

PLANNING SERVICES AGREEMENT

BETWEEN:

THE REGIONAL MUNICIPALITY OF NIAGARA

(hereinafter called the "Region")

-and-

THE CORPORATION OF THE TOWN _____

(hereinafter called the "Town")

(Change to "City" or "Township" throughout as appropriate)

(hereinafter together referred to as the "Parties" and individually as a "Party")

WHEREAS the Region is an upper-tier municipality established pursuant to the provisions of the *Municipal Act, 2001*, S.O. 2001, c. 25 (*"Municipal Act, 2001"*);

AND WHEREAS the Town is a lower-tier local municipality within the Region and incorporated pursuant to the provisions of the *Municipal Act, 2001*;

AND WHEREAS pursuant to subsection 15(2) of the *Planning Act*, R.S.O. 1990, c. P.13 (*"Planning Act"*) the Council of an upper-tier municipality, on such conditions as may be agreed upon with the Council of a lower-tier municipality, may provide advice and assistance to the lower-tier municipality in respect of planning matters generally;

AND WHEREAS the Region and the Town desire to enter into an agreement whereby the Region shall provide advice and assistance to the Town in respect of planning matters;

AND WHEREAS the Region and Town desire to deliver timely and streamlined planning services to the public, based upon a mutual understanding of their respective roles and responsibilities, and seek to collaborate without duplication of service in order to achieve efficient and cost effective resourcing;

AND WHEREAS the Region desires to provide planning services to its lower-tier municipalities which exhibit equity as between the lower-tier municipalities, recognizing that each lower-tier municipality has different circumstances and different resource needs resulting in allocations of Regional resources that will aim to be fair but which may be different for each lower-tier municipality;

AND WHEREAS the Region and the Town acknowledge that entering into a Planning Services Agreement will facilitate the ability of the Region to continue providing planning services, data collection and data analysis, mapping services and growth management analysis and advice, for use by the Region and its lower-tier municipalities;

AND WHEREAS the Region and the Town desire to enter into this Planning Services Agreement (“Agreement”);

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Region and the Town agree as follows:

1. PURPOSE AND SCOPE

- 1.1. This Agreement sets out the advice, assistance and services to be provided by the Region to the Town in respect of planning matters so as to promote the delivery of efficient and effective municipal planning services using a “one-window” approach.
- 1.2. The Parties acknowledge and agree that notwithstanding any other provision of this Agreement, the planning services provided by the Region under this Agreement shall be provided on an as-needed basis in accordance with the Town’s planning needs and the volume of development applications received and that this Agreement does not guarantee a minimum or any number of service requests by the Town.
- 1.3. The Parties further acknowledge and agree that in furtherance of the “one-window” approach to providing municipal planning services, Region planning staff may on occasion use Town resources such as office space, communications equipment and letterhead, to provide services under this Agreement. However, this Agreement does not and shall not be taken to create an employment relationship between any member of Region planning staff and the Town.
- 1.4. The Parties further acknowledge and agree that this Agreement shall encompass, address and govern all planning services provided by or exchanged between the Region and the Town but shall not encompass, address or govern other service relationships between the Region and the Town, including but not limited to all non-planning services.

2. TERM

- 2.1. This Agreement shall be subject to approval by the Council of the Region and the Council of the Town and upon such approvals, shall be deemed effective on the date that is ninety (90) days following the proclamation of amendments to the *Planning Act* pursuant to which the Region becomes an upper-tier municipality without planning responsibilities and shall, unless terminated earlier in accordance with this Agreement, expire on the date that is ninety (90) days following the next regular municipal election (“the Term”).
- 2.2. At least twelve (12) months prior to the expiry of the Term, staff of the Parties shall enter into good faith negotiations to extend or amend this Agreement on such terms and conditions as may be agreed to by the Parties and approved by their respective Councils.

- 2.3. The terms and conditions of this Agreement shall apply to all services requested, commenced and/or provided prior to the end of the Term, including during the negotiation period prescribed by paragraph 2.2. In the event that the Parties have agreed to extend or amend this Agreement but have not sought Council approval by the end of the Term, the terms and conditions of this Agreement shall continue to apply until Council has considered the proposed extension or amendment of this Agreement, provided that this occurs within nine (9) months of the end of the Term, failing which this Agreement shall expire.

3. PLANNING SERVICES PROVIDED BY THE REGION

- 3.1. The Region shall provide to the Town the planning services set out in Appendix “A”, which is appended hereto and forms part of this Agreement and shall adhere to all timeframes for service delivery set out therein.
- 3.2. The Town shall circulate all pre-consultation applications to the Region where the application identifies a service to be provided by the Region in accordance with Appendix “A”. Where the Region is able to provide the services identified in the pre-consultation application, the Town shall not receive such services from any other source.
- 3.3. The Region may decline a request to provide Services in Appendix “C” where providing the Services would require efforts beyond current capacity including Services requested by other municipalities which;
 1. require more time than the Region’s representatives can reasonably commit,
 2. lead to or constitute a conflict of interest, or
 3. prevent the Region or its representatives from meeting any other duties.
- 3.4. The Region shall charge fees in accordance with the Region’s Fees and Charges By-law for the planning services provided to the Town under paragraph 3.1, which shall be the same rate as is charged by the Region to all of its local municipalities for the services set out in Appendix “A”.
- 3.5. The Region shall provide to the Town the planning services set out in Appendix “B”, which is appended hereto and forms part of this Agreement, upon receipt of a written request by the Town, and shall adhere to all timeframes for service delivery set out therein.
- 3.6. The Region shall charge fees in accordance with the Region’s Fees and Charges By-law for the planning services provided to the Town under paragraph 3.4, which shall be based upon the rates set out in Appendix “B”, and which shall be funded by the fee(s) for the development application to which the services relate.
- 3.7. The Region shall provide to the Town the planning services set out in Appendix “C”, which is appended to and forms part of this Agreement, upon the exchange of a written service request from the Town and a written service and budget proposal

from the Region, which shall be agreed to by the Parties before the services are provided.

- 3.8. The Region shall charge fees in accordance with Region's Fees and Charges By-law for the planning services provided to the Town under paragraph 3.6, which shall be based upon the hourly rates set out in Appendix "C", and which shall be funded as budgeted for by the Town.
- 3.9. The fees required to be paid by the Town to the Region under this Agreement, shall be collected by the Town and remitted to the Region. The fees shall be invoiced by the Region to the Town on a monthly basis.
- 3.10. Notwithstanding paragraph 3.8, the Region shall be responsible for and reimburse the Town for any fees required to be refunded under sections 34(10.12) and 41 (11.1) of the *Planning Act* if the Region does not meet the timelines set out in Appendix "A" or any timelines applicable to the services set out in Appendix "B" or Appendix "C", irrespective of the reason(s) for non-compliance.
- 3.11. The Town shall be responsible for and indemnify the Region, if necessary, for any fees required to be refunded by the Region under sections 34(10.12) and 41(11.1) of the *Planning Act* if the Town does not meet the timelines as set out in Appendix "A" or Appendix "C", irrespective of the reason(s) for non-compliance.
- 3.12. Notwithstanding the foregoing, the Parties may mutually agree to waive reimbursement or indemnification of fees refunded under paragraphs 3.9 and/or 3.10.
- 3.13. The Region will provide planning advice and opinions as necessary and participate in any proceeding including proceedings before the Ontario Land Tribunal in accordance with the provisions and rates set out in this Agreement in accordance with the Region's Fees and Charges By-law.
- 3.14. The fees charged by the Region under this Agreement may be increased and adjusted annually in accordance with the Consumer Price Index or any applicable fee increases, or adjustments identified in the Region's Fees and Charges By-law.
- 3.15. The Town will pay all of the Region's invoices issued under this Agreement within thirty (30) days of the invoice date. Should the Town fail to make payment or portion thereof on invoices issued under this Agreement, the Town shall pay to the Region interest due on the amount in default at the rate of fifteen (15) per cent per annum, accrued monthly, from the due date of the invoice until the payment is made.
- 3.16. The fees charged by the Region under this Agreement shall be paid in full by the Town in accordance with the terms of this Agreement and shall not be credited to or set off against any other amounts owing or payable by the Parties pursuant to any other agreement or arrangement between them.

- 3.17. At the end of the first year of the Term, the Parties shall conduct a review of fees charged by the Region under this Agreement and shall determine if any fees require adjustment for one (1) or more subsequent years of the Term.
- 3.18. Planning services provided by the Region under this Agreement shall comply with all applicable professional and industry standards.
- 3.19. At the end of each year of the Term, the Parties may, at the request of either Party, conduct a joint review of all services provided by the Region under this Agreement in the preceding year. The purpose of the review shall be to assess and determine if the timelines, service requirements and levels of service prescribed by this Agreement have been met. For greater certainty, any such review shall not encompass, address or alter the nature of services to be provided by the Region under this Agreement in subsequent years of the Term.

4. CONFLICT

- 4.1. In the event of a conflict between the Region and the Town as to the interpretation of a Provincial Plan, Provincial Policy and/or an Official Plan Policy, planning staff of the Region and the Town shall work together to resolve the interpretation issue and if such issue is not resolved, the Town, as the approval authority, shall make a final determination in respect of the conflict.
- 4.2. Either Party may decline to request or provide planning services in relation to a specific matter if there is an actual or perceived conflict between the interests of the Region and the interests of the Town in relation to that matter arising under this Agreement. The Chief Administrative Officer of the Region and the Chief Administrative Officer of the Town shall have authority to determine if there is an actual or perceived conflict of interest and, where a Party identifies an actual or perceived conflict of interest, it shall immediately notify the other Party of same.

5. INSURANCE AND INDEMNITY

- 5.1. During the Term, the Region shall obtain and maintain in full force and effect a policy of errors and omissions insurance with limits of not less than two million dollars (\$2,000,000.00). The policy shall provide for no less than thirty (30) days' notice of cancellation or non-renewal and shall name the Town as an additional insured but only with respect to this Agreement.
- 5.2. During the Term, the Town shall obtain and maintain in full force and effect a policy of errors and omissions insurance with limits of not less than two million dollars (\$2,000,000.00). The policy shall provide for no less than thirty (30) days' notice of cancellation or non-renewal and shall name the Region as an additional insured but only with respect to this Agreement.
- 5.3. The Region and the Town shall each indemnify and save harmless the other from claims of any kind arising from or in any way related to this Agreement.

6. DISPUTE RESOLUTION

- 6.1. In the event that a dispute arises as to the interpretation, application and/or execution of this Agreement, including but not limited to any Party's rights or obligations under this Agreement and/or an allegation of default or breach, the Party that disputes the other Party's position or conduct shall provide written notice of the dispute.
- 6.2. Where a notice of dispute is received in accordance with paragraph 6.1, the Parties' planning staff shall use best efforts to resolve the dispute for a period of thirty (30) days from the date on which the notice is delivered. The Parties may extend the negotiation period if they agree that a reasonable extension is likely to resolve the dispute.
- 6.3. In the event that the Parties' planning staff fail to resolve the dispute, the Parties' Chief Administrative Officers shall use best efforts to resolve the dispute for a period of thirty (30) days from the date on which the discussions commence. The Parties may extend the negotiation period if they agree that a reasonable extension is likely to resolve the dispute.
- 6.4. In the event that the Parties fail to resolve a dispute under paragraphs 6.2 or 6.3, the parties shall refer the matter to non-binding mediation by a mediator agreed on by the Parties. If mediation fails to resolve the dispute, the Parties shall refer the matter to arbitration by an arbitrator agreed on by the Parties and shall proceed in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, without any right of appeal.
- 6.5. Each Party shall bear its own costs associated with the determination of disputes arising under this Agreement, including but not limited to legal, mediation and arbitration costs.

7. EVENTS OF DEFAULT AND TERMINATION

- 7.1. Any of the following circumstances constitutes a default under this Agreement:
 - (a) if a Party fails to make any payment required under this Agreement and such failure continues for a period of one hundred and eighty (180) days after written notice thereof has been given by the other Party pursuant to the provisions of this Agreement; and/or
 - (b) other than a default under (a) above, if a Party is in default under any of the provisions of this Agreement and such default continues for a period of fourteen (14) days after written notice thereof has been given by the other Party.
- 7.2. Upon an event of default set out in paragraph 7.1, either Party may terminate this Agreement on sixty (60) days' written notice to the other Party.
- 7.3. Notwithstanding sections 7.1 and 7.2, either Party may terminate this Agreement without cause, upon eighteen (18) months' notice.

8. NOTICE

- 8.1. Any and all information, records, notices, approvals, waivers, agreements, extensions or other communications pursuant to this Agreement given by the Region or the Town shall be in writing unless the Parties agree otherwise in writing.
- 8.2. Any notices required to be given pursuant to this Agreement shall be delivered by personal delivery, regular or prepaid first class mail, or email and addressed to the Party to whom it is given as follows:

If to the Region: THE REGIONAL MUNICIPALITY OF NIAGARA
 1815 Sir Isaac Brock Way
 P.O. Box 1042
 Thorold ON L2V 4T7
 Attention: INSERT NAME AND EMAIL ADDRESS

If to the Town(ship): THE CORPORATION OF THE TOWN(SHIP) OF NAME
 INSERT ADDRESS
 INSERT ADDRESS
 INSERT ADDRESS
 Attention: INSERT NAME AND EMAIL ADDRESS

or such other address or email address of which either Party has notified the other, in writing, and any such notice shall be deemed sufficient under this Agreement.

- 8.3. Any notice given pursuant to this Agreement shall be deemed to have been given to and received by the Party to whom it is addressed as follows:
- (a) where personally delivered, on the date of delivery;
 - (b) where sent by regular or prepaid first class mail, on the fifth (5th) day after mailing; or
 - (c) where sent by email, on the date of email transmission, unless the email was sent after 4:00 p.m., in which case notice is deemed to have been given and received on the next business day.

9. GOOD FAITH

- 9.1. The Town and the Region, including their planning staff and any other employees, officers, representatives and agents shall at all times act honestly, in good faith and with all due diligence and dispatch in taking all actions and in making all decisions pertaining to the implementation and administration of this Agreement.
- 9.2. The Town and the Region, including their planning staff and any other employees, officers, representatives and agents shall make their best and timely efforts upon the reasonable request of the other Party to make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and

assurances whatsoever necessary to give effect to this Agreement and the terms and conditions contained herein.

10. AMENDMENTS

- 10.1. This Agreement may be amended by mutual agreement of the Parties at any time during the Term. Any changes, alterations or amendments to this Agreement shall be made in writing and signed by one or more persons authorized as representatives of the Region and the Town and who can bind the respective Parties, and shall be appended to this Agreement.
- 10.2. Without limiting the generality of the foregoing, the Parties may amend this Agreement at any time during the Term to add as Appendix “D” a list of further services as special projects that the Region may provide, subject to capacity, to the Town and for which the Region shall charge fees in accordance with its Fees and Charges By-law. Services provided pursuant to Appendix “D” shall be subject to section 3 of this Agreement.
- 10.3. For greater certainty, the Parties are authorized to amend this Agreement in accordance with paragraphs 10.1 and 10.2 without requiring the approval of their respective Councils provided that the amendments are minor in nature, are mutually agreed to by the Parties and do not impact or change the purpose or intent of this Agreement.

11. GENERAL

- 11.1. In this Agreement, words importing a singular number shall include the plural and vice versa, words importing the any gender shall include all genders and words importing persons shall include firms and corporations and vice versa.
- 11.2. Unless the context otherwise requires, the words “Region” and “Town” wherever used in this Agreement shall be construed to include and to mean the successors and/or assigns of the Region and the Town respectively.
- 11.3. This Agreement shall be governed, construed and enforced according to the laws of the Province of Ontario and the laws of Canada applicable therein.
- 11.4. In the event that any of term, condition or provision contained in this Agreement is determined by a court or tribunal of competent jurisdiction to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions of this Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 11.5. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

- 11.6. Moreover, any delay or failure on the part of a Party to exercise or enforce any right, power or remedy conferred by this Agreement shall not constitute a waiver of same and shall not constitute a waiver of any rights, powers or remedies with respect to any subsequent default or breach.
- 11.7. The Parties acknowledge and agree that nothing in this Agreement shall be deemed to fetter or interfere with either Party's responsibilities and rights as municipal bodies.
- 11.8. This Agreement constitutes the entire agreement between the Parties relating to the matters set out herein. There are no representations, promises, covenants or other terms relating to the content of this Agreement and this Agreement supersedes any prior discussions, understandings or agreements between the Parties in relation to its subject matter.
- 11.9. This Agreement may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email.

[signature page follows]

IN WITNESS WHEREOF, the Region has on the ____ day of _____, 2023 executed this Agreement.

THE REGIONAL MUNICIPALITY OF NIAGARA

Per: _____

Name:

Title:

I have the authority to bind the Regional Corporation

IN WITNESS WHEREOF, the Town(ship) has on the ____ day of _____, 2023 executed this Agreement.

THE CORPORATION OF THE TOWN(SHIP) OF

Per: _____

Name:

Title:

I have the authority to bind the Corporation

