

The Corporation of the Township of Whitewater Region

By-law Number 17-06-965

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**Being a by-law to award the contract for detailed design & engineering services for the reconstruction of John Street, Truelove Street and Crawford Street to Jp2g Consultants 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

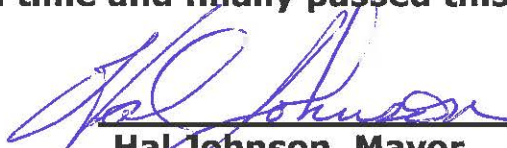
**Whereas**, Section 9 of the Act states that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

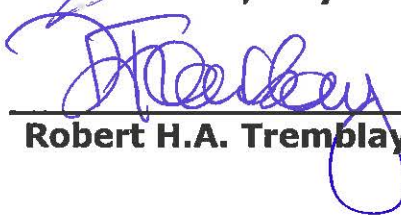
**Whereas**, Council deems it expedient and necessary to award the Request for Proposals for the detailed design and engineering to Jp2g Consultants Inc.;

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

1. That the detailed design & engineering services for the reconstruction of 91 metres of John Street, 226 metres of Truelove Street and 140 metres of Crawford Street in Cobden be awarded to Jp2g Consultants Inc. for \$198,549 (including HST).
2. That the Mayor and Chief Administrative Officer/Clerk are hereby authorized and directed to execute the attached engineering agreement on behalf of the Corporation of the Township of Whitewater Region.
3. That the agreement attached hereto shall form a part of this by-Law.
4. 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 21st day of June, 2017.**

  
\_\_\_\_\_  
**Hal Johnson, Mayor**

  
\_\_\_\_\_  
**Robert H.A. Tremblay, Clerk**

**M.E.A./C.E.O.  
CLIENT/CONSULTANT AGREEMENT  
FOR  
MUNICIPAL WORKS**

**DETAILED DESIGN & ENGINEERING  
SERVICES FOR THE RECONSTRUCTION  
OF JOHN STREET, TRUELOVE STREET  
AND CRAWFORD STREET  
TOWNSHIP OF WHITEWATER REGION**

**M.E.A./C.E.O.  
CLIENT/CONSULTANT AGREEMENT  
FOR  
MUNICIPAL WORKS  
2006**

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**AGREEMENT  
FOR  
PROFESSIONAL CONSULTING SERVICES**

**MEMORANDUM OF AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_

A. D. 2017

-BETWEEN -

**THE CORPORATION OF** Township of Whitewater Region

Hereinafter called the 'Client'

THE PARTY OF THE FIRST PART

-AND-

**Jp2g Consultants Inc., Engineers · Planners · Project Managers**

Hereinafter called the 'Consultant'

THE PARTY OF THE SECOND PART

WHEREAS the Client intends to reconstruct 91m of John Street, 226m of Truelove Street and 140m of Crawford Street, hereinafter called the 'Project', and has requested the Consultant to furnish professional services in connection therewith, as outlined in Schedules 'A' & 'B';

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

## **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. For purposes of this agreement, the basis of payment shall be as specified in Article 3.2.1.

### **1.04 Staff and Methods**

The Consultant shall perform the services under this agreement with that 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 Engineers Act (RSO 1990, Chapter P. 28) and regulations therein. The Consultant shall employ only 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, including record drawings, may be used by the Client, for the Project herein described. In accordance with Article 1.06, the client indemnifies the Consultant for unauthorized use of the documents and deliverables.

### **1.06 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 considered as Intellectual Property 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 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.

**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. In the event that the client delays the project then the consultant shall have the right to renegotiate the agreement.

**1.09 Suspension or Termination**

Either party may at any time by notice in writing to the other party, 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 claim, losses, damages, 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) as the aggregate limit of liability of the Consultant and its employees for the Client's 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 the Professional Engineers Act (RSO 1990, Chapter P. 28) 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.

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 thirty (30) days after written notice of such change or cancellations has been personally delivered to the Client.

**1.12 Contracting for Construction**

Neither the Consultant nor any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall tender for the construction of the Project, or have an interest either directly or indirectly in the construction of the Project.

**1.13 Assignment**

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

**1.14 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.

**1.15 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.

**1.16 Principals and Executives**

The use of Principals and Executives on a time basis by the Consultant, will be in accordance with Section 1.23.1 (c).

**1.17 Sub-Consultants**

The Consultant may engage others as 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 plus the cost of the additional insurance incurred by the Consultant for the specialized services.

**1.18 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.

**1.19 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 by 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**

- (a) If requested in writing by either the Client or the Consultant, the Client and the Consultant shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of ninety (90) calendar days with the mediator, the dispute shall be referred to and finally resolved by arbitration under the rules of the province having jurisdiction or by an arbitrator appointed by the agreement of the parties.
- (b) No person shall be appointed to act as mediator or 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, including an award for costs if applicable, shall be final and binding upon the parties.
- (d) The provisions of The Arbitration's Act, R.S.O., 1991, Chapter 17, as amended shall apply.

**1.22 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.

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.



**ARTICLE 2 - SERVICES**

**2.01 Services to be provided by Consultant**

1. Scope of Work Included in as Schedule 'B'.

**2.02 Additional Services Available**

1. Advisory services consisting of the following:
  - Environmental Impact Study (EIS)
  - Species at Risk
  - Other Special Consultation and advice
2. ~~Preparation of feasibility studies comparing alternate routes for services and alternative methods of construction or materials in terms of:~~
  - ~~\_\_\_\_\_ capital cost~~
  - ~~\_\_\_\_\_ land requirements~~
  - ~~\_\_\_\_\_ operating efficiency~~
  - ~~\_\_\_\_\_ environmental conservation~~
  - energy conservation
3. Appearance on behalf of the Client at public hearings before the Environmental Assessment Board, the Ontario Municipal Board or other public authorities, regarding the environmental impact of the Project, the method of charging for the works and property evaluation for easements and purchases.
4. Appearance in litigation, arbitration proceedings and attendance at hearings on behalf of the Client.
5. Obtaining of photogrammetric mapping.
6. Assist in the preparation of local improvement assessment sheets, attendance at the Court of Revision and similar services under The Municipal Act, The Public Utilities Act or the Drainage Act, to the degree requested by the Client.
7. Preparation of the proposed allocation of costs between the Client and the municipalities, authorities or private interests, including advising with respect to the administration of extended financial arrangements, computation of principal and interest and preparation of accounts.
8. Services resulting from a Contractor's insolvency.
9. Preparation of changes in design where required by factors beyond the control of the Consultant.
10. Carrying out prolonged negotiations with public authorities on behalf of the Client.

**2.03 Client's Services for General Municipal Project**

The Client shall provide the Consultant with the following Services, notwithstanding that, should the Client be unable to provide any of the Services hereunder, services under (1) may be assigned to the Consultant under Section 1.08:

1. Access to and, where necessary, copies of existing plans, profiles or other topographic information showing or pertaining to existing conditions within the Project area.
2. ~~Registered land plans, legal documents and surveys, where necessary, defining the property limits of existing rights of way and other parcels of land affected by the Project, and as required in the acquisition of property and lands for the Project.~~
3. General direction of the Consultant in the provision of the Services and approvals from time to time as necessary during the currency of this Agreement.
4. Any information regarding utilities necessary for the preparation of the plans referred to in Section 2.01 in the possession of the Client.
5. Any information, Functional Study or Predesign Investigation undertaken for the Project or any adjoining property.
6. Arrange and make provision for the Consultant's entry and ready access to property (public and private) as well as to the site of the Project, as necessary to enable him to perform his services.
7. Designate in writing an individual to act as his Representative who will 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 pursuant to Clauses 1 through 7 hereof, inclusive, as being accurate in the performance of the Consultant's Services under this Agreement.

**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 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 (STRIKE OUT INAPPLICABLE PARAGRAPHS)**

**~~3.2.1 Fees Calculated on a Percentage of Cost Basis~~**

~~The Client shall pay the Consultant fees to be calculated as a percentage of the Cost of the Work for normal projects as follows:~~

~~CALCULATION OF FEE~~

| <del>TYPE OF SERVICE</del> | <del>PERCENTAGE</del> |
|----------------------------|-----------------------|
| <del>_____</del>           | <del>_____</del>      |
| <del>_____</del>           | <del>_____</del>      |
| <del>_____</del>           | <del>_____</del>      |
| <del>_____</del>           | <del>_____</del>      |

**3.2.2 Fees Calculated on a Time-Basis**

**3.2.2.1 Time Basis**

The Client shall pay the Consultant a fee, calculated on a time basis, for that part of the Services described in Article 2. Fees on a time basis for all staff shall be hourly rates based on job classifications as follows:

Classification:            Hourly Rate.

For a project of over one (1) year duration, or for projects which become extended beyond one (1) year in duration, the consultant may from time to time seek approval from the client to adjust hourly rates and such approval shall not be unreasonably withheld.

**3.2.2.2 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 Lump-Sum Fee / Negotiated 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 Fee Basis, inclusive for labour and reimbursable expenses.
- (b) Monthly progress invoices will be based on the percentage of project completed or milestone achieved. Invoices for fees are due upon presentation. Accounts unpaid after 30 days are subject to monthly interest charges at a rate of 4% per annum. The Consultant reserves the right, without penalty, to discontinue services in the event of non-payment.
- (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 Fee.

**3.2.4 Reimbursable Expenses**

In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 0% for expenses properly incurred by him in connection with the project including, but not limited to: vehicle use charges by field staff, long distance telephone charges, printing and reproductions, progress photography, advertising for tenders, special delivery and express charges.

**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. Interest at the annual rate of \_\_\_ percent ( \_\_\_ percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultant's invoice.

**3.3.2 Fees Calculated on a Percentage of Cost Basis**

(a) Monthly Payment

The Consultant shall submit an invoice to the Client for that part of the design of the Project completed in the immediately preceding month calculated upon the basis of the Consultant's estimate of the cost of that part of the Project, and, if the Client agrees with such estimate and that such part has been completed, the Consultant will be paid the amount of the fee so invoiced. Interest at the annual rate of 6 percent (0.5 percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultants' invoice.

(b) On Award of Contract

Following the award of the contract for the construction of the Project, the Consultant shall recalculate his fee on the basis of the tender quantities and prices on which the contract for the construction of the Project was awarded, plus the estimated cost of materials and other services supplied by the Client and upon such recalculation, the amount paid to the Consultant shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Consultant of any overpayment made to the Consultant.

(c) Delay of Award of Contract

In the event the contract for construction of the Project is not awarded within \_\_\_ months of the acceptance of the Design by the Client the final fee for design shall be determined as in paragraph (a) above, and paragraph (b) shall not apply. Further services for the Project beyond the \_\_\_ months will be undertaken on a time basis.

(d) On Completion of the Work

Following Completion of the Work, the Consultant shall recalculate his fee on the basis of the actual cost of the work and upon such recalculation the amount paid to the Consultant shall be adjusted to equal the full amount of the recalculated fee including the repayment by the Consultant of any overpayment to the Consultant.

**3.3.3 Lump Sum Fee/Negotiated Fee**

(a) Compensation

The Client will compensate the Consultant in accordance with the fees and charges for services as set out in in Schedules 'B' or as otherwise mutually agreed. All fees and charges will be payable in Canadian funds unless noted otherwise. Invoices will be due and payable, as presented and without hold backs, by the Client upon receipt. Interest on overdue accounts will be charged at the rate of 4% per annum.

**SCHEDULE 'A'**

**Request for Proposal**

**2017-02**

**The Provision of Detailed Design & Engineering  
Services for the Reconstruction of 91 metres John  
Street, 226 metres Truelove Street and 140 metres  
Crawford Street, Cobden ON**

**SCHEDULE 'B'**

**Jp2g Consultant Inc.**

**Proposal**

**Engineering Services for the Reconstruction of 91 metres of John Street, 226 metres of Truelove Street and 140 metres of Crawford Street, in Cobden ON**

**Dated: May 17, 2017**



**SIGNED, SEALED AND DELIVERED**

in the presence of: ) \_\_\_\_\_  
) \_\_\_\_\_  
) \_\_\_\_\_  
) \_\_\_\_\_  
) \_\_\_\_\_  
) \_\_\_\_\_

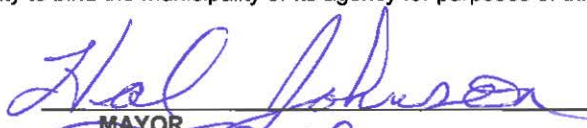
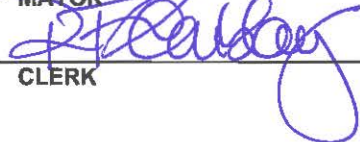
**CONSULTANT**

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

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

**THE CORPORATION OF**

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

  
\_\_\_\_\_  
MAYOR  
  
\_\_\_\_\_  
CLERK