

**Cannabis Growing Facilities
Land Use Review**

Terms of Reference

June 2019

Town of Grimsby Planning Department



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1. Introduction

The Town of Grimsby is inviting proposals to undertake a review of the Town's land use planning policies and regulations pertaining to cannabis growing facilities. The purpose of this review will be to determine whether revisions are required to the Town's existing land use policies and regulations pertaining to cannabis growing facilities.

2. Project Overview

The work program will consist of three phases as follows:

Phase 1: Best Practice Review and Review of Current Standards and Legislation

The initial phase will involve a detailed analysis of the following:

- a) The Town's current land use policies and regulations pertaining to cannabis growing facilities;
- b) A review of federal, provincial and other relevant policies and regulations applicable to cannabis growing facilities; and
- c) A best practice review of land use planning policies and regulations in place in other Ontario municipalities.

The purpose of this review will be to identify any gaps that exist in the Town's current land use policies and regulations pertaining to cannabis growing facilities, and to identify land use planning strategies that can be utilized by the Town to address these gaps.

To complete this work, the successful consultant will undertake the following tasks in this phase of the work program:

- 1) Conduct a best practice review, and a review of current standards and legislation governing cannabis growing in the province of Ontario. This review must also include an analysis of the powers municipalities have to regulate cannabis growing facilities (i.e. what a zoning by-law can and cannot regulate).
- 2) Compare and contrast this review to the land use planning policies and regulations currently in place in the Town of Grimsby.
- 3) Prepare a draft background analysis report on the findings and recommendations of this review.
- 4) Review the draft background analysis report and findings with Planning Department Staff and revise based on any feedback received.
- 5) Prepare a final background analysis report to be presented by the consultant at a meeting of the Town's Planning & Development Committee.

Phase 2: Formulate Policy Options

The second phase will involve the consultant formulating policy options based on the background analysis undertaken in the initial phase.

To complete this work, the successful consultant will undertake the following tasks in this phase of the work program:

- 1) Prepare draft policy options and review these with Planning Department Staff, revising based on any feedback received.
- 2) Present the policy options at a Public Open House, the content of which will be prepared by the consultant, with assistance provided by Planning Department Staff. The consultant's discussion at the Public Open House should include an analysis of the strengths and weaknesses of each policy option.
- 3) Based on the comments received at the Open House, refine the policy options and prepare a draft recommendation report, supporting a preferred policy option.
- 4) Review the draft recommendation report with Planning Department Staff, revising based on any feedback received.
- 5) Prepare a final recommendation report to be presented by the consultant at a meeting of the Town's Planning & Development Committee.

Council will then be asked to provide direction regarding an initiation of amendments to the Town's Official Plan and/or Zoning By-law.

Phase 3: Policy Implementation

The third phase will involve the consultant overseeing the implementation of the selected policy option through amendments to the Town's Official Plan and/or Zoning By-law, with assistance provided by Planning Department Staff.

To complete this work, the successful consultant will undertake the following tasks in this phase of the work program:

- 1) Prepare draft amendments to the Town's Official Plan and/or Zoning By-law, which would implement the policy option selected by Council. Planning Department Staff will circulate these amendments to internal and external agencies for comment.
- 2) If necessary, refine the draft amendments based on any agency comments received, and present these at a formal Statutory Public Meeting.
- 3) Prepare the draft amendments for final consideration by Council, and prepare a recommendation report regarding the proposed amendments.

3. Schedule

Awarding of the project will occur in July 2019 and project completion is scheduled for April 2020. It is anticipated that the project will generally adhere to the following schedule, which may be modified by the Town based on discussions with the Consultant:

Item	Task	Date
1	Approve, Post and Circulate RFP	May – June 2019
2	Consultant Selection Process	June – July 2019
3	Phase 1: Best Practice Review and Review of Current Standards and Legislation	August – October 2019

4	Phase 2: Formulate Policy Options	October – December 2019
5	Phase 3: Policy Implementation	January – April 2020

4. Deliverables

Deliverables for this project will be as follows:

- Detailed work plan and project schedule;
- Draft and final background analysis report;
- Draft and final policy options report and presentation materials for public open house;
- Draft and final recommendation report and presentation materials for statutory public meeting; and
- Draft and final Official Plan and/or Zoning By-law amendments.

All documentation must be submitted in PDF format, and **must be compliant with the Accessibility for Ontarians with Disability Act 2005, Ont. Reg. 429/07 (A.O.D.A.)**. Presentations shall be provided in PowerPoint format wherever possible.

The Town shall have the right to reproduce all deliverables.

5. Project Team's Roles and Responsibilities

The project will be overseen by the Acting Director of Planning of the Town of Grimsby. The project team will consist of the consultant's team and Planning Department Staff.

The Consultant

The consultant team will be responsible for coordinating the study, conducting research and analysis, reporting findings, and preparing the documents and presentations outlined in the Terms of Reference. The consultant team's responsibilities will include, but not be limited to, the following:

- Submit a study proposal;
- Create a detailed work schedule based upon elapsed time in weeks and the calendar year which includes timing, person hours and cost per task, and a tentative completion date for each plan deliverable (including dates for draft submission, staff review time, and final submission);
- Collect and compile all required information for the draft and final background analysis report;
- Collect and compile all required information for the draft and final policy options recommendation report;
- Prepare and present all deliverables to Planning and Development Committee and/or Council, as required;
- Provide all presentation materials required for meetings;
- Design visual aids (i.e. mapping, graphics, concept plans, and presentation materials) as required, to illustrate recommendations and actions; and

- Attend Town of Grimsby Planning and Development Committee meetings, and meetings with other Committees of Town Council as necessary.

While the consultant will work with Planning Department Staff, Council and stakeholders in compiling and reviewing information throughout the process, it is expected that the consultant will provide sound, objective and defensible analysis and reports based on technical and professional judgement which may or may not necessarily be consistent with the opinions and conclusions of Town Planning Department Staff or other community stakeholder inputs.

The documentation arising out of this project shall be consistent with/conform to all Provincial and municipal legislation and policies, such as the Planning Act, Provincial Policy Statement (PPS), Growth Plan, Greenbelt Plan, Niagara Escarpment Plan, Region of Niagara Official Plan and the Town of Grimsby Official Plan, and in accordance with sound planning principles.

The consultant shall be expected to attend hearings of the Local Planning Appeal Tribunal (LPAT), Courts and/or tribunals to present evidence and professional opinions in defense of the documentation it supplies as part of this project. Accordingly, the consultant **shall include a flat rate fee (as an additional cost item) for any LPAT related works.**

The consultant **shall also be required to include a flat rate fee (as an additional cost item) for any additional work** that may be required above and beyond the scope of this Terms of Reference.

The lead consultant and applicable representatives shall attend all meetings required during the project, and present the project recommendations and amendments to Council prior to adoption. The consultant team's representatives attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

Planning Department Staff

Planning Department Staff will be a conduit to other internal departments, outside agencies and Council as required. Planning Department Staff will be required to provide the Consultant with the background information, documents, and materials required to complete the project. Planning Department Staff will also review all deliverables, and provide comments as necessary.

Other Organizations

Representatives from other organizations such as the Region of Niagara, the Niagara Peninsula Conservation Authority, the Niagara Escarpment Commission, other Town departments and other external groups will be consulted. These organizations will be expected to provide information in their areas of expertise as required.

6. Budget

The upset limit for this project will be \$30,000.00, excluding HST. The consultant shall supply a detailed task list, itemized cost estimate, work plan, and a total proposed cost (i.e. maximum upset limit) of the project, including all consulting fees, disbursements, contingencies and all other cost associated with implementing the scope of work. HST should be identified separately. It is the responsibility of the respondent to anticipate and clearly identify all tasks required to satisfy the requirements of the RFP.

The successful consultant project leader will be responsible for submitting detailed invoices which describe the work undertaken within each invoice time period, the personnel employed and hours expended by the hourly rate, disbursements, total fee for each invoice, and total budget expended/remaining on the project. If the consultant determines that this target cannot be met at any time prior to or during the project work, the consultant shall advise the Town within 48 hours of such determination and should not undertake any work that would cause the upset limit to be exceeded without written permission from the Town of Grimsby.

7. Contents of Proposal

Proposals must contain the following:

- The consultant team's understanding of the assignment, including an explanation of the approach and methodology to be used to achieve the objectives of the RFP, and an assessment of any anticipated difficulties in performing tasks and the proposed approach for overcoming these;
- A list of employees within the consulting team who will be involved in the project, their role in the process, anticipated percentage of time dedicated to the project, curriculum vitae complete with qualifications, experience and applicable skills, and their contact information, and a breakdown of all hourly rates;
- Examples of recently completed municipal projects, and a list of three (3) client references relating to the same;
- A work plan/project schedule, including a detailed description and costing of all tasks and sub-tasks, timelines, milestones, deliverables, meetings and key dates proposed to meet the requirements of the RFP. If the Consultant feels it is advisable to perform additional work at the proposal stage, the nature, extent and estimated cost of such work shall be identified separately;
- Lead consultant's experience before the Local Planning Appeal Tribunal and/or Ontario Municipal Board;
- An upset cost for the project, including a breakdown of all hourly rates and predicted person hours attributed to each team member by the task and all other tasks and disbursements. Cost estimates should also include the cost of additional public meetings, printing, document reproduction, travel and accommodation, LPAT witness, etc. and any costs of anticipated sub-consultant work;
- Indication of availability for the project and other concurrent commitments;
- Disclosure of any potential conflict of interest if applicable.

Respondents shall submit two (2) bound copy and one (1) PDF copy of the proposal (in AODA compliant format). The maximum proposal length shall be twenty five (25) pages, exclusive of CV's, references and project experience materials. Proposals are to be clearly marked with the RFP title.

The proposal shall be prepared and submitted at the sole expense of the consultant's team and without cost to the Town.

Proposals in the prescribed format must be addressed to:

Walter Basic
Acting Director of Planning, Town of Grimsby
160 Livingston Avenue, Grimsby, Ontario L3M 4G3
wbasic@grimsby.ca

Proposals must be received on or before 4:00 p.m. local time on **June 28, 2019**. The Town bears no responsibility for any proposal(s) which are lost, misplaced or are not considered as a result of failure to follow the instructions. Proposals received after the official closing time will not be considered during the selection process and will be returned unopened to the respective respondent.

8. Evaluation of Proposals

Proposals will be evaluated based on the following criteria and weighting:

TECHNICAL AND MANAGEMENT PROPOSAL	75%
FEE PROPOSAL	25%

A score of 50% out of the maximum 75% for the Technical and Management aspects of the proposal must be obtained to be considered for the Consultant Team to be shortlisted and invited to proceed to the consideration of the Fee component.

The review and selection of a proposal(s) will be conducted by the Acting Director of Planning and Senior Planning Staff. The proposed winning submission must be endorsed by Town Council.

A report outlining the results of the RFP and a recommendation to award the contract for this project will be presented for Council approval in July 2019.

9. General Terms and Conditions

The successful candidate will be required to sign an agreement with the Town. The General Terms and Conditions of this agreement are outlined as follows:

Withdrawal of Proposals

A proposal may be withdrawn by submitting a request in writing to:

Walter Basic
Acting Director of Planning, Town of Grimsby.
160 Livingston Avenue, Grimsby, Ontario L3M 4G3

The withdrawal of a proposal will not preclude a proponent from submitting another proposal prior to the Closing Date/Time.

Questions, Discrepancies and Omission

A consultant seeking clarification or discovering discrepancies or omissions in these Terms of Reference or having doubt as to the meaning or intent of any part thereof shall send notification to planning@grimsby.ca. The email subject line MUST reflect the RFP title. All questions must be received at least seven (7) business days prior to the bid closing date. All questions received later than seven (7) business days before the closing date will not be answered.

It is understood and acknowledged that the Town shall not be held liable or responsible for verbal instructions or explanations. Only written Addenda issued by the Town during the bidding period shall become part of these Terms of Reference.

During the bidding period, bidders may be advised by Addenda of required additions and deletions from or alterations to the requirements of the proposal. All such changes shall become an integral part of the proposal and shall be allowed for in the price submitted by the consultant.

Addenda cannot be issued later than five (5) working days before the closing date without extending the closing date and time. All registered document takers will be notified of all or any addendums/information changes. Bidders shall confirm the receipt of all addendum(s).

The Town reserves the right to distribute any or all questions received and responses given pertaining to discrepancies and omissions to all bidders.

The Town bears no responsibility for any oral communication instruction or suggestions.

Acceptance or Rejection of Proposals

The Town reserves the right in its total discretion to accept or reject any or all proposals for any reason whatsoever, and to accept or reject any proposal if considered best for the Town. All documentation is subject to review by Staff for accuracies and compliance with the specifications, terms and conditions of these Terms of Reference.

Invoicing and Payment

The normal terms of payment for the Corporation will be net thirty (30) days from receipt of services/invoice, whichever occurs later.

Intent of Scope of Work

It is the intent of the scope of work to describe specific details of services required. It is the responsibility of the successful consultant to supply any service not described in the scope of work but which may be reasonably implied to discharge the scope of work covered in these Terms of Reference.

Incurred Costs

The Town will not be liable nor reimburse any consultant for costs incurred in the preparation of submissions, attendance at meetings and related travel costs, or any other services that may be requested as part of the preparation of the proposal or proposal evaluation process.

Proposal Expiry Date

Consultants acknowledge that offers contained within their proposal shall remain open for acceptance by the Town for a period of not less than ninety (90) days from the closing date of acceptance of the proposals.

Harmonized Sales Taxes (HST)

All base prices shall exclude HST. Payment under the contract shall be subject to value added taxes in effect at the time of invoicing.

Insurance

The successful lead consultant and all sub-consultants shall purchase and maintain at all times during the term of project the insurance coverage listed below:

- a) Comprehensive General Liability Insurance
- b) Commercial general liability insurance insuring the proponent and covering all services as described in the scope of work. The policy will be extended to include bodily injury and property damage, personal and advertising injury, products and completed services, blanket contractual, a severability of interest and cross liability clause to a limit of not less than two million dollars (\$2,000,000) per occurrence. A commercial general liability policy that has an aggregate limit will be acceptable.
- c) Errors and Omissions: The successful consultant is required to have Errors and Omissions liability insurance insuring the proponent in the amount of not less than two million dollars (\$2,000,000) per claim in the aggregate. The coverage under the policy shall be maintained continuously until expiry or termination of the contract Agreement. If coverage under the Errors and Omissions policy is cancelled within the two year period after the completion or termination on the work, the proponent shall provide the Town with notice within ninety days of cancellation and shall be required to purchase an extended reporting endorsement to ensure that coverage is maintained.
- d) Other Insurance: Any other type or form of insurance as otherwise may be required from time to time as identified at any time by either party. All insurance policies shall be:
 - Written with an insurer licensed to do business in Ontario;

- Be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the Proponent; and
- Contain an undertaking by the insurers to notify the Town in writing not less than thirty days before any material change in risk cancellation of coverage.

Workplace Safety and Insurance Board Clearance

Upon award, the consultant shall provide a valid, current Clearance Certificate indicating that the proponent is registered with Workplace Safety and Insurance Board (“WSIB”), and has an account in good standing, or, if WSIB coverage is not required by law to be carried by the Proponent, either:

- a) An Exemption Letter from WSIB, satisfactory to the Clerk; or
- b) An Independent Operators Status¹ Certificate issued by WSIB.

In addition to the indemnification provided by the proponent herein, the proponent agrees to indemnify the Town for all losses, claims, expenses (including reasonable legal fees) or other charges related to the proponent’s status with WSIB.

Failure to Perform

Failure to comply with all terms and conditions of these Term of Reference and failure to supply all documentation as required, within the specified time period, shall be just cause for cancellation of the award. The Town shall then have the right to award to any other Consultant, or issue a new Request for Proposal.

Collusion

A reasonable suspicion or collusion between two or more consultants will be sufficient cause for the rejection of all proposals so affected. It will be the responsibility of the Town to determine if collusion has occurred.

Ability and Experience of Proponents Submitting Proposals

Each Consultant making a submission shall satisfy the Town as to their ability and experience in supplying the services offered in their submission. The Town will not award a contract to any consultant that cannot furnish evidence satisfactory to the Town that they have the necessary ability, dedication, equipment, capital and experience to provide the services required.

Freedom of Information and Protection of Privacy Act

The proposal and any other documentation submitted by the consultant prior to the closing date specified in these Terms of Reference shall become the property of the Town and shall not be returned. The proposal shall be subject to Freedom of Information and Protection of Privacy Act. The consultant must identify any information contained in the proposal that is submitted in confidence.

Vendor Performance

The Town may, at their sole discretion, reject a submission if the consultant making the submission:

- a) Has, at any time threatened, commenced or engaged in legal claims or litigation against the Town;
- b) Previously provided goods or services to the Town in an unsatisfactory manner;
- c) Has failed to satisfy an outstanding debt to the Town;
- d) Has a history of illegitimate, frivolous, unreasonable or invalid claims;
- e) Provides incomplete, unrepresentative or unsatisfactory references; or
- f) Has engaged in conduct that leads the Town to determine that it would not be in the Town's best interest to accept the submission.

Assignment of Contract

Sub-contracting out the services will not be permitted without the prior written consent of the Town. Any work undertaken by sub-contractors shall in no way relieve the consultant of his/her responsibilities to the Town.

Indemnification

The successful consultant shall indemnify and save harmless the Town, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind arising out of negligence, errors or omissions, fraud or willful misconduct of the successful consultant, its officers, employees, agents and sub-consultants, or any of them, attributable to or in connection with the delivery of performance of the goods and services contemplated in these Terms of Reference, except to the extent that the same is attributable to or caused by the negligence of the Town, its officers, employees and agent, or any of them. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the successful consultant in accordance with the Terms of Reference.

Clarification of Submission

The Town reserves the right in their sole discretion to clarify any proposal after the proposal submission deadline. The response received by the Town from a consultant shall, if accepted by the Town, form an integral part of that consultant's proposal. The Town reserves the right to interview any or all consultants to obtain information about or clarification of their proposals. In the event that the Town receives information at any stage of the evaluation process which results in earlier information provided by the consultant being deemed by the Town to be inaccurate, incomplete or misleading, the Town reserves the right to revisit the consultant's evaluation result.

Conflict of Interest

Consultants making a submission shall disclose to the Town prior to award of the contract, any potential conflict of interest. If such a conflict of interest does exist, the Town may, at its sole discretion, withhold the award. This shall include identification if any member of the consultant or consultant team currently represents any property owner(s) within the subject area. Sub-consultants may participate in more than one bid.

Award and Announcement

Negotiations, if any, must be successfully concluded and documented before a final recommendation is made. The first ranked consultant, having acceptable terms and conditions as outlined in this Request for Proposal will be recommended for award. No announcement concerning the successful consultant will be made until a complete report is prepared and approved the Town Council.

If approved by Council, the Town will notify the successful consultant in writing, of the acceptance of its proposal. The successful consultant shall be bound to execute a written agreement with the Town within fourteen (14) days of contract award. The date of the contract award shall be taken as the date on which the consultant is notified of the acceptance of its proposal. Notice of acceptance will be deemed to have been given on the fifth (5) day following the date of mailing of the written notice. The successful consultant must submit the following to the Town within fourteen (14) days of the contract award:

- A fully executed agreement in triplicate; and
- A certificate of insurance which complies with the insurance and indemnification requirements of the Request for Proposal.

Contract Award Document

The issue of a Purchase Order and an Agreement by the Town gives rise to a contract between the Town and the successful Consultant in accordance with the terms and conditions sent out in these Terms of Reference, the specifications, any applicable addenda and any other related documents.

Negotiations

In the event that a prepared proposal does not precisely and entirely meet the requirements of this Request for Proposal, the Town reserves the right to enter into negotiations with the selected proponent(s) to arrive at a mutually satisfactory arrangement with respect to any modifications to the proposal.

Performance Unsatisfactory

The agreement will be deemed to be in default if the Consultant fails to:

- Perform any specification, term or requirement included herein, in a good and proper manner;

- Provide any deliverable(s) in accordance with the requirements incorporated in the Contract; and
- Adhere to specified delivery requirements and/or dates.

Exclusion

Except as expressly and specifically permitted herein, no consultant shall have any claim for any compensation of any kind whatsoever, as a result of participating, and submitting a proposal. Each consultant shall be deemed to have agreed that it has no claim.

Intellectual Property

All information and data in any form, including but not limited to drawings, documents and as-built or record drawings, which are prepared by the Consultant pursuant to this work, together with all designs or materials capable of intellectual property protection, prepared, developed or created by the consultant, its employees or agents during the performance of the services involved in this work shall become the property of the Town unless specifically noted otherwise in the written agreement for this work. The consultant shall not be liable for subsequent changes to or alterations of such drawings and documents.

Limitations of Damages

By submitting a proposal, the consultant agrees that in no event will the consultant claim damages in excess of an amount equivalent to the reasonable costs incurred by the consultant in preparing its proposal for matters relating to any agreement or concerning the competitive process, and, the consultant, by submitting a proposal, waives any claim for loss of profits if no agreement is made with the consultant.

Termination

Unless the Town agrees in writing to termination on a different basis, the following termination condition would apply to any contract following an award.

Upon giving the consultant not less than thirty (30) days prior written notice, the Town may, at any time and without cause, cancel the contract, in whole or in part. In the event of such cancellation, the Town shall not incur any liability to the consultant apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the successful consultant at the time of cancellation.

Failure of the consultant to perform its obligations under the agreement shall entitle the Town to terminate the contract upon ten (10) days written notice to the consultant if a breach which is not remediable is not rectified at that time. In the event of such termination, the Town shall not incur any liability to the successful consultant apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the successful Consultant at the time of termination.

Right to Audit

The Town or anyone designated in writing by it may audit and inspect all financial and related records associated with the terms of the contract including timesheets, accounts, records, receipts, vouchers, and other documents relating to the services and shall have the right to make copies thereof and take extract therefrom. The consultant shall make available all facilities, physical and otherwise, for such audits and inspections and shall furnish the Town and its authorized representatives with all such information as it, or they, may from time to time require with reference to such timesheets, accounts, records, receipts, vouchers, and other documents. The Consultant shall cause all such timesheets, accounts, records, receipts, vouchers, and other documents, as aforesaid, to be preserved and kept available for audits and inspection at any reasonable time, and from time to time, until the expiration of five (5) years from the later of:

- a) The date of termination of the consultant or cancellation of the contract;
- b) The date of completion of the services hereunder; or
- c) The expiration of such lesser or greater period of time as shall be approved in writing by the Town.

Meetings

The consultant's representative(s), as requested by the Town, shall attend all meetings required prior to and during the contract. This shall include all regular meetings and emergency meetings.