

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 08-145

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND MORRISON HERSHFIELD LIMITED FOR THE CONSULTING SERVICES TO COMPLETE THE UPDATE TO THE 2002 COMPREHENSIVE TRANSPORTATION PLAN (P-21-08)

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

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Morrison Hershfield Limited in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 11th day of August, 2008

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

M.E.A./C.E.O. 1989

**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

THIS AGREEMENT dated this 24th day of October 2008

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH

Hereinafter called the 'Client'

and

MORRISON HERSHFIELD LIMITED

Hereinafter called the 'Consultant'

WHEREAS, the Client has requested the Consultant to perform the services set out in Article 2 hereof in connection with the 'Project' (as herein defined) and the Consultant has agreed to perform such services on the subject to the Terms and Conditions of this Agreement.

'Project' shall mean completion of the "Update of the 2002 Comprehensive Transportation Plan for The City of Peterborough"

NOW THEREFORE WITNESSETH that in consideration of the covenants contained herein, the Client and the Consultant mutually agree as follows:

THAT MORRISON HERSHFIELD LIMITED WILL COMPLETE THE TASKS DESCRIBED IN THE ATTACHED "TERMS OF REFERENCE" AND THE "PROPOSAL" DATED APRIL 22, 2008 FOR THE FEE STATED THEREIN.

ARTICLE 1 - GENERAL CONDITIONS

1.01 Retainer

The Client hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the services described herein under the general direction and control of the Client.

In this Agreement the word Consultant shall mean professionals and other specialists engaged by the Client directly and whose names are party to this Agreement.

1.02 Services

The services to be provided by the Consultant and by the Client for the Project are set forth in Article 2 and such services as changed, altered or added to under Section 1.08 are hereinafter called the 'Services'.

1.03 Compensation

The Client shall pay the Consultant in accordance with the provisions set forth in Article 3.

1.04 Staff and Methods

The Consultant shall use current state of the art principles and shall skilfully and competently perform the Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff.

1.05 Drawings and Documents

Subject to Section 3.2.4 of Article 3, drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant for the Client may be used by the Client, for the Project herein described, including "as built" records. The Client has ownership of the drawings and documents. The Consultant shall be entitled to retain a copy of all documents and drawings produced or gathered for the project. Exchange of drawings and documents will be by hard copy and electronic files.

1.06 Patents

All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in the performance of his Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant.

The Client shall have permanent non-exclusive royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from the Services rendered by the Consultant in connection with the Project and for no other purpose or project.

1.07 Records and Audit

- a) In order to provide data for the calculation of fees on a time basis, the Consultant shall keep a detailed record of the hours worked by and salaries paid to his staff employed for the Project
- b) The Client may inspect and audit the books, payrolls, accounts and records of the Consultant during regular office hours with respect to any item which the Client is required to pay on a time scale or disbursement basis as a result of this Agreement.
- c) The Consultant, when requested by the Client, shall provide copies of receipts with respect to any disbursement for which the Consultant claims payment under this Agreement.

1.08 Changes and Alterations and Additional Services

With the consent of the Consultant the Client may in writing at any time after the execution of the Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the subject of the Agreement, and if such action by the Client necessitates additional staff or services, the Consultant shall be paid in accordance with Section 3.2.1 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Section 3.2.4.

1.09 Suspension or Termination

The Client may at any time by notice in writing to the Consultant suspend or terminate the Services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out his Services. In such an event, the Consultant shall be entitled to payment in accordance with Section 3.2.1 for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.4.

If the Consultant is practising as an individual and dies before his Services have been completed, this Agreement shall terminate as of the date of his death, and the Client shall pay for the Services rendered and disbursements incurred by the Consultant to the date of such termination.

1.10 Indemnification

The Consultant shall indemnify and save harmless the Client from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Client, his employees, officers or agents may suffer as a result of the negligence of the Consultant, his employees, officers or agents in the performance of this Agreement.

The Client agrees to hold harmless, indemnify and defend the Consultant from and against any and all claim, losses, damages, liability and costs of defence arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligence of the Consultant in the performance of consulting services to the Client within this project.

1.11 Insurance

a) Comprehensive General Liability and Automobile Insurance

The Insurance Coverage shall be \$5,000,000 for general liability and \$5,000,000 for automobile insurance. When requested the Consultant shall provide the Client with proof of Comprehensive General Liability and Automobile Insurance (Inclusive Limits) for both owned and non-owned vehicles.

b) Professional Liability Insurance

The Insurance Coverage shall be \$5,000,000 per claim and aggregate limit. When requested the Consultant shall provide to the Client proof of Professional Liability Insurance carried by the Consultant, and in accordance with APEO Act, 1984 and Regulations therein.

c) Change in Coverage

If the Client requests to have the amount of coverage increased or to obtain other special insurance for this Project then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the Client's expense as a disbursement allowed under Section 3.2.4.

It is understood and agreed that the coverage provided by these policies will not be changed or amended in any way nor cancelled by the Consultant until (60) days after written notice of such change or cancellations has been personally delivered to the Client.

1.12 Assignment

Neither party may assign this Agreement without the prior consent in writing of the other.

1.13 Previous Agreements

This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the Project.

1.14 Approval by Other Authorities

Unless otherwise provided in this Agreement, where the work of the Consultant is subject to the approval or review of an authority, department of government, or agency other than the Client, such applications for approvals or review and obtaining such approvals shall be the responsibility of the Consultant, but shall be submitted through the offices of the Client and unless authorized by the Client in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of government or agency.

1.15 Principals and Executives

The use of Principals and Executives on a time basis by the Consultant will be in accordance with

Section 1.22.1 (c).

1.16 Specialized Services

The Consultant may engage others for specialized services provided that prior approval is obtained, in writing, from the Client and may add a mark-up of not more than 5% of the cost of such services to cover office administration costs when claiming reimbursement from the Client.

1.17 Inspection

The Client, or persons authorized by the Client, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

1.18 Publication

The Consultant agrees to obtain the consent of the Client before publishing or issuing any detailed information regarding the Project.

1.19 Confidential Data

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by them, or disclosed by the Client in the course of carrying out the Services provided for herein. No such information shall be used by the Consultant on any other project without the approval in writing of the Client.

1.20 Arbitration

- a) Any dispute, difference or disagreement between the parties hereto in relation to the Agreement may, with the consent of both parties, be referred to arbitration.
- b) No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Client or the Consultant.
- c) The award of the arbitrator shall be final and binding upon the parties.
- d) The provisions of The Arbitration Act, R.S.O., 1990, Chapter a.24, as amended, shall apply.

1.21 Time

The Consultant shall perform the Services expeditiously to meet the requirements of the Client and shall complete any portion or portions of the Services in such order as the Client may require and the Client shall have the right to take possession of and use any completed or partially completed portions of the Work notwithstanding any provisions expressed or implied to the contrary.

The Client shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, and shall make any decisions which he is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

1.22 Estimates, Schedules and Staff List

1.22.1 Preparation of Estimate of Fees, Schedule of Progress and Staff List

When requested by the Client, the Consultant shall within fourteen days of the execution of this Agreement provide, for approval by the Client:

- a) An estimate of the total fees to be paid for the Services.
- b) A Schedule showing an estimate of the portion of the Services to be completed in each month

and an estimate of the portion of the fee which will be payable for each such month.

- c) A Staff List showing the number, classifications and salary ranges of staff and/or hourly rate ranges for Principals and Executives, for which the Consultant will seek payment on a time basis. The Consultant shall relate such information to the particular type of work that such staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's staff who is to be the liaison person between the Consultant and the Client.

1.22.2 Subsequent Changes in the Estimate of Fees, Schedule of Progress and Staff List

The Consultant will require written approval, from the Client for any of the following changes:

- a) Any increase in the estimated fees beyond those approved under Subsection 1.22.1 (a).
- b) Any change in the Schedule of Progress which results in a longer period than provided in Subsection 1.22.1 (b).
- c) Any change in the number, classification and salary ranges of the staff provided under Subsection 1.22.1 (c).
- d) Any increase in salaries will be subject to the approval of the Client. However, such increases will not entitle the Consultant for an increase in Upset Limits.

1.22.3 Monthly Reporting of Progress

When requested by the Client, the Consultant shall provide the Client with a written report showing the portion of the Services completed in the preceding month.

1.23 Contract Time

1.23.1 Commencement and Completion of Work

The work shall be started within 7 days of the written order to commence work and carried on to completion and full possession thereof given to the Client in the time specified in the Proposal, unless an extension of time has been granted by the Client in writing, in accordance with Clause 1.23.2, in which case it shall be carried out to completion and possession given to the Client within the additional time allowed.

1.23.2 Extension of Time

An extension of time may be granted in writing by the Client in the event of the work being delayed beyond the prescribed time for the completion as a result of causes beyond the Consultant's control. Such extensions shall be for such time as the Client may prescribe, and the Client shall fix the terms on which the said extension may be granted. An application by the Consultant for an extension may be granted. An application by the Consultant for an extension of time as herein provided shall be made to the Client in writing at least 15 calendar days prior to the date of completion fixed by the Contract.

1.24 Additional Conditions

Not applicable.

ARTICLE 2 - SERVICES

- 2.1 The Consultant represents and warrants that it shall use shall exercise reasonable care, skill and diligence while performing the Services and obligations described in Articles 6.0 & 7.0 of P-21-08 Update of the 2002 Comprehensive Transportation Plan, dated 24 April 2008 and as described in the Consultant's response thereto.

ARTICLE 3 - FEES AND DISBURSEMENTS

3.1 Definitions

For the purpose of this Agreement, the following definitions shall apply:

(a) Labour Fees

Labour fees will be consistent with the hourly chargeout rates used in the development of the Workplan and Fee Breakdown Schedule, which formed part of the Consultant proposal submission. These rates are as follows:

Ron Wilson	\$175
Bassam Hamwi	\$150
Jennifer Armstrong	\$100
Andrew Harkness	\$150
Brian Dawod	\$85
Jennifer Brown	\$75
Jim Mallet	\$120
Bill O'Brien	\$120
Bill Copeland	\$150
Seo-woon Im	\$100
Phil Niblett	\$120
Christopher Ellingwood	\$95
Will Pridham	\$75
Support Staff	\$75

(b) Cost of the Work

- i) The Cost of the Work shall mean the total cost of the Project including all materials, equipment, sales taxes, labour and contractor's overhead and profit, necessary to complete the work for which the Consultant prepares designs, drawings or specifications, for which he is responsible. Where sales taxes are not included in the cost of the work, the fee shall be adjusted upwards by the factor equivalent to the sales taxes. The adjusted fee may be computed to the nearest one-tenth of one percent ($\frac{1}{10}\%$).
- ii) Wherever the Client furnishes labour or any other service which is incorporated in the work, the current price of labour or other service when the work was executed shall be used to compute the Cost of the Work.
- iii) Whenever used material or equipment is furnished by or on behalf of the Client, the fair market value of such material or equipment, as though it was purchased new, shall be used to compute the Cost of the Work.
- iv) In computing the Cost of the Work, no deductions shall be made on account of any penalties or damages claimed by the Client from any contractor or on account of any other sum withheld from any contractor.

(c) Site

Site includes the actual work site and other locations where the checking of materials, equipments and workmanship is carried out.

3.2 Basis of Payment

3.2.1 Fees Calculated on a Time Basis

3.2.1.1 The Client shall pay the Consultant a fee, calculated on a time basis, for that part of the Services described in Article 2 or additional Services as approved by the Client.

3.2.1.2 Time Expended

All time expended on the assignment, whether in the Consultant's office, at the Client's premises, or elsewhere, and including travel time, shall be chargeable. This also includes, but is not limited to, stenographic and clerical staff engaged in the preparation of documents such as reports and specifications.

3.2.3 Computer Services

Computer services, except where a computer is used for design under the percentage fee scale or for the Consultant's normal office administration, may be considered a reimbursable expense.

3.2.4 Reimbursable Expenses

In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 0%, plus the cost of the additional insurance incurred by the Consultant, for all expenses properly incurred by them in connection with the Project, including but not limited to: vehicle use charges, travelling and living expenses, long distance telephone charges, teletype and telegraph charges, printing and reproductions, progress photography, advertising for tenders, special delivery and express charges, overtime premium costs, and the cost of providing and maintaining site offices, supplies and equipment, chemical and physical tests.

3.3 Payment

3.3.1 Fees Calculated on a Time Basis

The Consultant shall submit an invoice to the Client for all Services completed in the immediately preceding month.

3.3.2 Upset Limits

Notwithstanding any other provisions contained in this agreement, it is understood and agreed that Upset Limits have been agreed to by the Consultant and the Client with respect to the engineering fees and reimbursable expenses, which are to be paid to the Consultant for the services to be performed by them under this agreement and that the combined Upset Limit is \$313,665.00 (exclusive of all applicable taxes). It is further understood and agreed that the engineering fees and reimbursable expenses shall not exceed the agreed Upset Limits unless prior written approval is received from the Client.

WITNESS THEREOF the parties hereto have caused to be executed those presents by their officers properly authorized in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

CONSULTANT

MORRISON HERSHFIELD LIMITED

Bassam Hamwi, Principal

CLIENT

**THE CORPORATION OF THE
CITY OF PETERBOROUGH**

D. Paul Ayotte, Mayor

Nancy Wright-Laking, City Clerk