

PLANNING SERVICES AGREEMENT

MEMORANDUM OF AGREEMENT effective this _____ day of _____, 2023

BETWEEN:

THE CORPORATION OF THE COUNTY OF RENFREW

(hereinafter called the "County")

- and -

THE CORPORATION OF THE MUNICIPALITY OF HORTON

(hereinafter called "HORTON ")

WHEREAS:

- A. The County is a municipality and an upper-tier municipality as defined by the Municipal Act , 2001, 5.0 . 2001, c. 25, as amended or replaced (hereinafter the "Municipal Act");
- B. Horton is a municipality, lower-tier municipality, and local municipality as defined by the Municipal Act;
- C. Local municipalities located within the geography of the County and County Councillors have expressed interest in having local planning advice, assistance and services provided by the County;
- D. Subsect ion 9 of the Municipal Act provides that municipalities have the capacity, rights, powers and privileges of natural persons, which includes the power to do things that natural persons can do, such as, inter alia, provide planning services and enter into agreements;
- E. Subsection 11(1-2) of the Municipal Act provides broad authority for upper -tier municipalities to manage their respective financial affairs and to provide any service the upper-tier municipality considers desirable for the public;
- F. County Council considers the County provision of local planning advice, assistance and services to be desirable in terms of providing value to the local citizenry/common taxpayer and has determined that Planning Services should be offered to local municipalities related to local Planning Act applications;
- G. Subsection 19(2)3 and 20 of the Municipal Act allows an upper-tier municipality to provide a service in a local municipality as long as one of the purposes for its provision is for lower-tier municipal purposes, there is consent from the local municipality, and the municipalities enter into an agreement with respect to the provision of such services;
- H. Section 15 of the Planning Act, RSO 1990, c P. 13, as amended or replaced ("Planning Act") allows upper-tier municipalities to provide advice and assistance to local municipalities with respect to planning matters, as long as the municipalities agree on the conditions upon which the service will be provided;
- I. Horton desires and consents for Planning Services to be provided by the County and confirms that the purpose of delivery of such service from the County is to pool resources with the County in a cooperative effort for Local Municipalities to receive high quality planning advice,

assistance and services at a cost which is not prohibitive (hereafter referred to as the "Initiative");

- J. Horton acknowledges that its desire for the Initiative has caused the County to rely on such desire to hire planning staff to provide planning advice, assistance and services to the local municipalities and that it would be detrimental to the County in terms of human resources and employment law costs in the event that Horton were to terminate this Agreement;
- K. Subsection 8 of the Municipal Act provides that the powers of municipalities shall be interpreted broadly so as to confer broad authority to enable municipalities to govern their own affairs; and
- L. This Agreement sets out the conditions upon which the County will provide local planning advice, assistance and services to Horton.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each Party to the other and for other good and valuable consideration, including the covenants provided for herein, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

Recitals

- 1. The above recitals are true and are hereby incorporated into this Agreement by reference.

Definitions

- 2. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:
 - a) "**Agreement**" means this Agreement, including all Schedules, as it may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties.
 - b) "**Business Day**" means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario.
 - c) "**Communication**" means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party.
 - d) "**Consultant(s)**" means a third party(ies) whose business is procured by the County Planning Division upon the recommendation of the Director of Development and Property and paid for by the Local Municipality.
 - e) "**Core Planning Services**" means the subset of Planning Services set out in section 5-6 of this Agreement.
 - f) "**County Levy**" means the annual County taxation of its citizens, payable by all Local Municipalities in the geography of the County.

- g) **"County Planning Division"** means the department of the County having the mandate and responsibility for reviewing matters related to land use planning under the Planning Act.
- h) **"Director of Development and Property"** means the person appointed to hold the position of the Director of Development and Property of the County Planning Division.
- i) **"Local Municipalities"** means all of the local municipalities which are located within the geography of the County of Renfrew, collectively.
- j) **"Non-Core Planning Services"** means the subset of Planning Services set out in sections 8- 9 of this Agreement.
- k) **"Parties"** means The Corporation of the County of Renfrew and Horton collectively and "Party" means one of them.
- l) **"Planning Staff"** means employees of or independent contractors contracted with the County Planning Division.
- m) **"Planning Services"** means the planning advice, assistance and services provided for in sections 5 through 9 of this Agreement and includes both Core Planning Services and Non-Core Planning Services, as defined herein.
- n) **"Primary Planner"** means the employee of the County Planning Division or independent contractor retained by County Planning Division assigned to a particular Local Municipality by the Manager of Planning.

Term

- 3. Subject to the termination and amendment provisions of this Agreement (ss. 20-22 and 26), the term of this Agreement shall be for three (3) years commencing on the effective date noted at the top of page one (1) of this Agreement, provided that the term shall be automatically renewed for further periods of three (3) years commencing on the anniversary date of each three year term between any Party which has not made termination effective in accordance with ss. 20-22 of this Agreement as of each anniversary date.

Planning Services

- 4. The County Planning Division shall use reasonable efforts to provide Horton with the Planning Services set out in sections 5 through 9 of this Agreement.

Core Planning Services

- 5. Core Planning Services shall include, subject to section 11:
 - a) Providing planning information and advice to the staff of Horton, the public, the development industry, and Municipal Council and Committees regarding land use planning matters generally within Horton.
 - b) Providing assistance, including consultation (general inquiries), review of planning applications for completeness, research, meetings, site visits, interpretations, reports and presentations using solution based planning practices, subject to Ontario Professional

Planners Institute ("OPPI") standards, in the processing of the following applications pursuant to the Planning Act such as:

- (i) Official plan amendments;
 - (ii) Zoning by-law amendments;
 - (iii) Minor Variances;
 - (iv) Part-lot control by-laws;
 - (v) Site plan control;
 - (vi) Interim control by-laws;
 - (vii) Temporary use by-laws;
- c) Collaborate with local staff (i.e. CBO, fire chief, public works, engineering, legal) on agreements related to consents, site plans, plans of subdivision, and plans of condominium.
- d) Preparation of planning reports for presentation to councils and committees of Horton based upon a detailed review of the application and related information. Such reports will include a professional planning opinion and recommendation in accordance with OPPI standards with respect to the application. Planning Staff will attend at municipal council and committee meetings as requested by the local municipal chief administrative officer (or his/her functional equivalent and/or designate) to present the planning report and to answer questions.
- e) Providing staffing levels such that Horton will be served appropriately from a planning standpoint.
- f) Regular consolidation of Official Plans and Zoning By-Laws of Horton to reflect recent amendments.
- g) Where a decision of Horton as an approval authority is appealed to the Ontario Land Tribunal or proceedings are initiated in any other court or tribunal of competent jurisdiction:
- (i) Assisting in the preparation of necessary documentation for proceedings initiated in court or tribunal of competent jurisdiction, although primary responsibility for the documentary preparation remains with the administration staff of Horton (See 13).
 - (ii) Subject to qualification by any court or tribunal of competent jurisdiction, giving professional planning evidence at any proceedings and/or hearing(s) convened in cases where the decision of Horton under appeal coincided with the recommendation of Planning Staff.
 - (iii) In cases where the decision of Horton under appeal did not coincide with the recommendation of Planning Staff, no Consultant will be recommended or retained by the County Planning Division as set out in section 11 of this Agreement and it may be necessary for Horton, at its discretion, to procure its own witness to provide planning evidence and Horton hereby acknowledge that Planning Staff may be

summoned before a court or tribunal of competent jurisdiction to give evidence of the recommendation that was forwarded and not accepted by Horton.

Should the above referenced situation arise, Horton hereby acknowledges and agrees that the planning evidence given by the Planning Staff shall be considered to be part of the Planning Services and not be considered to be a conflict of interest. Horton hereby acknowledges and agrees that Planning Staff are required to adhere to OPPI standards and properly issued subpoenas in this regard.

- h) Providing availability (based from the County Administration Building) during regular business hours to respond to in-person, telephone and e-mail inquiries from Horton staff, the public and the development industry. Planning Staff will respond to inquiries in a timely manner.
- i) Providing Planning Staff office hours in Horton which are available substantially as set out in the appended Schedule "A". Schedule "A" shall be amended on an annual calendar year basis by the Director of Development and Property at his/her discretion in consideration of ongoing Planning Services demand. Horton hereby acknowledges and agrees that absences due to vacation, illness or other types of valid leave may not be known or communicated at the time that Schedule "A" is formulated and distributed and further agree that any such variance from Schedule "A" is not a breach of this section of the Agreement. **Fee for this service is for mileage only, calculated from the County Administration Building to the Township office. An hourly rate or fee will not apply to amount of hours spent at the Horton Office. County planning work while at the Horton Office may not exclusively be devoted to Township matters/applications.
- j) Assignment of a Primary Planner to Horton by the Director of Development and Property, to serve as the regular point of contact for Horton, who is normally responsible for the Planning Services outlined in this Agreement for Horton. The Primary Planner will be the liaison between the County Planning Division and any other Departments of the County that may require input into a planning matter. The Primary Planner may serve as the Primary Planner to another local municipality that is not Horton. The Director of Development and Property may assign other Planning Staff that is not the Primary Planner in order:
 - (i) to assist with areas of specialized expertise;
 - (ii) to further the provision of Planning Services during periods of high workload or
 - (iii) absence (such as vacations); and/or for any other reasonable operational reason at the sole discretion of the Director of Development and Property.
- k) Providing Geographic Information System ("GIS") mapping services for municipal reports, by-laws, schedules and other planning related documents as needed. The Primary Planner will serve as liaison between Horton and the County Development and Property's GIS personnel and will be responsible for giving instructions to GIS personnel for the portions of the Planning Services performed by GIS personnel.
- l) Preparing annual summary reports for the Council of Horton which outlines the Planning Services provided to the municipality.
- m) Providing zoning related support to Horton by-law enforcement

6. The scheduling and delivery times for Core Planning Services will be discussed, as between the Director of Development and Property and Horton and the Planning Division shall use reasonable efforts to cooperate with and accommodate the scheduling requests of Horton.
7. Horton acknowledges and agrees that in cases where the County, a lower-tier municipality, or a third party appeals a Planning Act decision to the Ontario Land Tribunal (OLT), Planning Staff may be summoned to give planning evidence before the Ontario Land Tribunal, that the resulting giving of planning evidence shall be considered part of the Planning Services and Core Planning Services and shall not be considered to be a conflict of interest. Horton also acknowledges that in cases where a third party or lower-tier municipality appeals a County planning decision, Planning Staff may be summoned to give planning evidence before the Ontario Land Tribunal and such shall not be considered to be a conflict of interest. The Local Municipalities further acknowledge that Planning Staff are professionally required to adhere to OPPI standards and legally required to respond to duly issued subpoenas.

Non-Core Planning Services

8. Non-Core Planning Service shall include, subject to s. 11, professional planning advice, project management services and any additional expert planning assistance required by Horton to complete:
 - a) Official Plan reviews;
 - b) Comprehensive zoning by-law updates;
 - c) Special area studies; and
 - d) Such other planning related tasks which the Director of Development and Property may agree in writing from time to time for the County Planning Division to perform.
9. The scheduling and delivery times for Non-Core Planning Services will be discussed, as between the Director of Development and Property and Horton and the Planning Division shall use reasonable efforts to cooperate with and accommodate the scheduling requests of Horton. However, given the extensiveness of Non-Core Planning Services and their potential to delay the provision of Core Planning Services, ultimate and final discretion with respect to scheduling and delivery times for Non-Core Planning Services resides with the Director of Development and Property.

Planner's Ethical Duty

10. Horton acknowledges that Registered Professional Planners in Ontario owe ethical duties to provide planning opinions within the professional standards and requirements of the OPPI and that as a result, are not advocates for a particular client position when providing Planning Services, but rather, planners registered in Ontario advance their professional planning opinions based on their professional view of the matter in application of the planning apparatus in existence in Ontario and have a duty to serve the public interest .

Consultants to be Procured by the County Planning Division

11. From time to time and subject to section S(f)(iii) of this Agreement, it may be necessary for the County Planning Division, on the recommendation of the Manager of Planning, to individually procure Consultant(s) to assist with the provision of Planning Services. Such situations may include but are not limited to:

- a) The need for additional or peer review evidence at an Ontario Land Tribunal appeal hearing;
- b) The need for specialized expertise;
- c) To provide additional support to existing Planning Staff for significant projects with short deadlines;

Where the Director of Development and Property recommends the procurement of Consultant(s), he/she shall notify Horton in writing of such recommendation with written reasons why the consultant is necessary. It shall be the sole responsibility of the County Planning Division to procure the Consultant(s) in accordance with the County purchasing policy and pay such Consultant(s) directly. Any amounts due and payable to a Consultant pursuant to this section shall be calculated and directly paid to the consultant by Horton. Prior to awarding the procurement of a Consultant to a particular individual or entity the County Planning Division shall provide the name of a proposed Consultant to Horton so that it may advise the County Planning Division of any potential conflicts of interest.

Fees

12. The County shall be compensated for the provision of Planning Services by the costs of providing Planning Services in accordance with the planning tariff of fee's by-law (as amended from time to time).

Horton acknowledges and agrees that where Horton procures its own witness(es) under the circumstances described section 5(e)(iii) of this Agreement, Horton will be responsible for paying the fees of such consultant directly to the consultant independent of the County.

Local Municipality Responsibilities

13. Horton shall be responsible for the following, which are not Planning Services to be performed by the County pursuant to this Agreement:

- a) Mailing notification of completeness, scheduling of public meetings, circulation of public notices, internal staff circulation;
- b) Arranging/assigning (when required) team to review technical submissions (i.e. engineering studies, environmental studies, legal)
- c) Arranging for the drafting and registration of legal agreements for subdivisions, site plans, etc.
- d) Tracking/enforcement of legal agreements/release of securities when applicable
- e) By-law enforcement
- f) Creation of agendas, committee or council packages or minutes;
- g) Municipal by-laws that are not passed under the Planning Act; and
- h) Any other matters related to planning administration which are not Core or Non-Core Planning Services set out in section 5-9 of this Agreement.

Without limiting the foregoing, Horton warrants that where local municipal staff assistance is required for the implementation of Planning Services, Horton shall provide the Primary Planner with necessary staff assistance.

However, and despite the foregoing, assistance with respect to any of the responsibilities of Horton listed in section 13(a-f) may become Non-Core Services only if agreed to in accordance with section 8(d) of this Agreement.

Recognition of Lower-Tier Municipal Council and County Council Autonomy

14. The Parties recognize the authority of Horton's Council and County Council as statute-enabled decision making authorities in certain land use and planning matters. Further, the Parties hereby recognize the discretion of each of the Councils of Horton and County Council to advocate for a particular position relating to a land use planning matters and the potential for County Council and Horton's Council to take opposing positions.

Local Integration

15. When Planning Staff attend office hours in Horton as set out in section S(h) of this Agreement, Planning Staff shall make reasonable efforts to function in an integrated manner with the day-to-day staffing of Horton, with the same hours as the Horton municipal office when on-site (ie. start time, end time, lunch time).

County as Approval Authority

16. The County is mandated by statute to operate as the delegate of provincial authority with respect to being an Approval Authority for municipal official plan amendments, plans of subdivision, plans of condominium, consents, and part-lot control by-laws which will be operated in an arms-length manner from the day-to-day land use planning activities. Any professional planning opinion provided by any member of Planning Staff or the Director of Development and Property shall be consistent with the OPPI requirements.

Insurance

17. The County will ensure that appropriate general liability, errors and omissions and automobile, and WSIB insurance coverage is in place for all Planning Staff performing Planning Services.

Force Majeure

18. Despite any section of this Agreement, no Party shall be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control (hereinafter referred to as a " Force Majeure Event"). The Parties agree that an event shall not be considered a Force Majeure Event if a reasonable person owing duties to others in the same or similar circumstances as provided for under this Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such an event. If a Party seeks to excuse itself from its obligations under this Agreement due to a Force Majeure Event, that Party shall immediately notify the other Party(ies) of the delay or non-performance, the reason for such delay or non-performance, and the anticipated period of delay or non-performance. In addition, the Party excusing itself due to a Force Majeure Event shall use its best efforts to

remedy any such non-performance, except that nothing herein contained shall require any such party to make settlement of any labour dispute on terms unacceptable to it.

Compliance with Law and Confidentiality

19. The Parties will each perform their responsibilities pursuant to this Agreement in compliance with all applicable laws, including all laws pertaining to the protection of personal information about individuals and individuals' access to personal information about themselves.

Termination

By Local Municipality

20. Horton may terminate this Agreement at any time, upon providing six (6) months written notice to the County. The effective date of Horton's termination shall be exactly six (6) months after notice is effectively received by the County in accordance with section 24 of this Agreement. Horton acknowledges that in the event Horton terminates its respective Party status to this Agreement, Horton will no longer receive local Planning Services.

By County

21. The County may terminate this Agreement at any time without cost or penalty upon providing six (6) months written notice to Horton.

Due to Dissolution

22. In the event Horton dissolves as a Corporation, this Agreement shall terminate. In the event the County dissolves as a Corporation, this Agreement shall terminate. In either event, termination due to dissolution shall occur as of the date the corporate entity ceases operations. Each of the Parties covenant to inform the other immediately as soon as it has knowledge that the dissolution the cessation of operations is either being considered and/or has any semblance of likelihood.

Notices

23. Any Communication must be in writing and either be:

- a) Delivered personally or by courier;
- b) Sent by prepaid registered mail; or
- c) Transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid.

Any Communication must be sent to the intended Party at its address for service listed on the signature pages of this Agreement or to any other address as any Party may at any time advise the other by Communication given or made in accordance with this section. Any Communication delivered to a Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted, but if the Communication is transmitted on a day which is not a Business Day or after 4:00pm

(local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

Further Assurances

24. The Parties warrant that they shall do, execute, acknowledge, deliver and/or cause to be done such other acts, agreements and other documents as may be reasonably required or desirable to give effect to the terms of this Agreement.

Amendment and Waiver

25. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver

Assignment and Enurement

26. Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party, other than provided for herein, without the prior written consent of the other Parties. This Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.

Dispute Resolution

27. Upon written requests to resolve any disputes arising from this Agreement which are sent by one Party to another, the Parties hereby agree to resolve all disputes pursuant to this section. Upon receipt by the receiving Party of a written request to resolve disputes, the Parties shall first attempt to resolve all disputes by way of formal negotiation between the Parties and their appointed representatives. If the disputes cannot be settled within thirty (30) days from the receipt of the written request to resolve disputes by the receiving Party, then the Parties shall enter into a structured negotiation on a without prejudice basis with the assistance of a mediator appointed by them. If the disputes cannot be settled within ninety (90) days from the receipt of written request to resolve disputes by the receiving Party, or such longer period as may be agreed to by the Parties, the Parties shall, refer the matter forthwith to an arbitration which shall finally resolve the dispute (s). The aforementioned arbitration shall be conducted in accordance with the Ontario Arbitration Act, 1991, c 17, as amended or replaced.

Entire Agreement

28. This Agreement constitutes the entire agreement between the Parties pertaining to the provision of Planning Services by the County to Horton and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. The Parties acknowledge that there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement and that no Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement. Except as amended herein, the terms of this Agreement shall remain in full force and effect. This

Agreement includes the provisions of this Agreement and each of its Schedules, all of which shall be read together in the forming of this Agreement. In the event there is a conflict between the provisions of this Agreement and its Schedules, the provisions of this Agreement shall prevail.

Voluntary Enforceable Agreement

29. The Parties warrant that this Agreement is voluntary, that none of the Parties are under any legal disability and that each Party has had an opportunity to seek the advice of independent legal counsel with respect to this Agreement. Horton confirms that the County has the legal right and ability to provide Planning Services, as set out herein, and that they are estopped from pleading or asserting otherwise in any dispute, arbitration or any other proceeding.

Counterparts

30. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

Severability

31. Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:

- a) the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
- b) the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

Governing Law

32. This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the date set out at the top of page one (1) of this Agreement.

THE CORPORATION OF THE COUNTY OF RENFREW

We have authority to bind the Corporation.

County of Renfrew

Township of Horton

Jason Davis
Director of Development and Property

David M. Bennett
Mayor

Date
(SEAL)

Hope Dillabough
CAO/Clerk

Date
(SEAL)

Schedule "A"

Horton Office Hours Schedule:

**To be added/discussed*