



THE CORPORATION OF THE TOWN OF ORANGEVILLE

BY-LAW NUMBER 3-2009

**A BY-LAW TO AUTHORIZE AN AGREEMENT WITH
TRITON ENGINEERING SERVICES LIMITED
(Installation of watermain B-Line)**

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25, S.9 provides a municipality with the powers of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS on November 24, 2008, Council authorized the Corporation of the Town of Orangeville to enter into an agreement with Triton Engineering Services Limited for the engineering services for the installation of a new watermain on B-Line;

BE IT THEREFORE ENACTED by the municipal council of the Corporation of the Town of Orangeville as follows:

1. THAT an agreement with respect to engineering services for the installation of a new watermain on the east side of B-Line (between Hunter Road and Alder Street) between Triton Engineering Services Limited and the Corporation of the Town of Orangeville, in substantially the same form as the agreement attached hereto as Schedule "A", is hereby approved.
2. THAT the Mayor and Clerk are hereby authorized and instructed to execute the agreement on behalf of The Corporation of the Town of Orangeville and to affix the corporate seal thereto.

PASSED IN OPEN COUNCIL THIS 12TH DAY OF JANUARY, 2009.

A handwritten signature in black ink, appearing to be 'Rob Adams'.

Rob Adams, Mayor

A handwritten signature in black ink, appearing to be 'Cheryl Johns'.

Cheryl Johns, Clerk

**M.E.A./C.E.O.
CLIENT/CONSULTANT AGREEMENT
FOR
MUNICIPAL WORKS
1989**

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**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

MEMORANDUM OF AGREEMENT dated the 6th day of January

A. D. 2009

-BETWEEN-

THE CORPORATION OF *THE TOWN OF ORANGEVILLE*

Hereinafter called the 'Client'

THE PARTY OF THE FIRST PART

-AND-

TRITON ENGINEERING SERVICES LIMITED

Hereinafter called the 'Consultant'

THE PARTY OF THE SECOND PART

WHEREAS the Client intends to

install watermain on B-Line from Hunter Road to Alder Street

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

1.01 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.

1.02 Services

The services to be provided by the Consultant and by the Client for the Project are set forth in Article 2 and such services as changed, altered or added to under Section 1.08 are hereinafter called the 'Services'.

1.03 Compensation

The Client shall pay the Consultant in accordance with the provisions set forth in Article 3.

1.04 Staff and Methods

The Consultant shall use current state of the art principles and shall skillfully 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.

1.05 Drawings and Documents

Subject to Section 3.2.4 of Article 3, drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant for the Client may be used by the Client, for the Project herein described, including "as built" records. The Client has ownership of the drawings.

1.06 Patents

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 his Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant.

The Client shall have permanent non-exclusive royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from the Services rendered by the Consultant in connection with the Project and for no other purpose or project.

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

1.08 Changes and Alterations and Additional Services

With the consent of the Consultant the Client may in writing at any time after the execution of the Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the subject of the Agreement, and if such action by the Client necessitates additional staff or services, the Consultant shall be paid in accordance with Section 3.2.1 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Section 3.2.4.

1.09 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 his Services. In such an event, the Consultant shall be entitled to payment in accordance with Section 3.2.1 for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.4.

If the Consultant is practicing as an individual and dies before his Services have been completed, this Agreement shall terminate as of the date of his death, and the Client shall pay for the Services rendered and disbursements incurred by the Consultant to the date of such termination.

1.10 Indemnification

The Consultant shall indemnify and save harmless the Client from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Client, his employees, officers or agents may suffer as a result of the negligence of the Consultant, his employees, officers or agents in the performance of this Agreement.

The Client agrees to hold harmless, indemnify and defend the Consultant from and against any and all claim, losses, damages, liability and costs of defense arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligence of the Consultant in the performance of consulting services to the Client within this project.

1.11 Insurance

The Client will accept the insurance coverage specified in this clause as the limit of liability of the Consultant.

a) Comprehensive General Liability and Automobile Insurance

The Insurance Coverage shall be \$2,000,000.00 for general liability and \$2,000,000.00 for automobile insurance. When requested the Consultant shall provide the Client with proof of Comprehensive General Liability and Automobile Insurance (Inclusive Limits) for both owned and non-owned vehicles.

b) Professional Liability Insurance

The Insurance Coverage shall be in the amount of * refer to 1.24. When requested the Consultant shall provide to the Client proof of Professional Liability Insurance carried by the Consultant, and in accordance with APEO Act, 1984 and Regulations therein.

c) Change in Coverage

If the Client requests to have the amount of coverage increased or to obtain other special insurance for this 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 3.2.4.

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 (60) days after written notice of such change or cancellations has been personally delivered to the Client.

1.12 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 Project, or have an interest either directly or indirectly in the construction of the Project.

1.13 Assignment

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

1.14 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.

1.15 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.

1.16 Principals and Executives

The use of Principals and Executives on a time basis by the Consultant, will be in accordance with Section 1.23.1 (c).

1.17 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.

1.18 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.

1.19 Publication

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

1.20 Confidential Data

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by him, 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.

1.21 Arbitration

- (a) Any dispute, difference or disagreement between the parties hereto in relation to the Agreement may, with the consent of both parties, be referred to arbitration.
- (b) No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Client or the Consultant.
- (c) The award of the arbitrator shall be final and binding upon the parties.
- (d) The provisions of The Arbitrations Act, R.S.O., 1980, Chapter 25, as amended shall apply.

1.22 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 he is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

1.23 Estimates, Schedules and Staff List

1.23.1 Preparation of Estimate of Fees, Schedule of Progress and Staff List

When requested by the Client, the Consultant shall within fourteen days of the execution of this Agreement provide, for approval by the Client:

- (a) An estimate of the total fees to be paid for the Services.
- (b) A Schedule showing an estimate of the portion of the Services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month.
- (c) A Staff list showing the number, classifications and salary ranges of staff and/or hourly rate ranges for Principals and Executives, for which the Consultant will seek payment on a time basis. The Consultant shall relate such information to the particular type of work that such staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's staff who is to be the liaison person between the Consultant and the Client.

1.23.2 Subsequent Changes in the Estimate of Fees, Schedule of Progress and Staff List

The Consultant will require prior written approval, from the Client for any of the following changes:

- (a) Any increase in the estimated fees beyond those approved under Subsection 1.23.1 (a).
- (b) Any change in the schedule at progress which results in a longer period than provided in Subsection 1.23.1 (b).
- (c) Any change in the number, classification and salary ranges of the staff provided under Subsection 1.23.1 (c).

1.23.3 Monthly Reporting of Progress

When requested by the Client, the Consultant shall provide the Client with a written report showing the portion of the Services completed in the preceding month.

1.24 Additional Conditions

The liability of the Engineer to the Client under this Agreement shall be absolutely limited to the re-performance at the Engineer's own cost of those Services which are proven at law to constitute errors, omissions or negligent acts on the part of the Engineer or anyone for whom the Engineer may be responsible at law.

ARTICLE 2 - SERVICES

Detail design and contract administration.

ARTICLE 3 - FEES AND DISBURSEMENTS

3.1 Definitions

For the purpose of this Agreement, the following definitions shall apply:

(a) **Payroll Cost:**

Payroll cost is defined as hourly salary plus payroll burden.

- i) The following formula shall be used to calculate the hourly salary for the billing purposes. Hourly salary equals:

$$\frac{\text{Annual Salary}}{\text{Hours Per Week} \times 52 \times .85}$$

- ii) Payroll burden equals fringe benefits expressed as a percentage of salary that provides for ***vacation, statutory holidays, sick leave, professional development***, health and medical insurance, group life and disability insurance, company and Canada pension employer contribution, ***Workplace Safety and Insurance Board contributions, Employment Insurance contributions, and Employer Health Tax***, ~~Workers' Compensation and Unemployment Insurance~~, but excludes bonuses or profit sharing. For the purposes of this agreement payroll burden is **35.000** %.

(b) **Cost of the Work:**

- (i) The "Cost of the Work" shall mean the total cost of the Project including all materials, equipment, sales taxes, labour and contractor's overhead and profit, necessary to complete the work for which the Consultant prepares designs, drawings or specifications, for which he is responsible. Where sales taxes are not included in the cost of the work, the fee shall be adjusted upwards by the factor equivalent to the sales taxes. The adjusted fee may be computed to the nearest one-tenth of one percent (1/10%).
- (ii) Wherever the client furnishes labour or other service which is incorporated in the work, the current price of labour or other service when the work was executed shall be used to compute the Cost of the Work.
- (iii) Whenever used materials or equipment is furnished by or on behalf of the Client, the fair market value of such materials or equipment, as though it was purchased new, shall be used to compute the Cost of the Work.
- (iv) In computing the Cost of the Work, no deductions shall be made on account of any penalties or damages claimed by the Client from any contractor or on account of any other sum withheld from any contractor.
- (v) The Cost of the Work shall not include any fees and disbursements due to the Consultant, the Client's engineering and office expenses, or cost of land.

(c) **Site:**

Site includes the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.

3.2 **Basis of Payment**

3.2.1 **Fees Calculated on a Time Basis**

3.2.1.1 The Client shall pay the Consultant a fee, calculated on a time basis, for that part of the Services described in Article 2. Fees on a time basis shall be as follows:

- (a) Principals and Executives on normal assignments \$_____ per hour. ~~This rate will be reviewed annually and adjusted accordingly.~~ - **Payroll Cost plus 100%.**
- (b) Staff on normal assignments - Payroll Cost plus 100 %.
- (c) Principals, Executives and staff rendering individual services on assignments for which they are eminently qualified and for which they require little or no assistance including providing expert testimony and attendance at hearings or courts ... ~~50% more than the rates specified above.~~ - **rates to be negotiated if such services are requested in writing by the Client.**
- (d) Services During Construction
 - i) For all services, except for staff full-time continuously on site:

Principals and Executives
on normal assignments \$_____ per hour

This rate will be reviewed annually and adjusted accordingly.

All Staff: Payroll Cost plus 70 %
 - ii) For site staff working full time continuously Payroll Cost plus 70 %.

3.2.1.2 **Time Expended**

All time expended on the assignment, whether in the Consultant's office, at the Client's premises, or elsewhere, and including travel time, shall be chargeable. This also includes, but is not limited to, stenographic and clerical staff engaged in the preparation of documents such as reports and specifications.

3.2.2 **Fees Calculated on a Percentage of Cost Basis** *N/A*

3.2.2.1 The Client shall pay the Consultant a design fee to be calculated as a percentage of the Cost of the Work for normal projects as follows:

CALCULATION OF FEE

COST OF THE WORK

FEE

_____	_____
_____	_____
_____	_____

3.2.3 **Computer Services**

Computer services, except where a computer is used for design under the percentage fee scale or for the Consultant's normal office administration, shall be considered a reimbursable expense.

3.2.4 Reimbursable Expenses

In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 5%, plus the cost of additional insurance incurred by the Consultant, for all expenses properly incurred by him in connection with the project, including but not limited to: vehicle use charges, travelling and living expenses, long distance telephone charges, teletype and telegraph charges, printing and reproductions, progress photography, advertising for tenders, special delivery and express charges, overtime premium costs, and the cost of providing and maintaining site offices, supplies and equipment, chemical and physical tests.

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. Interest at the annual rate of N/A percent (____ percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultant's invoice.

3.3.2 Fees Calculated on a Percentage of Cost Basis N/A

(a) Monthly Payment

The Consultant shall submit an invoice to the Client for that part of the design of the Project completed in the immediately preceding month calculated upon the basis of the Consultant's estimate of the cost of that part of the Project, and, if the Client agrees with such estimate and that such part has been completed, the Consultant will be paid the amount of the fee so invoiced. Interest at the annual rate of ____ percent (____ percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultants' invoice.

(b) On Award of Contract

Following the award of the contract for the construction of the Project, the Consultant shall recalculate his fee on the basis of the tender quantities and prices on which the contract for the construction of the Project was awarded, plus the estimated cost of materials and other services supplied by the Client and upon such recalculation, the amount paid to the Consultant shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Consultant of any overpayment made to the Consultant.

(c) Delay of Award of Contract

In the event the contract for construction of the Project is not awarded within eighteen months of the acceptance of the Design by the Client the final fee for design shall be determined as in paragraph (a) above, and paragraph (b) shall not apply.

Further services for the Project beyond the eighteen months will be undertaken on a time basis.

(d) On Completion of the Work

Following Completion of the Work, the Consultant shall recalculate his fee on the basis of the actual cost of the work and upon such recalculation the amount paid to the Consultant shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Consultant of any overpayment to the Consultant.

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

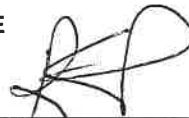
in the presence of:

CONSULTANT



Howard W. Wray, President
TRITON ENGINEERING SERVICES LIMITED

THE CORPORATION OF THE TOWN OF ORANGEVILLE



ROB ADAMS, MAYOR
TOWN OF ORANGEVILLE



CHERYL JOHNS, CLERK

