

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 07-012

BEING A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO SIGN A LETTER OF AGREEMENT BETWEEN HER MAJESTY THE QUEEN REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE PROVINCE OF ONTARIO, AND THE CORPORATION OF THE CITY OF PETERBOROUGH TO ALLOW THE CITY TO CONDUCT A CLASS ENVIRONMENTAL ASSESSMENT (CLASS EA) AND PRELIMINARY DESIGN STUDY FOR THE RECONSTRUCTION OF HIGHWAY 7/115-PARKWAY-SIR SANDFORD FLEMING DRIVE INTERCHANGE, WITHIN THE CITY OF PETERBOROUGH

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 with Her Majesty the Queen, represented by the Minister of Transportation, attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 15th day of January, 2007

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made as of this 12th day of December, 2006

B E T W E E N:

**HER MAJESTY THE QUEEN in right of the Province of Ontario,
represented by the Minister of Transportation for the Province of
Ontario.**

(the "Ministry"),

OF THE FIRST PART:

- and -

THE CORPORATION of the CITY of PETERBOROUGH

(the " City"),

OF THE SECOND PART.

WHEREAS:

- (1) The City has requested that the Ministry allow the City to conduct a Class Environmental Assessment (Class EA) and Preliminary Design study for the reconstruction of Highway 7/115-Parkway-Sir Sandford Fleming Drive interchange (the "Interchange"), within the City of Peterborough. The project includes all exit and on ramps, the Parkway from the interchange up to and including the Crawford intersection, and Sir Sandford Fleming Drive from the interchange up to and including the Fisher Drive intersection. The project limits are shown on the diagram attached hereto as Schedule A and forming part of this Agreement.**
- (2) The Ministry has agreed to allow the City to complete the Class Environmental Assessment (Class EA) and Preliminary Design (the "Work") for the construction of the highway improvements, traffic**

signals and illumination at the Interchange (the "Improvements"), provided that the cost of the Work will be shared with the Ministry paying sixty per cent (60%) and the City paying forty per cent (40%), upon the terms and conditions of this Agreement.

(3) The Ministry acknowledges that City intends to tender and construct certain portions of the Improvements in 2007, subject to completion of the Work. Subject to further definition in the Preliminary Design Report, the Ministry has agreed to fund the cost of detailed design and capital construction costs of the improvements to the westbound Highway 115 to northbound Parkway off-ramp in 2007.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants contained herein, the parties hereto mutually agree:

1. In this Agreement, "Regional Director" means the Regional Director, Provincial Highways Management, Eastern Region of the Ministry of Transportation for the Province of Ontario, or a nominee.
2. The City, as proponent, shall comply with the Environmental Assessment Act and the Ministry of Transportation (MTO) Class Environmental Assessment for Provincial Transportation Facilities (2000) process and obtain from the Ministry of Environment, as well as the Ministry of Natural Resources, all clearances required by the Act .
3. The City, as the proponent, will write the Terms of Reference to hire the consultant to complete the Work. The Terms of Reference will be reviewed and approved by the Ministry prior to finalizing the terms. The Terms shall include:
 - (a) a schedule identifying target dates for completion of the Work;
 - (b) a construction cost estimate of the Improvements and;

- (c) the consultant to recommend the cost share between the City and Ministry for the detailed design and construction of the Improvements.

4. The City shall include, as part of the City's 2007 Transportation Master Plan Update study, the analysis and recommendations for the long term need of the Crawford Drive (The Parkway to Lansdowne Street West) and/or recommendations on the timing of the reopening of Crawford Drive at the Parkway.
5. The City shall ensure that a plan for traffic control ("the plan") is in place prior to authorizing any investigations for the commencement of the Work. The plan shall be prepared in accordance with the Ministry's Manual of Uniform Traffic Control Devices, the Ministry's Roadside Safety Manual and other Ministry standards and procedures and the plan will be reviewed by the Ministry prior to the field work being conducted. A permit shall be obtained by the consultant/contractor from the Ministry prior to the field work being conducted.
6. Save and except pending environmental and geotechnical investigations, the City shall not authorize the Work to commence until it has:
 - (a) received an executed copy of this Agreement;
 - (b) received an Encroachment Permit from the Ministry;
 - (c) performed all other conditions and received all approvals that are required by this Agreement; and
 - (d) given the Ministry written notice at least twenty-four hours (24) prior to commencement of the field investigations for the Work, after having received an Encroachment permit, as required herein, from the Ministry.

7. The City shall ensure that the Work is completed in compliance with:
- (a) MTO Class Environmental Assessment for Provincial Transportation Facilities (2000) process;
 - (b) Occupational Health and Safety regulations for field investigations;
 - (c) the terms and conditions of the Agreement; and
- All Work is subject to Ministry review and approval.
8. The City shall issue a formal Request for Proposal for the Class EA and Preliminary Design assignment and shall accept submissions only from consultants pre-approved by the Ministry in Highway Engineering specialties: Preliminary Design- Functional Planning and Design Studies; and Detailed Design- Major Reconstruction and/or widening. The proposals shall be evaluated in accordance with the City's Purchasing Policy by a Consultant Selection Committee comprised of Ministry and City staff. The successful consultant, agreed upon by both the MTO and the City, will be approved by City Council and required to enter into an Engineering Agreement with the City. The Ministry agrees to pay sixty percent (60%) of the cost of the Work. The City shall, from time to time, invoice the Ministry for the actual costs payable by the Ministry to the City under this Agreement and the Ministry shall pay the amount or amounts of each invoice to the City within sixty business (60) days of its receipt.

The City shall report to the Ministry, quarterly, and on the actual eligible expenditures incurred and paid by the City to date, plus a projected forecast or estimate of anticipated expenditures to the end of the Ministry's fiscal year end, which generally is the end of March of each year. The report that is to be provided in accordance with the provisions set out in this paragraph is to enable the Ministry to meet its report obligations. The City shall submit the report within 5 working days of the end of the reporting period, being the last calendar day of June, September, December and March of each year. The Project Manager, who is designated by the City, must sign each report. The City shall, in writing, provide to the Ministry the designated Project Manager's name and contact

information and shall promptly inform the Ministry of any changes thereto. The Ministry will supply a reporting template that the City shall be required to use for this purpose.

9. The City shall:
 - (a) Supervise the Work mentioned in the Agreement to the extent necessary to ensure the fulfilment of the assignment pursuant to paragraph 8;
 - (b) Decide all questions relating to the Work in consultation with the Ministry and in compliance with the terms and conditions of this Agreement;
 - (c) Provide the ministry with copies of all documents relating to the Work, and;
 - (d) Review all materials pertaining to the Work.

10. When the Work under this Agreement is, in the view of the City, completed, the City shall provide written notice to the Regional Director.

11. The City shall accommodate audits of the Ministry at the discretion of the Ministry and on one (1) business day notice. The City agrees to allow on-site audits by the Ministry during regular business hours. All books and records made pursuant to this Agreement shall be subject to inspection and audit for a period of six (6) years following the completion of the Work.

12. The Regional Director has the right to review the Work the City does under this Agreement and the performance by the City of the Work, and if the City;
 - (a) fails or neglects to ensure that the Work commences or fails to ensure that the Work is completed diligently and at a rate which in the opinion of the Regional Director will ensure the entire completion of the Work within the time limit prescribed in the schedule mentioned in paragraph 3, or

- (b) defaults in the completion of the Work,

The Regional Director may instruct the City to discontinue all Work under the Agreement and the Ministry may then employ means the Ministry deems necessary to do or complete any or all of the Work and the City shall have no claim against the Ministry for loss or damage caused by or resulting from any or all of the Work being taken out of the control of the City.

- 13. The City shall indemnify and save harmless the Ministry from and against all claim, action, cause of action or liability for loss, damage, accident or injury in any manner arising due to, out of, from or in connection with the Work undertaken and performed by the City, its agents or its contractors under this Agreement, but excluding anything arising from any action taken by the Ministry.
- 14. The City, at its cost, shall maintain comprehensive general liability insurance protecting and indemnifying the City and the Ministry from and against all claims for damage or injury to persons, including loss of life to persons, occurring on lands affected by the Work mentioned in this Agreement until the Regional Director gives the City notice that the Work is completed and,
 - (a) the comprehensive general liability insurance shall be in the amount of not less than Five Million (\$5,000,000.00) Dollars in respect of bodily injury or death of any one person in any one occurrence;
 - (b) the insurance shall be maintained with a company or companies licensed to do business in the Province of Ontario and approved by the Ministry;
 - (c) the City and the Ministry shall be joint insureds; and
 - (d) the City shall furnish the Ministry with certificates of the insurance signed by the insurance company prior to the

issuance of Ministry permits.

- 15. Where there is a conflict between this Agreement and the terms and conditions contained in a permit issued to the City by the Ministry for the Work prescribed herein, the terms and conditions contained in the permit govern.
- 16. Where there is a conflict between this Agreement and the terms and conditions of other agreements that the City may have entered into with another party pertaining to the Work, including with a consultant or sub consultant in accordance with paragraph 8, this Agreement governs.
- 17. Any notices to be given under the provisions of this Agreement shall be in writing and shall be given by personal delivery, or sent by electronic facsimile, or mailed by prepaid registered mail, or delivered by courier service. Subject to change by either party with written notice, notice shall be addressed as follows:

To the Ministry:

Kathryn Moore
 Regional Director
 Ministry of Transportation
 1355 John Counter Blvd.
 Kingston, ON K7L 5A3

With a faxed copy to:

Cheryl Tolles
 Regional Dev. Review Co-ord.
 Ministry of Transportation
 Fax: (613) 540-5106

To the City:

Nancy Wright-Laking
 City Clerk
 City of Peterborough
 500 George Street North
 Peterborough, ON K9H 3R9

With a faxed copy to:

David Bonsall
 Manager of Engineering
 City of Peterborough
 Fax: (705) 876-4621

Notices shall be deemed to have been effectively given on the date of personal delivery, the date of electronic facsimile transmission, or the date of delivery by courier service, or in the case of service by registered mail, three (3) days after the date of mailing.

- 18. The City warrants that it shall take all necessary steps, has done all acts, passed all by-laws and obtained all approvals within its power legally required to give it the authority to enter into this Agreement and do the Work herein.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Minister of Transportation for the Province of Ontario on behalf of the Party of the First Part has hereunto set her hand and the Party of the Second Part has hereunder affixed its Corporate Seal under the hands of its proper officers duly authorized in that behalf.

SIGNED this ____ day of _____ 2007.

MINISTER OF TRANSPORTATION (ONTARIO)

SIGNED AND SEALED this ____ day of _____ 2007.

THE CORPORATION OF THE CITY OF PETERBOROUGH

MAYOR

Clerk

