

**CORPORATION OF THE TOWNSHIP OF PRINCE**

**BY-LAW NO. 2014-18**

Being a by-law to authorize execution by the Reeve and Administrator of an agreement between RDL Engineering Services and Prince Township.

THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF PRINCE HEREBY ENACTS AS FOLLOWS:

1. THAT the Reeve and Administrator are hereby authorized to execute and affix the Corporate Seal to an Agreement between RDL Engineering Services and Prince Township, which Agreement is attached hereto as Schedule "A".
2. SCHEDULE "A"

Schedule "A" forms part of this by-law.

READ THREE TIMES AND PASSED in open Council this 8<sup>th</sup> day of April, 2014.

  
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Reeve Ken Lamming

  
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CAO/Administrator Peggy Greco



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# AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

MEMORANDUM OF AGREEMENT Dated the 31<sup>st</sup> day of March A.D. 2014

-BETWEEN-

CORPORATION OF THE TOWNSHIP OF PRINCE

Hereinafter called the "Client"

THE PARTY OF THE FIRST PART

-AND-

RDL ENGINEERING SERVICES

Hereinafter called the "Engineer"

THE PARTY OF THE SECOND PART

WHEREAS the client has requested the Engineer to perform the Engineering services set out in Article III hereof in connection with the Project (as hereinafter defined) and the Engineer has agreed to perform such services on and subject to the terms and conditions of this Agreement;

The Project is defined as

MUNICIPAL OFFICE BUILDING HEATING SYSTEM DESIGN

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

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## **ARTICLE 1. GENERAL CONDITIONS**

### **1.1 Ownership of Documents**

The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents provided by the engineer in connection with the works shall remain vested in the engineer, but the client shall have a royalty-free licence to use such drawings and other documents for the purpose of constructing the works. Save as aforesaid, the client shall not make copies of such drawings or other documents, nor shall the client use the same in connection with the making or improvement of any works other than those comprised in the works, without the prior written approval of the engineer and upon such terms as may be agreed between the client and the engineer.

The engineer may with the consent of the client, which consent shall not be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the works.

### **1.2 Patents**

All concepts, products or processes produced by or resulting from the services rendered by the engineer in connection with the project, or which are otherwise developed or first reduced to practice by the engineer in the performance of service, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the engineer.

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 engineer in connection with the project, for the life of the project, and for no other purpose or project.

All costs incurred to obtain patents or trademarks shall be reimbursed by the client.

### **1.3 Confidential Information**

It is the responsibility of each party to identify to the other party all confidential information connected with this project.

Confidential information acquired in the course of this project shall not be used or divulged by either party, or their employees, consultants, subconsultants or agents, without the prior written approval of the other party, or as may be required by regulatory authorities having jurisdiction.

This requirement shall not prohibit the engineer from acting to correct or report a situation that the engineer may reasonably believe to endanger the safety or welfare of the public, provided the engineer notifies the client that the engineer intends to provide such notice as soon as reasonably possible.

In the event that the engineer becomes legally compelled to disclose confidential information, the engineer shall forthwith notify the client of this requirement. Such disclosure shall not result in any liability hereunder.

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#### **1.4 Insurance**

When requested, the engineer shall supply to the client a summary of insurance coverage currently being maintained by the engineer. Such summary shall include the name of the insurance company, type of insurance and amount of such coverage.

If the client requests that the amount of coverage of the engineer's insurance be increased or special insurance be obtained for this project, the engineer shall cooperate with the client to obtain such increased or special insurance coverage at the client's expense.

It is understood and agreed that the coverage provided by either of the policies named in the aforementioned summary or specially required will not be changed or amended in any way nor cancelled by the engineer until 60 days after written notice of such change or cancellation has been delivered to the client.

#### **1.5 Fee Mediation / Arbitration**

The Association of Professional Engineers of Ontario has established a Fees Mediation Committee (FMC) in compliance with the Professional Engineers Act, R.S.O. 1990, Chapter P28. Unless the FMC considers it inappropriate to do so, the FMC shall mediate any written complaint the client makes to the Association of Professional Engineers of Ontario respecting the fee charged by the engineer for professional engineering services provided to the client under this agreement.

With the written consent of both parties, the FMC may arbitrate a dispute between the client and the engineer respecting a fee. In that case, the decision of the FMC is final and binding on all parties to the dispute. Where the FMC acts as an arbitrator, the Ontario Arbitration Act does not apply.

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 engineer.

The award of the arbitrator shall be final and binding upon the parties. The provisions of the Ontario Arbitrations Act shall apply.

#### **1.6 Successors and Assignment**

This agreement shall inure 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

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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 foresaid, neither party shall assign this agreement without the prior consent in writing of the other.

### **1.7 Termination and Suspension**

By notice in writing to the engineer, the client may at any time suspend or terminate the services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the engineer shall perform no further services other than those reasonably necessary to close out the engineer's services.

If either party to this agreement is in default in the performance of any of the party's obligations set forth in this agreement, the other party may require that such default be corrected by written notice. If within 30 days of receipt of such notice such default is not corrected, the other party may immediately terminate this agreement, without limiting any other right or remedy he or she may have.

If the client changes significantly the requirement for the engineer's services and subsequent negotiations fail to resolve the matter, the engineer may terminate this agreement by notice in writing to the client.

If the engineer is practicing 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 engineer to the date of such termination.

In the event of suspension or termination of the project resulting from the aforementioned circumstances, the client shall pay the engineer for all fees performed. Payment shall be calculated in accordance with Section 4.2.1 for any of the engineer's staff employed directly thereon, together with such expenses and disbursements as are allowed under Sections 4.2.4.

### **1.8 Records**

To provide data for the calculation of fees on a time basis, the engineer, the engineer's employees, consultants and subconsultants shall keep a detailed record of the hours worked by their staff employed on the project.

The client may inspect these records during regular office hours, on receipt of reasonable notice respecting any item that the client is required to pay on a time basis as a result of this agreement.

When requested by the client, the engineer shall provide copies of receipts for any disbursements for which the engineer claims payment under this agreement.

### **1.9 Indemnification**

Each party to this agreement shall indemnify and save harmless the other party from and against all claims, actions, losses, expenses, costs, or damages that the other party may suffer, sustain, or incur

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arising from the other party's negligent acts or the negligence of the other party's employees, directors, officers, consultants, subconsultants or agents in the performance of this agreement.

The client further agrees to hold harmless, indemnify, and defend the engineer and the engineer's subconsultants from and against any and all claims, losses, damages, liability, and costs of defence arising out of, or in any way connected with, the presence, discharge, release, or escape of contaminants of any kind.

**1.10 Contracting for Construction**

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

**1.11 Changes and Alterations and Additional Services**

After giving notice to the engineer, 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 engineer shall be paid in accordance with Article 4 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Article 4. In the case of a reduction in the requirement for services, any reduction in the engineer's fee will be the subject of negotiation. No such change shall require the execution of a formal amendment to this agreement.

**1.12 Additional Conditions**

1. Entire Agreement

This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this agreement.

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## ARTICLE 2. RESPONSIBILITIES OF THE CLIENT

### The Client shall:

- 2.1 make available to the engineer all relevant information required by the engineer, and shall instruct the engineer fully as to the client's requirements including design objectives, constraints and criteria, special equipment and systems, site requirements and construction budget. The engineer shall be entitled to rely upon the accuracy and completeness of all such information and data furnished through the client or client's consultants whether such consultants are engaged at the request of the engineer or not.
- 2.2 when so required by the engineer, engage consultants directly to perform services necessary to enable the engineer to fully carry out his or her duties (eg. legal survey of the site, site services data, geotechnical reports and appropriate testing, etc.).
- 2.3 give the engineer authority to act as the client's agent in all matters falling within the scope of the engineer's services.
- 2.4 promptly review all documentation submitted by the engineer, and inform the engineer of decisions in time for the orderly progress of the engineer's services and of the work.
- 2.5 obtain all required consents, approvals, licences and permits from authorities having jurisdiction.
- 2.6 arrange and make provision for the engineer's entry and access to public and private property and the project site in the performance of the duties.
- 2.7 arrange and pay for tender advertising and any necessary legal, financial or insurance counseling services required for the project.
- 2.8 designate in writing a representative to have authority to transmit instructions to and receive information from the engineer.
- 2.9 immediately notify the engineer whenever the client, or the client's representative, becomes aware of a defect or deficiency in the work or the contract documents.



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## **ARTICLE 3. ENGINEERING SERVICES PROVIDED UNDER THIS AGREEMENT**

### **3.1 General**

The engineer shall render services to the client under this agreement with that degree of care, skill and diligence normally provided in the performance of services in respect of projects of a similar nature to that contemplated by this agreement at the time and place that such services are rendered.

### **3.2 Services Rendered**

The engineer shall perform the following services in connection with the project:

- Prepare a schematic design of a recommended replacement heating system that will utilize propane-fired boilers.
- Upon the client's acceptance of the schematic design, prepare drawings and specifications suitable for soliciting competitive bids from qualified contractors.
- Develop a Class 'C' construction estimate. Prepare a preliminary project budget.
- On behalf of the client, obtain competitive bids from client-approved contractors for the construction work.
- Administer the construction contract on behalf of the client, which will also include periodic review of the construction work.
- At the completion of the construction, witness and report on commissioning undertaken by the contractor.
- Ensure project completion documents such as as-built drawings, maintenance manuals, and warranty certificates are submitted by the contractor.

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## ARTICLE 4. FEES AND DISBURSEMENTS

### 4.1 Definitions

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

#### 4.1.1 Hourly Billing Rate

The hourly billing rate is defined as the hourly rate for billing purposes for each of the engineer's employees working on the various phases of the project. It shall include charges for computers and equipment used by the engineer for the project. This rate is subject to cost of living and merit adjustments on 12-month intervals from the date of this agreement.

#### 4.1.2 Construction Budget

The construction budget is the final estimate of the construction cost, based on the engineer's drawings. Both the client and the engineer shall agree to the construction budget before tendering,

#### 4.1.3 Construction Cost of the Project

a) The 'construction cost of the project' shall mean the total cost of constructing the project, including all materials, equipment, sales taxes, labour and contractors overhead and profit necessary to complete the project, for which the engineer prepares designs, drawings and specifications. In cases where sales taxes are not included in the construction cost of the project, the engineer's fee shall be adjusted upwards accordingly.

b) Wherever the client furnishes labour, or any other services that are incorporated in the project, the price of such labour or other services when the work was executed shall be used to calculate the construction cost of the project.

c) Whenever used material or equipment is furnished by, or on behalf of, the client, the fair market value if purchased new of such material or equipment shall be used to calculate the construction cost of the project.

d) In calculating the construction cost of the project, no deductions shall be made on account of any penalties or damages claimed by the client from any contractor or supplier, or on account of any other sum withheld from any contractor or supplier,

e) The construction cost of the project shall not include any fees and disbursements due to the engineer, the client's engineering and office expenses, and the land acquisition costs.

#### 4.1.4 Site

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

### 4.2 Basis of Payment

#### 4.2.1 Fees Calculated as a Percentage of Estimated Construction Cost

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engineer's invoice and the engineer and the client have not agreed in writing on terms for payment of the invoice, the engineer may stop rendering services on the project. In that event, the client shall not have any claim whatsoever against the engineer for any loss, cost, damage or expense incurred or anticipated to be incurred by the client as a result.

The rights of the engineer given in this section are in addition to, rather than a substitute for, any other rights the engineer may have under this agreement, or otherwise, for non-payment of the engineer's invoices by the client.

IN WITNESS THEREOF the parties hereto have caused to be executed by their officers properly authorized in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED

ENGINEER  Date: April 2, 2014

CLIENT  Date: April 9, 2014

 April 9, 2014

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- (a) For services as described in Article 3.2, pertaining to the preparation of the drawings and specifications, a fee of 5% of the estimated construction cost plus H.S.T.
  - (b) Reimbursable expenses are additional to the noted fees.

#### 4.2.2 Fees Calculated as a Percentage of Actual Construction Cost

- (a) For services as described in Article 3.2, pertaining to the tendering of the project and administering the construction contract, a fee of 5% of the actual construction cost plus H.S.T.
- (b) Reimbursable expenses are additional to the noted fees.

#### 4.2.3 Fees Calculated on a Time Basis

##### (a) Additional Services

- i) For all services, rate shall be \$150 per hour plus H.S.T.. This rate will be reviewed annually and adjusted accordingly.
- (b) All time expended on the assignment, whether in the engineer's office, at the client's premises, or elsewhere shall be chargeable.
- (c) Reimbursable expenses are additional to the fees calculated on a time basis.

#### 4.2.4 Reimbursable Expenses

- (a) The engineer shall be reimbursed at cost plus 5%, for all reasonable expenses the engineer incurs properly in connection with the project for additional services rendered, including applicable sales taxes. Reimbursable expenses include, but are not limited to:
  - vehicle use charges;
  - traveling and living expenses;
  - printing and reproductions;
  - special or express delivery charges;
  - supplies and equipment;

### 4.3 Payment

#### 4.3.1 Payment by the Client

The client shall pay within 30 days after submission all invoices the engineer submits to the client under this agreement.

Interest at 5% per month shall be paid on the total unpaid balance, commencing 30 days after the date of the engineer's invoice.

#### 4.3.2 The Engineer's Right to Stop Rendering Services

If any invoice submitted by the engineer remains unpaid by the client for 60 days from the date the invoice was submitted, the engineer may give seven days written notice to the client that engineer will stop rendering services.

If within seven days of delivery of this notice the client has not paid the