



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 140-76

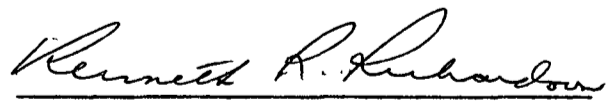
A By-law to authorize the execution of an Agreement between The Corporation of the City of Brampton and Paul Theil Associates Limited.

The Council of The Corporation of the City of Brampton
ENACTS as follows:

That the Mayor and the Clerk are hereby authorized to execute an Agreement between The Corporation of the City of Brampton and Paul Theil Associates Limited, attached hereto as Schedule 'A'.

READ a FIRST, SECOND and THIRD TIME and PASSED in Open Council this 21st day of June, 1976.


James E. Archdekin, Mayor


Kenneth R. Richardson, Clerk



BY-LAW

No. 140-76

A By-law to authorize the execution
of an Agreement between The Corporation
of the City of Brampton & Paul Theil
Associates Limited.

**STANDARD
FORM OF AGREEMENT
BETWEEN CLIENT AND ENGINEER
FOR
CONSULTING ENGINEERING SERVICES**



Approved by
THE ASSOCIATION OF PROFESSIONAL ENGINEERS
OF THE PROVINCE OF ONTARIO

236 Avenue Road
Toronto, Ontario

July, 1972

**STANDARD FORM OF AGREEMENT BETWEEN CLIENT AND ENGINEER
FOR CONSULTING ENGINEERING SERVICES**

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

AGREEMENT made in duplicate this 6th day of May 1975

BETWEEN: CITY OF BRAMPTON
24 Queen Street, East
Brampton, Ontario hereinafter referred to as the "Client",
and PAUL THEIL ASSOCIATES LIMITED
700 Balmoral Drive
Bramalea, Ontario
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

- (a) "Association" shall mean the Association of Professional Engineers of the Province of Ontario.
- (b) "Scales of Fees and Guide" shall mean the current Scales of Fees and Guide for the Engagement of Consulting Engineering Services-General Engineering Projects or ~~Scales of Fees and Guide for the Engagement of Consulting Engineering Services-Building Projects (strike out one)~~ published by the Association;
- (c) "Project" shall mean

Improvements to Etobicoke Creek Watercourse from Orenda Road
to Balmoral Drive

- (d) "Category I Services" shall mean services of an advisory nature and may include such services as testimony, consultation and advice, appraisals, valuations, rate structure and tariff studies, research or other services leading to specialized conclusions and recommendations,
- (e) "Category II Services" shall mean the carrying out of preliminary engineering studies and may include the collation and processing of information for the purpose of selecting one of several alternative plans or courses of action relative to the Project, exploration, gathering of topographical data and other site conditions, sub-surface investigation, preparation of traffic studies, analysis of conditions or of several alternative plans, economic study of capital, operating costs and other financial considerations, and similar matters leading to conclusions on which recommendations for the Project will be made,
- (f) "Category III Services" shall mean the preparation and submission of sketch plans, outline specifications, preliminary estimates of the Project costs and schedules for the completion of work which will clearly indicate the concept of the Project;
- (g) "Category IV Services" shall mean the preparation of final plans and specifications based on the approved preliminary plans and specifications and may include the preparation of final designs and cost estimates, working drawings, specifications and contract documents ready for tender and/or construction, the analysis of tenders and recommendations for the construction work,
- (h) "Category V Services" shall mean the carrying out of general administration during construction and may include office and field services during the construction period following the award of contract, attendance at job meetings, approval of certificates of contractors' payment and general follow-up of construction with respect to progress, cost and schedules, review of shop drawings, consideration of alternative materials and construction methods proposed by the contractor, preparation of change orders, obtaining of warranties and guarantees, and certification of contract completions;
- (i) "Category VI Services" shall mean supplying resident staff on the Project to determine if the contractor is carrying out his work in accordance with the contract documents. Such services may be provided on a full or part-time basis and may include the following:
 - (i) Ensuring that all work will satisfy the intent of the design and will conform substantially with plans and specifications,
 - (ii) Arranging for and/or carrying out all necessary field testing of materials and equipment installed.
 - (iii) Investigating, reporting on and advising on unusual circumstances which may arise during construction;
 - (iv) Preparing contractor's payment certificates;
 - (v) Detailed final inspection, liaison and other assistance required to expedite the acceptance and takeover of the work by the Client or other agency,
 - (vi) Calling job meetings and generally following up on costs and schedules;
 - (vii) Recording all details of construction necessary to modify contract drawings to show the work as built;
- (j) "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) 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;
 - (ii) labour or other services furnished by the Client shall be included at current market prices;
 - (iii) 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
 - (iv) any fees and disbursements paid or due to the Engineer shall not be included.
- (k) "Payroll cost" shall mean the salary and/or wages of the employees of the Engineer engaged in performing services for the Project plus provision for statutory holidays, vacations with pay, sick time allowance, unemployment insurance where applicable, hospitalization and medical insurance, group life insurance, Workmen's Compensation and pension plan. It shall not include any bonus or profit sharing plan.
- (l) "calculated on a time basis" when used in relation to a fee shall mean a fee calculated under Scale 1-Time Basis in the manner outlined in the Scales of Fees and Guide with the daily rates and staff time factors set out in Article III hereof.

Article II ENGINEERING SERVICES:

The Engineer shall perform the following services in connection with the Project. in accordance with Performance Standards for Consulting Engineering Services to Municipalities as issued by A.P.E.O.

1. PRELIMINARY PLANS AND SPECIFICATIONS (Category III)
2. FINAL PLANS AND SPECIFICATIONS (Category IV)
3. GENERAL ADMINISTRATION DURING CONSTRUCTION (Category V)
4. RESIDENT SERVICES (Category VI)
5. ADDITIONAL AND SPECIAL SERVICES

As part of the General Administration during construction, the Engineer will modify contract drawings to show "as built" work and provide the originals to the Client. The information on which modifications are based will be obtained under Resident Services (Category VI).

Article III FEES:

Unless otherwise expressly provided for herein, the appropriate scale of fees in the Scales of Fees and Guide shall be applicable for any services rendered by the Engineer hereunder.

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

- | | |
|--|-------------------------|
| 1. PRELIMINARY AND FINAL PLANS AND SPECIFICATIONS (Categories III and IV) | 80% of Scale 2, Table 1 |
| 2. GENERAL ADMINISTRATION DURING CONSTRUCTION (Category V) | 20% of Scale 2, Table 1 |
| 3. RESIDENT SERVICES DURING CONSTRUCTION (Category VI) | Payroll Cost x 1.7 |
| 4. ADDITIONAL AND SPECIAL SERVICES | Payroll Cost x 2.0 |

"Cost of Work" to determine the percentage fee shall exclude:

Professional Fees and Disbursements
Legal Fees and Disbursements
Cost of Property and Easements
Soil Tests
Sales Tax, where exempt, irrespective of
Article VI, Clause 3.

"Payroll Cost" means salary plus 17% to include for statutory holidays, vacations with pay, unemployment insurance, Workmen's Compensation, health and medical insurance, group insurance and sick time allowance.

The Client will provide at his own cost soil reports and material tests required.

Article IV EXPENSES AND DISBURSEMENTS:

1. The Engineer shall be reimbursed for all expenses properly incurred by him in connection with the Project including, without limitation, reasonable travelling and living expenses, long distance telephone calls and telegraphs, special reproductions, printing of documents for Client approval and/or construction purposes in excess of 15 sets, special delivery and express charges, site offices for resident staff, overtime premium payments if approved by the Client in advance ~~and~~

2. In the case of disbursements incurred by the Engineer in connection with approved special consultations for sub-surface investigations and chemical and physical tests, ~~and~~

the Engineer shall be re-imbursed for such disbursements ~~plus a charge of 10% of such disbursements.~~

Article V PAYMENT OF FEES AND EXPENSES:

- (a) Unless otherwise expressly provided for herein, the provisions of the Scales of Fees and Guide for the payment of fees and disbursements shall govern the payment of fees and disbursements to the Engineer hereunder.
- (b) Payment of fees and disbursements for services performed by the Engineer for which the fee is to be calculated on a time basis shall be made within 30 days after the Engineer has forwarded his statement of account to the Client.
- (c) Payment of fees and disbursements for services performed by the Engineer for which the fee is calculated on a percentage of Cost of the Work shall be made within thirty days after the Engineer has forwarded his statement to the Client. The fee for such services shall be based on the Engineer's monthly progress estimate as approved by the Client provided that 80% of the total fee for such services shall be due upon completion of the final plans, specifications and contract documents. The remaining twenty percent (20%) of the fee will be pro-rated throughout the construction period. 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, the Engineer's fee shall be adjusted accordingly.
- (d) Payment of fees and disbursements for services for which the fee is calculated on a time basis plus a percentage of the Cost of the Work shall be made within 30 days after the Engineer has forwarded his statement of account to the Client for the time portion of the fee. Eighty percent (80%) of the percentage portion of the total fee is due to the Engineer upon completion of the final plans, specifications and contract documents and shall be paid within 30 days after the Engineer has forwarded his statement of account to the Client. In the event that the preparation of design documents extends over a period of months, partial payment of the percentage portion of the fee will be made monthly pro-rated on the basis of the design work completed. The remaining twenty percent (20%) of the percentage portion of the fee will be pro-rated throughout the construction period until the fee is paid in full.

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 the work insofar as they do not originate in the Engineer's office.

2. Fee for Additional and Special Services

The fee for Additional and Special Services provided by the Engineer hereunder, if any, shall be calculated on a time basis unless specifically provided for in the percentage fee for other services provided for hereunder.

3. Sales Taxes

The percentage fee provided for herein is based on the assumption that sales taxes have been included in the Cost of the Work. If sales taxes are not included in the Cost of the Work, such percentage fee shall be adjusted upwards to the nearest one quarter of one percent by a factor equivalent to what the sales taxes would have been.

4. 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 intention to make such changes or to carry out such extra work and that the Engineer shall keep separate cost records in respect to such changes or extra work.

5. Abandonment or Suspension

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. 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. 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.

7. 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 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 Engineer.

8. 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.

9. 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.

10. 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 or 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 provision of The Arbitrations Act, R.S.O. 1970 Chapter 25, shall apply to the arbitration.

Article VII SUCCESSORS AND ASSIGNMENT

- (a) This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, and except as hereinafter otherwise provided, their executors, administrators, successors and assigns.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 CITY OF BRAMPTON

James E. Richardson MAYOR
Kenneth P. Richardson CLERK

Engineer PAUL THEYL ASSOCIATES LIMITED

Paul E. Theyl