responsible. At the time of submission the Contractor shall notify the City in writing of any deviations in the shop drawings from the requirements of the Contract Documents.
- 19.3 The Contractor shall submit shop drawings to the City to review in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of other contractors. Upon request of the Contractor or the City, they jointly shall prepare a schedule of the dates for submission and return of shop drawings. Shop drawings that require approval of any legally constituted authority having jurisdiction shall be submitted to such authority by the Contractor for approval.
- 19.4 The Contractor shall submit shop drawings in the form acceptable to the Contract Administrator acting reasonably. The City shall review and return shop drawings in accordance with the schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The City's review is for conformity to the design concept and for general arrangement only. The City's review shall not relieve the Contractor of responsibility for errors or omissions in the shop drawings or for meeting all requirements of the Contract Documents unless the City expressly notes the acceptance of a deviation on the shop drawings.
- 19.5 Upon the City's request, the Contractor shall revise and resubmit shop drawings which the City rejects as inconsistent with the Contract Documents unless otherwise directed by the City. The Contractor shall notify the City in writing of any revisions to the resubmission other than those requested by the City.
- 19.6 All drawings, schematics, specifications, and other design models furnished by the Contractor are the property of the Contractor. Such documents, schematics, and specifications are not to be used on any other work. Documents are not to be copied or revised in any manner without the written authorization of the parties. Upon substantial completion of the subject Work, and upon certification thereto, the drawings and specifications shall become the property of the City, and the Contractor shall assign ownership thereto to the City.

## **ARTICLE 20 – SUB-CONTRACTORS AND SUPPLIERS**

- 20.1 The Contractor shall hold and save harmless the City from liability arising from agreements made between the Contractor and sub-contractors and suppliers.
- 20.2 The Contractor shall provide the City with a list of proposed sub-contractors and suppliers before executing agreements for the provision of goods and/or services.

- 20.3 In the event the City objects to the use of a proposed sub-contractor or supplier and provides reasonable reasons for same, the Contractor shall choose another sub-contractor or supplier. Any such change in sub-contractor or supplier shall not result in an increase of the contract price hereunder. The City acknowledges that the subcontractors and suppliers referred to in Schedule "A" are, subject to their performance, acceptable to it.

## **ARTICLE 21 – REVIEW AND INSPECTION OF THE WORK**

- 21.1 The City shall have access to the Work at all times. The Contractor shall provide sufficient, safe, and proper facilities at all times for the review of the Work by the City and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Place of Work the City shall be given access to such work whenever it is in progress.
- 21.2 If work is designated for tests, inspections, or approvals in this Agreement or the law or ordinances of the City, the Contractor shall give the City reasonable notice of when the work will be ready for review and inspection. The Contractor shall arrange for and shall give the City reasonable notice of the date and time of inspections by other authorities.
- 21.3 If the Contractor covers, or permits to be covered, work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the Contractor shall, if so directed by the City, uncover such work, have the inspections or tests satisfactorily completed and make good covering work at the Contractor's expense.
- 21.4 The City may order any portion or portions of the Work to be examined to confirm that such work is in accordance with the requirements of this Agreement. If the work is not in accordance with the requirements of this Agreement, the Contractor shall correct the work and pay the cost of the examination and the correction.
- 21.5 The Contractor shall render all necessary assistance to the City and, if required, shall take and furnish levels, other measurements, or anything necessary to enable the City's review and inspection to be completed.

## **ARTICLE 22 – DEFECTIVE WORK**

- 22.1 The Contractor shall promptly remove from the Place of Work and replace or re-execute defective work that is rejected by the City as failing to conform to this Agreement whether or not the defective work has been incorporated into the Work and whether or not the defect is the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Contractor.
- 22.2 The Contractor shall promptly make good any work destroyed or damaged by such removals or replacements at the Contractor's expense.

- 22.3 If in the opinion of the City it is not expedient to correct defective work or work not performed or provided in this Agreement, the City may deduct from the amount otherwise due to the Contractor the difference in value between the work as performed and that called for in this Agreement. If the City and the Contractor do not agree on the difference in value they shall refer the matter to an arbitrator for a determination.
- 22.4 No payment by the City, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work or products which are not in accordance with the requirements of this Agreement.

### **ARTICLE 23 – PERMITS AND APPROVALS**

- 23.1 The City shall be responsible for obtaining at its expense all necessary governmental or other permits and approvals for the Work.
- 23.2 In all respects the Work shall be executed in accordance with the by-laws and regulations in force in the City and all materials included in the Work shall be new and meet all relevant codes and legislative requirements.

### **ARTICLE 24 – CITY'S RIGHT TO TERMINATE CONTRACT**

- 24.1 Without limiting the City's rights or remedies upon default by the Contractor pursuant to this agreement, the City may terminate this Agreement on written notice to the Contractor in the event that:
- 24.1.1 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;
- 24.1.2 the Contractor refuses or fails to supply sufficient properly skilled workers 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 Place of Work; or
- 24.1.3 the Contractor fails to institute appropriate corrective action forthwith after written notification by the City of any failure on the part of the Contractor to comply with any of the terms and specifications of this Agreement.

### **ARTICLE 25 – SUCCESSORS AND ASSIGNMENT**

- 25.1 This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, and except as hereinafter otherwise provided, the executors, administrators, successors and assigns of the parties.

- 25.2 If the Contractor is dissolved before its services hereunder have been completed, this Agreement shall automatically terminate as of the date of its dissolution and the City shall pay for the services rendered and disbursements made to the date of such termination.
- 25.3 Except as aforesaid, neither party shall assign this Agreement without the consent in writing of the other.

## **ARTICLE 26 – ARBITRATION / DISPUTES**

- 26.1 All matters in difference between the parties hereto in relation to this Agreement may be referred to arbitration, or to a private court.
- 26.2 No person shall be appointed or act as arbitrator or judge who is in any way interested, financially or otherwise, in the conduct of the Work or in the business or other affairs of either the City or the Contractor.
- 26.3 The award of the arbitrator or judge shall be final and binding upon the parties.
- 26.4 The provisions of the *Arbitrations Act*, R.S.O. 1990, c. A.24, shall apply to the arbitration if this agreement is submitted to arbitration.
- 26.5 The matter in dispute shall be submitted to arbitration unless the parties agree on the terms of submission and hearing in a private court.

## **ARTICLE 27 – NOTICES**

- 27.1 Any notice provided for under this Agreement shall be served by personal service, registered mail, or facsimile transmission:

27.1.1 to the Contractor at:

R.R. 2  
Lakefield, ON  
K0L 2H0  
Attention: Rodger Neath

27.1.2 to the City at:

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



## SCHEDULE A

The Work shall include:

1. All of the improvements structures and facilities illustrated in the Drawings submitted by the Contractor, prepared by Baste field & Associates with Kirkland Engineering Ltd., D. M. Wills Associates Ltd. and Sander & Associates Ltd. entitled "City of Peterborough Tender # P-46-08, Drawings L1, L2, L3, L4, L5, E1, E2, S1, S2 and SS1, subject to the following modifications:

(a). The parties recognize that the Work illustrated in Drawings S1, S2, and SS1 will be extensively revised to conform to the terms approved by the City. Prior to the installation of support structures the Contractor will submit such revised drawings to the City for review, and shall not proceed with the installation of support structures until the City has approved such revised drawings.

(b) The Parties further acknowledge that the contract price as hereinbefore set out was calculated on the basis of the revisions referenced in the immediately preceding sub clause.

In the case of conflict between any provisions of this contract, the provisions of the main text shall have precedence over the provisions of this schedule.

# SCHEDULE B

## PROPOSED CHANGE / CHANGE ORDER

Project: \_\_\_\_\_

Proposed Change Order #: \_\_\_\_\_

Contractor: \_\_\_\_\_

Date: \_\_\_\_\_

This notification requests the Contractor to price the Work, as specified in the Details below. DO NOT PROCEED with the proposed changes until this Change Order is signed by the City. Unless otherwise stated herein, the pricing includes all material, labour, shipping, rentals, taxes, overhead, and profit necessary to complete the Work.

Details: \_\_\_\_\_

The Contract Price is increased / decreased by the sum of \$ \_\_\_\_\_

The Term of Performance is increased / decreased by \_\_\_\_\_ working days.

Authorized for the Contractor by:

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Position: \_\_\_\_\_

Change Order details, price, and terms accepted for the City by:

Signed: \_\_\_\_\_

Change Order #: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Original Contract Price: \$ \_\_\_\_\_

Total Additions to Date: \$ \_\_\_\_\_

Total Deductions to Date: \$ \_\_\_\_\_

Revised Contract Price: \$ \_\_\_\_\_

Distributed to: CONTRACTOR    PLANNER, URBAN DESIGN    CONSULTANT    CITY FILE

# SCHEDULE C

## ADDITIONAL WORK INSTRUCTION

**Project:** \_\_\_\_\_ **Additional Instruction #:** \_\_\_\_\_  
**Contractor:** \_\_\_\_\_ **Date:** \_\_\_\_\_

This notification gives the Contractor the authorization to add or delete Work, as specified in the Details below, and it is NOT INTENDED that a change to the Contract Price shall result.

**Details:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Additional Term of Performance in Working days:** \_\_\_\_\_

**Issued for the City by:**

**Signed:** \_\_\_\_\_  
**Position:** \_\_\_\_\_

**Distributed to:** CONTRACTOR PLANNER, URBAN DESIGN CONSULTANT CITY FILE

# SCHEDULE D

## CERTIFICATE OF PAYMENT

**Project:** \_\_\_\_\_

**Certificate of Payment #:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Original Contract Price	_____	
Total Additions to Date	_____	
Total Deductions to Date	_____	
Amended Contract Price	_____	_____
Amount Authorized to Date	_____	
Less Holdback	_____	
Amended Authorization to Date	_____	
Less Holdback	_____	
Holdback Previously Released	_____	
Holdback Released this Payment	_____	
Total Holdback Released	_____	
Balance of Holdback	_____	_____
Total Amount Authorized	_____	
Less Amount Previously Authorized	_____	
Total	_____	_____

**Total Payment Authorized by this Certificate #** \_\_\_\_\_ **:**        **\$**\_\_\_\_\_

By law, the amount of this Certificate is subject to reduction by the amount of any lien of which the City has received written notice. This Certificate is not negotiable and is payable only to the payee named in it. Issuance, payment, and acceptance are without prejudice to any rights of the City or the Contractor under their Agreement.

**Proposed Change Notice details, price, and terms authorized by:**

**Signed:** \_\_\_\_\_                      **Date:** \_\_\_\_\_

**Position:** \_\_\_\_\_

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

**Distributed to:**    CONTRACTOR      PLANNER, URBAN DESIGN      CONSULTANT      CITY FILE