

2037

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 Nineteenth day of February 1980

BETWEEN: THE CORPORATION OF THE
CITY OF NIAGARA FALLS

hereinafter referred to as the "Client",

and

H.Q. GOLDBER & ASSOCIATES LTD.

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:

The proposed watermain construction on River Road from Bridge Street to Queen Street and from Ellis Street to Hiram Street in Niagara Falls, Ontario.

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" shall mean the salary and/or wages of the employees of the Engineer engaged in performing services for the Project plus fringe benefits. Fringe benefits, may be expressed as a percentage of the salary and/or wages and may include but not be limited to such benefits as statutory holidays, vacations with pay, sick time allowance, hospitalization, medical and other health insurance, group life and disability insurance, pension plans including the Canada Pension Plan, Workmen's Compensation and unemployment insurance where applicable. Bonus or profit sharing plans shall not be included.

Article II - ENGINEERING SERVICES:

The Engineer shall perform the following services in connection with the Project:

The work is subdivided into three stages:

STAGE 1 - (pre-construction stage)

(a) Work carried out by H.Q. Golder & Associates Ltd.:-

A geological reconnaissance of the proposed watermain alignment from Bridge Street to Queen Street and from Ellis Street to Hiram Street in Niagara Falls, Ontario to delineate zones within which excavation by means of drill and blast could be carried out under controlled conditions without affecting the stability of the nearby escarpment.

(b) Work carried out by specialist consultants retained by H.Q. Golder & Associates Ltd.

A detailed pre-blast inspection of those existing residential and commercial type structures which in the opinion of the Engineer are susceptible to blast damage will be conducted by VME Associates Ltd., an explosives and blasting specialist retained by H.Q. Golder & Associates Ltd.

The above inspection will be carried out on all buildings within 150 ft. of the Contract location, as per recommendations and professional opinion of H.Q. Golder & Associates Ltd.

The pre-blast inspection will be conducted by qualified and experienced blasting technicians on a building to building basis. A record of the addresses and the names of the owners or occupants of the buildings inspected will be available to the Client. The field reports will be kept on file and be available in the event that a damage claim is made by the resident/owner. The field reports or a copy of them shall be submitted to the Client upon completion of the construction contract.

(c) Reports to be submitted by H.Q. Golder & Associates Ltd.

An engineering report will be prepared and submitted to include a discussion of the factors influencing stability in the construction area, a review of stability of the existing escarpment, a delineation of the zones within which blasting excavation would be allowable, an outline of the constraints which should be placed upon that blasting and typical specification items recommended to be included in the Contract Specifications.

A report delineating areas where blasting can be carried out without endangering the stability of the buildings will be submitted.

STAGE 2 - (construction stage)

(a) Work carried out by H.Q. Golder & Associates Ltd.:-

Three half day inspections of the exposed bedrock have been allowed for over the course of the excavation.

(b) Work carried out by specialist consultant retained by H.Q. Golder & Associates Ltd.

VME Associates will perform the following field work:

- (i) initial examination of the Contract area for blasting,
- (ii) acquiring a total of up to 12 recordings on the first two days of the initial blasting operation using two VME 3-component velocity recording seismographs; this work will be carried out within two 8-hour field days by a Professional Engineer.

STAGE 3 - (post-blast stage)

A repeat geological survey of the existing escarpment inspected in Stage I will be conducted and an engineering report will be prepared and submitted to include all the factual observations and an assessment of the stability of the escarpment over the area in question following the construction. 3.

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:

ENGINEERING FEES (H.Q. Golder & Associates Ltd.)

Stage I	\$ 4,800
Stage 2	375
Stage 3	4,300
Disbursements	<u>1,475</u>
Sub-total (Geotechnical Services)	<u>\$10,950</u>

ANCILLARY SERVICES (Specialist consultant retained by
H.Q. Golder & Associates Ltd.)

VME Associates Ltd.

Stage 1 - pre-blasting survey	\$ 7,000
Stage 2 - blasting vibration study	<u>1,850</u>
Sub-total (Ancillary Services)	<u>\$ 8,850</u>

CONTINGENCIES

\$ 1,200

TOTAL

\$21,000

Notwithstanding any other provisions of this agreement, the total amount to be paid by the Client for fees, expenses and disbursements is not to exceed \$21,000.00 without the prior written consent of the Client.

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.

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.

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 Engineer. The Client shall be entitled to reproducible copies of such documents.

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 of the Client as he shall deem necessary or expedient, the same to be at the expense of the Client, provided that such emergency is not due to the fault or neglect of the Engineer.

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 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., 1970, 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.

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 CITY
OF NIAGARA FALLS

[Signature] MAYOR
[Signature] CLERK
Engineer

H.Q. GOLDBER & ASSOCIATES LTD.

Per:

Per:

[Signature]
PRESIDENT
[Signature]
SECRETARY

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