THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 10-127

BEING A BY-LAW TO PROVIDE CONSULTING SERVICES TO DEVELOP A MUNICIPAL CULTURAL PLAN (P-26-10)

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 Office for Urbanism*, 457 Richmond Street West, Suite 200, Toronto, Ontario, M5V 1X9, in the form attached hereby as Schedule “A”, and to affix the Seal of The Corporation thereto.

By-law read a first, second and third time this 5th day of July, 2010.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Kevin Arjoon, Deputy Clerk

* Note: Between the passing of the by-law and the execution of the associated agreement, Office for Urbanism has become known as Dialog Ontario Inc.
THIS AGREEMENT made this ____ day of _______________ 2011

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the “City”)

and

DIALOG ONTARIO INC.
(the “Project Manager”)

WHEREAS the City requested proposals from interested proponents for project management services for the development of municipal cultural plan for City of Peterborough, as set out in Request for Proposals P-26-10, which is attached as Appendix A, (referred to as the “Project”);

AND WHEREAS The Office for Urbanism Inc. submitted a proposal dated May 20, 2010, for project management, which is attached as Appendix B, (referred to as the “Proposal”) which the City accepted;

AND WHEREAS the Office for Urbanism Inc. is now Dialog Ontario Inc. (“Dialog”);

AND WHEREAS Dialog has assumed all the rights, responsibilities and obligations of The Office for Urbanism and has agreed to perform all the management services contained in the Proposal and in the attached Appendix “C” necessary to complete the Project;

AND WHEREAS subsequent to the City’s acceptance of the Proposal, the City and Dialog have agreed to remunerate the Project Manager in accordance with the recommendation contained in City Report CSACH11-001Change Notices – Municipal Cultural Plan;

AND WHEREAS the Project Manager has agreed to perform the requirements as set out in Section 7 of the Request for Proposals P-26-10 and in four Change Notices;

NOW THEREFORE in consideration of the mutual covenants herein contained and the provision of other good and valuable consideration (the receipt and adequacy of which is acknowledged), the parties hereto have agreed as follows:

1.00 SCOPE OF PROJECT MANAGEMENT SERVICES TO BE PROVIDED

1.01 The Project Manager agrees to perform the services with respect to the Project, in accordance with the Proposal and Appendix “C”. In the event of a conflict or
inconsistency between the provisions of the Proposal and this Agreement, the provisions of this Agreement shall prevail.

1.02 All Services performed by the Project Manager shall be undertaken in accordance with recognized requirements and practice of the Project Management Institute and with the degree of care, skill and diligence normally provided in the performance of services for similar projects to that contemplated by this Agreement.

1.03 Unless otherwise expressly specified in this Agreement, the Project Manager agrees to supply, at its sole cost and expense, all staff, equipment, accommodations and technical assistance necessary to perform the services to be furnished under this Agreement and assume all overhead expenses in connection therewith, to the reasonable satisfaction of the City.

1.04 The consultants and any sub-consultants forming part of the Project Manager’s team, shall not be changed by the Project Manager without the City’s prior written approval.

1.05 The Parties estimate that the Project will take approximately 52 weeks.

2.00 COMPENSATION AND FEES

2.01 The City shall pay to the Project Manager compensation for services rendered in accordance with the Proposal and Appendix “C”, up to a maximum of $134,583.00 inclusive of HST.

2.02 The parties also wish to set out their understanding that the Project Manager has, concurrent with their agreement that the Project Manager will provide the extra services contained in Appendix “C”, agreed to waive charges related to project management, coordination and creating correspondence in the amount of $3,968.64, inclusive of HST.

2.03 Changes in taxes due to the introduction of the new Harmonized Sales Tax (HST) took effect July 1, 2010.

In the event that the City determines any of the Project Manager’s payments and compensation by the City, as outlined in Section 2.01 have been affected by the HST, the City may request detailed documentation, to support changes to the unit prices due to the implementation of the new HST. The documentation must be made in advance of requesting payment. Contract payments after July 1, 2010 will not be made without the necessary HST support documentation.
2.04 Payments shall be made to the Project Manager by the City, to the limits established in Section 2.01 of this Agreement, in accordance with invoices from the Project Manager (which invoices may be submitted at a frequency not greater than once every thirty (30) days) detailing work time and expenses incurred. Terms of payment of any such invoice shall be net thirty (30) days.

2.05 Despite Section 2.01 above, the Parties may agree on the performance of extra work by the Project Manager. Any such extras must have been approved in writing by the City and, failing such approval, no payment shall be made in respect of same.

3.00 REMEDIES FOR NON-PERFORMANCE BY PROJECT MANAGER

3.01 In the event that the Project Manager fails to perform any obligations hereunder, the City shall be entitled to exercise any one or more of the following remedies:

(a) The City may withhold any payment due hereunder until the Project Manager has remedied its failure;

(b) The City shall be entitled, in the event that the Project Manager does not remedy its default within seven (7) working days of a request that it do so from the City, be entitled to engage other contractors to compete the work of the Project Manager and to deduct the cost of obtaining such other contractors from any amounts owing to the Project Manager hereunder;

(c) The City may terminate this Agreement in the event that the Project Manager does not remedy its default within seven (7) working days of a request that it do so from the City in writing; and

(d) The City may exercise any other right available to it in law or equity.

Unless the City expressly agrees to the contrary, any failure of the City to exercise any of the foregoing remedies, or the granting of any extension or indulgence, shall not be prejudicial to the right of the City to subsequently obtain such remedies.

4.00 TERMINATION OF AGREEMENT

4.01 The City shall be entitled to terminate this Agreement at any time without cause, and in the event of such termination the remuneration payable to the Project Manager shall be determined by calculating the proportion of services completed and applying that proportion to the fees payable hereunder for the services.
5.00 CO-OPERATION FROM CITY

5.01 The City will instruct the Project Manager fully as to the City’s requirements and make available all relevant information the Project Manager requires. The Project Manager will be entitled to rely upon the accuracy and completeness of all such information furnished by the City.

5.02 The City shall give due consideration to all drawings, plans, reports, proposals and other information provided by the Project Manager, and shall make decisions which the Project Manager requires the City to make in connection with the Project, within a reasonable time.

5.03 The City shall designate Erik Hanson, the City’s Heritage Resources Coordinator, as the City’s representative to have authority to transmit instructions to, and receive information from, the Project Manager and advise the Project Manager in advance if the representation is to change.

5.04 The City will notify the Project Manager immediately, whenever the City or the City’s representative becomes aware of a deficiency in the services provided.

6.00 CONFIDENTIAL INFORMATION

6.01 It is the responsibility of each Party to identify to the other Party all of the confidential information that is connected with the Project. Confidential information acquired in the course of the Project shall not be used or divulged by either Party, or their employees, consultants, sub consultants or agents, without the prior written approval of the other Party, or as may be required by law.

7.00 OWNERSHIP OF DOCUMENTS ARISING FROM SERVICES PROVIDED

7.01 The copyright in all plans, drawings, reports, specifications and other documents (hereinafter collectively referred to as “documents”) prepared, collected or provided by the Project Manager pursuant to this Agreement shall be the property of the City.

7.02 The Project Manager shall have a non-exclusive, royalty-free licence to use the documents for purposes of publication relating to the project and to promote the Project Manager’s involvement in the Project.

7.03 The Project Manager shall deliver all documents to the City immediately upon completion or abandonment of the Project and/or upon the termination of this agreement.
8.00 INDEMNIFICATION

8.01 The Project Manager shall always indemnify, save harmless and defend the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the City, its agents, servants or officers, may suffer as a result of the negligent errors or omissions of the Project Manager in the performance of its services in relation to the Project. The Project Manager’s indemnity extends to covering any charges arising as a result of any health and safety violation on the part of the Project Manager.

9.00 INSURANCE

9.01 The Project Manager shall maintain, and keep in force the following:

(a) Professional Liability Insurance (Errors and Omissions) covering the services described in the Agreement in an amount of not less than Two Million Dollars ($2,000,000.00) per claim with a $10,000 aggregate or such greater amount as the City may require from time to time;

(b) Comprehensive General Liability Insurance having a limit of not less than Two Million Dollars ($2,000,000.00), inclusive for any one occurrence, and shall include insurance against liability for bodily injury and property damage caused by vehicles or equipment owned by the Project Manager; be endorsed to provide that the policies shall not be altered, cancelled or allowed to lapse without thirty (30) days written notice to the City; and

(c) Vehicle Insurance and Licensing with a limit of liability of not less than Two Million Dollars ($2,000,000.00).

9.02 The City shall be added as an additional third-party insured, with a cross-liability endorsement, on the policies referred to in Article 9.01(a) and 9.01(b) above.

9.03 The Project Manager shall provide the applicable Certificates of Insurance to the City, in the Proposal.

9.04 The insurance company must be satisfactory to the City and the Project Manager shall pay for all premiums and expenses incurred.

9.05 The Project Manager shall provide the City with a valid and current “Certificate of Clearance” from the WSIB, prior to the City executing this Agreement.
10.00 ARBITRATION / DISPUTES

10.01 Any matter in dispute between the Parties hereto in relation to this Agreement may be referred to arbitration.

10.02 No person shall be appointed to act as arbitrator who has an interest, financial or otherwise, in the conduct of the services performed on the Project, or in the business or other affairs of either the City or the Project Manager.

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

11.00 MFIPPA

11.01 This Agreement and all schedules and attachments are subject to the Municipal Freedom of Information and Protection of Privacy Act (referred to as MFIPPA). Any information collected by the City pursuant to this Agreement is subject to the rights and safeguards provided for in the MFIPPA. The Project Manager shall satisfy itself and warrant to the City that the collection and use of personal information is conducted in a manner consistent with MFIPPA.

12.00 NOTICES

12.01 Any notice required to be given pursuant to this Agreement may be Served or given by prepaid registered mail, by personal mail, email or by service by facsimile transmission at the following addresses:

To the Project Manager at:

DIALOG Ontario Inc.
Bloor Street East, Suite 1000
Toronto, ON, M4W 1A8

Attention: Jennifer Keesmaat

F: 416.966.0223
E: jkeesmaat@designdialog.ca

To the City at:

500 George Street North
Peterborough, Ontario K9J 3R9
13.00 COMPLETE AGREEMENT

13.01 This Agreement and the appendices attached, constitutes the complete and exclusive statement of the Agreement between the Parties which supersedes all other communications between the Parties relating to the subject matter of this Agreement.

14.00 GOVERNING LAW

14.01 This Agreement shall be governed by the law of the Province of Ontario.

15.00 RELATIONSHIP OF THE PARTIES

15.01 Nothing in this Agreement shall be construed to place the Parties in the relationship of partners, joint venturers, principal/agent, or employer/employee. The Project Manager also acknowledges that it has no authority to bind the City to any obligation of any nature or any kind, in law or equity.

16.00 SUCCESSORS AND ASSIGNMENT

16.01 This Agreement shall enure to the benefit of and be binding upon the Parties, and their executors, administrators, successors and assigns.

16.02 Neither party shall assign this agreement without the consent in writing of the other.

THE NEXT ARTICLE IS ARTICLE 17
17.00 AMENDMENTS

17.01 This Agreement may be amended by the City and any amendments to this Agreement shall be in writing and signed by the Parties.

IN WITNESS WHEREOF the Parties have set their respective hands and seals.

SIGNED, SEALED AND DELIVERED in the presence of:

THE CORPORATION OF THE
CITY OF PETERBOROUGH

Daryl Bennett, Mayor

Nancy Wright-Laking, Clerk

DIALOG ONTARIO INC.

Name: ___________________________
Office: ___________________________

Name: ___________________________
Office: ___________________________

I/We have the authority to bind the Corporation
APPENDIX A

REQUEST FOR PROPOSALS
Document No. P-26-10
APPENDIX B

PROJECT MANAGER’S PROPOSAL,
Dated May 20, 2010
APPENDIX C

ADDITIONAL SERVICES TO THOSE CONTAINED IN THE PROPOSAL