

The Corporation of the Township of Whitewater Region

By-law Number 17-11-1007

Being a by-law to award the Community Improvement Plan – Phase Two to J.L. Richards & Associates Limited

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 Community Improvement Plan – Phase Two to J.L. Richards & Associates Limited;

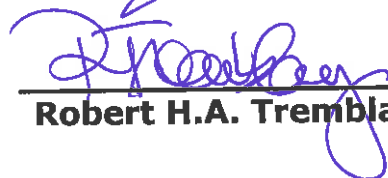
Now therefore Council of the Corporation of the Township of Whitewater Region enacts as follows:

1. That the Request for Proposals for the development of a Community Improvement Plan – Phase Two be awarded to J.L. Richards & Associates Limited for \$ 26,635.70 (including HST).
2. That the Mayor and Chief Administrative Officer/Clerk are hereby authorized and directed to execute any necessary professional services 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.
3. 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 1st day of November, 2017.



Hal Johnson, Mayor



Robert H.A. Tremblay, Clerk

**THE CORPORATATION OF THE TOWNSHIP OF WHITEWATER REGION
CONSULTANTS AGREEMENT**

- 1 -

**AGREEMENT
FOR
PROFESSIONAL CONSULTING SERVICES**

MEMORANDUM OF AGREEMENT made in duplicate dated the 1 day of November, 2017

-BETWEEN-

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

Hereinafter called the 'Client'

THE PARTY OF THE FIRST PART

-AND-

J.L. RICHARDS & ASSOCIATES LIMITED

Hereinafter called the 'Consultant'

THE PARTY OF THE SECOND PART

WHEREAS the Client intends to complete a **COMMUNITY IMPROVEMENT PLAN (PHASE TWO)** 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:

**J.L. RICHARDS & ASSOCIATES LIMITED (JLR)
STANDARD TERMS AND CONDITIONS**

1. **ENTIRE AGREEMENT:** Upon authorization by The Corporation of the Township of Whitewater Region (herein referred to as the "CLIENT") and commencement of performance hereunder, these terms constitute the entire Agreement between the parties concerning its subject matter and supersede any prior discussions and agreement (written or oral). The CLIENT acknowledges and agrees that its use of any purchase order or other form to procure services is solely for administrative purposes and JLR shall not be bound to any terms and conditions contained within such a form regardless of reference or signature. In the event of a conflict between the written proposal letter and the terms of this Agreement the proposal letter shall take precedence.
2. **SCOPE OF SERVICES:** The CLIENT and J.L. Richards & Associates Limited ("JLR") have agreed to a scope of services outlined in our proposal dated October 24, 2017 to which is attached these Terms and Conditions. Services not identified in the scope of services in the fee proposal letter are specifically excluded from this Agreement.
3. **CHANGES:** Upon receipt of a written change in the scope of work request from the CLIENT or in situations where it becomes necessary to affect a change in the scope of the work, JLR shall notify the CLIENT in writing, regarding the impact of the request on the fees and/or schedule. Any changes or additional conditions between JLR and the CLIENT shall promptly, and in good faith, be negotiated, stated in writing, and mutually agreed to by both parties.
4. **SITE INFORMATION AND ACCESS:** The CLIENT, at its own expense, shall make available to JLR all relevant project information and documentation under the CLIENT's control regarding past, present and proposed conditions of the site. JLR will provide a list of any required documentation to the CLIENT for its action. During the term of this Agreement, the CLIENT shall immediately notify JLR of any new information that becomes available and/or any change in plans. JLR assumes no responsibility or liability for the accuracy and/or completeness of such information, or the impact any inaccurate project information may have on JLR's services. The CLIENT shall make all necessary arrangements for right of entry in order to provide JLR personnel access to the site at no cost to JLR throughout the performance of this Agreement.
5. **PERMITS AND UTILITIES:** The CLIENT shall apply for and obtain all required permits and licenses. The CLIENT shall provide JLR with the location of all relevant underground utilities and buried structures, and shall ensure that all information provided is in accordance with applicable laws and regulations. The CLIENT warrants the accuracy of this information.
6. **PAYMENT AND SUSPENSION:** Unless otherwise stated, invoices will be submitted on a monthly basis. Invoices are due and payable within thirty (30) days of the invoice date. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late fee of two (2%) per month computed at thirty-one (31) days from the date of invoice. In addition, any collection fees, legal fees, court costs, and other related expenses incurred by JLR in connection with the collection of delinquent invoices shall be paid by the CLIENT. In the event the CLIENT disputes all or part of an invoice, the CLIENT must advise JLR, in writing, within fifteen (15) days from the invoice date. Undisputed portions are subject to payment within thirty (30) days. JLR may suspend performance of services under this Agreement if:
 - .1 the CLIENT fails to make the payment in accordance with the terms hereof; and/or
 - .2 the CLIENT becomes insolvent, enters bankruptcy, receivership, or other like proceeding (voluntary or involuntary) or makes an assignment for the benefit of creditors.

If any such suspension causes an increase in the time required for JLR's performance of the contract, then the schedule and/or period for performance shall be extended for a period of time equal to the suspension period. If payment remains past due sixty (60) days from the

date of the invoice, then JLR shall have the right to suspend or terminate all services under this Agreement without prejudice or penalty, if applicable. The CLIENT shall pay all reasonable costs associated with the suspension or termination of the services under this Agreement.

7. **OWNERSHIP RIGHTS:** All documents produced by JLR are copyright protected and are the sole property of JLR. At the request and expense of the CLIENT, JLR shall provide the CLIENT with hard copies of all deliverables specified in the proposal. JLR will not be responsible for the reuse of any document without its expressed written permission.
8. **STANDARD OF CARE:** In the performance of professional services, JLR shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the province/locality of the JLR office performing the work. No warranty, expressed or implied, is made or intended by this Agreement, or by furnishing oral or written reports of the findings. JLR is to be liable only for any direct damages caused by the negligent acts or negligent failure to act by JLR in discharging its professional duties
9. **CERTIFICATIONS, GUARANTEES AND WARRANTIES:** JLR shall not be required to sign any documents, no matter by whom requested, that would result in JLR having to certify, guarantee or warrant the existence of conditions whose existence JLR cannot ascertain. The CLIENT also agrees not to make resolution of any dispute with JLR or payment of any amount due to JLR in any way contingent upon JLR's signing any such certification.
10. **INSURANCE:** JLR shall maintain the following Insurance in the amounts of:
 - .1 Workplace Safety & Insurance Board (per statutory requirements)
 - .2 Automobile Liability \$2,000,000
 - .3 Commercial General Liability:

Each Occurrence	\$1,000,000
Policy Aggregate	\$2,000,000
 - .4 Professional Liability Insurance:

Each Occurrence	\$1,000,000
Policy Aggregates	\$3,000,000
11. **INDEMNITY:** Subject to Section 14 hereof, the CLIENT agrees to indemnify and save harmless JLR and its shareholders, directors, officers, employees, advisors and agents from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses incurred, suffered or sustained as a result of JLR performing the services other than negligent services.
12. **ENVIRONMENTAL LIABILITY:** Because the CLIENT owns and/or operates the site where work is being performed, the CLIENT has and shall retain all responsibility and liability associated with the environmental conditions at the site. Unless specifically identified elsewhere, the CLIENT's responsibility and liability includes the handling and disposal of any samples or hazardous materials.
13. **CONSEQUENTIAL DAMAGES:** Neither JLR nor the CLIENT shall be held responsible for consequential damages, incidental or indirect, because of any alleged failures by either party.
14. **LIMITATION OF LIABILITY:** Notwithstanding any other provision of this Agreement, the total liability of JLR, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to JLR for the services hereunder or \$50,000, whichever is less.

15. **THIRD-PARTY BENEFICIARIES:** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favour of a third party against either the CLIENT or JLR. JLR's services under this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against JLR because of this Agreement or the performance or non-performance of services hereunder. The CLIENT and JLR agree to require a similar provision in all contracts with contractors, subcontractors, sub-consultants, vendors and other entities involved in this project to carry out the intent of this provision.
16. **PUBLIC RESPONSIBILITY:** JLR shall endeavour to alert the CLIENT to any matter of which JLR becomes aware and believes requires the CLIENT's immediate attention to help protect public health and safety, or which JLR believes requires the CLIENT to notify others, or otherwise conform to applicable codes, standards, regulations or ordinances. If the CLIENT decides to disregard JLR's recommendations in these respects:
- .1 JLR shall determine in its sole judgment if it has a duty to notify public officials; and
 - .2 If there is an unaddressed risk to the public, JLR has the right to immediately terminate this Agreement upon written notice to the CLIENT and without penalty.
17. **DISPUTES:** Any dispute arising hereunder shall first be resolved by taking the following steps, where a successive step is taken if the issue is not resolved at the preceding step:
- .1 By the technical and contractual personnel of both JLR and the CLIENT;
 - .2 By executive management of each party;
 - .3 By mediation; or
 - .4 Through the court system of the Province of Ontario.
- The CLIENT hereby waives the right to trial by jury for any disputes arising out of this Agreement. Except as otherwise provided herein, each party shall be responsible for its own legal fees and costs.
18. **ASSIGNMENT:** Neither party shall assign its interest in this Agreement without the written consent of the other.
19. **CHOICE OF LAWS:** This Agreement shall be governed by the laws of the Province of Ontario and any federal laws applicable thereto.
20. **FORCE MAJEURE:** Should performance of services by JLR be affected by causes beyond its reasonable control, including but not limited to: acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged by JLR; fires; floods; labour disturbances; unusually severe weather and/or an epidemic; then the CLIENT shall grant JLR a time extension and the parties shall negotiate an equitable adjustment to the price of any affected services, where appropriate.
21. **FIELD REPRESENTATION:** JLR shall not assume the role of "prime contractor", "principal contractor", "constructor", "controlling employer", or their equivalents unless the scope of such services are expressly agreed to in writing.
22. **TERMINATION:** This Agreement may be terminated by either party, for any reason, upon ten (10) days written notice to the other. In the event of termination due to the suspension or abandonment of the project, or any breach of this Agreement, JLR shall be paid within thirty (30) days of the invoice date for all services performed to the effective termination date, including reimbursable expenses, applicable taxes and any termination expenses incurred.

23. **JOBSITE SAFETY:** Neither the professional activities of the Consultant, nor the presence of the Consultant or its employees and sub-consultants at a project site and/or construction site, shall impose any duty to the Consultant, nor relieve the client and/or the General Contractor of its obligations, duties and responsibilities to provide a safe working environment including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions, required by any regulatory agencies.

The Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health and safety programs or procedures. It is agreed that both the Client and/or the Contractor shall be solely responsible for the project site and/or the construction site and worker safety, and warrants that this intent shall be carried out in the Client's and/or the Contractor's contract. It is also agreed that both the Client and/or the General Contractor shall defend and indemnify the Consultant and the Consultant's sub-consultants. If applicable, the Client also agrees that the Client, the Consultant and the Consultant's sub-consultants shall be made additional insureds under the General Contractor's policies of general liability insurance.

The Consultant retains the right to refuse services (at no cost to the Consultant) if, in the opinion of the Consultant upon accessing the site, the site conditions in immediate relation to the Work are not up to regulatory standards whether local, Provincial or Federal (if applicable).

24. **CODE COMPLIANCE:** The Consultant shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect during the Terms of the Agreement. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over this Project, the Consultant shall notify the Client of the nature and impact of such conflict. The Client agrees to cooperate and work with the Consultant in an effort to resolve this conflict.
25. **SEVERABILITY:** If any term or provision of this Agreement is held to be invalid, or unenforceable under the applicable statute or rule of law, such holding shall be applied only to the provision so held and the remainder of this Agreement shall remain in full force and effect.
26. **SURVIVAL:** All limitations of liability, indemnifications, warranties and representations contained in this Agreement shall survive the completion or termination of this Agreement and shall remain in full force and effect.

SIGNED, SEALED AND DELIVERED

in the presence of:

) _____
) _____
) _____
) _____
) _____

J.L. RICHARDS & ASSOCIATES LIMITED

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

Per:

(Signature)

(Name)

(Title)

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

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

Per:



Hal Johnson, Mayor



Robert Tremblay, CAO/Clerk

TRANSMITTAL

RECEIVED
NOV 28 2017



**J.L. Richards
& Associates Limited**
864 Lady Ellen Place
Ottawa, ON Canada
K1Z 5M2
Tel: 613 728 3571
Fax: 613 728 6012

Page 1 of 1

Date: November 24, 2017 JLR No.: 27776-000.1 Send Via: CANADA POST

To: Township of Whitewater Region
44 Main Street, P.O. Box 40
Cobden, Ontario
K0J 1K0

Re: Agreement

ATTN: Carmen Miller, Deputy Clerk

CC:

The following documents are enclosed:

COPIES	DOCUMENTS/DRAWINGS	DESCRIPTION
1	Agreement	Signed Page.

Comments:
Please find enclosed a signed copy (page) of the Agreement.
Thanks.

Marc Rivet, MCIP, RPP
J.L. Richards & Associates Limited

11-1007

SIGNED, SEALED AND DELIVERED

in the presence of:

} _____
} _____
} _____
} _____

J.L. RICHARDS & ASSOCIATES LIMITED

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

Per:

_____ (Signature)
T.E. Chedder (Name)
Chief Planner (Title)

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

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

Per:

_____ Hal Johnson, Mayor
_____ Robert Tremblay, CAO/Clerk

