

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW #2567 (2004)

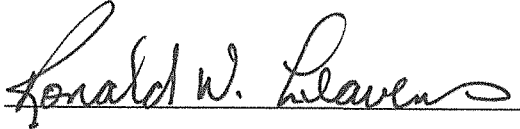
Being a by-law to authorize the Mayor & Clerk to enter into an Agreement with Meridian Planning Consultants Inc. re professional consulting services - Official Plan review and update.

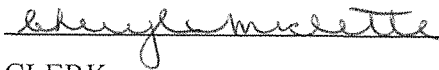
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into an Agreement with Meridian Planning Consultants Inc. For professional consulting services to carry out an Official Plan Review and Update;

NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Meridian Planning Consultants Inc. be and the same is hereby approved.
- (2) THAT the Mayor and Clerk be and each of them is hereby authorized and instructed on behalf of the Corporation of the Town of Pelham to execute the said agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
5th. DAY OF APRIL, 2004 A.D.


MAYOR


CLERK

**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES
OFFICIAL PLAN REVIEW AND UPDATE**

AGREEMENT made this 5th day of ^{April}~~March~~, 2004

- BETWEEN -

THE CORPORATION OF THE TOWN OF PELHAM
Hereinafter called the "**Client**"

- AND -

MERIDIAN PLANNING CONSULTANTS INC.
Hereinafter called the "**Consultant**"

WHEREAS the Client requires Consulting Services to be completed for the Project known as the Official Plan Review and Update, hereinafter called the "Project" and has requested the Consultant to furnish professional services in connection therewith;

THIS AGREEMENT WITNESSES in consideration of the covenants contained herein, the Client and the Consultant mutually agree as follows:

ARTICLE 1. GENERAL CONDITIONS

1.1 Ownership of Documents

All reports, documents, drawings and calculations that are prepared in connection with the Project are to be the exclusive property of the Client. Any future uses of these materials shall require authorization from the Client.

1.2 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 practise by the Consultant in the performance of service, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant.

The Client shall have a permanent, non-exclusive, royalty-free licence 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, for the life of the Project, and for no other purpose or project.

1.3 Confidential Data

The Consultant shall not divulge any confidential information acquired 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 approval in writing by the Client.

This requirement shall not prohibit the Consultant from acting to correct or report a situation, which the Consultant may reasonably believe to endanger the safety or welfare of the public, provided that the Consultant notifies the Client in advance, and in writing of what is intended.

1.4 Insurance

When requested, the Consultant shall supply to the Client a summary of insurance coverage currently being maintained by the Consultant, including but not exclusive to professional liability insurance, comprehensive general liability and automobile insurance. Such summary shall include the name of the insurance company, type of insurance and amount of such coverage.

As a minimum requirement, the Consultant will maintain, throughout the term of this Agreement and the completion of the Project, insurance coverage as specified as follows:

- (a) Comprehensive General Liability coverage in the amount of \$2,000,000;
- (b) Automobile Insurance for both owned and non-owned vehicles in the amount of \$2,000,000;
- (c) Professional Liability Insurance in the amount of \$5,000,000.

If the Client requests that the amount of coverage of the Consultant's insurance be increased beyond that specified above, or special insurance be obtained for this Project, the Consultant shall co-operate with the Client to obtain such increased or special insurance coverage at the Consultant's expense.

It is understood and agreed that the coverage provided by any one of the policies named above or specially required will not be changed or amended in any way nor cancelled by the Consultant without the Client's consent. All insurance policies shall contain a clause requiring insurance companies to provide the Client with a minimum of sixty (60) days written notice of any such change, amendment or cancellation.

1.5 Arbitration

The parties will use their best efforts to resolve amicably any dispute.

All matters in dispute under this Agreement may with the consent of both parties, be resolved using alternative dispute resolution options.

All matters in dispute under this Agreement may with the consent of both parties be referred to arbitration.

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.

The award of the arbitrator shall be final and binding upon the parties.

The provisions of the *Arbitrations Act, 1991, S.O. 1991, c.17* shall apply.

1.6 Successors and Assignment

This Agreement shall enure to the benefit of and be binding upon the parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors and assigns.

If a party to this Agreement who is an individual should desire to bring in a partner or partners, or if a party which is a partnership should desire to bring in a new partner or partners to share the benefits and obligations of this Agreement, they may do so by properly notifying the other party in writing of such intended action.

If a party to this Agreement is a partnership, and a partner thereof either dies or retires, the remaining parties therein shall form a new successor partnership to share the benefits and obligations of the Agreement.

Except as aforesaid, neither party shall assign this Agreement without the prior consent in writing of the other.

1.7 Termination and Suspension

The Client may at any time, and at its sole discretion, by notice in writing to the Consultant, suspend or terminate the services or any portion thereof at any stage during the provision of such services by the Consultant. Upon receipt of such written notice, the Consultant shall perform no further services other than those reasonably necessary to close out the Consultant's services. In such event, the Consultant shall be paid by the Client for all services performed up to the date of termination and for all disbursements incurred pursuant to this Agreement up to the date of termination and remaining unpaid as of the effective date of such termination.

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

1.8 Records and Audit

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 the salaries paid to, staff employed on the Project.

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 payroll multiplier basis as a result of this Agreement.

The Consultant, when requested by the Client, shall provide copies of receipts with respect to any disbursements for which the Consultant claims payment under this Agreement.

1.9 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, the employees, officers or agents of the Client may suffer as a sole result of the negligence or contributory negligence or wilful misconduct of the Consultant, the employees, officers or agents of the Consultant in the performance of this Agreement.

The Client shall indemnify the Consultant from any claims, damages, losses, and costs arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the wilful misconduct of the Client or its employees or agents in connection with the Project.

1.10 Subcontracting

The Consultant, or any person, firm or corporation associated or affiliated with or subsidiary to the Consultant, shall not tender for any or all of the execution of the Project or have an interest either directly or indirectly in the completion of the Project, without the prior written consent of the Client.

1.11 Changes and Alternations and Additional Services

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 submit a written estimate of the costs to complete the extra work for review and authorization by the Client.

ARTICLE 2. RESPONSIBILITIES OF THE CLIENT

2.1 The Client shall:

- (a) Provide the Consultant with copies of the Official Plan and the Town's Zoning By-law No. 1136 (1987);
- (b) Undertake reasonable efforts to make available to the Consultant; access to and where necessary and legal, copies of any existing maps, surveys, drawings or reports pertaining to the Project, that are in the Client's possession;
- (c) Review and respond to all documentation submitted by the Consultant, within two weeks unless agreed otherwise, to allow for orderly progress of the Consultant's services;
- (d) Obtain all required consents, approvals and licences and permits from authorities having jurisdiction;
- (e) Arrange and make provision for the Consultant's entry and access to public and private property in the performance of the duties;
- (f) Prepare and circulate agency notices, prepare and circulate public meeting notices and arrange and pay for advertising;
- (g) Designate in writing a representative to have authority to transmit instructions to and receive information from the Consultant.

The Consultant shall be entitled to rely upon the information, direction and approvals provided by the Client as being accurate in the performance of the Consultant's services under this Agreement.

ARTICLE 3. CONSULTING SERVICES PROVIDED UNDER THIS AGREEMENT

3.1 General

The standard of care applicable to the Consultants services will be the degree of skill and diligence normally employed by Consultants performing the same or similar services at the time said services are performed. The Consultant will reperform any services not meeting this standard without additional compensation.

3.2 Services to be Provided by the Consultant

The services to be provided by the Consultant are outlined in their submission dated December 17, 2003, identified as Proposal to Prepare a New Official Plan (File No. 9014), a copy of which is included as Attachment No. 1 to this Agreement.

3.3 Staff Changes

The Consultant shall require written approval from the Client for any changes in Project personnel set out in Attachment No. 1.

ARTICLE 4. FEES, DISBURSEMENTS AND PAYMENT

4.1 Definitions

4.1.1 Project Deliverables

The "Project Deliverables" shall mean all reports, documents, drawings and calculations that are to be provided by the Consultant under Section 3.2.

4.1.2 Cost of the Work

- (a) The "Cost of the Work" shall mean the total cost of the Project, including all materials, taxes (including Goods and Services Tax), labour and overhead and profit, necessary to complete the work for which the Consultant prepares reports, documents, calculations, drawings, designs or specifications for which the Consultant is responsible.
- (b) 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.

4.2 Basis of Payment

4.2.1 Project Fee

The Client shall pay the Consultant a fee for the services described in Article 3. The total fee shall not exceed \$65,444.72, including the Goods and Services Tax, and such fees shall include all disbursements. These fees shall not be exceeded without the prior written consent of the Client.

4.2.2 Disbursements

Disbursements are those direct cost and charges incurred for the Project including but not limited to the following: transportation; meals and lodging; mail; special Project specific insurance; Project specific equipment and/or supplies; field and/or laboratory testing and analysis; Consultants standard rates for mileage; telecommunication services and reprographics.

The Consultant may request payment for additional expenses incurred on behalf of the Client, provided these additional expenses extend beyond the scope of the original services and are initiated and authorized by the Client. The Consultant shall provide a detailed report of these items for which reimbursement is being requested.

4.3 Payment

4.3.1 Fees Calculated on a Time Basis

The Consultant agrees to invoice the Client only for those tasks outlined in Attachment No. 1, which have been completed the immediately preceding month. Interest at the annual rate of 12% (1% monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultant's invoice.

4.3.2 Holdback


A "holdback" of 10% of the amount specified in Section 4.2.1, will be maintained until completion of the Project Deliverables has been made.

4.3.3 Upset Limit

The Client will make no payments in excess of the amounts specified in 4.2.1 unless the Client has authorized additional services, pursuant to Section 1.12 or disbursement expenses, pursuant to Section 4.2.2, in writing by the Client.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their respective corporate seals under the hands of the respective authorized officers.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**



**CONSULTANT: MERIDIAN PLANNING
CONSULTANTS INC.**



Signature

I have authority to bind the Corporation

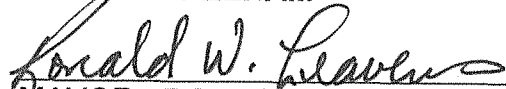
Name:

Robert Behrman (print)

Position:

President (print)

**CLIENT: THE CORPORATION OF THE
TOWN OF PELHAM**


MAYOR: RON LEAVENS
CLERK: CHERYL MICLETTE