

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 09-059

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE MINISTRY OF TRANSPORTATION ONTARIO (MTO) FOR THE DETAILED DESIGN, CONTRACT DOCUMENT PREPARATION AND CONSTRUCTION ADMINISTRATION FOR IMPROVEMENTS TO THE PARKWAY/ HIGHWAY 115 INTERCHANGE IN CITY OF PETERBOROUGH (P-20-09)

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

That the Mayor and Clerk be and they are hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Ministry of Transportation Ontario (MTO) in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second and third time this 25th day of May 2009

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made as of this _____ day of _____ 2009

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 Parties have previously entered into an agreement, dated December 12, 2006, to allow the City to conduct a Class Environmental Assessment and Preliminary Design study for the construction and improvements to the Highway 7/115-Sir Sandford Fleming Drive interchange, as more particularly shown in Schedule "A" attached to this Agreement (the "Interchange").
- (2) The City has completed the Class Environmental Assessment and Preliminary Design study for the Interchange and they now wish to proceed with the detailed design and reconstruction of the Work.
- (3) The Ministry has agreed to allow the City to complete the detailed design and construction of the Work and such other highway improvements as are required by the Work upon the terms and conditions of this Agreement and at the cost and expense agreed herein.

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

DEFINITIONS

1. In this Agreement,

"Regional Director" means the Regional Director, Provincial Highways Management, of the Eastern Region for the Ministry of Transportation for the Province of Ontario, or a nominee.

"Work" means all the work necessary to undertake the detailed design, tendering, and contract administration for the construction of the interchange, including improvements such ancillary highway improvements as traffic signals and illumination for the interchange as agreed to by the parties.

AGREEMENT TO DESIGN AND CONSTRUCT

2. The Ministry acknowledges and agrees that the City shall undertake the detailed design, tendering and construction of the Work to complete the improvements to the interchange as shown in Schedule B at the shared cost and expenses with the Ministry, the details of such financial contributions and payments from the Ministry are more particularly set out in this Agreement.

DETAILED DESIGN

3. The City, as the proponent, shall:

- a) comply with the *Environmental Assessment Act* and the Ministry of Transportation Class Environmental Assessment for Provincial Transportation Facilities process and;
- b) obtain from the Ministry of Environment, as well as the Ministry of Natural Resources, all clearances required by the Act.

4. The City shall issue a Request for Proposal to retain the services of a consulting engineer to prepare the detailed design for the reconstruction of the Work. The Terms of Reference for the consulting engineer shall be reviewed and approved by the

Ministry forthwith upon receipt prior to the acquisition of this consultant. Failing the City's receipt of the Ministry's approval, the City shall notify the Ministry and provide 15 days for response prior to proceeding with obtaining the services.

5. The City shall design and prepare, according to the Ministry's and City's standards and specifications, the contract drawings and documents for the construction of the Work, which shall be approved in writing by the Regional Director prior to the tendering and the construction of the Work.
6. Should the City proceed with the closure of Crawford Drive west of the Parkway, the City shall include, as part of the City's 2008 Transportation Master Plan Update Study, the analysis and recommendations for the long-term needs of the Crawford Drive connection, between the Parkway and Lansdowne Street West, including the recommended timing of the reopening of Crawford Drive at the Parkway.
7. The City shall prepare a proposal for field engineering and supervision and quality assurance requirements prior to the reconstruction of the Work, and the City shall submit the proposal to the Regional Director for approval prior to the commencement of the construction of the Work.

TRAFFIC CONTROL

8. The City shall prepare and ensure a Traffic Control Plan ("the plan") is in place prior to construction for the Work. The plan is to be prepared in accordance with the Ontario Traffic Manual, the Ministry's Roadside Safety Manual and other Ministry standards and procedures and the plan is subject to the review and approval of the Ministry prior to any construction or field investigation activity related to the Work.
9. The City shall be fully responsible for traffic control and safety during the Work, including the supply, installation, relocation and maintenance of all traffic control devices and warning signs required by the Traffic Management Plan.

PTHIA PERMITS

10. Upon application made by the City to the Ministry in a form satisfactory to the Ministry and accompanied by supporting documentation prepared in accordance with this

Agreement, then the Ministry will issue such permits as may be required by the City pursuant to the *Public Transportation and Highway Improvement Act* ("PTHIA"), including and not limited to Encroachment Permits and Moving of Utility Orders for the work within the Ministry's jurisdiction.

TENDERING

11. As a condition of the award of the construction contract, the City shall obtain either a performance bond or a standby irrevocable letter of credit from the contractor performing the Work in favour of the City in an amount reasonably acceptable to the City to secure the performance of the contract with the City, and;

- (a) the performance bond or standby letter of credit, as the case may be, shall specify that if the Work is not completed as prescribed herein, the City shall be entitled to recover any costs or payments it may make under this Agreement by realizing upon the letter of credit or performance bond as the case may be; and,
- (b) the City shall furnish the Ministry with copies of the performance bond or standby irrevocable letter of credit, as the case may be.

12. The City shall:

- a. tender and award the contract for the construction of the Work, once written approval has been received from the Regional Director to award the contract; and,
- b. accept tender submissions only from qualified contractors under the Ministry's prequalification system.

13. The City shall submit to the Regional Director, prior to award of the contract, the details of all tenders, including bid prices and the City's recommendation for award.

14. The City shall allow the Regional Director two weeks to approve of the tender award recommendation.

15. If in the opinion of the City or the Ministry, the unit prices or total bid tenders are excessive, the City and the Ministry shall agree upon the extent or scope of the Work to be awarded, if any. Failing any such agreement, this Agreement shall terminate.

CONTRACT ADMINISTRATION

16. The City shall retain the consulting engineering services for Contract Administration,

which selection shall be subject to the approval of the Regional Director. The selected Contract Administrator must be on the Ministry's approved Consultant Administrator Vendor's list.

17. The City shall ensure that the selected Contract Administrator submits a plan to the Ministry for supervision, traffic control activities, contract administration, quality assurance and quality control activities prior to the start-up of the construction of the Work for the Ministry's information.
18. The Ministry shall forthwith provide guidance and assistance with respect to the Ministry's standards, specifications and material testing, as the City or Contract Administrator may reasonably require.
19. The City shall, through its Contract Administrator, supervise and direct all work in order to ensure the completion of the Work in accordance with the contract drawings, documents and plans approved by the Regional Director and in accordance with the applicable Ministry specifications and standards for the Interchange and the fulfilment of any applicable warranty periods.

CONSTRUCTION

20. The City shall not authorize the construction of the Work to commence until it has:
 - (a) received an executed copy of this Agreement;
 - (b) received any necessary permits 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 seven business days' prior to commencement of the construction of the Work.
 - (e) establish a construction schedule for the 2009 and 2010 construction season with the Ministry.
21. The City shall maintain records pertaining to the inspection of materials and workmanship in a form and detail to the satisfaction of the Ministry. These records shall be available to the Ministry for review and inspection.
22. The Parties understand and agree that the Ministry's traffic signals located at the

Highway 7/115 ramp terminal at Sir Sanford Fleming Drive and the Parkway will be redesigned and constructed under the cost share provisions outlined in this agreement. It is understood by the Parties that the City desires to maintain and operate the traffic signals at the time of construction in order to provide a coordinated system on the City's arterial road system. In this regard, the Parties agree that a separate agreement will be negotiated and entered into between them in order to define the specific maintenance and operational conditions regarding these signals. Until this occurs, the Ministry will continue to operate and maintain the traffic signals, until such time as the Parties enter into this separate agreement, whereby the City shall assume the responsibility for operation of these signals.

23. The City shall:
 - (a) supervise the Work to the extent necessary to ensure the fulfilment of the contracts tendered pursuant to this Agreement;
 - (b) decide all questions relating to the Work in compliance with the terms and conditions of this Agreement;
 - (c) review all materials pertaining to the Work;
 - (d) maintain or ensure that all appropriate construction records are maintained to the satisfaction of the Ministry;
 - (e) be responsible for construction quality assurance of the Work in accordance with Ministry standards and specifications;
24. The City shall ensure that the Work is completed in compliance with:
 - (a) contract drawings and documents approved by the Regional Director;
 - (b) Ministry's standards and specifications for quality assurance; and,
 - (c) the terms and conditions of the Agreement.
 - (d) all work is subject to Ministry review and approval.
25. When, in the opinion of the City, the Work is completed under this Agreement, the City shall provide written notice to the Regional Director, whereupon the Regional Director shall cause the Work to be inspected, and if the Regional Director finds the Work has been satisfactorily completed in accordance with the contract drawings and documents, the Regional Director shall provide the City written notice that the Work has been

completed.

26. If a lien is filed with the Ministry with respect to the Work within the provisions of the Construction Lien Act, the City, at its cost, shall resolve the lien.

FINANCIAL CONTRIBUTIONS AND INVOICING

27. The Ministry agrees to pay 61.7 % and the City agrees to pay 38.3 % of the total cost of the Work (the Cost Sharing Ratio).
28. Notwithstanding the foregoing, the maximum amount the Ministry will contribute to the tender amount as per Schedule B dated August 27, 2008 with an upset limit of \$3,000,000.00 (3.0 M). In the event that the cost of the Work exceeds this amount, the additional costs shall be borne by the City and the Ministry in accordance with Schedule B dated August 27, 2008. Schedule B specifies red equals 100% Ministry cost, yellow equals 100% City cost, green and blue equals 60% Ministry and 40% City, and yellow and red equals 50% Ministry and 50% City costs.
29. The City shall invoice the Ministry periodically for the Ministry's share of the actual cost of the completed Work throughout the design and reconstruction of the Work, and:
- a. The invoices shall be subject to the approval of the Regional Director and be in the form and detail as the Regional Director may require; and,
 - b. The Ministry shall pay such invoices within sixty days of the receipt of the invoice, subject to its approval of the Regional Director of the invoice.
30. The Ministry shall pay the actual costs or its proportional share of the actual costs as determined by this Agreement related to the design and reconstruction of the Work. The Ministry is exempt from the payment of Goods and Services Tax (GST) and all invoicing to the Ministry for the Work shall not include GST.
31. The City shall accommodate audits of the Ministry at the discretion of the Ministry upon being given reasonable 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 four years following the completion of the Work.
32. The Regional Director has the right, at her sole risk and expense, to carry out random

tests and inspections of the Work that the City does under this Agreement.

33. In the event of any discrepancy between the Ministry's test results and those of the City, the parties shall forthwith utilize the services of a third party expert having knowledge in the test results field.

34. 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 construction schedule mentioned in this Agreement; or,

(b) defaults in the completion of the Work,

the Regional Director may instruct the City to discontinue all Work under this agreement, or provide another contractor satisfactory to the Regional Director, and the Ministry may then employ such means as the Ministry deems necessary to do or complete any or all of the Work. 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 reasonably taken out of the control of the City. The City shall be chargeable with and shall remain liable for all loss, damage, expense or cost which may be suffered by the Ministry by reason of the default, neglect or omissions of the City, and the Ministry may commence such action or applications as necessary in the circumstances to recover losses.

c). If either party is bona fides delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles, inability to procure materials or services, power failure, restrictive government laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or other reason whether of a like nature or not which is not the fault of either party, then the performance of that term, covenant, or act is excused for the period of the delay and that party shall be entitled to perform that term, covenant or act within the appropriate time period after the expiration of the period of delay.

INDEMNITY

35. 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 for the duration of this Agreement.

INSURANCE

36. The City, at its cost, shall ensure that its consulting engineer has adequate insurance to protect itself, the Ministry and the City and to support the indemnification requirements of this Agreement in respect of the detail design to be undertaken by this Agreement.
37. 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.

GENERAL PROVISIONS

38. 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.

- 39. 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, this Agreement governs.
- 40. 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
 Corridor Management Planner
 Ministry of Transportation
 1355 John Counter Blvd.
 Kingston, ON K7L 5A3
 Fax: (613) 540-5106

To the City:

Wayne Jackson, P. Eng.
 Director, Utility Services
 Development Services
 500 George Street North
 Peterborough, ON

With a faxed copy to:

Jim Kimble
 Manager, Transportation Engineering
 City of Peterborough
 Peterborough, ON K9H 3R9
 K9H 3R9
 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 days after the date of mailing.

- 41. The City warrants that it has taken all necessary steps, 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 his 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 _____ 2009.

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

MINISTER OF TRANSPORTATION (ONTARIO)

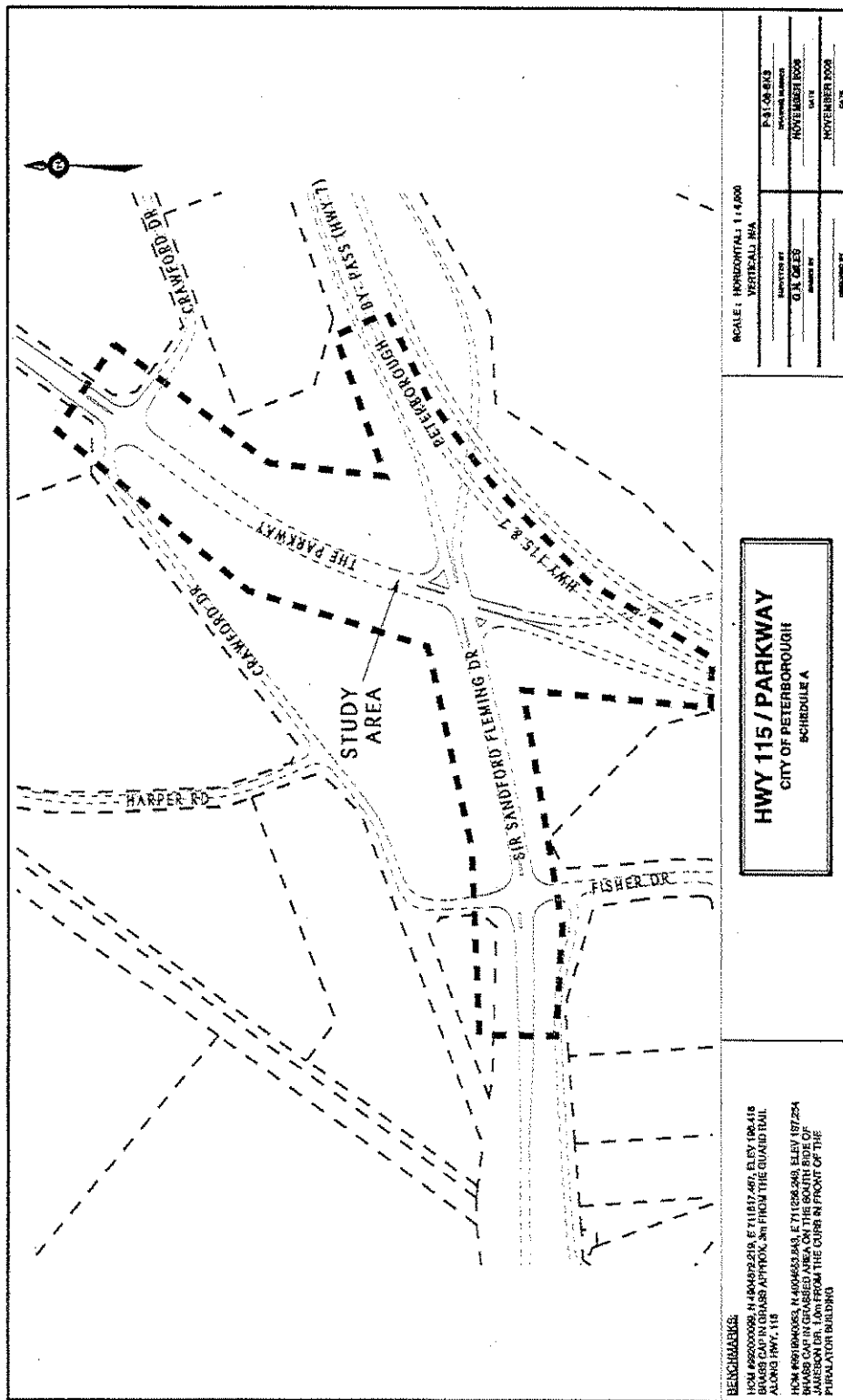
SIGNED AND SEALED this _____ day of _____ 2009.

THE CORPORATION OF THE CITY OF PETERBOROUGH

MAYOR

CLERK

Schedule "A" to an Agreement between the Ministry of Transportation and The Corporation of the City of Peterborough



The Interchange Schedule depicting the limits of the detail design and construction area for this agreement.

