

The Corporation of the Township of Whitewater Region

By-law Number 17-06-962

Being a by-law to authorize the Corporation of the Township of Whitewater Region to award the Fire Master Plan Request for Proposals to Dillon Consulting Inc.

Whereas, Section 5 of the Municipal Act, 2001 S.O. 2001, c.25 as amended states that the powers of a municipality shall be exercised by its Council and generally through by-law; and

Whereas, Section 9 of the Act states that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

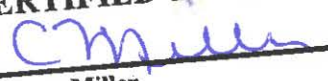
Whereas, Council deems it expedient and necessary to award the Request for Proposals for a Fire Master Plan to Dillon Consulting Inc.;

Now therefore Council of the Corporation of the Township of Whitewater Region enacts as follows:

1. That the Request for Proposals for the development of a Fire Master Plan be awarded to Dillon Consulting Inc. for \$57,876 (including HST).
2. That an additional contribution from the Fire Reserve in the amount of \$8,000 is hereby authorized to cover project costs not previously budgeted.
3. That the Mayor and Chief Administrative Officer/Clerk are hereby authorized and directed to execute the attached agreement on behalf of the Corporation of the Township of Whitewater Region and to affix to it the corporate seal of the Corporation of the Township of Whitewater Region.
4. That agreement attached hereto shall form a part of this By-Law.
5. This by-Law shall come into force and take effect upon the date of the final passing thereof.

Read a first, second and third time and finally passed this 7th day of June, 2017.

CERTIFIED TRUE COPY


Carmen Miller
Deputy Clerk
and Commission of Oaths
Township of Whitewater Region


Hal Johnson, Mayor


Robert H.A. Tremblay, Clerk

ARTICLE 4 – FORM OF AGREEMENT

CONSULTANT: DILLON CONSULTING LIMITED

The signatory shall have the authority to bind the corporation or company for the purposes of this agreement.

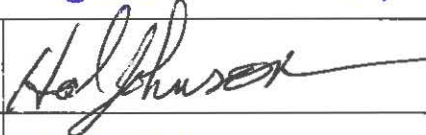

This Day of , 20

Signature	
Name	Claudio Covelli
Title	Partner / Officer

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

The signatory shall have the authority to bind the municipality or its agency for the purposes of this agreement.

This 7 Day of June, 20 17

Signature		Signature	
Name	Hal Johnson	Name	Robert Tremblay
Title	Mayor	Title	CAO/Clerk

M.E.A. / C.E.O.
CLIENT / CONSULTANT AGREEMENT
FOR
Professional Consulting Services
2016
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**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

Dated the 7th day of June A. D. 2017

-BETWEEN-

THE CORPORATION OF The Corporation of the Township of Whitewater Region

Hereinafter called the 'Client'

THE PARTY OF THE FIRST PART

-AND-

Dillon Consulting Limited

Hereinafter called the 'Consultant'

THE PARTY OF THE SECOND PART

WHEREAS the Client intends to engage the services of the Consultant in connection with the provision of services to complete a comprehensive Fire Master Plan for the Township of Whitewater.

Hereinafter called the 'Project' and has requested the Consultant to furnish professional services in connection therewith.

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

DEFINITIONS

- a) **Consultant** - 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.
- b) **Services** – The services are those outlined within the Consultant’s proposal submission dated May 17th, 2017, attached as **Schedule A**, with revisions to budget, schedule and work plan included as **Schedule B**.
- c) **RFP** – The Client’s Request for Proposal document, Proposal Number 201-04, attached as **Schedule C**.
- d) **Addenda** – Addendum #1 dated May 9th, 2017, attached as **Schedule D**.
- e) **Order of Precedence:**
 - i. Revised budget, schedule and work plan (**Schedule B**)
 - ii. Proposal submission document (**Schedule A**)
 - iii. Addendum (**Schedule D**)
 - iv. Request for Proposal issued (**Schedule C**)

ARTICLE 1 - GENERAL CONDITIONS

1.1 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 in Schedule 'A' and Schedule 'B' (The Services) for the Project under the general direction and control of the Client.

1.2 Compensation

The Client shall pay the Consultant in accordance with the provisions set forth in Article 3. For purposes of this agreement, the basis of payment shall be as specified in Article 3.2.3.

1.3 Staff and Methods

The Consultant shall perform the services under this agreement with the degree of care, skill and diligence normally provided in the performance of such services as contemplated by the agreement at the time such services are rendered and as required by the Professional Consultants Act (RSO 1990, Chapter P.28) and the regulations therein. The Consultant shall employ only competent staff who will be under the supervision of a senior member of the Consultant's staff. The Consultant shall obtain the prior agreement of the Client before making any changes to the staff list after commencement of the Project.

1.4 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 "record" drawings. The Client has ownership of the drawings and the client indemnifies the Consultant for unauthorized use of the documents and deliverables.

1.5 Intellectual Property

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.

1.6 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 staff employed for the Project.
- b) The Client may inspect timesheets and record of expenses and disbursements 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.
- d) For seven (7) years after the expiry date or any date of termination of the Agreement, the Consultant shall maintain all necessary records to substantiate i) all charges and payments under the Agreement and ii) that all deliverables were provided in accordance with the Agreement.

1.7 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 3.2.2.1 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Section 3.2.4, or as otherwise agreed in writing between the parties

1.8 Delays

In the event that the start of the project is delayed for sixty (60) days or more for reasons beyond the control of the consultant, the Consultant shall have the right to renegotiate the agreement before the commencement of the project.

1.9 Suspension or Termination

The Client may at any time by notice in writing suspend or terminate the Services or any portion thereof at any stage of the project. 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 for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.

If the Consultant is practicing 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, to the extent the Consultant is legally liable as a result of the negligent acts 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 claims, actions, losses, expenses, costs or damages of every nature including liability and costs of defense 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 negligent acts of the Consultant in the performance of consulting services to the Client within this project.

1.11 Insurance

The Client will accept the insurance coverage amount specified in this clause section (a) and (b) or as specified in the RFP as the aggregate limit of liability of the Consultant for Clients damages.

a) Comprehensive General Liability and Automobile Insurance

The Insurance Coverage shall be \$2,000,000 per occurrence and in the aggregate for general liability and \$2,000,000 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 in the amount of \$2,000,000 per claim and in the aggregate. When requested, the Consultant shall provide to the Client proof of Professional Liability Insurance carried by the Consultant, and in accordance with Professional Consultants Act (RSO 1990, Chapter P.28) and Regulations therein.

c) Additional Coverage

If the Client requests to have the amount of coverage increased from that detailed in the RFP, or requests other special insurance for this Project then the Consultant shall endeavour forthwith to obtain such additional or special insurance at the Client's expense as a disbursement allowed under Section 3.2.

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 (30) days after written notice of such change or cancellation has been delivered to and acknowledged by the Client.

1.12 **Force Majeure**

The Client agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labour disputes; severe weather disruptions or other natural disasters or acts of God; fires; riots, war or other emergencies; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if such delays resulting from any such causes increase the cost or time required by the Consultant to perform its services in an orderly and efficient manner, the Consultant shall be entitled to a reasonable adjustment in schedule and compensation.

1.13 **Contracting for Construction**

The Consultant or any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall not tender for the construction of the Project, or have an interest either directly or indirectly in the construction of the Project.

1.14 **Assignment**

Neither party may assign this Agreement or any portion thereof without the prior consent in writing of the other party.

1.15 **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.

1.16 **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 approval or review 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. Costs for all application fees shall be borne by the Client unless otherwise provided for by the Consultant. The foregoing in no way limits the Consultant's responsibility to identify, understand and coordinate any and all approvals and permits required for the Project unless otherwise specified in the RFP or agreed to by the Client.

1.17 **Sub-Consultants**

The Consultant may engage Sub-Consultants 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.

1.18 Inspection (Review by the Client)

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.

1.19 Publication

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

1.20 Confidential Data

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by him, or disclosed by the client in the course of carrying out the Services provided for herein. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the Consultant by a third party without obligation of confidentiality, which is independently developed by the Consultant without access to the Client's information, or which is required to be disclosed by law or court order. No such information shall be used by the Consultant on any other project without the approval in writing of the Client.

1.21 Dispute Resolution

1) Negotiation

- a) In the event a matter of difference between the Consultant and the Client in relation to the Contract the grieved party shall send a notice in writing of dispute to the other party which contains the particulars of the matter in dispute and the relevant provisions of the Contract Documents. The responding party shall send a reply in writing to the dispute within ten (10) business days after receipt of the notice of dispute setting out particulars of this response and any relevant provisions of the Contract Documents.
- b) The Consultant and the Client shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of any and all relevant facts, information, and documents to facilitate these negotiations.
- c) In the event of failure by the Consultant and the Client to reach agreement within ten (10) business days of receipt of the responding party's reply, or if either party concludes that further negotiation is unlikely to result in agreement, the matter shall be referred to mediation as provided in Section 2 herein.

2) Mediation

- a) The Consultant and the Client shall jointly select an impartial Mediator who shall be, preferably, properly qualified in the area of work as contemplated by this Contract. In the event that the parties, acting reasonably, cannot agree on a

mediator, the candidates selected by the parties shall, acting reasonably, choose a third party to act as the Mediator.

- b) The Mediator shall meet with the parties within ten (10) business days after the selection of the Mediator selection to attempt to mediate and resolve the dispute. The Consultant and the Client shall observe such reasonable procedures for conducting the mediation as the Mediator may reasonably request.
- c) If not agreement is reached within twenty (20) business days of the selection of the Mediator or if either party concludes that further mediation is unlikely to result in agreement, then either the Consultant or the Client may request the Mediator to recommend (and only recommend) a basis, or bases, for resolution of the dispute. The Mediator shall, after consideration of the parties' positions and written submissions (if so requested), issue a written recommendation in this regard. Any recommended basis for resolution shall have absolutely no binding effect upon either party unless both parties agree to accept it and shall be without prejudice to the parties' positions in any further proceeding.
- d) If no agreement is reached either party may refer such matter as is arbitrable to arbitration as provided in Section 3 herein or exercise any legal rights it may have.
- e) All meetings and proceedings shall be held in municipality of the Client or a reasonable alternate at a time and location as determined by the parties.
- f) The costs and expenses of the Mediator shall be shared equally by the Consultant and the Client.

3) Arbitration

- a) In the event that the parties are unable to settle any dispute between them which is under mediation, either party may refer such matter to arbitration as provided herein:
 - i. The Client and the Consultant shall select an arbitrator within ten (10) business days of the submission of a dispute to arbitration under this Section. If the parties are unable to agree on a neutral arbitrator, each party shall appoint an arbitrator within ten (10) business days, and the two (2) arbitrators so chosen shall select a third arbitrator acceptable to both of them within a further ten (10) business days.
 - ii. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, C.17, unless the parties otherwise agree. If the issue in dispute is particularly time sensitive, the parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process. In any event, all disputes shall be submitted to the arbitrator within thirty (30) calendar days of the selection of the arbitrator. All arbitration meetings and proceedings shall be held in municipality of the Client or a reasonable alternate, at a time and location determined by the parties, but in any event no later

than thirty (30) calendar days following the submission of the dispute to the arbitrator.

- iii. In addition to the examination of the parties by each other, the arbitration panel may examine, in the ordinary course, the parties or either of them and the witnesses in the matter referred to the arbitration panel, and the parties and witnesses, if examined, shall be examined on oath or affirmation.
- iv. The arbitration panel shall, after full consideration of the issues in dispute, the relevant facts and applicable law, render a decision within thirty (30) calendar days after argument of the issue to the arbitrator, which decision shall be final and binding on the parties and not subject to appeal or challenge, except such limited relief provided under Subsection 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the *Arbitration Act, 1991*.
- v. Each party shall bear its own costs and expenses incurred in the arbitration, and the parties shall share equally in the costs and expenses of the neutral arbitrator.
- vi. Any award of the arbitration panel may, at the instance of either of the parties to this Agreement and without notice to the other of them, be made an Order of the Superior Court of Ontario, pursuant to the *Arbitration Act, 1991* and the *Courts of Justice Act, R.S.O. 1990, c.C-43*.

1.22 Time

The Consultant shall perform the Services in accordance with the requirements of Schedule A and shall complete any portion or portions of the Services in such order as the Client may require.

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.

1.23 Estimates, Schedules and Staff List

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

When requested by the Client, and where payment is calculated on a time basis, the Consultant shall 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 hourly rate ranges for staff, 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.

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

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

- a) Any increase in the estimated fees beyond those approved under Subsection 1.23.1 (a).
- b) Any change in the schedule at progress which results in a longer period than provided in Subsection 1.23.1 (b).
- c) Any change in the number, classification and hourly rate ranges of the staff provided under Subsection 1.23.1 (c).

1.23.3 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.

1.24 Health & Safety and WSIB

The Consultant will comply with the *Occupational Health and Safety Act* related to the performance of services. In addition, the Consultant will supply the Township with a valid Clearance Certificate issued by the WSIB. A new Clearance Certificate is required every sixty (60) days. The Consultant will complete the Township's Contractor's Acknowledgement Form prior to commencement of work.

1.25 Accessibility of Ontarians with Disabilities Act (AODA)

It is the responsibility of the Consultant to ensure that it is fully aware of, and meets the requirements under the AODA and associated regulations.

ARTICLE 2 – SERVICES TO BE PROVIDED

- 2.01 Services to be provided by Consultant as detailed in the RFP (and Addendum) and as provided for in the Consultant's Proposal and revised budget, schedule and work plan.
- 2.02 Services to be provided by Client as detailed in the RFP (and Addendum) and as provided for in the Consultant's Proposal and revised budget, schedule and work plan.

ARTICLE 3 - FEES AND DISBURSEMENTS

3.1 Definitions

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

a) Cost of the Work:

- i. The "Cost of the Work" shall mean the total construction 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 (1/10%).
- ii. Wherever the Client furnishes labour or 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 materials or equipment is furnished by or on behalf of the Client, the fair market value of such materials 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.
- v. The Cost of the Work shall not include any fees and disbursements due to the Consultant, the Client's engineering and office expenses, or cost of land.

b) Site:

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

3.2 Basis of Payment

3.2.3 Lump Sum Fee

3.2.3.1 Lump Sum Fee Basis

- a) Fees for the scope of work covered under this Agreement will be on a Lump Sum Price Basis, inclusive of labour, disbursements and reimbursable expenses.
- b) Monthly progress invoices will be based on the percentage of project completed. Invoices for fees are due upon presentation. Accounts unpaid after 30 days are subject to monthly interest charges at a rate equivalent to the average bank prime rate plus 4 per cent per annum. The Consultant reserves the right, without penalty, to discontinue services in the event of non-payment after a sixty (60) period from the date of the invoice.
- c) If the project is abandoned or delayed for any reason beyond the Consultant's control, the Client shall pay a fee for services rendered to that date, plus the termination expenses reasonably incurred by the Consultant in winding down the project.
- d) HST will be added to the Lump Sum Price.