

THE TOWN OF CARMAN

BY-LAW NO. 72/1145 ✓

R.P.

Engineer

A By-law of the Town of Carman to provide for the entering into of an Agreement with M. M. Dillon Limited in order to provide for Engineering Services and remuneration to the Engineers with respect to the construction of an Expansion of Sewage Treatment and Disposal Facilities and appurtenances thereto at or near the Town of Carman, in Manitoba.

WHEREAS Part III, Division iv, Sub-division (14), of the Municipal Act, R. S. M. 1970, C 100 - cap. M225 provides as follows:

- "166(1) The Council of every Municipality may pass by-laws for
- (b) Appointing such officers of the Municipality as the Council thereof deems necessary for the proper conduct of the affairs of the Municipality as provided herein; and
 - (f) Prescribing and regulating the fees and charges to be paid by any person in respect of services rendered by any officer or employee of the Municipality."

AND WHEREAS it is deemed desirable for the Town of Carman to enter into an Agreement with M. M. Dillon Limited, to obtain engineering services for the construction of an Expansion of Sewage Treatment and Disposal Facilities and appurtenances thereto at or near the Town of Carman, in Manitoba, and to provide for the remuneration for the rendering of the said services;

NOW, THEREFORE, the Council of the Town of Carman, in Council assembled, hereby enacts as a By-law as follows:

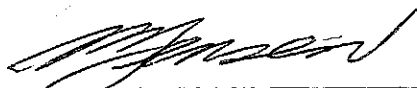
1. THAT the Mayor and Secretary-Treasurer of the Town of Carman shall be authorized to execute an Agreement in the form and substance hereto attached, and forming part of this by-law.
2. THAT the Council of the Town of Carman hereby directs the Mayor and Secretary-Treasurer to execute the said Agreement on behalf of the Town of Carman.

Read a first time this 10th day of February A. D. 1972.

Read a second time this 13th day of April A. D. 1972.

Read a third time this 13th day of April A. D. 1972,

DONE AND PASSED by the Council of the Town of Carman, in Council assembled, at the Town of Carman, in Manitoba, this 13th day of April A. D. 1972.



Mayor



Secretary-Treasurer

**THE STANDARD FORM OF AGREEMENT BETWEEN
CLIENT AND PROFESSIONAL ENGINEER IN CONSULTING PRACTICE**

PRINTED UNDER AUTHORITY OF THE COUNCIL OF THE ASSOCIATION OF
PROFESSIONAL ENGINEERS OF THE PROVINCE OF MANITOBA

THIS AGREEMENT is made in ^{triplicate}~~duplicate~~ the twenty-seventh day
of October in the year Nineteen Hundred and Seventy-One

BETWEEN: THE TOWN OF CARMAN

hereinafter called the "Client",

and M. M. DILLON LIMITED

hereinafter called the "Engineer"

WHEREAS the Client has requested the Engineer to perform the engineering services hereinafter set out and the Engineer has agreed to perform such services on and subject to the terms and conditions hereinafter contained.

NOW IN CONSIDERATION of the mutual promises hereinafter contained it is hereby agreed as follows:

ARTICLE I. PROJECT:

The Engineer shall perform the engineering services set out in Article II hereof for the following project and branches thereof:

Expansion of Sewage Treatment and Disposal Facilities and appurtenances for the Town of Carman.

ARTICLE II. ENGINEERING SERVICES:

The Engineer shall perform the following engineering services:

- a) Pre-design Services - detailed topographic survey and establishing requirements for design of sewage treatment facility.
- b) Soils investigation, testing and report.
- c) Design, preparation of plans and specifications, call for tenders and administration during construction, including preparation and submission of requests for approvals to the Authorities concerned.
- d) Provide resident services during construction, including the preparation of "as-built" drawings and final inspection at the conclusion of construction and at the end of the maintenance period as part of the acceptance programme of the Client.

ARTICLE III. FEES:

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

- a) For pre-design, detailed survey and establishing requirements for design, the fee shall be payroll costs multiplied by a factor of two plus actual costs of all disbursements made for expenses properly incurred in the performance of the work.
- b) For soils investigation, testing and report the work shall be paid for at actual cost.
- c) For design, preparation of plans and specifications, call for tenders, administration during construction and preparation and submission of requests for approvals, the fee shall be as follows:-
 - i) Construction cost under \$100,000, a fee on a time basis as detailed in Article III (a) above.
 - ii) Construction cost between \$100,000 - \$200,000, a fee of \$6,750.00 on first \$100,000. and 5.25% on next \$100,000. Under this basis 80% of the fee will be due and payable on completion of the design, plans and specifications. If fees on this basis the Engineer shall furnish without additional cost, 10 sets of prints of the final drawings and 12 copies of the specifications.

ARTICLE III. FEES - Continued

- d) For resident services during construction, the preparation of "As-built" drawings, final inspection at the conclusion of construction and at the end of the maintenance period, and as part of the acceptance programme of the Town of Carman, the fee shall be payroll costs plus seventy per cent when staff are continuously employed for periods of one week or more and plus 100% when staff are employed for periods of less than one week.

- e) In addition to the above fees, the Engineer shall be reimbursed for expenses as outlined in Clause 8 of Article IV.

ARTICLE IV — GENERAL TERMS AND CONDITIONS

1. Co-operation

(a) The Client shall give due consideration to all plans, drawings, 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 with any 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. Cost of Work

(a) The "cost of work" shall mean the total cost to the client of the project, including all materials, equipment, labour and contractors' overhead and profit, necessary to complete the work for which the Engineer prepares designs, drawings, or specifications or for which he is responsible.

(b) Whenever the Client furnishes material, equipment, labour or any other service which is incorporated in the work, the fair market value of such material or equipment as though it were purchased new, and the current price of such labour or other service when the work was executed shall be used to compute the cost of the work.

(c) 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 were purchased new shall be used to compute the cost of the work.

(d) 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.

(e) The cost of the work shall not include any fees and disbursements due to the Engineer.

3. Supervision and Inspection

(a) "General Supervision" means taking such steps within the scope of the Engineer's authority reasonably required by good practice for the execution of the work in accordance with the plans, specifications, drawings and designs.

(b) "Resident Supervision" shall have the meaning assigned to it under Category IV of the Schedule of Minimum Fees.

(c) "Inspection" shall mean the examination of the work from time to time as may reasonably be required by the nature thereof and reporting thereon to the Client.

4. Payment of Engineer

(a) Save as is herein otherwise expressly provided, the schedule of Minimum Fees of the Association of Professional Engineers, current at the date of this Agreement shall be applicable to any services rendered by the Engineer and in the interpretation of this Agreement.

(b) Payments for Advisory Services, Pre-engineering Services and any other services performed by the Engineer on a "Per Diem Rate" basis or on a "Time" basis, and reimbursement for travelling or other expenses; shall be made during the month following that in which such services were rendered or such expenses incurred.

(c) Payment for Design Services in respect of which the fee is calculated on a "Percentage of Cost of Work" basis shall be made either on the Engineer's monthly progress estimate as approved by the Client or when each phase of such service, as set out in Article III hereof, is completed, whichever is the earlier.

(d) Payment for general supervision in respect of which the fee is calculated on a "Percentage of Cost of Work" basis shall be made monthly based on the cost of construction or installation work done during the previous month as certified by the Engineer.

(e) If the Engineer's fee is calculated on a "Percentage of Cost of Work" basis, the portion of the fee due for design shall be based on the total cost of the work as defined in Article IV, 2 hereof, for which the Engineer has prepared plans, specifications or designs and of any work for which the Engineer is responsible. The portion of the fee due for general supervision shall be based on the cost of the work actually constructed or installed.

(f) If the Engineer's fee is calculated on a "Percentage of Cost of Work" basis and 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 be calculated either on the Engineer's estimates of the cost of the work as defined in Article IV 2, hereof or on a "Per Diem Rate" basis or on a "Time" basis 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 design, the Engineer's fee shall be adjusted accordingly.

(g) The payment of the Engineer's fee shall not be contingent upon the construction or installation of the work designed by him or upon the outcome of any proceedings pending before a Court of Law, Arbitration Board or similar body to which the Engineer is not a party.

(h) Any fees due to the Engineer shall be paid to him whether or not any payment is made to or withheld from any Contractor.

5. 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 work 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 Engineer shall be compensated for such changes or extra work either on a "Per Diem Rate" basis or a "Time" basis at his option; 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.

6. 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 compensate the Engineer for his services from the inception of the work on a "Per Diem Rate" basis or on a "Time" basis at the option of the Engineer. 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 compensate the Engineer for his services from inception of the work to the completion of design as provided in this Agreement, and shall compensate the Engineer for his services subsequent to the completion of design on a "Per Diem Rate" basis or on a "Time" basis at the option of the Engineer.

7. Special Services

(a) The Client shall reimburse the Engineer for all permit and examination fees paid out by the Engineer.

(b) If the Engineer considers it necessary to engage a specialist, the Client shall reimburse the Engineer for the specialist's fee and out-of-pocket expenses, provided that the Engineer shall not engage any specialist without the Client's authority.

(c) The Engineer shall not be required to prepare for nor to appear in any litigation on behalf of the Client unless the Engineer is compensated therefore either on a "Per Diem Rate" basis or on a "Time" basis at the option of the Engineer.

8. Travelling and Out-of-Pocket Expenses

The Client shall reimburse the Engineer for the cost of any travelling and living expenses incurred by the Engineer or his assistants for inspections or visits to the site or for any visits to any other location which the Engineer may be required to make provided such site or location is not within the limits of the City or Town in which the Engineer's office is located and for all long distance telephone calls, telegrams and similar expenses reasonably required in connection with the work.

9. Plans, Specifications and Designs

(a) Any and all plans, specifications, drawings and designs furnished by the Engineer are based 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 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.

(b) Any and all plans, specifications, drawings and designs are provided on the express condition that the Engineer will be entrusted with the general supervision of all works of construction and installation relating to such plans, specifications, drawings or designs; and it is hereby expressly agreed that if the Engineer is not entrusted with the general supervision of such works of construction and installation as aforesaid, the Engineer shall not be liable in contract or in tort in the event of any loss or damage relating to such plans, specifications, drawings or designs howsoever arising and whether as a result of the Engineer's negligence in any such plans, specifications, drawings or designs or due to any cause whatsoever. The Client hereby further expressly agrees to indemnify the Engineer against all and any liability on the part of the Engineer to any person or persons other than the Client arising out of any such works of construction or installation, the general supervision of which has not been entrusted to the Engineer whether as a result of the Engineer's negligence, in any such plans, specifications, drawings, or designs, or due to any cause whatsoever.

(c) If the Engineer's fee is calculated on a "Percentage of Cost of Work" basis the Engineer shall furnish to the Client without additional cost, up to ten (10) sets of prints of the final drawings and twelve (12) copies of the specifications. Prints needed for the proper design of the work shall be exchanged between the Engineer and the Client on a free reciprocal basis.

(d) 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.

(e) If the Client requests the Engineer to provide any

linen or transparency reproduction of any plans, drawings or designs he shall reimburse the Engineer for the cost thereof.

10. 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.

11. Variations in Design

The Engineer shall be entitled to make such deviations, alterations, additions or omissions in carrying out the work as he may reasonably consider desirable in the Client's interests, provided that no substantial additions to the cost of the work are caused thereby.

12. 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 as hereinbefore mentioned. No such information shall be used by the Engineer on any other project without the approval of the client.

13. Arbitration

(a) All differences between the parties hereto arising out of this agreement shall be submitted to arbitration.

(b) No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

(c) The award of the arbitrator shall be final and binding upon the parties.

(d) The provisions of the Arbitrations Act, R.S.M. 1954 Chapter 9, shall apply to the arbitration.

ARTICLE V — SUCCESSORS AND ASSIGNMENT

(a) This agreement shall enure to the benefit of, and be binding upon, the Parties hereto, and except as herein-after otherwise provided, their executors, administrators, successors and assigns.

(b) If the Engineer is an individual and dies or becomes incapacitated before his services hereunder have been completed, this Agreement shall automatically terminate as of the date of his death or incapacity, and the Client shall pay for the services rendered and disbursements made to the date of such termination.

(c) 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 may do so but shall promptly notify the other party of such action.

(d) Except as aforesaid neither Party shall assign this Agreement without the consent of the other.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals the day and year first above written, and the Parties hereto have hereunto affixed their Corporate Seals by the hands of their proper officers duly authorized in that behalf.

Witness:

Client. THE TOWN OF CARMAN

[Signature] Mayor

[Signature] Secretary-Treasurer

Engineer. M. M. DILLON LIMITED

[Signature] Winnipeg Manager

[Signature] Secretary