

CORPORATION OF THE TOWN OF AMHERSTBURG

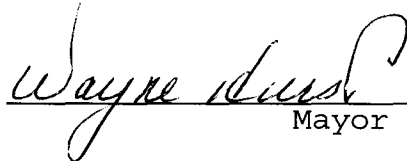
BY-LAW NO. 1998-86

Being a by-law to authorize the execution of an Agreement for engineering services.

Whereas the Municipal Council of the Town of Amherstburg deems it expedient to enter into an agreement with Stantec Consulting Ltd. for the purpose of providing engineering services to construct a system of sanitary sewers and pumping stations to provide sewage servicing to Amherst Point, Bar Point, Lakewood Beach, Willow Beach and Lake Erie Country Club area of Amherstburg.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute the original and duplicate of the Agreement in the form annexed hereto and attach the Corporate Seal thereto.
2. This By-law shall come into force and take effect on the final passing thereof.



Mayor



Clerk

1st Reading: December 14, 1998

2nd Reading: December 14, 1998

3rd Reading: December 14, 1998

Certified to be a true copy of By-law No. 1998-86 passed by the Amherstburg Municipal Council on the 14th day of December, 1998.

**AGREEMENT
FOR
PROFESSIONAL ENGINEERING SERVICES**

MEMORANDUM OF AGREEMENT dated the day of A.D. 19

BETWEEN

The Corporation of the Town of Amherstburg

Hereinafter called the Client

THE PARTY OF THE FIRST PART

AND

Stantec Consulting Ltd.

Hereinafter called the Engineer
THE PARTY OF THE SECOND PART

WHEREAS

the Client intends to

(description of project)

construct a system of sanitary sewers and pumping stations to provide sewage servicing to Amherst Point, Bar Point, Lakewood Beach, Willow Beach and Lake Erie Country Club areas of the former Township of Malden.

hereinafter called the Project and has requested the Engineer to furnish professional services in connection therewith;

NOW THEREFOR WITNESSETH that in consideration of the covenants contained herein, the Client and the Engineer mutually agree as follows:

ARTICLE 1. GENERAL CONDITIONS

1.1 Ownership of Documents

The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents provided by the engineer in connection with the works shall remain vested in the engineer, but the client shall have a royalty-free licence to use such drawings and other documents for the purpose of constructing the works. Save as aforesaid, the client shall not make copies of such drawings or other documents, nor shall the client use the same in connection with the making or improvement of any works other than those comprised in the works, without the prior written approval of the engineer and upon such terms as may be agreed between the client and the engineer.

The engineer may with the consent of the client, which consent shall not be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the works.

1.2 Patents

All concepts, products or processes produced by or resulting from the services rendered by the engineer in connection with the project, or which are otherwise developed or first reduced to practice by the engineer in the performance of service, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the engineer.

The client shall have a permanent, non-exclusive, royalty-free licence 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 engineer in connection with the project, for the life of the project, and for no other purpose or project.

1.3 Confidential Data

The engineer shall not divulge any confidential information acquired in the course of carrying out the services provided for herein. No such information shall be used by the engineer on any other project without approval in writing by the client.

This requirement shall not prohibit the engineer from acting to correct or report a situation which the engineer may reasonably believe to endanger the safety or welfare of the public, provided that the engineer notifies the client of what is intended.

1.4 Insurance

When requested, the engineer shall supply to the client a summary of insurance coverage currently being maintained by the engineer, including but not exclusive to professional liability insurance, comprehensive general liability and automobile insurance. Such summary shall include the name of the insurance company, type of insurance and amount of such coverage.

If the client requests that the amount of coverage of the engineer's insurance be increased or special insurance be obtained for this project, the engineer shall cooperate with the client to obtain such increased or special insurance coverage at the client's expense.

It is understood and agreed that the coverage provided by either of the policies named in the aforementioned summary or specially required will not be changed or amended in any way nor cancelled by the engineer until 60 days after written notice of such change or cancellation has been delivered to the client.

1.5 Arbitration

All matters in dispute under this agreement may with the consent of both parties be referred to arbitration.

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 engineer.

The award of the arbitrator shall be final and binding upon the parties.

The provisions of the Ontario Arbitrations Act shall apply.

1.6 Successors and Assignment

This agreement shall enure to the benefit of and be binding upon the parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors and assigns.

If a party to this agreement who is an individual should desire to bring in a partner or partners, or if a party which is a partnership should desire to bring in a new partner or partners to share the benefits and obligations of this agreement, they may do so by properly notifying the other party in writing of such intended action.

If a party to this agreement is a partnership, and a partner thereof either dies or retires, the remaining parties therein shall form a new successor partnership to share the benefits and obligations of the agreement.

Except as foresaid, neither party shall assign this agreement without the prior consent in writing of the other.

1.7 Termination and Suspension

The client may at any time, by notice in writing to the engineer, suspend or terminate the services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the engineer shall perform no further services other than those reasonably necessary to close out the engineer's services. In such event, the engineer shall be paid by the client for all services performed and for all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

If the client is in default in the performance of any of the client's obligations set forth in this agreement, the engineer may, by written notice to the client, require such default be corrected. If, within 30 days of receipt of such notice, such default shall not have been corrected, the engineer may immediately terminate this agreement. In such event, the engineer shall be paid by the client for all services performed and for all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

If the engineer is practising as an individual and dies before services have been completed, this agreement shall terminate as of the date of death and the client shall pay for the services rendered and disbursement, incurred by the engineer to the date of such termination.

1.8 Records and Audit

In order to provide data for the calculation of fees on a time basis, the engineer and the sub-consultants shall keep a detailed record of the hours worked by, and the salaries paid to, the engineer's staff employed on the project.

The client may inspect and audit the books, payrolls, accounts and records of the engineer and sub-consultants during regular office hours with respect to any item which the client is required to pay on a payroll multiplier basis as a result of this agreement.

The engineer, when requested by the client, shall provide copies of receipts with respect to any disbursements for which the engineer claims payment under this agreement.

1.9 Indemnification

The engineer 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, the employees, officers or agents of the client may suffer as a sole result of the negligence of the engineer, the employees, officers or agents of the engineer in the performance of this agreement.

The client agrees to hold harmless, indemnify and defend the engineer from and against any and all claims, 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 solely arise out of the negligence of the engineer in the performance of consulting services to the client within this project.

1.10 Contracting for Construction

The engineer, or any person, firm or corporation associated or affiliated with or subsidiary to the engineer, shall not tender for any or all of the execution of the project or have an interest either directly or indirectly in the construction of the project, without the prior written consent of the client.

1.11 Approval by Other Authorities

Unless otherwise provided in this agreement or explicitly required by legislation, where the work of the engineer is subject to the approval or review of an authority, department of government, or agency other than the client, preparation of applications for approval or review shall be the responsibility of the engineer, 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 engineer with such other authority, department of government or agency.

1.12 Changes and Alterations and Additional Services

After giving notice to the engineer, 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 engineer shall be paid in accordance with Article 4 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Article 4. In the case of a reduction in the requirement for services, any reduction in the engineer's fee will be the subject of negotiation. No such change shall require the execution of a formal amendment to this agreement.

ARTICLE 2. RESPONSIBILITIES OF THE CLIENT

The client shall:

- a) make available to the engineer all relevant information required by the engineer, and shall instruct the engineer fully as to the client's requirements, including design objectives, constraints and criteria, special equipment and systems, site requirements and construction budget. The engineer shall be entitled to rely upon the accuracy and completeness of all such information and data furnished through the client or client's consultants whether such consultants are engaged at the request of the engineer or not.
- b) engage consultants directly, when so required by the engineer, to perform services necessary to enable the engineer to fully carry out the engineer's duties, such services to include a legal survey of the site, site services data, geotechnical reports and appropriate testing.
- c) give the engineer authority to act as the client's agent in all matters falling within the scope of the engineer's services.
- d) promptly review all documentation submitted by the engineer, and inform the engineer of decisions in time for the orderly progress of the engineer's services and of the work.
- e) obtain all required consents, approvals and licences and permits from authorities having jurisdiction.
- f) arrange and make provision for the engineer's entry and access to public and private property and the project site in the performance of the duties.
- g) arrange and pay for tender advertising and any necessary legal, financial or insurance counselling services required for the project.
- h) designate in writing a representative to have authority to transmit instructions to and receive information from the engineer.
- i) immediately notify the engineer whenever the client, or the client's representative, becomes aware of a defect or deficiency in the work or the contract documents.

ARTICLE 3. ENGINEERING SERVICES PROVIDED UNDER THIS AGREEMENT**3.1 General**

The engineer shall render services to the client "in a timely manner" under this agreement with that degree of care, skill and diligence normally provided in the performance of services in respect of projects of a similar nature to that contemplated by this agreement at the time and place that such services are rendered.

3.2 The engineer shall perform the following services in connection with the project:

Refer to Schedule A - Scope of Engineering Services attached to and forming part of this agreement.

ARTICLE 4. FEES AND DISBURSEMENTS

4.1 Definitions

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

4.1.1 Payroll Cost

Payroll cost is defined as hourly salary plus payroll burden.

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

$$\frac{\text{Annual Salary}}{\text{Hours per week} \times 52 \times 0.85}$$

- b) Payroll burden equals fringe benefits expressed as a percentage of hourly salary that provides for health and medical insurance, provincial payroll tax, group life and disability insurance, company and Canada Pension employer contribution, Workers' Compensation and Unemployment Insurance, but excludes bonuses or profit sharing. For the purpose of this agreement payroll burden is 28 %.

4.1.2 Cost of the work

- a) 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 engineer prepares designs, drawings or specifications. 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 (0.001%).
- b) Wherever the client furnishes labour or any 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.
- c) Whenever used material or equipment is furnished by or on behalf of the client, the fair market value of such material or equipment, as though it was purchased new, shall be used to compute the cost of the work.
- d) 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.
- e) The cost of the work shall not include any fees and disbursements due to the engineer, the client's engineering and office expenses, or the cost of acquiring the land including, without limitation, the purchase price, legal fees, commissions and land transfer taxes.

4.1.3 Site

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

4.2 Basis of Payment

4.2.1 Fees calculated on a time basis

The client shall pay the engineer a fee, calculated on a time basis, for that part of the services described in Article 3. 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.~~
- ~~(b) Staff on normal assignments: payroll cost plus _____ % or as per hourly rates shown on schedule _____ attached.~~
- ~~(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.~~

Not
Applicable

~~(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.~~

~~◆ Other staff: payroll cost plus _____ %, or as shown individually on schedule _____ attached.~~

~~ii) For site staff working full-time continuously: payroll cost plus _____ %, reducing to payroll cost plus _____ % for periods in excess of 6 months.~~

~~All time expended on the assignment, whether in the engineer's office, or 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 such documents as reports and specifications.~~

4.2.2 Fees calculated on a percentage of cost basis

The client shall pay the engineer a design fee to be calculated as a percentage of the cost of the work for normal projects as follows:

Calculation of Fee

Estimated	Cost of the Work	Fee
	<u>5,696,500</u>	<u>12%</u>
	_____	_____
	_____	_____

4.2.3 Reimbursable expenses

In addition to the fee, the engineer shall be reimbursed at cost plus an administrative charge of 5%, plus the cost of the additional insurance incurred by the engineer and as requested by the client, for all reasonable expenses properly incurred by the engineer 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 office, supplies and equipment, chemical and physical tests.

4.2.4 Computer services

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

4.3 Payment

~~4.3.1 fees calculated on a time basis~~

Not Applicable

~~The engineer shall submit an invoice with such detail and supporting documentation as the client may reasonably require to the client for all services completed in the immediately preceding month. Interest at the annual rate of ___% (___% monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the client has received the engineer's invoice.~~

4.3.2 Fees calculated on a percentage of cost basis

a) Monthly payment

The engineer 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 engineer'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 engineer will be paid the amount of the fee so invoiced (___% monthly) on the total outstanding unpaid balance commencing 30 days after the client has received the engineer's invoice.

b) On award of contract

Following the award of the contract for the construction of the project, the engineer shall recalculate the 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 engineer shall be adjusted to equal the full amount of the recalculated fee including the repayment by the engineer of any overpayment made to the engineer.

c) Delay of award of contract

In the event the contract for construction of the project is not awarded within 18 months of the acceptance of the design by the client, the final fee for design shall be determined as in paragraph a) above.

d) On completion of the work

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

IN WITNESS THEREOF the parties hereto have caused to be executed those present by their officers properly authorized in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of: _____

ENGINEER _____

CLIENT _____

SCHEDULE 'A'

**to the Agreement for Professional
Engineering Services dated the
_____ day of _____ A.D. 1998.**

Scope of Engineering Services

The engineer shall perform the following services in connection with the project:

- a) all incidental services necessary for the preparation of complete and comprehensive design calculations, plans, specifications and other documents for the works;
- b) a written recommendation and an estimate of the cost of site investigations, boreholes and soil tests that are considered to be necessary;
- c) a report, substantiated by photographs, describing the nature, extent and condition at the date of tendering of roads, driveways, sidewalks, grass verges, ditches, open drains, fences, walls, trees, bushes, lawns and other things through or adjacent to which the works will be constructed.
- d) identification of and assistance in obtaining including preparation of completed applications, drawings and information required for or in connection with all approvals, licenses, permits, permissions, authorities, agreements and privileges. The obtaining of which is not the responsibility of a contractor of the Client, required for the construction, financing or putting into operation of the works.
- e) all necessary resident field engineers and inspectors to confirm construction generally conforms to requirements of drawings and specifications
- f) copies of correspondence related to the project between the Engineer, the contractor and others including the soils engineering company;
- g) photographs of the works taken during the construction of the works;
- h) preparation of contract change orders, payment certificates and other contract administration documentation during the construction of the works.
- i) preparation and submission to the client a complete set of "construction record" drawings recording the final location and details of the constructed works.