



# The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 41-2000

**BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO AN  
AGREEMENT WITH HER MAJESTY, THE QUEEN IN RIGHT OF  
ONTARIO, AS REPRESENTED BY THE MINISTER OF THE  
ENVIRONMENT FOR WATER EFFICIENCY AND SYSTEM  
OPTIMIZATION STUDY (F11.49) L04.903**

**WHEREAS** the Corporation of the Town of Fort Erie applied for funding assistance under the Provincial Water Protection Fund of the Ministry of the Environment for a Water Efficiency and System Optimization Study, and

**WHEREAS** the Minister of the Environment has approved the Town's application for funding, and

**WHEREAS** prior to receipt of the funds, it is necessary to enter into an agreement with the Minister of the Environment in the form of Schedule "A" annexed hereto to this by-law;

**NOW THEREFORE** the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

- (1) **THAT** the entry into an agreement with Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment for funding under the Provincial Water Protection Fund for the Town's Water Efficiency and System Optimization Study in the form of Schedule "A" annexed hereto to this by-law be and it is hereby approved and authorized.
- (2) **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the agreement annexed hereto as Schedule "A" to this by-law as well as any other documentation necessary to complete the intent of the agreement.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13<sup>th</sup>  
DAY OF MARCH, 2000.**

  
MAYOR

DeD.   
CLERK

I, the Clerk, Carolyn J. (Booth) Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 41-2000 of the said Town. Given under my hand and the seal of the said Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

DATE: \_\_\_\_\_

MINISTRY

FILE REFERENCE:

Water Works Study Project No. 87-1481-01

## **PROVINCIAL WATER PROTECTION FUND**

### **AGREEMENT FOR:**

#### **WATER EFFICIENCY AND SYSTEM OPTIMIZATION STUDY REPORT**

#### **B E T W E E N:**

**THE CORPORATION OF THE TOWN OF FORT ERIE**

**referred to herein as the "Recipient"**

#### **A N D:**

**HER MAJESTY, THE QUEEN IN RIGHT OF ONTARIO,  
AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT**

**referred to herein as the "Ministry"**

This Agreement defines the terms and conditions of a financial contribution to assist with a study to develop cost-effective solutions that address health and environment problems in a pro-active manner or reduce and defer capital investment pressures as follows:

Water efficiency study to identify cost-effective opportunities to implement conservation measures that increase a community's water efficiency so as to address health or environmental problems in a pro-active manner or eliminate, reduce or defer the need for capital expansion to existing works.

Water optimization study to identify cost-effective opportunities to optimize the use and functioning of a community's existing works so as to address health or environmental problems in a pro-active manner or eliminate, reduce or defer the need for capital expansion.

Details of the study (upon consideration of the Recipient's application for funding assistance under the Provincial Water Protection Fund) are more particularly described in Schedule A (herein referred to as the "Study"). The amount of assistance is based on the cost of the Study, population and relevant factors, as deemed by the Ministry.



The details of the Eligible Costs, Payment Schedules, Description of Study, Maximum Financial Assistance and Projected Cash Flows for the Study are outlined in Attachments A and B, and Schedules A and B to this Agreement.

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree as follows:

#### **SECTION 1.0      TERM OF AGREEMENT**

- 1.1 Subject to any extension or termination of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date of execution by the parties below, up to and including March 31, 2005.
- 1.2 Notwithstanding Section 1.1 above, the Ministry shall not be obligated to provide financial assistance under this Agreement after March 31, 2001.

#### **SECTION 2.0      STUDY AWARD AND COMPLETION**

- 2.1 The Recipient shall be fully responsible for completing the Study including retaining an independent consultant or project manager satisfactory to the Ministry to carry out the Study. The Recipient shall make any other arrangements as necessary to properly carry out the Study. Where an Environmental Study Report is required, the Recipient shall ensure that:
  - 2.1.1 an Environmental Assessment is conducted in accordance with the Municipal Engineers Association Class Environmental Assessment process, and that the Study conforms in all material ways to the Environmental Assessment Act; and
  - 2.1.2 an Environmental Study Report is prepared where required by the Municipal Engineers Association Class Environmental Assessment process for municipal water and sewage projects, and that Phase 4 of the Environmental Assessment process is completed where required.
- 2.2 The Recipient agrees to adhere to the established cash flows in Schedule B as amended from time to time and agreed to by the Ministry.
- 2.3 Except as otherwise approved by the Ministry, all portions of the Study including project management, engineering and professional consulting, technical services, leasing contracts for specialized equipment will be eligible for funding assistance if an objective competitive process, as deemed by the Ministry, was used to acquire such services. Upon request, the Recipient shall provide

sufficient documentation, in the opinion of the Ministry, to establish that this requirement has been met. Where technical or other services are provided by a project manager, this requirement will be met if an objective competitive process was used to acquire the services of the project manager. Requests for Proposal (and Invitations to Tender where applicable) must be advertised in one or more of the following: a daily newspaper accessible to vendors in Ontario; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX.

All purchases in excess of \$100,000, except for professional engineering services, are required to follow the "Agreement on the Opening of Public Procurement for Ontario and Quebec".

- 2.4 The Recipient agrees to enter into an agreement with a consultant in connection with the Study by March 15, 2000. Where this does not occur, the Ministry may withhold payment or terminate its obligations under this Agreement in accordance with Section 7.1 of this Agreement.
- 2.5 The results of the Study shall be submitted to the Ministry by December 31, 2000, or such longer period as is specified in writing by the Ministry, in a format acceptable to the Ministry. Upon request, the Recipient shall provide such information and permit such inspection of existing water and sewage works by the Ministry as necessary to confirm the results of the Study.
- 2.6 The Recipient and, through the Recipient, its consultant represents and warrants that it has investigated and satisfied itself that, to the best of its knowledge, any materials or documents produced under this Agreement or any part thereof do not infringe any patent or copyright or any other intellectual property rights including trade secrets.
- 2.7 The Recipient and, through the Recipient, its consultant hereby grants the Ministry a non-exclusive and unlimited licence to use, in whole or in part, any materials or documents produced under this Agreement or any part thereof in the original or, notwithstanding any moral rights, modified form and to copy and distribute at no cost such materials or documents, without payment to the Recipient.
- 2.8 The Recipient and, through the Recipient, its consultant represents and warrants that it has the authority to grant the licence referred in Section 2.7 above.
- 2.9 The Recipient shall ensure that its consultant provides the Ministry with the representations and warranties referred to in Sections 2.6 and 2.8, in writing, and grants a licence, in writing, to the Ministry with the terms and conditions referred to in Section 2.7 above.



- 2.10 The Recipient shall submit the final claims with the required documentation for approval, cost reviews, audits and settlement within 3 months of completion of the Study and no later than December 31, 2000, or such longer period as is specified in writing by the Ministry. Upon completion of the cost reviews, audits and settlement, the Ministry shall not be obligated to consider any further claims in relation to the Study.

### **SECTION 3.0 FINANCIAL ASSISTANCE**

- 3.1 The financial assistance is intended for and shall be used only for the Study described in Schedule A. The maximum amount of financial assistance for the Study under this Agreement is set out in Schedule B.
- 3.2 The financial assistance is based on eligible expenditures as determined according to Attachment A.
- 3.3 The Recipient acknowledges and agrees that the amount of financial assistance under this Agreement for the Study shall be determined by the Ministry, in its sole discretion. The Recipient acknowledges and agrees that financial assistance under this Agreement is contingent on completion of the Study to the satisfaction of the Ministry. The Ministry will notify the Recipient in writing of any steps required to complete the Study to the Ministry's satisfaction. If the Study is not completed to the satisfaction of the Ministry within the period specified in the notice, the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Study or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Study in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 3.4 Where actual costs are lower or appear likely to be lower than the total eligible expenditures identified in Schedule B, or where additional funding is secured from other sources (government or private), the Recipient shall immediately notify the Ministry. The Ministry will, in its sole discretion, adjust the amount of the financial assistance on the Study or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take into account the revised costs and the contribution from other sources. In addition, the Ministry may require repayment for some or all of the financial assistance of the Study in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 3.5 The Recipient shall immediately notify the Ministry if it does not intend to carry out the Study in whole or in part as specified in Schedule A in which case the Ministry may, in its sole discretion, adjust the amount of financial assistance for

the Study or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Study in an amount to be determined by the Ministry and within the period specified by the Ministry.

- 3.6 In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of financial assistance under this Agreement, the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Study or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Study in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 3.7 The Recipient acknowledges and agrees that financial assistance under this Agreement shall not be construed as a guarantee or assurance that financial assistance will be provided in relation to the construction and implementation of related works.
- 3.8 Sections 3.4, 3.5 and 3.6 shall survive the expiration or early termination of this Agreement.

#### **SECTION 4.0      PAYMENT PROCEDURES**

- 4.1 Payments will be made in accordance with Attachment B and relevant terms of this Agreement. Payment of financial assistance is contingent on receipt and approval by the Ministry of invoices and a detailed statement of costs for the eligible expenses under this Agreement, including Attachment A. Payment of financial assistance on any invoice is subject to the approval of the Ministry.
- 4.2 The Recipient shall submit the detailed statement of costs claimed and corresponding invoices together with updated Projected Cash Flows as set out in Schedule B, signed by the Chief Financial Officer or other authorized official of the Recipient, on a quarterly basis in a form satisfactory to the Ministry. The costs claimed must be reasonable and supported by documentation acceptable to the Ministry.
- 4.3 The Recipient shall provide such information and in such form in relation to payment of financial assistance as is specified from time to time by the Ministry. As a condition precedent to payment of financial assistance, invoices and proper documentation as specified in this Agreement must be submitted for the approval of the Ministry.



- 4.4 The Ministry may, in its sole discretion, withhold payment where the Recipient is in default of compliance with any provisions of this Agreement or any applicable environmental legislation.
- 4.5 Notwithstanding Section 3.1 of this Agreement, the Ministry will hold back an amount (normally 10%), in its sole discretion, the release of which shall be contingent on the completion of the Study and upon receipt and approval by the Ministry of the final claim for the Study as required, all in accordance with Section 2.10 of this Agreement. Upon release, the amount of the hold back is subject to an adjustment equal to the difference between the amount of the financial assistance as defined in Sections 3.1 to 3.8 (and any other relevant sections) of this Agreement and the total payments made to date. The Ministry is not obligated to pay interest on the hold back or any other payments under this Agreement.

## **SECTION 5.0 OVERPAYMENT**

- 5.1 Funds advanced to the Recipient prior to settlement in accordance with Section 2.10 of this Agreement shall not be construed as a final determination of financial assistance applicable to the Study. Upon conducting a cost review or audit of the Study, the Ministry will determine the amount of financial assistance on the Study. The Recipient agrees to repay to the Ministry, upon receipt of a written demand and within the period specified by the Ministry, that portion of the total of the funds advanced that exceeds the financial assistance applicable to the Study, as determined by the Ministry, as well as any funds used for a purpose other than that stated in the terms of this Agreement, as determined by the Ministry.
- 5.2 The Ministry may deduct any overpayment of financial assistance pursuant to Section 5.1 of this Agreement from financial assistance payable on any project(s) of the Recipient under the Provincial Water Protection Fund, or other provincial program(s) (either current or future). Any overpayment made on any other project(s) of the Recipient under the Provincial Water Protection Fund or other provincial program(s) (either current or future) may in turn be deducted from financial assistance owing on the Study.
- 5.3 The Ministry reserves the right to demand interest on any overpayment of financial assistance owing by the Recipient under the terms of this Agreement at the then-current interest rate charged by the Province of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry.
- 5.4 Sections 5.1, 5.2 and 5.3 shall survive the expiration or early termination of this Agreement.

## **SECTION 6.0      INFORMATION REQUIREMENTS**

- 6.1 The Recipient, and through the Recipient, its consultant performing work under this Agreement shall maintain and keep all records and documentation relating to the Study for 5 years after completion of the cost reviews, audits and settlement by the Ministry referred to in Section 2.10 of this Agreement and, upon request, submit all records and documentation relating to the Study including, but not limited to, background information and data used in the development of the Study, invoices, proposals (tenders where applicable), correspondence, memoranda, agreements/contracts and amendments thereto. All accounting records and documentation shall be maintained in accordance with generally accepted accounting practices and principles.
- 6.2 Upon request, the Recipient shall submit the information referred to in Section 6.1 in a form satisfactory to the Ministry and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry.
- 6.3 If, in the opinion of the Ministry, any of the information requirements of Section 6.1 and 6.2 of this Agreement are not met, the Ministry may, in its sole discretion, require the information as a condition precedent to any payment in relation to the Study or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future). In addition, the Ministry may require repayment for some or all of the financial assistance for the Study in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 6.4 Sections 6.1, 6.2 and 6.3 shall survive the expiration or early termination of this Agreement.

## **SECTION 7.0      EARLY TERMINATION**

- 7.1 If, in the opinion of the Ministry, the Recipient fails to proceed diligently with the Study or abandons the Study in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, the Ministry may, by giving notice in writing to the Recipient, withhold payment or terminate this Agreement.
- 7.2 In the event that this Agreement is terminated pursuant to Section 7.1 above, the Ministry may, in its sole discretion, refrain from making any payment in relation to monies due or accruing due. The Ministry may, in its sole discretion, pay to the Recipient a portion of the financial assistance for costs incurred by the Recipient in connection with the Agreement up to and including the date of any such termination. In addition, the Ministry may require repayment for some or all of the financial assistance in an amount to be determined by the Ministry and within



the period specified by the Ministry. The Ministry may deduct the amount of financial assistance to be repaid from financial assistance payable on any other project(s) of the Recipient under the Provincial Water Protection Fund or any other provincial program(s) (either current or future). This provision shall survive the expiration or termination of this Agreement.

- 7.3 Despite Section 7.1, the Ministry reserves the right to terminate this Agreement without cause upon such conditions as the Ministry may require, with a minimum of fourteen (14) days written notice to the Recipient. If the Ministry terminates the Agreement prior to its expiration, the Ministry shall only be responsible for the payment of financial assistance on a portion of the cost incurred by the Recipient in connection with the Agreement up to and including the date of any such termination. The portion paid will be calculated on the same basis as the financial assistance in Sections 3.1 to 3.8 of this Agreement.
- 7.4 If, in the opinion of the Ministry, the Legislative Assembly of Ontario does not provide sufficient funds to continue the financial assistance for any fiscal year during which this Agreement is in effect, the Ministry may terminate this Agreement in accordance with the terms specified in Section 7.3 of this Agreement.

## **SECTION 8.0        INDEMNITY**

- 8.1 In no event shall the Ministry be liable for any bodily injury, death or property damage to the Recipient, its employees, agents, consultants or project managers, or for any claim, demand or action by any third party against the Recipient, its employees, agents, consultants or project managers, arising out of or in any way related to the Agreement or the Study.
- 8.2 In no event shall the Ministry be liable for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, consultants or project managers arising out of or in any way related to this Agreement or the Study.
- 8.3 The Recipient shall at all times indemnify, save and keep harmless the Ministry, its employees and agents, from and against all suits, judgements, claims, demands, expenses and losses (including, without limitation, reasonable legal expenses) and for any and all liability for damages to property and injury to persons (including death) howsoever caused, as a result of any claim, demand or action arising out of or in any way related to this Agreement or the Study.
- 8.4 Sections 8.1, 8.2 and 8.3 shall survive the expiration or early termination of this Agreement.

## SECTION 9.0 OTHER

9.1 Any report or publication relating to this Agreement or the Study shall be at the Recipient's own expense and shall reflect the financial participation of the Ministry in the Study, unless otherwise agreed to by the Ministry.

9.2 In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.

9.3 This Agreement, including:

ATTACHMENT A - Eligible Costs

ATTACHMENT B - Payment Schedules

SCHEDULE A - Description of Study

SCHEDULE B - Maximum Financial Assistance and Projected Cash Flows

constitutes the entire Agreement between the parties. There are no prior or collateral agreements or representations.

9.4 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

9.5 The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or unenforceable provisions shall be deemed to be severable.

9.6 The failure by the Ministry to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Ministry's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.

9.7 The headings are not to be considered part of this Agreement and are included solely for convenience and not intended to be full or accurate descriptions of the content of the paragraphs.

9.8 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada.



- 9.9 The Recipient acknowledges that this Agreement and any material submitted to the Province pursuant to this Agreement may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31. This Section shall survive expiration or early termination of this Agreement.
- 9.10 This Agreement shall not be assigned or varied except by a document in writing, dated and signed on behalf of the Ministry and the Recipient.
- 9.11 The Recipient represents and warrants to the Ministry that:
- 9.11.1 it is conducting its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals and, furthermore, that it has authority and any necessary approval to enter into this Agreement and to carry out its terms; and
- 9.11.2 it validly exists as a corporate entity with full power to perform and observe all the terms and conditions of this Agreement.
- 9.12 It is a condition precedent to any payment under this Agreement that the Representations and Warranties under this Agreement are true at the time of payment and that the Recipient is not in default of compliance with any terms of this Agreement. Where this is not the case, the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Study or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Study in an amount to be determined by the Ministry and within the period specified by the Ministry. This Section shall survive expiration or early termination of this Agreement.
- 9.13 The Ministry reserves the right to demand interest on any repayment of financial assistance owing by the Recipient under the terms of this Agreement at the then-current interest rate charged by the Province of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry. This Section shall survive expiration or early termination of this Agreement.
- 9.14 Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner of or in joint venture with the Ministry for any purpose whatsoever.
- 9.15 The provision of financial assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Study. The Recipient warrants and agrees that under no circumstances shall it enter into any contract

or commitment in the name of or on behalf of the Ministry and the Recipient acknowledges that it is not by the terms of this Agreement or otherwise, granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Ministry or to bind the Ministry in any manner whatsoever other than as specifically provided in this Agreement.

- 9.16 The Ministry acknowledges that, in connection with carrying out the terms of this Agreement, the Recipient may engage one or more employees, agents, consultants or project managers. The Ministry acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents, consultants or project managers including their hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient's employees, agents, consultants and project managers and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.

In witness whereof, the Recipient and the Ministry have respectively executed and delivered the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS  
REPRESENTED BY THE MINISTER OF THE ENVIRONMENT**

\_\_\_\_\_  
Jim MacLean  
Assistant Deputy Minister

\_\_\_\_\_  
Date

**THE CORPORATION OF THE TOWN OF FORT ERIE**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date



## **ATTACHMENT A**

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and the Corporation of the Town of Fort Erie (the "Recipient").

### **Eligible Costs**

#### **General**

1.
  - a) Only costs related to the Study described in Schedule A are eligible. For greater certainty, where Schedule A identifies a portion of the works that are specifically excluded from the description of the Study under this Agreement, those costs are not eligible.
  - b) Any portion of the Study which, in the opinion of the Ministry, does not relate to water and sewage works is not eligible.
  - c) Costs claimed under another Ministry grant program, provincial grant program or joint federal/provincial grant program are not eligible.
  - d) The same costs cannot be claimed on more than one study under the Provincial Water Protection Fund. Costs applicable to more than one Study must be split or prorated.
  - e) Where costs are only partly eligible, the cost of the eligible portion must be identified by the Recipient.
  - f) Only costs for work actually performed are eligible.
  - g) The eligibility of any items not listed in this Agreement will be determined in accordance with Ministry policies and guidelines.
  - h) The final eligibility of items claimed (including items specified in this Attachment A, where exceptional circumstances exist) is at the sole discretion of the Ministry. The Recipient should consider consulting with Ministry staff when in doubt over specific items prior to making an expenditure.
  - i) The results of the Study are required to be summarized in a report.
2. **Engineering, Professional and Technical Services**
  - a) Eligible costs include reasonable costs of the Recipient, as deemed by the Ministry, for project management, engineering and professional specialists,

consulting, technical services for the Study as described in Schedule A and purchased in accordance with Section 2.3 of the Agreement.

b) Except as otherwise approved by the Ministry, all portions of the Study including project management, engineering and professional consulting, technical services, leasing contracts for specialized equipment will be eligible for funding assistance if an objective competitive process, as deemed by the Ministry, was used to acquire such services. Upon request, the Recipient shall provide sufficient documentation, in the opinion of the Ministry, to establish that this requirement has been met. Where technical or other services are provided by a project manager, this requirement will be met if an objective competitive process was used to acquire the services of the project manager. Requests for Proposal (and Invitations to Tender where applicable) must be advertised in one or more of the following: a daily newspaper accessible to vendors in Ontario; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX.

All purchases in excess of \$100,000, except for professional engineering services, are required to follow the "Agreement on the Opening of Public Procurement for Ontario and Quebec".

Individual service contracts for less than \$25,000, if directly assigned, will be eligible for funding assistance only if sufficient justification for direct assignment, as deemed by the Ministry, has been provided by the Recipient.

c) The costs associated with the selection of a competent project manager, consulting engineer and other professional and technical consultants are eligible provided that the costs are reasonable in the opinion of the Ministry. The Recipient's in-house costs associated with this selection are not eligible.

d) The Recipient's in-house costs including labour, project management and engineering costs, administrative costs and overhead, executive costs, equipment including vehicles are not eligible. The cost of contract, part time and student labour hired especially for the Study are eligible.

e) Costs incurred prior to September 1, 1997 are not eligible.

### 3. Land Costs

a) The cost of land, property taxes, legal, survey, and appraisal fees are not eligible.



**4. Legal Costs**

Legal costs including those related to review and execution of this Agreement are not eligible.

**5. Taxes**

Non-refundable portion of taxes (currently 42.86% of the current GST of 7%) is eligible. Provincial sales taxes paid by the Recipient on eligible components of the Study are eligible.

**6. Equipment Costs**

The cost of renting and leasing specialized equipment and vehicles are eligible. The cost of purchasing equipment is eligible if sufficient justification is provided by the Recipient and this is a more cost-effective solution over renting and leasing options.

**7. Miscellaneous**

Some of the Recipient's expenses directly related to the Study can be included as miscellaneous costs. Examples of these are Ontario Government fees, laboratory supplies and expenses, advertising for tenders, etc. Other costs may be approved subject to the following:

- i) Examples of the Recipient's miscellaneous costs that are not eligible are:

insurance certificates and policies that the Recipient would require regardless of the Study, financing costs such as debentures and interest costs (interim financing charges), courier, postage, taxi, transportation, printing, reproduction, photographic, meeting and telephone costs, cost of surveying supplies and drafting supplies.

Amounts paid to suppliers relating to holding public meetings are eligible.

- ii) The cost of preparing and submitting the application for financial assistance (including cost associated with sampling) is not eligible.

- iii) All miscellaneous costs require supporting documentation including, where applicable, documentation demonstrating adoption of the most cost-effective solution.

- iv) Costs associated with preparing the Terms of Reference of the Study are eligible provided the Terms of Reference were developed by an outside consultant.

## **ATTACHMENT B**

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and the Corporation of the Town of Fort Erie (the "Recipient").

### **Payment Schedules**

Subject to the terms of this Agreement, the Ministry will make payments based on quarterly claims on the Study by the Recipient, which include the expenses incurred to date and may include a projection of the costs to be incurred for the current quarter. The Ministry will hold back an amount (normally 10%) of each advance, in its sole discretion, which will be released after completion of the Ministry's final cost review for the Study, subject to an adjustment in accordance with the terms of this Agreement. Claims for payment must be substantiated with satisfactory documentation as deemed by the Ministry.

The financial assistance advances for the Study will be processed in accordance with the following conditions:

#### **Condition**

#### **Maximum Cumulative Payments**

Ministry Approval of Terms of Reference and concurrence with assignment of consultant

Based on the financial assistance on the claims submitted (less holdback and other deductions under this Agreement)

Completion of cost review and audit

Release of holdback or recovery of overpayments net of adjustments

#### **Note 1:**

An adjustment will be processed after the implementation and completion of the Study and upon receipt and approval by the Ministry of the final claim for the Study as required, all in accordance with Section 2.10 of this Agreement. The adjustment will equal the difference between the amount of the financial assistance as defined in Sections 3.1 to 3.8 (and relevant sections of this Agreement) and the total of the payments made to date.

#### **Note 2:**

The financial assistance is made after adjusting for contributions from other Provincial, Federal, Municipal sources or private sources received or receivable.



## SCHEDULE A

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and the Corporation of the Town of Fort Erie (the "Recipient").

### Description of Study

#### **Water Works Study Project No. 87-1481-01**

The purpose of the Study is to examine water efficiency and system optimization measures so as to identify cost effective opportunities to optimize the use and function of the Town of Fort Erie's existing water works and eliminate, reduce or defer the need for capital expansions.

The scope of the Study for which financial assistance is being provided under this Agreement consists of the following:

1. The activities outlined in the "Terms of Reference Town of Fort Erie Water Distribution System Optimization Study" enclosed with the Town's February 29, 2000 letter to the Environmental Partnerships Branch including:
  - a leak detection survey;
  - a corrosion evaluation study;
  - an investigation of pipe lining technologies;
  - a chlorine residual management study;
  - development of a water quality distribution model;
  - an update of the Water Distribution Master Plan; and,
  - an investigation of corrosion inhibitors.

The scope of the project for which financial assistance is being provided under this Agreement will **not** include the following:

1. Activities related to the final design, project management, supervision, and construction of capital works.

**SCHEDULE B**

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and the Corporation of the Town of Fort Erie (the "Recipient").

**Maximum Financial Assistance**

1. The maximum amount of financial assistance for the Study under this Agreement is \$38,254.00 and is based on a maximum eligible cost of \$154,500.00 and a fixed percentage assistance of 24.76%.

**Projected Cash Flows**

**Water Works Study Project No. 87-1481-01**

Calendar Year	Quarter	Eligible Expenditures (\$)
To Date		
2000	First	
	Second	
	Third	
	Fourth	
2001	First	
Total		\$154,500.00

Estimated date of completion of Study \_\_\_\_\_

**Note 1:** The above cash flows are based on milestones as determined by the Recipient. The Ministry may require the Recipient to provide such milestones and projected cash flows from time to time.