



STAFF REPORT

to Board of The Blue Mountains Attainable Housing Corporation

MEETING DATE: 3 September 2020

REPORT NUMBER: 2020-02

SUBJECT: Award of Proposal for Legal Services

AUTHOR: Sharon McCormick, Executive Director

A. Recommendation

THAT The Blue Mountains Attainable Housing Corporation receive Staff Report 2020-02, entitled “Award of Proposal for Legal Services”;

AND THAT The Blue Mountains Attainable Housing Corporation award 2020-05-P-BMAHC Legal Services to Robins Appleby LLP, being the highest scoring proponent following evaluation of the qualified submitted bids.

AND THAT The Blue Mountains Attainable Housing Corporation direct the Chair and Executive Director to execute the Legal Services Agreement with New Commons Development.

B. Background

On June 4, 2020, the Blue Mountains Attainable Housing Corporation (BMAHC) Board approved a Request for Proposal for Legal Services be issued. The Executive Director, with representation from the BMAHC Board and Town staff, reviewed the submissions received and make the recommendation contained herein.

The Request for Proposals 2020-05-P-BMAHC was issued on June 30, 2020 and closed on July 23, 2020. Eight (8) qualified submissions were received.

C. Analysis

Following evaluation of the Proposals, the evaluation team recommends awarding the bid to Robins Appleby LLP, being the highest scoring proponent. Robin Appleby’s submission met all the proposal requirements.

The Service Agreement for execution of this award is attached for Board approval. This Service Agreement is on a non-exclusive and “as needed” basis, with no guarantee of any volume of work. The term of the Agreement is for a period of three (3) years, with an option for two 1-year renewals commencing on the date of the acceptance.

D. Financial Impact

Fee rates have been negotiated on a fixed rate basis for the initial three year period of the contract.



THE BLUE MOUNTAINS
Attainable Housing Corporation

STAFF REPORT

to Board of The Blue Mountains Attainable Housing Corporation

Value added services available to BMAHC free of charge provide favourable cost controls. These services include first half-hour telephone consultation on new matters and leading educational seminars on housing law and their industry experience.

ATTACHMENT: Blue Mountains Robins Appleby Legal Services Agreement



ROBINS APPLEBY
BARRISTERS + SOLICITORS

Delivered by: E-mail

August 25, 2020

Sharon McCormick
Executive Director
The Blue Mountains Attainable Housing Corporation
32 Mill Street, P.O. Box 310
Thornbury, ON N0H 2P0

Dear Ms. McCormick:

Re: Legal Services Agreement

This letter and the Addendum attached, describes the basis upon which Robins Appleby LLP (“Robins”) will provide legal services to the Blue Mountains Attainable Housing Corporation (“BMAHC”) for the Term of this agreement.

1. Scope of Representation

We will provide legal services to BMAHC for a three year term, with two one-year options for extensions at the discretion of BMAHC (the “Term”).

2. Receiving and Confirming Instructions

We will accept verbal, electronic and written instructions from Ms. McCormick as Executive Director of BMAHC.

When communicating with us by e-mail, please ensure that you provide us with an e-mail address that only you have access to as our communication is solicitor client privileged and confidential. If you do not wish to receive confidential information via e-mail, or if you are unable to restrict access by third parties to such communications, you must notify us in writing.

Given the increasing incidence of Cybercrime including fraud arising from personal and business computers/networks being "hacked" into, in the event that you provide email or unsigned facsimile instructions to us to release, pay or transfer any monies or securities, we may at our sole option (but are not obligated to), require verbal or signed confirmation from you.

Further, you hereby acknowledge and agree that, notwithstanding that no such verbal or signed confirmation is received from you, Robins does not accept any legal liability whatsoever arising from, or connected to, acting on any instructions purportedly sent by you or on your behalf with respect to the release, payment or transfer of any monies or



securities. As such, we strongly recommend that any such e-mail or unsigned facsimile instructions provided to us be immediately preceded or followed by a telephone call or signed confirmation.

3. Conflicts and Joint Retainer (if applicable) (Addendum ss.2 and 3)

We have conducted a review of our records and we confirm that we have not identified a conflicting interest in representing you at this time. We are relying on you to let us know of any other parties who are or become involved in this matter, including any parties whose interests may be adverse to yours.

4. Lawyer in Charge (Addendum s.1)

On behalf of Robins, John Fox will be the "Lawyer in Charge" of your legal matters including the Engagement. Please always feel free to contact him with any questions or concerns you have in respect of your relationship with Robins.

5. Fees (Addendum s.4)

It is impossible to predict, at the outset of our engagement, the amount of our fee in any particular matter because of several factors which cannot be known in advance. Section 4 of the Addendum identifies some factors we consider in computing our fees. Subject to agreement otherwise, our fees are generally based on the time expended by the members of our Firm involved in the matters multiplied by our standard hourly rates applicable from time to time for those persons, as more fully described in the Addendum. The Lawyer in Charge will exercise discretion regarding which members of the Firm will work on these matters.

Below is hourly rates of the persons most likely working on your file for the first three years of the Term.

Name	Title	Rate/Hour		
		Year 1	Year 2	Year 3
John Fox	Partner	\$660	\$660	\$660
Ismail Ibrahim	Associate	\$500	\$500	\$500
Tara Welat	Associate	\$480	\$480	\$480
Noah Ciglen	Associate	\$300	\$300	\$300
David Taub	Partner	\$725	\$725	\$725
Charlie Kim	Partner	\$525	\$525	\$525



Kimberly Lexovsky	Senior Real Estate Law Clerk	\$290	\$290	\$290
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With respect to the Gateway Site Project, we have provided our estimate for the work as Schedule A to this agreement. Specifically, our estimate is for \$18,500, excluding HST and disbursement for the design-build contract and procurement advice, and \$13,000, excluding HST and disbursements, for work related to the transfer of land. The details associated with our estimate and scope of work are provided in Schedule A.

6. Alternate Fee Structure

At the onset of each mandate, Robins will discuss the fee structure with you. In general, we charge for our services on the basis of time expended. Where appropriate, we can agree to fixed fees or other arrangements on a case by case basis. For example, we provide flat fee for incorporations. We can also provide flat fees where the scope of work is defined, such as tenancy agreements.

In addition, where we cannot provide a fixed fee we will provide you an estimate. We want to be clear that our estimates are not intended to be a cap on fees, nor is it our target. We will complete this mandate as efficiently as possible. We will also let you know as soon as we become aware that more time is required to complete a given mandate and we will not incur greater fees than our estimate without consulting with you.

7. Value-Added Services

In addition to the legal services provided pursuant to a particular retainer, Robins will provide the following services to BMAHC, free of charge:

- First half-hour telephone consultation on new matters.
- Monthly touch-point meetings between Robins and BMAHC to provide for an effective relationship based on open dialogue and continuous feedback. These meetings can be conducted either by telephone conference or in person, at the request of BMAHC.
- Robins lawyers will be available to lead educational seminars on housing law and their experiences in the industry.
- BMAHC will be invited to educational seminars hosted at the firm.
- BMAHC will have access to the boardrooms at the firm's office in downtown Toronto. Please note that reception generally requires 48-hours' notice for booking a boardroom, however boardroom's may be available on shorter notice.
- Robins provides our clients with legal updates and a summary of activities through our newsletter which you will receive.



8. **Retainer (Addendum s.6)**

WAIVED.

9. **Required Information**

In addition to the information requested herein we are required, under the **Client Identification and Verification Rules** of the Law Society of Upper Canada that governs lawyers in Ontario, to obtain photo identification from you as a condition of providing you with our services. In that regard, we will require a copy of your driver's licence or passport for our records. If you are copying your driver's licence, please copy both front and back.

10. **Accounts and Payment (Addendum s.7 and s.15)**

We normally render periodic accounts (generally monthly) for our fees and any disbursements which have been rendered in connection with this file. Accounts are due on receipt. To the extent that any retainer received by us from time to time is insufficient to cover any particular account, we expect any balance will be paid within 30 days, after which time interest in accordance with the *Solicitors Act* (Ontario) will be charged. In the event accounts remain unpaid for more than 60 days without appropriate alternate payment arrangements in place, we reserve our right to cease further work in this matter.

At this time I have explained what procedures we intend to follow and your execution of this letter is acceptance of these procedures.

Kindly sign this letter below and return the original to us at your earliest convenience to confirm our retainer on your behalf.

If you have any questions or any further concerns please feel free to contact Lawyer in Charge.

Yours very truly,

ROBINS APPLEBY LLP

Per:

Ismail Ibrahim

II:

I /We hereby acknowledge having reviewed and agree to the terms of your retainer on our behalf in accordance with this letter and the Addendum.

Dated at _____ this _____ day of _____, 2020.

(Signed)



ROBINS APPLEBY LLP

RETAINER ADDENDUM

This Addendum sets forth the standards upon which the Firm will provide legal services to a client and bill for those services. This Addendum accompanies a retainer letter ("**Accompanying Letter**") addressed to a client or clients and/or persons who agree to be liable to pay costs and lawyers' fees of the Firm (jointly, severally and collectively the "**Client**") and shall become part of the agreement between Robins Appleby LLP (the "**Firm**") and the Client. It is intended that this Addendum is incorporated by reference into the Accompanying Letter and in the event of a direct conflict between the terms of the Accompanying Letter and this Addendum, the terms of the Accompanying Letter shall govern.

1. Professional Undertaking

The Lawyer in Charge will have primary responsibility for the Client's representation, and may, in his or her sole discretion, utilize other lawyers and legal assistants in the Firm who can accomplish the work. If at any time the Client has any questions concerning the utilization of other lawyers or legal assistants, or any other matters, the Client should contact the Lawyer in Charge.

2. Preservation of Confidentiality

It is the Firm's policy not to disclose or misuse your confidential information, subject only to applicable law and our professional and ethical obligations. Because we owe this duty to all of our Clients, we will not disclose to you information we hold in confidence for others (even if that confidential information would be relevant to our representation of you), or disclose to others information we hold in confidence for you (even if that confidential information may be relevant to our representation of those others).

While we endeavour to protect all client information, please be aware that e-mail and other electronic modes of communication pose an inherent risk to client confidentiality. Client confidentiality may be inadvertently breached by you if you share access to electronic communications with others or if you take inadequate measures to prevent unauthorized access to the communications. For example, using a shared e-mail account or communicating on an employer's e-mail account could adversely affect a claim for lawyer-client privilege. In addition, communications routed over the Internet are susceptible to interception by unauthorized parties.

3. Conflict

We do not normally consider ourselves to have a conflicting interest because we represent another client who is (a) a business competitor, customer or supplier of yours; or (b) asserting through us legal positions or arguments that may be inconsistent with those you are asserting or may wish to assert; or (c) is adverse in interest in another matter to an entity with which you have a relationship through ownership, contract or otherwise. Unless you have asked us to conduct a search against a particular entity as described in one of the above categories, our conflict search will not identify any issues arising from our representation of them.



4. **Fees**

The Firm takes into account many factors in billing for services rendered, such as the complexity of the issues, the time needed for adequate analysis and research, the time needed to ascertain the relevant facts, the number of documents we are asked to prepare or review, and the extent of assistance available from the Client's officers or representatives and other professional advisers. The principal factor is usually the Firm's schedule of hourly rates, and most invoices for services are the product of the hours worked multiplied by the Firm's hourly rates in effect at the time the work is performed. However, there may be circumstances where time and effort involved, the novelty and difficulty of the issues, the urgency or time factors involved or the work performed produces substantial value or a favourable result for the Client which may be far greater than originally anticipated, in which event, if the Firm and the Client then mutually agree, the Firm's fee could be greater than the hourly rates multiplied by the number of hours worked. The Firm's schedule of hourly rates for lawyers and other members of the Firm's professional staff is based on their years of experience, specialization in training and practice and level of professional attainment. This rate schedule is adjusted from time to time and may affect the hourly rates of the lawyers working upon the Client's matters.

5. **Costs**

The Firm's fees do not include costs such as travel, lodging, meals, telephone calls, fax charges, express or other delivery charges, deposition transcripts, filing and recording costs, government registration and application fees, searches of public registries, agency fees, photocopying, computerized legal research and, when needed, staff overtime. The Client may also be asked to pay costs incurred by the Firm directly to the Firm's suppliers. The Firm shall establish rates which may change from time to time, in the Firm's discretion, for items such as photocopies, faxes, and computerized legal research used or incurred in connection with our representation of the Client.

6. **Retainer**

The retainer is paid by the Client with the understanding that no subsequent consent by the Client is required by the Firm in connection with the use of the retainer for payment of the Firm's costs and fees. An additional retainer may be required in the future if we reasonably anticipate a substantial additional investment of time or costs.

7. **Billing**

The Firm's invoices generally will be prepared and mailed or electronically transmitted (by e-mail or facsimile) during the month following the month in which services are rendered and costs advanced. The invoice is payable in full upon receipt. In the event that you have any questions with respect to an invoice, you must raise such issues within 30 days of your receipt of the invoice. In the event you do not raise any issues within the aforesaid 30-day period, your failure to object will be considered an acceptance of the invoice. When the Firm represents a client in a matter which results in monies being paid to the Firm, the Firm may, at its option, take the Firm's outstanding fees, disbursements and applicable taxes from such monies.



8. **Late Payments**

On the first day of each month, the balance of any invoice unpaid for more than 30 days shall be subject to interest in accordance with the *Solicitors Act* (Ontario). In the event that it is necessary to institute legal proceedings to collect the Firm's fees and costs, the Firm will also be entitled to reasonable lawyers' fees, paralegal fees and charges and other costs of collection, even if such services and costs are provided by the Firm.

9. **Security for Fees and Costs**

Ontario law provides the Firm with the right to impose a lien upon documents, money and other intangibles and materials coming into its possession to secure the payment of its fees and expenses. This retaining lien, as well as appropriate charging liens, may be asserted by the Firm at its discretion in appropriate circumstances.

10. **Credit Check**

The Firm may, at its sole option, request an investigative consumer report ("**Credit Check**") on the Client. The Accompanying Letter serves as the Client's authorization individually and collectively to the Firm to undertake Credit Check(s) with respect to each Client.

11. **Responsibility for Payment**

The Client has responsibility and is liable for fees and costs for all services rendered to the Client, and the Client is jointly and severally liable with any corporations, partnerships, estates, trusts or other entities for which we may render services in connection with our representation of the Client.

12. **Employment of Additional Professionals**

In the event the Firm deems it necessary to employ additional professionals with specialized skills (e.g., surveys, appraisals, environmental audits, extra-jurisdictional legal services, etc.), then, after consultation with (and consent of) the Client, additional professionals may be employed by the Firm. The Firm will employ professionals in the name of the Client or, at the discretion of the Firm, in the Firm's name on behalf of the Client. The Client is, in either event, responsible to pay the fees of such professionals in full upon the rendering of the professionals' statement upon the professional rendering its account for services. The Firm reserves the right to request and obtain an additional retainer to defray the fees and costs of professionals employed in connection with a client matter. All fees and costs of additional professionals shall be subject to the security provisions, interest provisions and other applicable provisions of this Addendum.

13. **Title Insurance**

If the transaction for which the Client has retained the Firm includes the issuance of a title insurance policy, the cost thereof is to be paid by the Client, based upon the rate charged by the applicable title insurer in addition to, and not in lieu of, the Firm's standard fees as described in this Addendum.



14. Choice of Law, Venue and Forum Selection

This Addendum and the Accompanying Letter shall be governed by the laws of the Province of Ontario. The Client and the Firm do hereby agree and consent that the Ontario Courts in Toronto have exclusive jurisdiction to adjudicate any claim, dispute and/or controversy of any nature arising out of or relating to this Addendum and the Accompanying Letter.

15. Termination of Engagement

Every Client has the right to terminate our Engagement at any time for any reason. The Firm will have the same right, and under certain circumstances, the Firm may be required to terminate representation of the Client, upon reasonable notice to the Client. Among the reasons for which we may terminate are: (a) non-payment of our fees after the Client has been given reasonable warning that we intend to withdraw unless we are paid; (b) the Client's breach or failure to comply with the terms of the Firm's Engagement, including the provisions of this Addendum; (c) the Client's failure or refusal to be forthright, cooperative or supportive of the Firm's efforts; (d) the Client's misrepresentation of, or failure or refusal to disclose facts to the Firm which are necessary for, or relevant to, the Engagement in the Firm's opinion; (e) the Client's refusal to accept the Firm's advice; (f) the Client's persistence in pursuing, or having us pursue, an objective which we consider to be criminal, fraudulent, actionable, repugnant, or imprudent; (g) discovery of a conflict with another Client of the Firm; and/or (h) any other reason permitted, or required, under the *Rules of Professional Conduct* which govern the legal profession in Ontario.

Upon termination of the Engagement, either by the Firm or by the Client, the Client, at our request, must sign all papers and documents which we believe necessary for us to accomplish our withdrawal from the representation. Regardless of when or by whom the representation is terminated, and until such time as all outstanding fees which are owed to the Firm (whether billed or unbilled), have been paid in full: (i) we reserve the right, to the extent permitted by law, to retain all of our files concerning the Client and to hold all documents, monies, or other property of the Client then in our possession; and (ii) we will have a lien, to the extent permitted by law, on all judgments, awards, damages or other assets or the proceeds thereof and/or all other monies which are recoverable or distributable to the Client as a result of any settlement, compromise, or court award then or thereafter obtained or achieved on its behalf in the matter whether by Client, by us, or by any other lawyers who may succeed us in the matter.

We confirm that once our Engagement has been completed or terminated:

- (a) We will not be obliged to advise you as to subsequent legal developments relating to this matter. The fact that we may subsequently send you information on legal developments without charge, or that we may include you in general mailings will not change the fact that our Engagement has ended.
- (b) We will close your file and notify you. You will be entitled to receive, following your request at that time and at your cost, copies of any documents relating to the legal services performed by us for you not previously provided to you, (excluding our internal accounting records and other documents belonging to us). We have the



right to retain copies of any documents or papers provided to you. If we do not receive your request for such copies, we will deal with your file in accordance with our file retention and destruction policy (available for viewing on our Firm website). In this regard, some documents will be removed from the file and destroyed, while others will be stored in an off-site location for a period of time and then destroyed. If you require copies of documents once the file has been moved to the off-site location, an administrative fee may be charged to retrieve the file from storage.”

16. Privacy

All "personal information", as defined in the *Personal Information Protection and Electronic Documents Act* (Canada) collected, used, retained and disclosed by the Firm is subject to the Firm's privacy policy, available for viewing on our Firm website.



Schedule A - Cost Estimate for Proposed Work Plan

Task A. Design-Build Contract and Procurement

Specific Work Item	Description of Activities	Cost Estimate
1. Initial Consolation	An initial call between BMAHC, and lawyers from Robins to meet one another and to discuss the goals and objectives of the Gateway Site Project.	Complimentary
2. Draft Design-Build Construction Contract	Prepare form of CCDC 14-2013, Design Build Contract (or another arrangement that BMAHC may wish to employ) along with set of supplementary conditions NOTE 1	\$4,000 J. Fox @ 4 Hrs N. Ciglen @ 4 Hrs
3. Procurement Consultation and Awarding	Advise on legal issues and proponents questions that arise during the procurement process on an as-needed basis. NOTE 2	\$2,500.00 I.Ibrahim @ 5 Hrs
4. Finalize Design-Build Contract	Negotiate the terms and conditions of the Design-Build Contract with Successful proponent NOTE 3	\$4,000.00 J.Fox @ 4 Hrs N.Ciglen @4 Hrs
5. Construction Period	Advise on legal issues relating to the construction process on an as-needed basis. NOTE 2	\$3,000.00
Contingency	Reasonable Budget Contingency NOTE 4	\$5,000.00
	Total Estimate (excluding HST and Disbursements)	\$18,500.00

NOTE 1 – We have provided for a two hour meeting with you to review the elements you would like to see included in the supplementary conditions and the time to draft.

NOTE 2 – We have based our predictions for on going work based on our experience. We are assuming there will be no need for tie back agreements or crane swing rights given that there are no immediate neighbours to the Gateway Site. We have not included any estimate for lien related litigation or dispute resolution.

NOTE 3 – Negotiation with a third party are difficult to predict. We assume that we would create the initial set of supplemental conditions, receive comments from the builder, participate in meetings aimed at resolving issues and then complete the contract.

NOTE 4 – Rather than provide legal fee ranges, we prefer to recommend that you budget a reasonable contingency. We include a higher contingency where we estimating the cost of a negotiation.



Task B. Land Acquisition

Specific Work Item	Description of Activities	Cost Estimate
1. Initial Consultation	An initial call between BMAHC, and lawyers from Robins to meet one another and to discuss the goals and objectives of the Gateway Site Project.	Complimentary
2. Legal Structure for Project Delivery	<p>Provide advice on the benefits and the challenges of delivering the project through various legal entities including BMAHC or a separate corporate, which may be a subsidiary and joint-ventures/partnerships.</p> <p>A determination on the entity should be completed prior to awarding the Construction Contract as the successful proponent will be entering into an agreement with that entity.</p> <p>NOTE 5</p>	<p>\$5,000.00</p> <p>J. Fox @ 2 Hrs</p> <p>I. Ibrahim @5 Hrs</p> <p>N. Ciglen @ 4 Hrs</p>
3. Purchase Agreement with the Town of the Blue Mountains	Draft and negotiate the Purchase Agreement with the Town of the Blue Mountains for the transfer of the development lands. As this acquisition is to be completed on a deferred-cost basis, the structure for the deferral, a Vendor Take-Back mortgage for example, will be noted in the Agreement.	<p>\$1,500.00</p> <p>J Fox @2 Hrs</p> <p>N.Ciglen @ 2 Hrs</p>
4. Transfer of Land	<p>Review title to the development site and conduct traditional real estate due diligence (review of registered title and off-title compliance searches). Includes delivery of report summarizing on-title and off-title matters.</p> <p>Prepare ancillary closing documents</p> <p>Complete transaction and register the transfer of the land from the Town of Blue Mountains to BMAHC, and any required mortgages.</p> <p>Anticipated disbursements include: Land Transfer Tax, Title Insurance, off-title compliance searches, registration fee.</p>	<p>\$3,500.00</p> <p>J. Fox@1 Hr</p> <p>N.Ciglen @ 3 Hrs.</p> <p>K. Lexovsky @ 7 Hrs.</p>
5. Contingency	<p>Reasonable Budget Contingency</p> <p>NOTE 6</p>	\$3,000
	Total Estimate (excluding HST and Disbursements)	\$13,000.00



NOTE 5 – Assumes one meeting with the Municipality to discuss structural options and desired outcomes followed by a memorandum discussing the options and setting out any recommendation we may have.

NOTE 6 – We have assumed that there will be no negotiation between the town and BMAHC with respect to the purchase agreement. The principal contingency in this case is (1) if extended meetings are required in connection with setting the structure or (2) unexpected title matters that need to be dealt with.

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