

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 06-111

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND EARTH TECH (CANADA) INC. FOR PROFESSIONAL SERVICES TO COMPLETE THE COLDSPRINGS FUNCTIONAL TRANSPORTATIONAL NEEDS ASSESSMENT FOR THE HIGHWAY 115 AND BENSFORT ROAD INTERCHANGE

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 Earth Tech Canada Inc. in the form attached hereto as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 3rd day of July, 2006

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

**AGREEMENT BETWEEN
THE CORPORATION OF THE
CITY OF PETERBOROUGH**

and

EARTH TECH CANADA INC.

for

**COLDSPRINGS FUNCTIONAL TRANSPORTATION NEEDS
ASSESSMENT FOR THE HIGHWAY 115 AND BENSFORT
ROAD INTERCHANGE**

THIS AGREEMENT made the _____ day of _____, 2006

BETWEEN: The Corporation of the City of Peterborough
500 George Street North
Peterborough, Ontario
K9H 3R9

hereinafter called the "City" Of The First Part

AND

Earth Tech Canada Inc.
105 Commerce Valley Drive West, 7th Floor
Markham, Ontario L3T 7W3

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: **The Coldsprings Study**.

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

SECTION 1: DEFINITIONS

In this Agreement -

- 1.1 "City" means the Municipality of the Corporation of the City of Peterborough.
- 1.2 "Consultant" means the Consultant, and its agent, servants and employees.
- 1.3 "Consultants' Project Manager" means Kevin Jones
- 1.4 "Study" means Coldsprings Functional Transportation Needs Assessment.

SECTION 2: THE CONSULTANT'S SERVICES

2.1 Services

The Consultant agrees to furnish and perform professional services in the preparation of the Study for the City of Peterborough according to the proposal and work program as mutually agreed upon by the Consultant and the City attached hereto as Schedule 'A' and forming part of this Agreement (hereinafter referred to as the "proposal").

2.2 Performance

The Consultant shall exercise reasonable care, skill and diligence in performing the services set out herein.

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. The City shall also assist the Consultant, if necessary, in obtaining relevant information from other agencies.

3.2 City's Decision

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 prescribed herein, a total amount not to exceed \$64,189.30, which includes disbursements and G.S.T. The Consultant will then be responsible for the disbursement of funds to the study team sub-consultants.

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 Remuneration to The Consultant

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 normally incurred in providing the services set out in Section 2 hereof, 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 any work or services required hereunder.

5.2 Right of Use

All material used in connection with the Study and prepared by the Consultant are the property of the City. 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 work 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

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

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 the 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 Arbitrators 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: 105 Commerce Valley Drive, West
7th Floor
Markham, ON, L3T 7W3

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 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 this Agreement has been executed by the parties hereto.

CLIENT: THE CORPORATION OF THE CITY OF PETERBOROUGH

SYLVIA SUTHERLAND,
Mayor

NANCY WRIGHT-LAKING
City Clerk

CONSULTANT: EARTH TECH CANADA INC.

NAME: KEVIN JONES
Title: Project Manager

NAME:
Title:

I/WE have the authority to bind the Corporation

SCHEDULE A

Proposal for Consulting Services to
Conduct the Coldsprings Functional Transportation Needs Assessment

Prepared by
Earth Tech Canada