

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 05-225

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND SHORE TILBE IRWIN & PARTNERS

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute an agreement between The Corporation of the City of Peterborough and Shore Tilbe Irwin & Partners in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 24th day of October, 2005

By-law read a third time and finally passed this 24th day of October, 2005

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made the 4th day of October, 2004.

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH
500 George Street North
Peterborough, ON K9H 3R9

hereinafter called the "City"

of the First Part

- and -

SHORE TILBE IRWIN & PARTNERS
20 Duncan Street, Suite 300
Toronto, ON M5H 3G8

hereinafter called the "Consultant"

of the Second Part

WHEREAS the Consultant is retained to provide the services as outlined below in order to assist the City in as required pursuant to Proposal Document No. P-20-05;

NOW THEREFORE IN CONSIDERATION of the mutual covenants hereinafter contained the parties hereto do covenant and agree with each other as follows:

SECTION 1: DEFINITIONS

2.1 In this Agreement

- (a) "City" means The Corporation of the City of Peterborough.
- (b) "Consultant" means the Consultant, and its agent, servants and employees.
- (c) "Services" means all professional services required to complete a facility review of the Peterborough Lakefield Community Police Service Main Headquarters at 500 Water Street, in the City of Peterborough, according to Request for Proposal P-20-05, attached hereto as Schedule "A", and the Consultant's Proposal, attached hereto as Schedule "B", and forming part of this agreement.

SECTION 2: THE CONSULTANT'S SERVICES

2.1 Services

The City hereby retains the Consultant to perform the Services.

2.2 Performance

The Consultant shall exercise reasonable care, skill and diligence in performing the Services.

2.3 Confidentiality

The Consultant shall keep strictly confidential any personal or confidential information communicated to or acquired by the Consultant during the course of completing the Study.

SECTION 3: THE CITY'S RESPONSIBILITY

3.1 Access to Municipal Documents and Statistics

The City shall make available at no cost to the Consultant any relevant municipal documents, plans or similar information as may be required by the Consultant to assist in the preparation of the Study and that are available to and under the control of the City. Upon completion of the Study, the relevant municipal documents shall be returned to the City.

3.2 City's Decisions

The City shall give due and reasonably expeditious consideration to all matters arising in the course of the performance of the Services that require direction or a decision by the City in order that the Consultant will not be unreasonably delayed in performing the Services provided for herein.

SECTION 4: FEES AND DISBURSEMENTS

4.1 Consultant's Fees

The City shall pay to the Consultant for the Services a total amount not to exceed Forty-Eight Thousand, Eight Hundred and Ninety-Nine Dollars (\$48,899.00), inclusive of GST.

4.2 Disbursements

The Consultant's Fee shall include all disbursement costs normally associated with professional services required to perform the prescribed Services as set out in the proposal.

4.3 Payment of Invoices

Payment of invoices shall be made by the City within thirty (30) days of receipt of same.

4.4 Additional Services

If, during the term of the Consultant's obligation as described in Section 2 hereof, the City makes a decision which would require additional services or expenses not normally incurred in providing the Services, the Consultant will immediately advise the City in writing that such extra services will be necessary. Any additional fee for the provision of such extra services shall be approved, in writing, by the City prior to the Consultant proceeding with the additional services.

SECTION 5: GENERAL CONDITIONS

5.1 Indemnity

The Consultant shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages which the City may suffer as a result of negligence by the Consultant, his employee or agents, in the performance or rendering of, or the failure to perform or render, or the failure to exercise reasonable care, skill or diligence in the performance or rendering of the Services.

5.2 Right of Use

All material used in connection with the Study and prepared by the Consultant are instruments of service for the execution of the Work, and as such are the property of the Consultant. The City is entitled to use copies of said material, but only for

its intended purpose in connection with the Study. If the material is altered in any manner whatsoever without the Consultant's prior consent, the Consultant does not warrant the fitness of same for the City's use, and the City agrees to indemnify, hold harmless and defend the Consultant against all claims and losses associated with such use by the City.

5.3 Adherence to Time Schedules

The Consultant shall carry out the work with the utmost dispatch and, subject to delays beyond its control, shall complete the Services in accordance with the approved time schedule as set forth in the proposal, or any subsequent revision that may be agreed upon by the Consultant and the City in writing.

5.4 The Consultant's Staff

(a) The Consultant's Project Supervisor shall be responsible to ensure the full performance of the terms and provisions of this Agreement on behalf of the Consultant. The Project Supervisor may only be replaced with the consent of the City, such consent not to be unreasonably denied.

(b) It is specifically understood, acknowledged and agreed that the Consultant is an independent contractor and that a business relationship exists with the City. Therefore, the Consultant will not be covered by the City under the provisions of the *Workplace Safety Insurance Board Act, 1997*. Furthermore, the Consultant is responsible for all statutory deductions in respect of the Consultant's employees

5.5 Arbitration

In the case of any dispute arising between the City and the Consultant as to their respective rights and obligations under this Agreement, either party hereto shall be entitled to require arbitration with respect to the dispute by giving a written notice to arbitrate one to the other. In that event, both the City and the Consultant, within five (5) days after the giving of notice to arbitrate, shall give notice to the other nominating one arbitrator on behalf of the party giving the notice, and, the two arbitrators so nominated shall, within five (5) days, nominate a third arbitrator. The three arbitrators so nominated shall determine the dispute having regard to all of the provisions of this Agreement (provided that if either party shall fail to nominate an arbitrator in accordance with the foregoing or if the two arbitrators who have been nominated fail to agree on the nomination of the third arbitrator, either the City or the Consultant may apply, upon notice to the other, to a Justice of the Supreme Court to Ontario who shall have jurisdiction to nominate such arbitrator or arbitrators). The decision of any two of the three arbitrators shall be binding and final upon the parties. The cost of such arbitration shall be as awarded by the arbitrators. Except as to matters otherwise provided herein, the provisions of the Arbitrations Act of Ontario (or any successor statute thereof) shall apply.

5.6 Notices

All notices, requests and other communications required in writing in this Agreement shall be deemed to have been duly given at the time of delivery or two days after the day of mailing if mailed by first class mail postage prepared and addressed:

a) to the City at:

500 George Street North
Peterborough, Ontario K9H 3R9

and,

b) to the Consultant at:

20 Duncan Street
Suite 300
Toronto, Ontario M5H 3G8

5.7 City's Right to Terminate Contract

The City shall have the right to terminate this Agreement, forthwith, on written notice to the Consultant, in the event that:

- a) The Consultant makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or an order is made for the winding-up of the Consultant; or
- b) The Consultant refuses or fails to supply sufficient properly skilled workmen or proper materials at all times to perform the Services in the manner and to the standards required under this Agreement, or it fails to observe and comply with any provisions of law, including, without limiting the generality of the foregoing, all requirements of all governmental authorities including federal, provincial and municipal legislative enactments, by-laws and other regulations now or hereafter in force which pertain to or affect the Services or the conduct of the Consultants' business at the Site; or
- c) The Consultant fails to institute appropriate corrective action forthwith after verbal notification by the City (which shall be confirmed subsequently in writing) of any failure on the part of the Consultant to comply with any of the terms and specifications of this Agreement notwithstanding that such failure is the result of any cause beyond the Consultant's control.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals.

SIGNED, SEALED AND DELIVERED	)	THE CORPORATION OF THE
in the presence of:	)	CITY OF PETERBOROUGH
)	
)	_____
	)	Sylvia Sutherland, Mayor
)	
)	_____
	)	Nancy Wright-Laking, Clerk
)	
	)	SHORE TILBE IRWIN
	)	& PARTNERS
)	
)	_____
	)	Name:
	)	Office:
)	
)	_____
	)	Name:
	)	Office:

I/We have authority to bind
the Corporation

SCHEDULE "A"

REQUEST FOR PROPOSAL P-20-05
(on file with the City Clerk)

SCHEDULE "B"
(Consultant's Proposal)
(on file with the City Clerk