

THE CORPORATION OF THE CITY OF BROCKVILLE

BY-LAW NUMBER 53-94

BY-LAW TO AUTHORIZE AN AGREEMENT WITH MINNES &
THOMAS LIMITED FOR THE PROVISION OF ENGINEERING
SERVICES FOR BROOME PARK STORMWATER PONDS

WHEREAS it is deemed advisable to enter into an
Agreement with Minnes & Thomas Limited for the provision of
engineering services for Broome Park Stormwater Ponds;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
CITY OF BROCKVILLE ENACTS AS FOLLOWS:

THAT the Mayor and Clerk be and they are hereby
authorized to enter into an Agreement with Minnes & Thomas
Limited for the provision of engineering services for Broome
Park Stormwater Ponds, in the City of Brockville, a copy of
which Agreement is attached herewith.

GIVEN UNDER THE SEAL OF THE CORPORATION OF

THE CITY OF BROCKVILLE AND PASSED THIS 12th

DAY OF

April

A.D., 1994.



MAYOR



CLERK

M.E.A./C.E.O.1989

AGREEMENT

FOR

PROFESSIONAL CONSULTING SERVICES

MEMORANDUM OF AGREEMENT dated the **10** day of **March**

A.D. 1995

-BETWEEN-

THE CORPORATION OF

CITY OF BROCKVILLE

Hereinafter called the Client:

THE PARTY OF THE FIRST PART

-AND-

PROCTOR & REDFERN LIMITED

Hereinafter called the "Consultant"

THE PARTY OF THE SECOND PART

WHEREAS the Client intends to

**DESIGN THE JOHN G. BROOME INDUSTRIAL PARK
STORMWATER DETENTION BASIN**

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 disbursements 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 reasonable 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 and Limit of Liability

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 \$5,000,000.00 for general liability and \$1,000,000.00 for automobile insurance. When requested the Consultant shall provide the Client with proof of Comprehensive General Liability and Automobile Insurance (Inclusive Limits) for both owner and non-owner vehicles.

(b) **Professional Liability Insurance.**

The Insurance Coverage shall be in the amount of \$1,000,000.00. When requested the Consultant shall provide the Client with 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 canceled 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 written, 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, plus the cost of the additional insurance incurred by the Consultant for the specialized services.

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 of the Client before publishing or issuing any detailed 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 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 written approval, from the Client for any of the following changes:

- (a) Any increase in the estimated fees beyond those approved under Section 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

Nil

ARTICLE 2 - SERVICES

2.1 Consultant Services

The services to be provided by the Consultant to the Client are described in schedule 'A' attached to this Agreement.

2.2 Client's Services for General Municipal Project

The Client shall provide the Consultant with the following services, notwithstanding that, should the Client be unable to provide any of the services hereunder, services may be assigned to the Consultant under Section 1.08.

1. Access to and, where necessary, copies of existing plans, profiles or other topographic information showing or pertaining to existing conditions within the Project area.
2. Registered land plans, legal documents and surveys, where necessary, defining the property limits of existing right-of-way, and other parcels of land affected by the Project, and as required by the Client.
3. Specimen contract documents for the guidance of the Consultant in the design of the Project, and as required in the acquisition of property and lands for the Project.
4. General direction of the Consultant in the provision of the services and approvals from time to time as necessary during the currency of this Agreement.
5. Geotechnical Investigation and Recommendation Reports for the proper design of the Project.
6. Any information regarding utilities necessary for the preparation of the plans referred to in Section 2.1 in the possession of the Client.
7. Any information, Functional Study or Pre-design Investigation undertaken for the Project or any adjoining property.
8. Arrange and make provision for the Consultant's entry and ready access to property (public and private) as well as to the site of the Project, as necessary to enable him to perform his services.
9. Engineering Field Survey of Existing Conditions.

The Consultant shall be entitled to rely upon the information, direction and approvals provided by the Client pursuant to clauses 1 through 9 hereof, inclusive, as being accurate in the performance of the Consultant's services under this agreement.

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:

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

- (ii)** Payroll burden equals fringe benefits expressed as a percentage of salary that provides for health and medical insurance, group life and disability insurance, company and Canada pension employer contribution, Workers' Compensation and Unemployment Insurance, but excludes bonuses or profit sharing. For the purposes of this agreement payroll burden is 32%.

(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 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.
- (iii)** 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, 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:

- (b)** Staff on normal assignments - Payroll Cost plus 100%.
- (c)** Principals, Executives and staff rendering individual services on assignments including providing expert testimony and attendance at hearings or courts ... 50% more than the rates specified above.

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.

3.2.3 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 the 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, traveling 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 cost, 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 8 percent (0.67 percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultant's invoice.

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:

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CONSULTANT

Proctor & Redfern Ltd.

D. Lampman, P.Eng.

Vice - President

THE CORPORATION OF

MAYOR

CLERK

Marilyn J. Smeed



PROCTOR & REDFERN LIMITED

February 8, 1995

PRP95 004

Mr. Conal Cosgrove, P.Eng.
City of Brockville
Victoria Building
One King Street West
Brockville, Ontario
K6V 3P5

Dear Conal,

Broome Industrial Park Stormwater Detention Basin

As requested during our telephone conversation January 19, 1995, we have prepared a Work Plan and identified the level of effort required to design the subject detention basin. We understand the City is looking to have this design undertaken in the event that the basin becomes required to support further development of the industrial park.

We have divided our Work Plan into 5 sections; Review Background Material; Preliminary Design; Detailed Design; Meetings; and Project Management.

At the onset of the study, we will meet with the City to obtain the available background information and to refine this Work Plan. At that time, we will discuss the key issues that the City believes are critical to making this project a success to them and we will document these in a Client Satisfaction Plan.

When reviewing the background material, we will be looking at the construction drawings associated with the surrounding roadways and sewers that were built last year. We will take delivery of the area DOI and Digital Terrain Model. The available geotechnical information will be reviewed and the need for additional information will be identified. Similarly, the need for additional topographic information will be identified at that time. Municipal design criteria and input to the design will be obtained from the City and the approval process will be confirmed.

The preliminary design stage will begin with the preparation of a 1:1000 scale base plan for the entire +/-10 hectare area within the roadway system. A 1:500 scale base plan of the +/-3 hectare pond site will be made from the DOI, upon which the preliminary pond features will be shown. Any additional topographic information will be added to the terrain model at this time. The need for maintenance access, fencing and screening will be identified. Preliminary grades will be set, together with sketches of the control structure(s) and ideas for landscape plantings. This will be assembled into a preliminary design package and reviewed with City staff.

Detailed design will be carried out based upon the preliminary design work that will have been refined through review with City staff, and any through comments obtained during discussions with reviewing agencies. Issues to be considered during detailed design include;

- the nature of short term and long term inlet / outlet elevations of the ditches and their capacities
- the potential structural stability requirements of the "dam" that is going to be built along the southern edge of the pond (clay core, toe drains, side slopes, emergency spillway, etc.)

February 27, 1995

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We have allowed for five (5) drawings including; plan and profile of the pond; structural details of the earthen dam and hydraulic control structure; grading plan of pond and adjacent building lot area; and a planting plan for the pond site. These plans will include the design of the access road and some of the most relevant technical specifications associated with the pond design. A specifications document will be prepared for the pond and its appurtenances.

We have allowed for a total of four (4) project review meetings at the City offices and, to assist the City with the approval process, an additional two (2) meetings with external review agencies.

Attached, is a detailed breakdown of the level of effort we have estimated to complete this assignment. We have estimated our fees to be \$34,800 based upon twice payroll costs plus disbursements, not including GST. We are prepared to begin this assignment within a week of being instructed to do so and estimate the project duration to be approximately 10 weeks (to submission of plans and specifications).

This Work Plan is based upon our interpretation of the City's requirements. We welcome your comments and we will be pleased to modify our approach through your input.

Yours truly,

Proctor & Redfern Limited

D.A. Bannister, P.Eng.
Manager, Hydrotechnical Services

D.L. Lampman, P.Eng.
Vice President

encl.

c. S.E. Archibald, P.Eng.,
Project Manager, P&R

file: fwater\prop1995\004prop.doc

City of Brockville PRP95-004; Design of Detention Basin for John J. Broome Industrial Park

Staff / Hourly Rates		SA	DB	TR	PG	BD	PP	tech			
Task		\$106	\$105	\$79	\$62	\$92	\$66	\$50	Sub Total	Disburs.	Total
1.0 Review Background Material											
1.1 review subdv'n engineering drawings			1	2	2		1		\$453	\$50	\$503
1.2 review DOI use with City							2		\$132		\$132
1.3 identify need for survey & soils work				1			3		\$277		\$277
1.4 obtain input to design from City			3	1			2		\$526		\$526
1.5 confirm approval process			1				1		\$171	\$50	\$221
											sub-total
											\$1,659
2.0 Preliminary Design											
2.1 prepare base plan & DTM							15	15	\$1,740	\$200	\$1,940
2.2 pond layout and features			4	15	6				\$1,977	\$100	\$2,077
2.3 hydraulic control structures shape			2		8				\$706	\$50	\$756
2.4 preliminary grading plan			2	15			2		\$1,527	\$100	\$1,627
2.5 landscape considerations						5		3	\$610	\$50	\$660
2.6 prepare Preliminary Design package			3		3	2	2	8	\$1,217	\$100	\$1,317
											sub-total
											\$8,377
3.0 Detailed Design											
3.1 Plan/Profile drawings (2)			1	4			4	75	\$4,435	\$200	\$4,635
3.2 Structural drawing (1)					2			100	\$5,124	\$200	\$5,324
3.3 Grading Plan (1)				4			5	20	\$1,646	\$100	\$1,746
3.4 Planting Plan (1)						15		15	\$2,130	\$100	\$2,230
3.5 Specifications			2			3	17	10	\$2,108	\$100	\$2,208
											sub-total
											\$16,143
4.0 Meetings											
4.1 internal meetings		2	4	4	2	2	4	2	\$1,620	\$50	\$1,670
4.2 review meetings with City (4)		4	8				16	2	\$2,420	\$450	\$2,870
4.3 external mtgs (1ea CRCA & MOEE)			2				10	2	\$970	\$250	\$1,220
											sub-total
											\$5,760
5.0 Project Management											
5.1 Client Satisfaction Plan		1					2		\$238		\$238
5.1 QA/QC		3	5						\$843	\$100	\$943
5.2 project management		15							\$1,590	\$90	\$1,680
TOTAL		25	38	46	23	27	86	252	\$32,460	\$2,340	\$34,800

Notes:

1. Topographic Survey and Geotechnical Investigation by others
2. Preliminary Grading Plan will identify approx. earth excess/deficit
3. Includes 4 meetings with City, and 2 with regulatory agencies

Legend:

SA Steve Archibald
 DB Dave Bannister
 TR Tom Richardson
 PG Paul Gillespie
 BD Bob Dobbins
 PP Perry Peterson
 tech technical support