



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 144-05

**BEING A BY-LAW TO AUTHORIZE THE APPOINTMENT OF
AUDITORS AND TO AUTHORIZE THE EXECUTION OF LETTER
OF ENGAGEMENT FOR THE FISCAL YEARS 2005-2009 AND TO
REPEAL BY-LAW NO. 209-04**

WHEREAS Section 296(1) of the *Municipal Act, 2001* provides that a municipality shall appoint an auditor licenced under the *Public Accountancy Act* who is responsible for

- (a) annually auditing the accounts and transactions of the municipality and its local boards and expressing an opinion on the financial statements of these bodies based on the audit;
- (b) performing duties designated by the Minister, and
- (c) performing duties required by the municipality or local board which do not conflict with the duties designated by the Minister, and

WHEREAS Section 296(3) of the said *Municipal Act* provides an auditor of a municipality shall not be appointed for a term exceeding five (5) years, and

WHEREAS By-law No. 81-99 passed by the Municipal Council of the Town of Fort Erie on the 25th day of May, 1999 provides for the appointment of Grant Thornton as the Corporation's auditors for the period 1999 to 2003, and

WHEREAS it was deemed expedient to delay the Proposal Call for Audit and Review Services until late Spring 2005 and subsequently Report No. CS-36-04 was approved at the Council-in-Committee meeting of November 1, 2004 authorizing the consideration of a by-law to amend the Letter of Engagement with Grant Thornton LLP, Chartered Accountants for audit services for the year ending December 31, 2004, to waive the Tendering Policy By-law to permit the one year extension and to defer the Proposal Call for Audit and Review Services to April 2005, and

WHEREAS By-law No. 209-04 was passed by the Municipal Council of the Town of Fort Erie on the 8th day of November, 2004 to authorize an extension of the appointment of Grant Thornton as the Corporation's auditors for the Year 2004, and

WHEREAS Report No. CS-22-05 was approved at the Council-in-Committee meeting of June 13, 2005 authorizing staff to proceed with a Request for Proposal for Audit and Review Services in accordance with the Terms of Reference and two proposals were received with Grant Thornton's proposal ranking highest to provide support for the Town's emphasis on strong internal controls and establishing an internal audit function, and

WHEREAS Report No. CS-27-05 was approved at the Council-in-Committee meeting of August 8, 2005 authorizing the appointment of Grant Thornton, Chartered Accountants as the Town of Fort Erie's auditors for the fiscal years 2005-2009 and to authorize the execution of a Letter of Engagement in the form of Schedule "A" annexed hereto to this by-law, and


WHEREAS it is deemed expedient to extend the audit engagement with Grant Thornton pursuant to the terms of the Audit Engagement Letter annexed hereto as Schedule "A" to this by-law, and

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** Grant Thornton be and they are hereby appointed as the Auditor for the Corporation of the Town of Fort Erie for audit services for the fiscal years 2005-2009.
2. **THAT** the entry into an Audit Engagement Letter with Grant Thornton for the provision of the aforesaid audit services in the stated amounts as outlined in the Audit Engagement Letter be and they are hereby approved and authorized.
3. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Audit Engagement Letter annexed hereto as Schedule "A" to this by-law and to affix the corporate seal thereto.
4. **THAT** By-law No. 209-04 be and it is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 8th DAY OF AUGUST, 2005.


MAYOR

DEPUTY 
CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 144-05 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 200 .

Grant Thornton LLP
Chartered Accountants
Management Consultants

August 4, 2005

Town of Fort Erie
Civic Centre
Fort Erie, Ontario
L2A 2S6

Dear Sirs:

Thank you for reappointing Grant Thornton LLP as the auditors for the Town of Fort Erie for the years ending December 31, 2005 to 2009. The purpose of this letter is to confirm our mutual understanding of the terms of our engagement.

Our responsibilities

We will audit the consolidated statement of financial position at December 31, 2005, 2006, 2007, 2008 and 2009 and the related consolidated statements of financial activities and changes in financial position for the year then ended for the Town of Fort Erie, the Fort Erie Public Library Board and the Town of Fort Erie Business Improvement Areas. Upon completion of our audits, we will provide you with our audit reports on those financial statements.

We will be responsible for performing the audits in accordance with Canadian generally accepted auditing standards. These standards require that we plan and perform the audits to attain reasonable assurance about whether the financial statements are free of material misstatement. The audits will include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation.

We will consider the municipality's internal control over financial reporting solely for the purpose of determining the nature, timing and extent of auditing procedures necessary for expressing our opinions on the financial statements. This consideration will not be sufficient to enable us to render an opinion on the effectiveness of internal control over financial reporting. However, we will inform the appropriate level of management of any significant weaknesses in internal control that come to our attention.

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We will design our audits to provide reasonable, but not absolute, assurance of detecting errors or fraud that would have a material effect on the financial statements as well as illegal acts having a direct and material effect on the financial statements. For the purpose of planning our audits, our preliminary assessment of materiality is \$ 370,000, on a consolidated basis. Planning materiality assists in determining the extent of audit work by setting the scope of certain audit procedures.

It is important to recognize that there are inherent limitations in the auditing process. Audits are based on the concept of selective testing of the data underlying the financial statements and are, therefore, subject to the limitation that material errors and fraud and illegal acts having a direct and material financial statement impact, if they exist, may not be detected. Because of the nature of fraud, including attempts at concealment through collusion and forgery, an audit designed and executed in accordance with Canadian generally accepted auditing standards may not detect a material fraud. Further, while effective internal control reduces the likelihood that errors, fraud or illegal acts will occur and remain undetected, it does not eliminate that possibility. For these reasons we cannot guarantee that errors, fraud or illegal acts, if present, will be detected. However, we will inform the appropriate level of management of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential.

Management's responsibilities

The financial statements referred to above are the responsibility of management. In this regard, management is responsible for ensuring that transactions are properly recorded in the accounting records and maintaining internal control sufficient to permit the preparation of financial statements in conformity with Canadian generally accepted accounting principles.

Management also is responsible for making available to us, upon request, all of the original accounting records and related information, and personnel to whom we may direct inquiries. As required by Canadian generally accepted auditing standards, we will make specific inquiries of management and others about the representations embodied in the financial statements and the effectiveness of internal control over financial reporting. Canadian generally accepted auditing standards also require that we obtain a representation letter covering the financial statements from certain members of management. The results of our audit tests, the responses to our inquiries and the written representations comprise the evidential matter we intend to rely upon in forming our opinion on the financial statements.

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If management intends to publish or otherwise reproduce the financial statements together with our report(s) (or otherwise make reference to our firm) in a document that contains other information, management agrees to (a) provide us with a draft of such document to read, and (b) obtain our approval for inclusion of our report(s), before the document is finalized and distributed.

If our report(s) are to be reproduced electronically (for example on the Internet), we are provided with the opportunity, prior to publication, to ascertain whether there are adequate controls over changes to your Internet site and to determine whether the financial statements and our report(s) thereon are accurately reproduced.

Fees

We will provide the services outlined in this letter, based on the assumption that the Town will prepare all supporting working papers, for fees not exceed the following:

	<u>Town</u>	<u>Library</u>	<u>Business Improvement Areas</u>
2005	\$ 22,500	\$ 3,000	\$ 1,500
2006	23,000	3,050	1,500
2007	23,500	3,100	1,500
2008	24,000	3,150	1,525
2009	24,500	3,200	1,550

Bills will be rendered as our work progresses and are payable on a basis of net thirty days. Accounts outstanding after thirty days will be subject to an interest charge of 1 ½% per month (18% per annum). All fees and other charges do not include any applicable Federal, Provincial or other goods and services or sales taxes, or any other taxes or duties whether presently in force or imposed in the future.

Standard terms and conditions

The attached standard terms and conditions form part of our mutual understanding of the terms of our engagement.

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Other matters

In addition to the services included in this letter, we will also prepare the financial reports for fees not to exceed the following:

	<u>Town</u>	<u>Library</u>	<u>Business Improvement Areas</u>
2005	\$ 1,500	\$ 500	\$ 500
2006	1,500	500	500
2007	1,500	500	500
2008	1,550	525	525
2009	1,600	525	525

Any additional services that you may request and we agree to provide will be the subject of separate written arrangements.

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We are proud to serve as your auditors and we appreciate your confidence in our work. If the services outlined herein are in accordance with your requirements and if the above terms are acceptable to you, please have one copy of this letter signed in the space provided below and return it to us.

Yours very truly,

GRANT THORNTON LLP

Grant Thornton LLP

Thane L. MacKenzie, C.A.
Partner

TLM/jf
Encl.

The services and terms set forth in this letter are agreed to

The Corporation of the Town of Fort Erie

By:



(Signature)

Mayor

(Title)

August 18, 2005

(Date)


(Signature)

Deputy Clerk

(Title)

August 18, 2005

(Date)

STANDARD TERMS AND CONDITIONS

For the purpose of these Standard Terms and Conditions, Grant Thornton LLP shall include its partners, principals, employees and associated entities in Canada.

1. **Timely performance** - Grant Thornton LLP will use all reasonable efforts to complete within any agreed upon time-frame the performance of the services described in the engagement letter or contract to which these Terms and Conditions are attached. However, Grant Thornton LLP shall not be liable for failures or delays in performance that arise from causes beyond its control, including the untimely performance by the client of its obligations as set out in the engagement letter or contract.
2. **Right to terminate services** – It is possible that because of unexpected circumstances, we may determine that we cannot render a report or otherwise complete the engagement. If, in our professional judgment, the circumstances require, we may resign from the engagement prior to completion. Should the client not fulfill its obligations set out herein or in the business engagement letter or contract and in the absence of rectification by the client within ten days, upon written notice Grant Thornton LLP may terminate its performance and will not be responsible for any loss, cost or expense resulting from such early termination.

In any event we retain the right to suspend or terminate our service in the event of non-payment. Services will not be resumed until your account is paid as agreed. If we elect to terminate our services for nonpayment, you will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenses through the date of termination.

3. **Fees** - Any fee estimates by Grant Thornton LLP take into account the agreed-upon level of preparation and assistance from client personnel. Grant Thornton LLP undertakes to advise client management on a timely basis should this preparation and assistance not be provided or should any other circumstances arise which cause actual time to exceed that estimate.
4. **Billing** - Bills, including out-of-pocket expenses, will be rendered on a regular basis as the assignment progresses. Accounts are due when rendered. Interest on overdue accounts is calculated at the rate of 1 ½% per month (18% per annum) as noted on the invoice commencing thirty days following the date of the invoice.
5. **Taxes** - All fees and other charges do not include any applicable federal, provincial, or other goods and services or sales taxes, or any other taxes or duties whether presently in force or imposed in the future. Any such taxes or duties shall be assumed and paid by the client without deduction from the fees and charges hereunder.

6. **Governing law** - The engagement will be governed by the laws of Ontario.
7. **Working Papers/Reports** - All materials, reports and work created, developed or performed by Grant Thornton LLP during the course of the engagement shall belong to Grant Thornton LLP. Grant Thornton LLP will provide management with a copy of all Grant Thornton LLP prepared working papers necessary for The Corporation of the Town of Fort Erie accounting records.
8. **Independent contractor** - Grant Thornton LLP shall provide all services as an independent contractor and nothing in this agreement shall be construed to create a partnership, joint venture or other similar relationship with the client or any other party. Neither the client nor Grant Thornton LLP shall have the right, power or authority to obligate or bind the other in any manner.
9. **Rights to Deliverables** - Upon full payment, Grant Thornton LLP hereby assigns to client all its right, title and interest including, without limitation, copyright and proprietary rights to the deliverables developed or prepared specifically for the client hereunder ("Deliverables"). However, the Deliverables may include data, modules, components, designs, utilities, subsets, objects, program listings, tools models, diagrams, analysis frameworks, leading practices and specifications ("Technical Elements") owned or developed by Grant Thornton LLP prior to, or independently from, its engagement hereunder and Grant Thornton LLP retains all rights thereto including any modifications or improvements made to the Technical Elements during or as a result of this engagement. Accordingly, to the extent that any Technical Elements are integrated into any Deliverables, Grant Thornton LLP hereby grants to the client a perpetual, worldwide, paid-up limited license to use such Technical Elements as integrated into such Deliverables for internal purposes only. In addition, Grant Thornton LLP retains the right to use its knowledge, experience, and know-how, including processes, ideas, concepts and techniques developed in the course of performing the services.
10. **Release and Indemnification** - The client agrees to release, indemnify and hold harmless Grant Thornton LLP from any and all claims, liabilities, costs and expenses arising out of or based upon: (a) any misstatement or omission in any material, information or representation, including but not limited to the representations above, supplied or approved by the client; or (b) any other matter related to or arising out of this engagement, except to the extent finally determined to have resulted from the negligence, wilful misconduct or fraudulent behaviour of Grant Thornton LLP.

11. **Limitation of liability** - In any action, claim, loss or damage arising out of the engagement, the client agrees that Grant Thornton LLP's liability will be several and not joint and several and the client may only claim payment from Grant Thornton LLP of Grant Thornton LLP's proportionate share of the total liability based on degree of fault. Any action against Grant Thornton LLP must be commenced on or before the date which is the earlier of: i) eighteen months from the date on which our audit report is provided to you and, ii) the date by which an action must be commenced under any applicable legislation other than limitation legislation. In no event shall Grant Thornton LLP be liable to the client whether the claim be in tort, contract or otherwise, for an amount in excess of the professional fees paid by the client for the engagement. In no event shall Grant Thornton LLP be liable to the client, whether a claim be in tort, contract or otherwise for any consequential, indirect, lost profit or similar damages, or failure to realize expected savings, relating to Grant Thornton LLP's services provided under the engagement letter or contract to which these terms and conditions are attached.