

THIS AGREEMENT made in triplicate
this 19TH day of MARCH, 1991.

B E T W E E N:

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "TOWN"

- AND -

JAMES EDWARDS

(Part 2 on Schedule "A")

TERAK INVESTMENTS LTD.

(Parts 2 & 3 on Schedule "B")

MANOUCHER & MONIREH FARAHBAKSH

(Part 4 on Schedule "B")

828345 ONTARIO LIMITED

(Part 5 on Schedule "B")

HEREINAFTER called the "Proponents"

WHEREAS the Proponents purports to be the Owners of
the subject lands described in Schedule "A" and "B"
attached to this Agreement;

AND WHEREAS the Proponents are desirous of
connecting their lands with the Town's sanitary
sewer system;

AND WHEREAS the Town has agreed to allow the
Proponents to connect their lands to the Pelham
Sanitary Sewer System within the aforementioned
sewer area, subject to certain terms and
conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in
consideration of the covenants herein contained,
the Town and the Proponents covenant and agree as
follows:

con't

1. ENGINEERING SERVICES AND INSPECTION:

(a) The works herein shall be undertaken by the Proponents at their own expense and who will engage at their expense the services of Professional Engineers who are members of the Professional Engineers Association of Ontario to perform the following engineering services, which require prior approval of the Town's Engineer:

- (i) preliminary investigation;
- (ii) layout drawings and design criteria of roads and services;
- (iii) detailed estimates of cost;
- (iv) contract drawings and specifications;
- (v) application to the Ministry of the Environment for necessary approvals;
- (vi) analysis of bids and recommendations to the Town;
- (viii) setting out the work;
- (ix) supervision of construction; and
- (x) preparation of progress certificates on the works undertaken by the Proponents and supply copies of each progress certificate to the Town Engineer (having regard to utility agencies, e.g. hydro, gas, telephone, etc.)

(b) The said Professional Engineer shall file with the Town Engineer prior to registration of the Agreement, a written undertaking:

- (i) that he has been engaged by the Proponents to inspect all works on a regular basis from time to time and so often as he deems necessary.
- (ii) that to the best of his ability he will ensure that works will be done in accordance with the contract drawings and specifications and all other provisions of this Agreement;
- (iii) that all phases of the works will be subject to the approval of the Town Engineer; and

con't

(iv) that he will provide the Town Engineer, prior to the acceptance of the works by the Town Engineer on behalf of the Town, with a complete set of linen tracings or certified true copies thereof suitable for making reproductions of the works as constructed pursuant to this Agreement, as well as detailed engineering data. The tracings or certified true copies and detailed engineering design shall be in in the following form:

(1) tracings shall be plan-profile reproducible A1 size sheets and ink lettering;

(2) title blocks to be placed in lower right-hand corner and shall indicate nature of work, location, limits and scales;

(3) plan profiles shall be fully detailed and where reference is made to other construction drawings, specific reference to those drawing numbers shall be made;

(4) horizontal ties shall be made to property lines;

(5) levels shall be to datum and all field surveys shall be tied into Geodetic Bench Marks.

(v) that he understands that any contractor employed by the Proponents shall, as a condition of such employment, be approved by the Town Engineer.

(vi) that he will provide a certificate at the completion of the construction indicating that the works have been installed in general accordance with the plans and specifications as hereinafter set out.

2. INSPECTION BY TOWN ENGINEER:

All works undertaken by the Proponents pursuant to this Agreement shall be inspected by the Town Engineer from time to time and so often as he shall deem necessary.

con't

3. ENGINEERING:

(a) The Proponents shall deposit with the Town, cash in amount equal to the estimated fees and disbursements billed to the Town by its Engineers for services performed by its Engineer in connection with the construction of the works, which will include the costs of administration, engineering and supervision. All such fees shall be as set out in the Schedule of Fees for Consulting Engineers Services recommended by the Association of Professional Engineers of Ontario.

(b) Such deposit will also include wages of the Town Inspector including overhead and the cost of subsequent compaction testing and shall be at the rate as set out.

(c) The total costs as set out above are estimated to be \$2,000.00; however, it is agreed that if the total actual fees & disbursements are less than the estimated amount, the balance will be returned to the Proponents. If the fees and disbursements are more than \$2,000.00 the difference will be paid by the Proponents to the Town within 30 days of the invoice date.

(d) Any work performed by the Town Engineer pursuant to the provisions of this Agreement shall not be deemed to be an assumption by the Town Engineer of any liability of any nature or kind in connection with such work or a release of the Proponents, by the Town, from his obligations pursuant to this Agreement.

4. REGIONAL INSPECTION:

The Regional Municipality of Niagara shall have the right at any time to inspect any of the works in progress, at no cost to the Proponents.

5. CONSTRUCTION OF SERVICES:

The Proponents agree to construct and pay the whole cost of such construction and materials required for all of the works referred to in Schedule "C" attached hereto, and in accordance with the conditions and specifications contained in such schedules.

con't

6. CONTRACTORS:

Before commencement of any works, the Proponents shall show satisfactory proof to the Town Engineer that the proposed contractors or sub-contractors, to whom the Proponents proposes to let or submit any part of the works, have, in the opinion of the Town Engineer, sufficient and valid liability insurance policies, a certificate from the Workers' Compensation Board showing that the contractor is in good standing; and, evidence satisfactory to the Town Engineer that the contractor is qualified, experienced and has equipment to successfully complete the works. Any contractor employed by the Proponents shall, as a condition of such employment, be approved by the Town Engineer.

7. PERFORMANCE BONDS:

The Proponents shall obtain from its contractor(s) a performance bond to ensure the completion of all the works that are called for by this Agreement and each bond shall cover any corrective work required for the maintenance period as defined in Clause 16. Each bond shall be in the amount of fifty percent (50%) of the construction value.

8. LETTER OF CREDIT:

The Proponents shall provide the Town with an Irrevocable Letter of Credit or Cash from a Canadian Chartered Bank or Trust Company for an amount equal to 100% of the estimated costs of construction of the works. The Letter of Credit shall be valid for a period of at least one year. Upon application by the Proponents, the Town may reduce the amount of the Letter of Credit or cash from time to time, provided that the remaining security held by the Town shall be at least equal to 110% of the estimated cost of the works still to be constructed. The Letter of Credit shall be renewed by the Proponents as necessary and any such renewal shall be confirmed at least 14 days prior to the expiry. If such renewal is not confirmed, the Town shall draw on the Letter of Credit. At the time of final acceptance of the works by the Town, the Letter of Credit or remaining cash shall be returned to the Proponents.

con't

9. CONSTRUCTION LIEN ACT SECURITY DEPOSIT

In order to secure the Town with respect to its obligations under the Construction Lien Act, the Proponents shall deposit with the Treasurer, upon the execution of this Agreement, a letter of credit or cash in the amount of 10% of the cost of the design and construction of the works as estimated by the Town Engineer. Upon the receipt of claims for liens filed pursuant to the provisions of the Construction Lien Act with respect to the construction of the works, the Town shall be entitled to call upon the said Letter of Credit or Cash in order to meet the Town's obligations pursuant to the provisions of the Construction Lien Act.

10. CASH DEPOSITS AND LETTERS OF CREDIT

(A) CASH DEPOSITS

The Proponents will be required to deposit cash equal to the sum of:

(a) engineering fees (clause 3)	\$ 2,000.00
(B) <u>LETTERS OF CREDIT, CASH OR CERTIFIED CHEQUE</u>	
(a) construction of services	\$20,000.00
(b) Construction Lien Act Deposit	<u>\$ 2,200.00</u>
TOTAL	\$22,200.00

11. RETURN OF DEPOSITS:

Unless otherwise directed by the Town Council, the Town shall, upon satisfactory completion of all of the works and subject to the provisions of the Agreement authorizing deductions therefrom, return upon the written application of the Proponents the remainder of the cash deposit or Letter of Credit provided in paragraphs 10 (a) and 10 (b) herein. The Treasurer, after receipt of satisfactory securities, shall, out of the monies on deposit, pay any engineering fees and maintenance costs still owing and shall return the balance, if any, to the Proponents. Should the deposit provided in paragraphs 10 (a) and 10 (b) be insufficient to pay the inspection and administration fees or other charges payable by the Proponents, the Town shall invoice the Proponents for the balance and the Proponents shall pay such balance within thirty (30) days of the invoice date.

con't

12. MATERIALS

All the works required hereunder shall be done and performed to the satisfaction of the Town Engineer, and all materials required for the said works shall be supplied to the specifications and directions of the Town Engineer.

13. REPLACING UTILITIES:

The Proponents shall assume complete responsibility and make all necessary arrangements for the moving or disturbance of any hydro-electric, gas or telephone pipes, conduits, wire or pole lines, or any other public utility works as required or approved by the Town Engineer, and shall be solely responsible for any damage caused to the said pipes, conduit, wires, pole lines, hydrants or other works.

14. LIABILITY INSURANCE:

Before commencing any of the works provided for herein, the Proponents shall supply the Town with a Liability Insurance Policy (with no exclusions) in a form satisfactory to the Town, and in an amount not less than One Million Dollars (\$1,000,000.00), indemnifying the Town until the issue of the certificate referred to in Clause 17, from any loss arising from claims or damage, injury or otherwise in connection with all work done by the Proponents, his employees, servants or agents, or any independent contractor. The Proponents shall submit to the Town evidence from the Insurer that the premium for the said Policy has been paid for a period of one (1) year and thereafter on an annual basis during the term of this Agreement.

15. ACCEPTANCE OF WORKS COMPLETED:

The Town agrees to pass, within a reasonable period of time, the necessary by-law documents authorizing its acceptance of the works in accordance with Clause 16, upon rectification of any deficiencies discovered at an inspection by the Town Engineer, one (1) year after the Proponents professional engineer has provided the Town with a certificate of completion in accordance with Clause 1 (b) (vi).

con't

Should the Proponents not be able to meet the above criteria, he may apply to the Town for acceptance of the works and the Town, in its discretion, may modify the above criteria.

16. MAINTENANCE:

The Proponents guarantees for a period of one (1) year from the date of the Proponents engineer's certificate of completion (referred to in clause 1 (b) (vi), proper functioning of the works in a manner satisfactory to the Town Engineer, and undertake and agree with the Town to indemnify it from any and all costs, expenses, fees, disbursements or charges of any manner whatsoever whether direct or indirect incurred by the Town and occasioned by the failure or partial failure of any or all of the works during the guarantee period.

17. TOWN ENGINEER'S CERTIFICATE:

Upon compliance, with the terms of this Agreement, and upon completion of all the said works in accordance with the specifications and direction of and to the satisfaction of the Town Engineer, and upon payment of all financial requirements herein, the Town Engineer under authority of resolution of Council shall at the expiration of the Proponents maintenance period above defined and upon written application by the Proponents, issue a certificate stating same to the Proponents. Upon the said certificate being issued ownership of all the works referred to herein shall be vested in the Town.

18. INDEMNIFICATION:

The Proponents hereby agrees and undertakes to save harmless and keep indemnified the Town, it successors and assigns from and against all manner of actions or claims for loss, costs, charges, damages, injuries, expenses or otherwise, arising before the issue of the certificate referred to in Clause 17 hereof, in connection with the work required to be done herein by the Proponent, his contractors, servants or agents during the period of construction and during the guarantee period provided in Clause 16 of this Agreement.

con't

19. DEFAULT:

(a) If the Proponents shall fail to pay any monies payable pursuant to this Agreement and such monies shall be in arrears and unpaid for a period of thirty (30) days after they shall become due or if the Proponents shall be notified of any default in the observance or performance of any covenant on his part herein contained and fail to correct or rectify such default within thirty (30) days, the Town may terminate this Agreement at its sole discretion, by delivering to the Proponents notice in writing to that effect and upon such delivery, this Agreement shall cease, but without prejudice to any rights of the Town which had accrued hereunder before such cancellation.

(b) If the Proponents shall be in default in the performance of any covenant on their part herein contained, except the covenant to pay money, the Town may advise the Proponents and then perform such covenants for the account of the Proponents or their property or to the person or persons and property of his agents, invitees or licensees, caused by the acts of the Town in so remedying the default of the Proponents save such as are due to the negligence of the Town. If the Town is at any time compelled or elects to pay any sum of money, by reason of the failure of the Proponents to comply with the provisions of this Agreement, or if the Town is compelled or elects to incur any expense, including legal fees, any sum so paid by the Town shall be paid by the Proponents to the Town upon demand.

20. SCHEDULES:

The provision of all Schedules attached hereto shall form part of this Agreement.

21. MINISTRY OF CITIZENSHIP AND CULTURE:

The Owner agrees to cease construction and immediately notify the Ministry of Citizenship and Culture, Heritage Branch if at any time during construction buried archaeological deposits are discovered and that construction will not recommence until such time as authorized by the Ministry of Citizenship and Culture, Heritage Branch.

con't

22. NOTICE:

Any notice, demand, acceptance, or request provided for in this Agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered by registered mail (postage prepaid) as follows:

To the Town at: -

The Corporation of the Town of Pelham
20 Pelham Town Square, P.O. Box 400
Fonthill, Ontario
L0S 1E0

Attention: Town Clerk

or such other address that the Town may from time to time designate in writing and to the Proponents by delivery to or by mailing by registered mail addressed to: -

Mr. James N. Edwards
1077 South Pelham Street
Welland, Ontario
L3C 3E4

or any such other address that the Proponents may from time to time designate in writing and every such notice shall be deemed to have been given upon the day it was so delivered or on the fifth day after the date upon which it is mailed by registered mail.

23. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and there are no other written or verbal agreements or representations between the parties hereto pertaining to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by all parties hereto.

24. VALIDITY OF TERMS:

If any term, clause or provision of this Agreement shall be adjudged to be invalid, the validity of any other term, clause, or provision shall not be affected, and such invalid term, clause, or provision shall be deleted from this Agreement.

con't

25. LAWS OF ONTARIO:

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

26. SUCCESSORS:

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by affixing their respective Corporate Seals duly attested by the proper officers in that behalf.

SIGNED, SEALED AND DELIVERED (THE CORPORATION OF THE TOWN
- In the Presence Of - (OF PELHAM

(Paul Collins
(MAYOR

(Jack Bernardi
(Deputy CLERK

[Signature]
WITNESS

(James M. Edwards
(JAMES EDWARDS

[Signature]
WITNESS

([Signature]
(Vice-President
(TERA INVESTMENTS LIMITED LTD.
(I have authority to bind the Corporation.

[Signature]
WITNESS

([Signature]
(MANOUCHER FARAHBAKSH

[Signature]
WITNESS

([Signature]
(MONIREH FARAHBAKSH

[Signature]
WITNESS

([Signature]
(828345 ONTARIO LIMITED

SCHEDULE "C"

SANITARY SEWERS

MANHOLES:

Standard precast concrete manholes, 1.2 metre diameter, Kor-N-Seal for pipe connections.

SANITARY SEWER:

200 mm diameter PVC, SDR 35 pipe with class "B" bedding

SANITARY SERVICE:

125 mm diameter PVC, DR 28 pipe with class "B" bedding