THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 09-071

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND BOUSFIELDS INC. FOR PROFESSIONAL SERVICES TO COMPLETE THE LILY LAKE FUNCTIONAL PLANNING STUDY

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Bousfields Inc. in the form attached hereto as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 15th day of June, 2009

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) John Kennedy, Deputy Clerk
AGREEMENT BETWEEN
THE CORPORATION OF THE
CITY OF PETERBOROUGH

and

BOUSFIELDS INC.

for

THE LILY LAKE FUNCTIONAL PLANNING STUDY
THIS AGREEMENT made the _____ day of _______________________, 2009

BETWEEN: The Corporation of the City of Peterborough
500 George Street North
Peterborough, ON   K9H 3R9

hereinafter called the "City" Of The First Part

AND

Bousfields Incorporated
3 Church Street, Suite 200
Toronto, ON   M5E 1M2

hereinafter called the "Consultant" Of The Second Part.

WHEREAS the Consultant is retained to provide the services as outlined below in order to assist the City in: Lily Lake Functional Planning Study

NOW THEREFORE IN CONSIDERATION of the mutual covenants hereinafter contained the parties hereto do covenant and agree with each other as follows:

SECTION 1: DEFINITIONS

In this Agreement -

1.1 "City" means the Municipality of the Corporation of the City of Peterborough.

1.2 "Consultant" means the Consultant, and its agent, servants and employees; the successful Proponent.

1.3 "Consultants’ Project Supervisor” means: Lindsay Dale-Harris

1.4 "Study” means: Lily Lake Functional Planning Study

SECTION 2: THE CONSULTANT’S SERVICES

2.1 Services
The Consultant agrees to furnish and perform professional services in the preparation of the Study for the City according to the Proposal and work program as mutually agreed upon by the Consultant and the City attached hereto as Schedule 'A' and forming part of this Agreement (hereinafter referred to as the "proposal").

2.2 Performance
The Consultant shall exercise reasonable care, skill and diligence in performing the services set out herein.

2.3 Confidentiality
The Consultant shall keep strictly confidential any personal or confidential information communicated to or acquired by the Consultant during the course of completing the Study.

SECTION 3: THE CITY’S RESPONSIBILITY

3.1 Access to Municipal Documents and Statistics
The City shall make available at no cost to the Consultant any relevant municipal documents, plans or similar information as may be required by the Consultant to assist in the preparation of the Study and that are available to and
under the control of the City. Upon completion of the Study, the relevant municipal documents shall be returned to the City.

3.2 City's Decisions
The City shall give due and reasonably expeditious consideration to all matters arising in the course of the performance of the services that require direction or a decision by the City in order that the Consultant will not be unreasonably delayed in performing the services provided for herein.

SECTION 4: FEES AND DISBURSEMENTS

4.1 Consultant’s Fees
The City shall pay to the Consultant for the services prescribed herein a total amount not to exceed $142,750.00. In addition, the City shall $100.00 PST and GST as applicable.

4.2 Disbursements
The Consultant's Fee shall include all disbursement costs normally associated with professional services required to perform the prescribed services as set out in the proposal.

4.3 Remuneration to The Consultant
Payment of invoices shall be made by the City within thirty (30) days of receipt of same in accordance with Section 6.11 of Request for Proposals Document P-21-09.

4.4 Additional Services
If, during the term of the Consultant's obligation as described in Section 2 hereof, the City makes a decision which would require additional services or expenses not normally incurred in providing the services set out in Section 2 hereof, the Consultant will immediately advise the City in writing that such extra services will be necessary. Any additional fee for the provision of such extra services shall be approved, in writing, by the City prior to the Consultant proceeding with the additional services.

SECTION 5: GENERAL CONDITIONS

5.1 Indemnity
The Consultant shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages which the City may suffer as a result of negligence by the Consultant, his employee or agents, in the performance or rendering of, or the failure to perform or render, or the failure to exercise reasonable care, skill or diligence in the performance or rendering of any work or services required hereunder.

5.2 Ownership
All information, data, policies, plans, and documents prepared and collected by the Consultant shall be the property of the City. The Consultant shall deliver all information, data, policies, plans, and documents to the City immediately upon completion or abandonment of the Project.

5.3 Adherence to Time Schedules
The Consultant shall carry out the work with the utmost dispatch and, subject to delays beyond its control, shall complete the work in accordance with the approved time schedule as set forth in the proposal, or any subsequent revision that may be agreed upon by the Consultant and the City in writing.

5.4 The Consultant’s Staff
The Consultant's Project Supervisor shall be responsible to ensure the full performance of the terms and provisions of this Agreement on behalf of the
Consultant. The Project Supervisor may only be replaced with the consent of the City, such consent not to be unreasonably denied.

5.5 **Arbitration**
In the case of any dispute arising between the City and the Consultant as to their respective rights and obligations under this Agreement, either party hereto shall be entitled to require arbitration with respect to the dispute by giving a written notice to arbitrate one to the other. In that event, both the City and the Consultant, within five (5) days after the giving of notice to arbitrate, shall give notice to the other nominating one arbitrator on behalf of the party giving the notice, and, the two arbitrators so nominated shall, within five (5) days, nominate a third arbitrator. The three arbitrators so nominated shall determine the dispute having regard to all of the provisions of this Agreement (provided that if either party shall fail to nominate an arbitrator in accordance with the foregoing or if the two arbitrators who have been nominated fail to agree on the nomination of the third arbitrator, either the City or the Consultant may apply, upon notice to the other, to a Justice of the Supreme Court to Ontario who shall have jurisdiction to nominate such arbitrator or arbitrators). The decision of any two of the three arbitrators shall be binding and final upon the parties. The cost of such arbitration shall be as awarded by the arbitrators.

Except as to matters otherwise provided herein, the provisions of The Arbitrators Act of Ontario (or any successor statute thereof) shall apply.

5.6 **Notices**
All notices, requests and other communications required in writing in this Agreement shall be deemed to have been duly given at the time of delivery or two days after the day of mailing if mailed by first class mail postage prepared and addressed:

a) to the City at:

500 George Street North
Peterborough, ON
K9H 3R9

and,

b) to the Consultant at:

3 Church Street, Suite 200
Toronto, ON
M5E 1M2

5.7 **City’s Right to Terminate Contract**
The City shall have the right to terminate this Agreement, forthwith, on written notice to the Consultant, in the event that:

a) The Consultant makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or an order is made for the winding-up of the Consultant; or

b) The Consultant refuses or fails to supply sufficient properly skilled workmen or proper materials at all times to perform the Work in the manner and to the standards required under this Agreement, or it fails to observe and comply with any provisions of law, including, without limiting the generality of the foregoing, all requirements of all governmental authorities including federal, provincial and municipal legislative enactments, by-laws and other regulations now or hereafter in force which pertain to or affect the Work or the conduct of the Consultants’ business at the Site; or
c) The Consultant fails to institute appropriate corrective action forthwith after verbal notification by the City (which shall be confirmed subsequently in writing) of any failure on the part of the Consultant to comply with any of the terms and specifications of this Agreement notwithstanding that such failure is the result of any cause beyond the Consultant’s control.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto.

CLIENT: THE CORPORATION OF THE CITY OF PETERBOROUGH

D. PAUL AYOTTE
Mayor

NANCY WRIGHT-LAKING
Clerk

CONSULTANT: LINDSAY DALE-HARRIS
Partner
Bousfields Inc.
SCHEDULE A

Proposal for Consulting Services to Conduct the Lily Lake Functional Planning Study

Prepared by
Bousfields Inc.