

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 09-040

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN
AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF
PETERBOROUGH AND THE PLANNING PARTNERSHIP**

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

1. That the Mayor and City Clerk be hereby authorized to execute an agreement between The Corporation of the City of Peterborough and The Planning Partnership for consulting services for a master plan of Little Lake and area, in the form attached as Schedule "A", and to affix the seal of the Corporation thereto.

By-law read a first, second and third time this 14th day of April, 2009

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) John Kennedy, Deputy Clerk

THIS AGREEMENT made this _____ day of _____ 2009.

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
500 George Street North, Peterborough, ON, K9H 3R9
(the "City")

- and -

THE PLANNING PARTNERSHIP LIMITED
(the "Consultant")

WHEREAS the Consultant is retained to provide the services as outlined below in order to assist the City to provide consulting services to develop an overall Master Plan for Little Lake and area for the City of Peterborough as required pursuant to Request for Proposal Document No. P-17-09 and the addenda and appendices attached hereto;

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

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 "Services" means all professional services required to prepare the Master Plan, according to the proposal and work program as mutually agreed upon by the Consultant and the City attached as set out in Request for Proposal Document No. P-17-09 and the addenda and appendices attached hereto as Schedule "A" and forming part of this agreement.

1.4 "Study" means the development of a Master Plan of Little Lake and Area for the City of Peterborough, in accordance with Request for Proposal Document No. P-17-09 and the addenda and appendices attached hereto as Schedule "A".

SECTION 2: THE CONSULTANT'S SERVICES

2.1 Services

The City hereby retains the Consultant to perform, and subject to the early termination of this agreement as hereinafter provided, to complete the Services.

2.2 Performance

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

b) The Consultant covenants that the Project will be undertaken without a conflict of interest and that during the course of the Project, the Consultant shall not undertake any project for any other client, which would result in a conflict of interest, without the prior written consent of the City.

2.3 Confidentiality and Ownership of Information etc.

- a) 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.
- b) All information, data, policies, plans, and documents prepared and collected by the Consultant pursuant to this agreement shall be the property of the City. The Consultant shall deliver all information, data, policies, and documents to the City immediately upon completion or abandonment of the Project and/or upon the termination of this agreement.
- c) No such information, data, policies, plans, and documents prepared and collected by the Consultant pursuant to this agreement shall be used by the Consultant on any other project or for any other purpose without the approval, in writing, of the City, such approval may be conditioned, delayed or withheld.

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 the amount set out in the Pricing Summary contained within Schedule "A", such sum being inclusive of GST and other applicable taxes.

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 Invoices and Payment

- a) The consultant shall prepare and submit monthly invoices which shall include the hours worked for the City and a detailed description of particular services provided during that time period.
- b) The City shall make payment of invoices 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 and Insurance

a) 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.

b) The Consultant shall at all times and until such time as the Consultant has completed and submitted the final Study to the City, maintain adequate general liability insurance concerning its performance and delivery of the Services and provide proof of same to the City, upon request. The City acknowledges that proof of adequate general liability insurance has been provided for the period ending 28 February 2010.

5.2 Right of Use

All material created and prepared by the Consultant in connection with the Study 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 and Insurance Act, 1997***. Furthermore, the Consultant is responsible for all statutory deductions in respect of the Consultant's employees

5.5 Dispute Resolution

a) The Consultant and the City acknowledge and agree that, in the event any term or condition of this agreement requires interpretation that the City shall, in first instance, provide its reasonable interpretation to the Consultant who shall perform its services in accordance with such interpretation. Concurrent with performing its services in accordance with the City's interpretation, the Consultant retains the right to refer such interpretation to arbitration, in accordance with Article 5.5(b) herein.

b) 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 ten (10) 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 ten (10) 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
Attention: City Clerk

and,

b) to the Consultant at:

1255 Bay Street, Suite 201
Toronto, Ontario M5R 2A9
Attention: Donna Hinde

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.

5.8 Non-Assignment

Neither party shall assign this agreement without the consent in writing of the other.

5.8 Successors and Assigns

This agreement shall ensure to the benefit of and be binding upon the parties hereto, and their executors, administrators, successors and assigns.

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

**SIGNED, SEALED AND DELIVERED
THE**

in the presence of:

) **THE CORPORATION OF**

) **CITY OF PETERBOROUGH**

)

) _____

) D. Paul Ayotte, Mayor

)

) _____

) Nancy Wright-Laking, City Clerk

)

) **THE PLANNING PARTNERSHIP
) LIMITED**

)

) _____

) Donna Hinde, Partner

)

) _____

) Name:

) Office:

I/We have authority to bind the Corporation

SCHEDULE A

Request for Proposal No. P-17-09 and Addenda on file with the City Clerk