

Corporation of the Village of Cobden

By-law Number 1986-13

Being a by-law to authorize the signing and enter into and execute an agreement with the Ministry of the Environment.

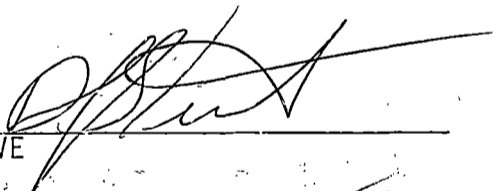
Whereas the Corporation of the Village of Cobden desires to execute an agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment for the provision of Project Management in accordance with the Schedule attached to this by-law,

Be it therefore enacted by the Council of the Corporation of the Village of Cobden as follows:

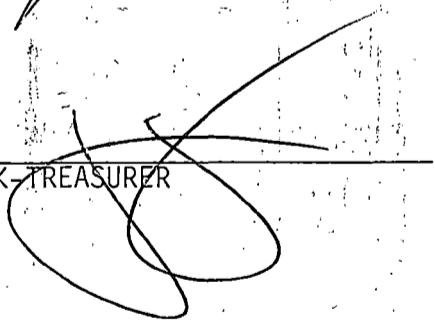
1. That the Corporation of the Village of Cobden enter into and execute an agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment for the provision of Project Management in accordance with the Schedule attached to this by-law.
2. The Reeve and Clerk are hereby authorized and directed to execute an agreement substantially the same as that attached hereto as a Schedule "A".

09

Read a First, Second and duly passed upon the Third reading this 9th day of December, 1986.



REEVE



CLERK-TREASURER

Corporation of the Village of Cobden

By-law Number 1986-13

Being a by-law to authorize the signing and enter into and execute an agreement with the Ministry of the Environment.

Whereas the Corporation of the Village of Cobden desires to execute an agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment for the provision of Project Management in accordance with the Schedule attached to this by-law,

Be it therefore enacted by the Council of the Corporation of the Village of Cobden as follows:

1. That the Corporation of the Village of Cobden enter into and execute an agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment for the provision of Project Management in accordance with the Schedule attached to this by-law.
2. The Reeve and Clerk are hereby authorized and directed to execute an agreement substantially the same as that attached hereto as a Schedule "A".

Read a First, Second and duly passed upon the Third reading this 9th day of December, 1986.


REEVE


CLERK-TREASURER



Ontario

Project No. 7-0537

Date.

MINISTRY OF THE ENVIRONMENT

AGREEMENT BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT

AND

THE CORPORATION OF THE VILLAGE OF COBDEN

~~CONSULTING ENGINEER~~

COVERING

THE PROVISION OF

PROJECT MANAGEMENT SERVICES FOR
COMMUNAL WATER AND SEWAGE WORKS
PROJECTS IN THE VILLAGE OF COBDEN

PROJECT ENGINEERING BRANCH

PROJECT MANAGEMENT AGREEMENT

Project No. 7-0537

Schedule "A" to By-law No. _____ of the Corporation of
the Village of Cobden.

This Agreement made in triplicate this _____ day of
_____, A.D. 19____.

B E T W E E N:

The Corporation of the Village
of Cobden
(herein called the "Municipality")

The Party of the First Part
- and -
Her Majesty the Queen in Right of
Ontario as represented by the
Minister of the Environment
(herein called the "Crown")

The Party of the Second Part

WHEREAS the Crown has agreed to provide funding
to the Municipality by Direct Grant payments, subject to
budget allocation of funds;

AND WHEREAS the Municipality has asked the Crown
to carry out direction of certain work with respect to
improvements and expansions of communal water and sewer
works in the Village of Cobden;

AND WHEREAS the Council of the Municipality on
the _____ day of _____, A.D. 19____
passed By-law No. _____ authorizing the Municipality to
enter into an agreement with the Crown for such purpose
upon the terms and conditions herein set out;

Pursuant to subsection (2) of Section 7 and Section 8 of the Ontario Water Resources Act, RSO 1980, chapter 381 as amended, the parties in consideration of the covenants, terms and conditions herein set forth covenant and agree with each other as follows:

1. In this agreement

- (a) "Construction Contract" means any contract other than an Engineering Contract entered into by the Municipality or the Crown as agent of the Municipality for purposes of acquiring goods, materials or services to facilitate the construction of the Works;
- (b) "Contract" means any Engineering Contract and any Construction Contract;
- (c) "Crown" means the Province of Ontario including any of its employees, agents, servants or officers authorized to act on its behalf under this agreement but excluding the Consulting Engineer and any of its employees.
- (d) "Engineer" means the person acting as Director of the Environmental Approvals and Project Engineering Branch, his delegate, or other person designated in writing as the Engineer by the Ministry.
- (e) "Engineering Contract" means any contract entered into by the Municipality, or the Crown as agent of the Municipality, with a person or firm, herein referred to as a Consulting Engineer, authorized to practice engineering in Ontario, for the provision of design, supervision of construction or other engineering

services to facilitate the construction of the Works;

(f) "Minister" means the Minister of the Environment;

(g) "Works" means the works constructed or acquired from time to time for the Municipality under this agreement.

2. The Crown, as agent for the Municipality, may enter contracts, in the forms usually used by the Crown for such purposes, for the design and the construction of the Works which are generally described in Schedule "A" and such other related matters as may be necessary to facilitate the construction of the Works. Payment for work undertaken in this fashion shall be made by the Crown under the provisions of subsection 6(6).

3. The Crown, as agent for the Municipality, will use its best efforts to manage the design, supervision and construction of the Works and to see that they are carried out in accordance with the Contracts without undue delay. However, no warranty or liability on the part of the Crown is intended nor shall any warranty or liability be implied or imposed in respect of the performance of this agreement or the design and construction of the Works by the Crown.

4. (1) This agreement is subject to the provisions of the Ontario Water Resources Act and the regulations made and any order issued thereunder as they may be made, issued or amended from time to time.

(2) Whenever any of the work which is required to be done to implement this agreement is subject to any statute the Crown will attempt to do

whatever is necessary in order to comply with the statute but is under no obligation to proceed with such work until compliance with the statute has been achieved.

(3) Subsection 2 does not require any person to give an exemption, certificate of approval or other approval under any statute administered by the Ministry of the Environment.

(4) In the event that any matters arise during the course of the performance of this agreement for which it is necessary to obtain approvals under any statute, the Engineer may act as the Municipality's agent in connection with applying for such approval.

5. The Crown will not charge for the time and expenses of any of its employees in the Ministry of the Environment for carrying out work in connection with this agreement but may charge the Municipality for any other expenses incurred by the Crown in connection therewith.

6. (1) From time to time, the Crown may make advances to the Municipality of funds of the Crown or funds received by the Crown from other agencies for purposes of subsidy or other financing for the Works.

(2) Funds advanced under subsection 1 shall be held in trust by the Municipality and in the event that because of changes in the Works or failure to carry out part of all of the Works or for any other reason the Municipality does not become entitled to expend any part of them under the program or conditions on which the funds are made available, the Municipality shall repay

such part to the Treasurer of Ontario or such other person as the Crown in writing directs.

- (3) Any funds received by the Municipality from the Crown, in connection with the Works, may be disbursed from the trust account established by the Municipality for payments in connection with liabilities incurred by the Municipality under this agreement or the terms of the subsidy or other financing.
- (4) The Crown will, from time to time, forward to the Municipality for payment, accounts or progress certificates received by the Crown for the Municipality and accounts for expenses incurred by the Crown in connection with the carrying out of this agreement and the design and construction of the Works.
- (5) The Municipality will pay the amounts due under accounts or progress certificates on or before the later of the due date shown on the account or progress certificate or within 20 days after its receipt by the Municipality.
- (6) The Crown may, in lieu of making some or all of the advances which would otherwise be made under subsection 1 pay on behalf of the Municipality some or all of the amounts which the Municipality would otherwise be liable to pay under subsections 3 and 5.
- (7) Where the Municipality receives any monies with respect to the Works from the Treasurer of Ontario or from any other source which the Crown determines are monies which could have been used to make a payment referred to in subsection 6 if

they had been received in time, the Municipality shall pay such monies to the Treasurer of Ontario or such monies may be deducted in the calculation of interim draws or the final audit.

7. (1) The Engineer may authorize payment for work under the Contract and authorize changes necessary to proceed with the work without prior approval of the Municipality provided that:
 - (a) Changes do not exceed the scope of approval of the Certificate of Approval;
 - (b) Total cost of changes or payments being authorized do not exceed the contract amounts plus contingency;
 - (c) Total payments do not exceed programme costs approved by the Ontario Municipal Board.
- (2) The Council of the Municipality will appoint a committee, which may consist of the Council to liaise with the Engineer and advise on the progress of the programme, assist with the resolution of problems, draft related by-laws, and other matters pertaining to the Works.
- (3) Where resolutions, approvals or directions of Council are required, the Engineer will address such matters to the committee referred to in subsection 2.
- (4) In the event the Engineer determines that a change should be made in the proposed Works, or that a payment should be made which change or payment is beyond the Engineer's authority to authorize under the Contracts, or which change or payment, even though within his authority, he

deems unadvisable to authorize without the authority of the Municipality, the Engineer may refer such matter to the committee for approval.

(5) The Municipality will keep the Engineer advised by notice in writing of any person or committee authorized to give an approval referred to in subsections 2 and 4, and where no person or committee is authorized to give the approval or fails to give or refuses to give such approval within such time as the Engineer considers reasonable, the Council of the Municipality itself shall give or refuse to give such approval.

(6) Where the Municipality

(a) fails to give or refuses to give an approval referred to in subsection 2 or 4 within a reasonable time,

(b) refuses to give an approval that the Engineer has advised the Municipality is necessary if the works are to be proceeded with, or

(c) requires that a change be made in the Works or the method of carrying them out, that the Engineer determines makes it impractical or impossible to carry out this agreement,

the Minister may, by 30 days' notice in writing, terminate the Crown's obligations as agent of the Municipality under this agreement.

- (7) The Municipality may, on 30 days' notice in writing authorized by by-law, terminate the Crown's authority as agent of the Municipality under this agreement.
- (8) If the Crown's agency is terminated under subsection 6 or 7, the Crown will
 - (a) co-operate with the Municipality to provide the Municipality with such information, documents and other material under the control of the Crown as are necessary to facilitate the completion of the Works by the Municipality, or
 - (b) if the Municipality so directs by resolution of its Council, take such steps as are necessary to terminate the Municipality's obligations under any Contract at minimum expense to the Municipality.
- (9) If the Crown's agency is terminated under subsection 6 or 7, the Crown will remain an agent of the Municipality insofar as it is necessary for the purpose of subsection 8.

If the Crown's agency is terminated under subsection 6 or 7, the Municipality will remain liable to pay any amounts for which a progress certificate or account is forwarded or issued to the Municipality under section 6 before or after such termination.

8. (1) Tenders for construction contracts will be received and opened at the Ministry's Head Office before the tender opening committee

in accordance with established practice. The Consulting Engineer shall be present and it is desirable that Council be represented.

(2) Construction of the Works shall not proceed until the Municipality authorizes the acceptance of a tender and where the work is to be carried out under more than one Construction Contract, the Municipality shall be asked to approve the acceptance of a tender for each Construction Contract as tenders are called from time to time. Before accepting any tender the Municipality shall consider the Engineer's recommendations on contract award.

(3) In the event the Crown proposes to engage a Consulting Engineer other than the one named in Appendix "A" for the purposes of carrying out the general design or detailed supervision of construction of the Works, the Crown will not enter into an Engineering Contract with the Consulting Engineer without the approval of the Municipality.

9. (1) It is the responsibility of the Municipality to acquire all necessary interests in land for the construction and operation of the Works, but if the Municipality fails to, or, with the consent of the Engineer, does not carry out this responsibility the Crown may acquire all necessary interests in land for construction and operation of the Works.

- (2) The Municipality may request assistance from the Realty Services Branch of the Ministry of Government Services in carrying out any phase of such acquisitions.
- (3) If the Crown acquires the necessary interests in land it shall do so as agent for the Municipality and title thereto shall be taken in the name of the Municipality.
- (4) Land Acquisitions undertaken by the Crown shall be carried out by the Realty Services Branch of the Ministry of Government Services in accordance with the policies and procedures established by that Ministry for land acquisitions.
- (5) In the event that an interest in land must be acquired by expropriation, proceedings shall be carried out on behalf of the Municipality in accordance with the provisions of the Expropriations Act, and the Council of the Municipality shall be the expropriating authority and the approving authority for such expropriations.

10. The Municipality will provide staff to operate the Works and the Crown will assist the Municipality in arranging for the recruitment and training of any additional staff required for such purpose.

11. The Municipality shall be responsible for property insurance and liability insurance for the works and their design and construction, other than

- (a) The professional liability insurance of the Consulting Engineer, and
- (b) Builders All-Risk, Public Liability and Property Damage insurance required of the Contractor by the construction contract

and any insurance policy obtained by the Municipality in connection therewith shall name the Crown as an insured party with respect to such risks.

12. The Municipality hereby releases, discharges and covenants and agrees at all times to indemnify and save harmless the Crown from and against all claims, including:

- (a) all claims for property damage or injuries, including injuries resulting in death, to any property or person or persons and any consequential damages arising from such damage or injury;
- (b) all claims, actions and awards under the Workers' Compensation Act or similar Acts;
- (c) all demands, liability, loss, costs, damages, expense, compensation, awards or payments of every kind or nature whatsoever, and all actions, suits or proceedings of every kind or nature whatsoever, by whomsoever incurred, sustained, suffered, made, paid, brought or taken;

and in any manner connected with, caused by or attributable to the entry into this agreement, the performance or the failure to perform the terms and conditions hereof, or the design, construction or operation of the Works (except to the extent that the Crown is indemnified under a policy of insurance, part or all of the premiums of which are charged to the Municipality by the Crown pursuant to this agreement) whether such claim be caused by or attributable to the negligence of the Crown or its officers, agents, servants or employees or otherwise.

13. This agreement contains the entire agreement between the parties hereto with reference to the subject matter hereof, shall not be altered or amended except as provided herein or by a written agreement duly executed by the parties hereto, shall enure to the benefit of and be binding upon the parties hereto and their successors, and shall not be assigned by either part in whole or in part without the consent in writing of the other part.

Project No. 7-0537

IN WITNESS WHEREOF the Crown and the Municipality have duly executed this agreement under seal.

The Corporation of the Village of Cobden.

per: _____
Reeve

_____ c/s
Clerk

Her Majesty the Queen in Right of Ontario as
Represented by the Minister of the Environment

Minister

APPENDIX "A" TO AN AGREEMENT BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER
OF THE ENVIRONMENT AND THE CORPORATION OF THE VILLAGE OF
COBDEN

Consulting Engineer: Greer Galloway & Associates Ltd.

Project No: 7-0537

DETAILS

Replacement of an existing water standpipe, and provision
of an emergency booster pump, watermains, feeder mains and
a trunk main, for an estimated cost of \$1.4 million, and
certain as yet undetermined improvements to the existing
sewer system.