

CORPORATION OF THE TOWNSHIP OF WESTMEATH

BY-LAW 86-22

A By-Law to enter into an agreement with A. J. Robinson & Associates Incorporated for the performance of the Flood Risk Mapping Study on the Ottawa River near Westmeath - Phase II.

Whereas:

- 1) The Municipality has authority under section 104 of the Municipal Act R.S.O. 1980 to make provision for the welfare and Safety of the inhabitants of the Municipality.
- 2) The Council of the Township of Westmeath considers it desirable to have Flood Plain Mapping done, and intends to incorporate it into the Township of Westmeath Official Plan.

Now therefore the Municipal Council of the Corporation of the Township of Westmeath ENACTS as follows:

- 1 That the Corporation of the Township of Westmeath enters into an agreement, known as Schedule "A" attached to, and forming part of this By-Law, with A. J. Robinson & Associates for the Flood Risk Mapping Study on the Ottawa River near Westmeath.
- 2 The total cost of the Project is \$ 61,400.00, of which 10% will be paid by the Corporation of the Township of Westmeath. The balance is to be funded by Environment Canada and the Ministry of Natural Resources jointly.
- 3 The Reeve and Clerk are hereby authorized to sign the agreement referred to in Section 1 on behalf of the Corporation.

Passed and ENACTED this 5th day of November, 1986.


Reeve


Clerk

CORPORATION OF THE TOWNSHIP OF WESTMEATH

BY-LAW 86-22

SCHEDULE "A"

Recommended Form of Agreement Between Client and Engineer for Professional Engineering Services

Published by:

THE ASSOCIATION OF PROFESSIONAL
ENGINEERS OF THE PROVINCE OF ONTARIO

Toronto, Ontario.

1977



RECOMMENDED FORM OF AGREEMENT BETWEEN CLIENT AND ENGINEER
FOR PROFESSIONAL ENGINEERING SERVICES

APPROVED BY THE COUNCIL OF THE ASSOCIATION OF
PROFESSIONAL ENGINEERS OF ONTARIO

AGREEMENT made in duplicate this 14 day of October 19 86

BETWEEN: The Corporation of the Township of Westmeath
Westmeath, Ontario
K0J 2J0

and A.J. Robinson & Associates Inc. hereinafter referred to as the "Client",
P.O. Box 13130
Kanata, Ontario
K2K 1X3

hereinafter referred to as the "Engineer".

WHEREAS the Client has requested the Engineer to perform the services set out in Article II hereof in connection with the Project (as hereinafter defined) and the Engineer has agreed to perform such services on and subject to the terms and conditions of this Agreement:

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, the Client and the Engineer agree as follows:

Article I – DEFINITIONS:

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified unless the context otherwise specifies or requires:

1. "Association" shall mean the Association of Professional Engineers of the Province of Ontario;
2. "Project" shall mean:

Flood Risk Mapping Study on the
Ottawa River Near Westmeath - Phase II

3. "Cost of the Work" shall mean the total cost to the Client of the Project, including all materials, equipment, labour and contractors' overhead and profit, provided that:
- (i) if sales taxes are not included in the Cost of the Work, the percentage fee provided for herein shall be adjusted upwards to the nearest 1/10th of 1% by a factor equivalent to what the sales taxes would have been;
 - (ii) material and equipment furnished by the Client shall be included as if purchased new, and if used material or equipment is furnished it shall be included as if purchased new;
 - (iii) labour or other services furnished by the Client shall be included at current market prices;
 - (iv) 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; and
 - (v) any fees and disbursements paid or due to the Engineer, the Client's own engineering liaison costs, legal costs, and land costs, shall not be included.
4. "Payroll Cost" is defined as salary plus payroll burden. Payroll burden equals fringe benefits expressed as a percentage of salary that provide for health and medical insurance, group life and disability insurance, company and Canada pension employer contributions, Workmen's Compensation and Unemployment Insurance but excludes bonuses or profit sharing. Salary per hour is defined as current annual salary divided by 1660 hours.

The 1660 hours of available working time is based on a 37½ hour week and is calculated by deducting 290 hours for vacation, statutory holidays, sick time and professional development time from 1950 hours (37½ hours per week x 52 weeks per year.)

Article II - ENGINEERING SERVICES:

Services to be provided in the Flood Risk Mapping Study on the Ottawa River near Westmeath - Phase II are outlined in a proposal submitted to the Client on August 26, 1986 in response to Terms of Reference provided by the Client. Additional work required in the project and referred to on Page 4 of the proposal will be carried out as outlined in letter dated November 7, 1986.

The work will be completed in conformance with the Canada/Ontario Flood Damage Reduction Program Terms of Reference for Floodline Mapping Studies, revised May 19, 1980.

The above-noted documents are not attached to this agreement but are to be read as part of it.

The following will be provided:

<u>Project Component</u>	<u>Description</u>
1	Background information review and documentation
2	Preparation of tender documents for Mapping and assistance in tender evaluations
3	Topographic mapping coordination and monitoring
4	Topographic and aerial photography checking and reporting
5	Hydrology analysis and reporting
6	Hydraulic analysis and reporting
7	Flood Risk Mapping preparation
8	General report preparation
9	Meetings and presentation
10	Field Survey
11	Additional alternative assessment The scope of the work and component study methodologies are described in the Terms of Reference and the proposal, as amended to include additional field survey, which form part of this agreement

Article III – FEES:

The Client shall pay to the Engineer the following fees for the performance of the services set out in Article II hereof:

<u>Project Component</u>	<u>Cost of the Work</u>
1.	\$ 2,800.00
2.	\$ 2,500.00
3.	\$ 1,000.00
4.	\$ 4,500.00
5.	\$ 9,800.00
6.	\$ 7,000.00
7.	\$ 3,000.00
8.	\$ 3,000.00
9.	\$ 2,000.00
10.	<u>\$25,800.00</u>

Total Project Cost of Work \$61,400.00

Additional Services:

- | | |
|-----|---|
| 11. | Additional Project Alternatives:
\$1,000/alternative |
|-----|---|

The above project component cost of work are to be paid in a lump sum basis according to the amended payment of fees and expenses clause Number 4 in Article V.

Article IV – EXPENSES AND DISBURSEMENTS:

1. The Engineer shall be reimbursed for all expenses properly incurred by him in connection with the Project including, but not limited to, automobile mileage, reasonable 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 payments, and the cost of providing and maintaining site offices, supplies, and equipments.
2. The Engineer shall also be reimbursed at cost plus a charge of 5.0% of such cost as an administrative charge for approved special consultations such as sub-surface investigations, legal surveys and chemical and physical tests.

Article V – PAYMENT OF FEES AND EXPENSES:

1. Payment of fees and reimbursable expenses for services performed by the Engineer for which the fee is calculated on a Time Basis shall be made within 30 days after the Engineer has forwarded to the Client his statement of account, rendered monthly.
2. Payment of fees and reimbursable expenses for services performed by the Engineer for which the fee is calculated on a Percentage of Cost of the Work shall be made within 30 days after the Engineer has forwarded to the Client his statement of account. The monthly fee shall be based upon the Engineer's monthly progress estimate pro-rated on the basis of the amount of design work completed, applied against agreed estimated construction costs. If the design of any part of the Project has been completed but tenders for the work have not been called, the fee then due to the Engineer shall either be calculated on a time basis or on the Engineer's estimates of the Cost of the Work, at the option of the Engineer. If subsequently tenders are called and received, or the Cost of the Work is ascertained within one year of the completion of the design, then the Engineer's fee shall be adjusted accordingly.
3. Overdue accounts are subject to carrying charges at a rate of 1.5% per month.

Article VI – GENERAL TERMS AND CONDITIONS:

1. **Co-operation**
 - (a) The Client shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals, and other information provided by the Engineer, 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 Engineer.
 - (b) The Client shall, at the request of the Engineer, provide the Engineer with the following information and documents relating thereto, except insofar as the Engineer is expressly required to furnish the same under the terms hereof:
 - (i) all pertinent information which may affect the work to be done, including a correct survey of the site and existing facilities and utilities;
 - (ii) accurate information, plans, and specifications regarding any other existing or proposed buildings or works which are involved, and insofar as such information is not available, the cost of obtaining the same shall be borne by the Client;
 - (iii) copies of all bids and contracts for the work for which the Engineer is responsible and copies of all quotations, certificates for payment, and final accounts in connection with work insofar as they do not originate in the Engineer's office.
2. **Plans, Specifications and Designs**

Any and all plans, specifications, drawings and designs furnished by the Engineer will be prepared on the assumption that all information supplied by the Client or on behalf of the Client by any person or persons other than the Engineer is correct, and the Engineer shall not be liable for any loss or damage arising from any inaccuracy in such information. The Client shall immediately notify the Engineer of any discrepancies or inaccuracies in such information as they become apparent. The Engineer shall be entitled to make any necessary change or changes in his plans, specifications, drawings, or designs at the Client's expense if any such information should be erroneous or inaccurate.

3. Compensation for Extra Work and Changes

If it shall become necessary for the Engineer to make any changes in any designs, drawings, plans or specifications for any part of the Project for reasons over which he has no control, or if the Engineer is put to any extra work, cost or expense by reason of any act or matter over which he has no control, the Client shall pay to the Engineer a fee for such changes or extra work calculated on a time basis; provided that prior to the commencement of such changes or extra work the Engineer shall notify the Client in writing of his intentions to make such changes or to carry out such extra work and that the Engineer shall keep separate costs records in respect to such changes or extra work.

4. Fee for Additional and Special Services

The fee for Additional and Special Services provided by the Engineer, if any, shall be calculated on a time basis unless specifically provided for in the percentage fee for other services provided for herein. (Additional and Special Services, if any, and the corresponding fees payable, shall be clearly itemized under Article II and III respectively, heretofore).

5. Abandonment or Suspension

(a) If the Project or any part thereof is abandoned at any stage prior to completion of the design, or if any stage of the Engineer's work is unduly delayed for reasons beyond his control, the Client shall pay to the Engineer a fee for his services from the inception of the work calculated on a time basis.

(b) If the Project or any part thereof is abandoned at any stage subsequent to the completion of the design, or if any stage of the Engineer's work is unduly delayed for reasons beyond his control, the Client shall pay to the Engineer the fee for his services from inception of the work to the completion of design as provided in this Agreement, and shall pay to the Engineer a fee for his services subsequent to the completion of design calculated on a time basis.

6. Ownership of Documents

All plans, drawings, specifications, designs, construction data and documents prepared by the Engineer shall be and remain the property of the Client. The Engineer shall be entitled to a copy of such documents for record purposes only, and shall not use or permit the use thereof for the construction of any other project without the consent of the Client.

7. Constructional Emergencies

In the event of any constructional emergency which in the opinion of the Engineer requires immediate action in the Client's interests, the Engineer shall have authority to issue such orders and to take such steps on behalf, and at the expense, of the Client as he shall deem necessary or expedient.

8. Confidential Data

The Engineer shall not divulge any confidential information communicated to or acquired by him in the course of carrying out the engineering services provided for herein. No such information shall be used by the Engineer on any other project without the approval of the Client.

9. Arbitration

- (a) All matters in difference between the parties hereto in relation to this Agreement which cannot be resolved between the parties shall 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 Engineer.
- (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, shall apply to the arbitration.

Article VII – SUCCESSORS AND ASSIGNMENT

- 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.
- 2. If the Engineer is an individual and dies before his services hereunder have been completed, this Agreement shall automatically terminate as of the date of his death and the Client shall pay for the services rendered and disbursements made to the date of such termination.
- 6.

Amendment to Article V - Payment of Fees and Expenses

The following clause is added to the existing three clauses:

4. Payment of fees and reimbursable expenses for services performed by the Engineer for which the fee is based on a lump sum. Cost of the Work shall be made within 30 days after the Engineer has forwarded to the Client his statement of account. Statement of Accounts associated with a particular project component will be forwarded to the Client at the completion of that project component.

3. If the Engineer is an individual and is unable to satisfactorily perform his services hereunder due to physical or mental incapacity for a period of 15 consecutive days or for the aggregate of 20 days in any 2 month period the Client may terminate this Agreement on 48 hours notice to the Engineer and shall pay for the services rendered and disbursements made to the date of such termination.
4. 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 benefit and burden of this Agreement, he or it may do so but shall promptly notify the other party of such action.
5. Except as aforesaid neither party shall assign this Agreement without the consent in writing of the other.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above appearing.

Client The Corporation of the
Township of Westmeath
Borden White
Reeve

Pat Burns
Clerk

Engineer A.J. Robinson & Associates Inc.
A.J. Robinson
A.J. Robinson, P.Eng,
President