



CORPORATION OF THE TOWNSHIP OF ST. CLAIR

BY-LAW 36 of 2018

**Being a By-Law to Authorize the Execution of an Agreement between
The County of Lambton and the Township Of St. Clair**

WHEREAS pursuant to Section 9 of the *Municipal Act, 2001* S.O. 2001, c.25 as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

WHEREAS pursuant to Section 11(1) of the *Municipal Act, 2001* S.O. 2001, c.25 as amended, a lower-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in Section 11(4) of the *Act*; and

WHEREAS it is deemed expedient to execute an agreement between the County of Lambton and the Township Of St. Clair;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ST. CLAIR ENACTS AS FOLLOWS:

1. That the Mayor and Clerk are hereby authorized to execute an agreement between the County of Lambton and the Township Of St. Clair as per the attached Schedule A.
2. That the Clerk is hereby authorized to make whatever minor changes to the agreement as may be necessary and reasonable in the circumstances.
3. That all other by-laws or parts of by-laws inconsistent with this by-law are hereby repealed.
4. That this by-law shall come into force and take effect on and from the date it is finally passed by Council.

Read a first and taken as read a second and third time and finally passed this 4th day of June 2018.

Mayor – Steve Arnold

Clerk Jeff Baranek

THE CORPORATION OF THE TOWNSHIP OF ST. CLAIR
SCHEDULE "A" TO BYLAW 36 OF 2018
BUILDING SERVICES AGREEMENT

This Agreement is entered into on this 4th day of June 2018:

BETWEEN:

The Corporation of the Township of St. Clair
(hereinafter, the "Municipality")

and

The Corporation of the County of Lambton
(hereinafter, the "County")

RECITALS

- A. Whereas the County is the upper-tier municipality with the geographic area of the County of Lambton;
- B. Whereas the Municipality is a lower-tier municipality within the County of Lambton;
- C. Whereas the provisions of the *Building Code Act, 1992*, S.O. 1992, c. 23 ("Code") and its respective regulations permits the County and Municipality to enter into an agreement to appoint the County of Lambton Chief Building Official (and/or other County employees) as its Chief Building Official for the purpose of the Code and for the County to enforce within the Municipality the *Code*, its regulations and any local by-laws of the Municipality enacted pursuant to the Code and its regulations, and the Municipality is desirous of retaining the services of the County for such purposes;
- D. In addition to the services generally described in recital paragraph C. above, the County of Lambton also provides inspection and other services in the enforcement of the Property Standards, cleaning and clearing of land, sewer, water and backflow prevention by-laws, and the Municipality is also desirous of retaining the services of the County for such purposes.

NOW THEREFORE for valuable consideration, the receipt of which is hereby acknowledged, the Municipality and the County agree as follows:

1. Definitions

In this Agreement, the following capitalized terms shall have the following meaning:

"Chief Building Official" has the meaning given to it in the *Building Code Act, 1992*, S.O. 1992, c. 23 and includes that person and/or position appointed by the County as its Chief Building Official from time to time and his or her designate;

"Inspector(s)" has the meaning given to it in the *Building Code Act, 1992*, S.O. 1992, c. 23 and includes those persons appointed by the County as Inspectors from time to time and also individuals named as inspectors for the additional purpose of enforcing the Municipality's by-laws;

"Officers" includes such positions named in the Municipality's by-laws (including property standards and clearing of land by-laws), including those enacted pursuant to the Municipality's authority under the *Building Code Act, 1992*, S.O. 1992, c. 23 and its respective regulations, responsible for the enforcement of such by-laws and / or the *Building Code Act, 1992*, S.O. 1992, c. 23.

2. Services

On and subject to the terms and conditions hereof, the County hereby agrees as follows:

(a) to provide:

- a. at the Municipality's request, the services of its duly qualified Chief Building Official and Inspectors to act as the Municipality's Chief Building Official, Inspector(s) and Officer(s) within the Municipality, in accordance with and for the purposes of the *Building Code Act, 1992*, S.O. 1992, c. 23 and the Municipality's by-laws (including property standards and cleaning and clearing of land by-laws) in those circumstances where such legislation and/or the Municipality's by-laws, on account of this Agreement or otherwise, grant the County the jurisdiction to enforce such legislation within the Municipality;
- b. at the Municipality's request, but without limiting the generality of paragraph a. above, inspection and investigation services for the purposes of enforcing the Municipality's Property Standards, cleaning and clearing of land, sewer, water and backflow prevention by-laws in those circumstances where the Municipality's by-law(s) grant the County the jurisdiction to enforce such by-laws within the Municipality;
- c. The Municipality reserves the right to enforce the above identified bylaws by officers of their own employ at any time prior to seeking the involvement of the County's officers and may elect not to involve the County on enforcement of municipal bylaws.

(b) without limiting the generality of paragraph (a) above, the County agrees to:

- a. provide, where requested in writing by the Municipality, the services of its Chief Building Official and Inspectors to *inter alia* review building code permit applications, conduct building code inspections, maintain and review files, travel to building sites, and generally administer and enforce in the Municipality: (1) *Building Code Act, 1992*, S.O. 1992, c. 23 and the *Planning Act*, R.S.O. 1990, c. P. 13 and their regulations and (b) the Municipality's cleaning and clearing of land, sewer, water and backflow prevention by-laws;
 - b. prepare, if requested in writing by the Municipality, monthly statistical reports for FIR/MPMP, MPAC, Statistic Canada, CHMC and Tarion and such other reports as required by the Municipality, and submit same on behalf of the Municipality;
 - c. manage and maintain property-specific files, by municipal address and property legal description, for the Municipality such as applications, drawings, inspections, orders, photos, correspondence, motions and legal documentation;
 - d. search and compile records in regards to any and all services rendered for the Municipality at the Municipality's request;
 - e. attend to, and provide evidence at, any legal proceedings (including court, property standard appeals and committee appeals) that pertain to the services provided by the County to the Municipality; and
 - f. provide such additional building and/or property related services mutually agreed upon in writing between the County and the Municipality.
- (c) To only operate under the direction of Council or the Clerk of the Township of St. Clair when determining under which Bylaw to issue an Order, and performing subsequent inspections.

3. Appointments

- (a) The Municipality hereby appoints, by no later than the date this Agreement takes effect:
- a. the County's Chief Building Official and its designate as the Municipality's Chief Building Official and designate;
 - b. the County Inspectors as the Municipality's Inspectors and Officers (also referred to, at times, in some of the Municipality's by-laws, as "municipal enforcement officers";
- for the purposes of providing the Municipality the services contemplated in this Agreement.
- (b) The Municipality shall be responsible for adopting and providing the County with a copy of its by-law(s) confirming the appointments stipulated in paragraph 3 (a) above.

4. Service Request and Service Delivery Standards

- (a) In regards to building permit applications, the Municipality agrees to collect all such information and fees reasonably required to process and assess such applications and to provide copies of such information, other than fees, to the County, together with any copies of any applicable policies, guidelines, by-laws or such other information reasonably required by the County to provide and execute its services hereunder.
- (b) In regards to all other services to be provided by the County pursuant to this Agreement, the Municipality agrees to provide such information, including policies, guidelines, standards, protocols, by-laws, as is reasonably required by the County to provide and execute its services and, moreover, those that the Municipality wishes the County to follow in the provision of its services. Provided that compliance therewith will not result in the County violating any applicable laws, the County agrees to provide its services in accordance with the Municipalities' policies, guidelines, standards, protocols, and by-laws communicated to it in writing from time to time.
- (c) The County shall not be required to provide any services hereunder until such time as all information reasonably required is submitted by the Municipality to the County.
- (d) The County agrees to provide the Municipality copies of all of its records pertaining to its provision of its services under this Agreement within thirty (30) days of the Municipality's request therefor, provided such request is made prior the expiry of the County's retention period for such records.
- (e) The County agrees to provide its services in a competent, diligent and professional manner.
- (f) In the event a member of the public lodges a complaint about the services provided under this Agreement, the County agrees to refer the member of the public directly to the Municipality to the individual identified in paragraph 13(c) hereof for the Municipality's action and processing. The County shall reasonably cooperate with the Municipality in responding and addressing complaints from members of the public regarding its provision of services hereunder.

5. Records

Each of the Municipality and the County shall maintain and keep all records pertaining to the services provided under this Agreement for such period prescribed by law, as applicable.

6. Term

This Agreement shall commence on July 4, 2018 and remain in effect for an indefinite period until terminated in accordance with Section 7 below.

7. Termination

- (a) Either of the County and the Municipality may terminate this Agreement upon providing the other written notice with immediate effect for Cause. "Cause" for the purposes of this paragraph 7(a) means: (i) any act that is in material breach of this Agreement and that has not been remedied within ten (10) days of the non-breaching party's notice to the other of the material breach, and (ii) any action that constitutes gross negligence and/or misconduct.
- (b) In the absence of Cause, either of the County and the Municipality may terminate this Agreement upon providing the other with ninety (90) days' advance written notice.
- (c) This Agreement and any services provided hereunder shall immediately cease upon the termination of this Agreement save and except that any rights and/or obligations that have accrued prior to such termination shall survive the termination of the Agreement.

8. Fees

- (a) The County's fees for the provision of its services hereunder shall be calculated on an hourly rate basis for time spent providing the services plus out of pocket expenses and mileage (for travel incurred in the provision of services).
- (b) The County's invoice for services shall provide adequate information of the services delivered in the prior month including enforcement steps taken and the time spent in providing the services. Travel time and kilometres travelled shall be separately itemized.
- (c) The applicable hourly and/or mileage rate chargeable by the County for services provided hereunder and any revisions thereto shall be communicated in writing to the Municipality from time to time, and will form the new Schedule for this Bylaw.
- (d) Phone calls shall be charged to the nearest quarter hour, and a call that does not result in speaking with the intended party shall not be charged to the municipality.
- (e) If the County wishes to revise its then applicable hourly and/or mileage rate, the County shall first provide the Municipality with at least two (2) calendar months advance notice thereof prior to the revised hourly and/or mileage rate taking effect.
- (f) The County shall submit detailed invoices to the Municipality for services rendered on a monthly basis, in arrears. Such invoices will be in an amount calculated based on the amount of time spent for services rendered to the Municipality under this Agreement times (X) the current hourly rate plus mileage (for travel) plus, where applicable, H.S.T. and expenses/disbursements (i.e. reasonable costs of paper, fax, long-distance, mail, courier, title searches, sheriff certificates, process services and out-of pocket expenses incurred by the County in the provision of the services for the Municipality). H.S.T. shall, where charged, be clearly separately itemized on the County's invoice.
- (g) The Municipality shall pay the County its invoice within thirty (30) days of the date of the County's invoice. If the Municipality has a dispute regarding any amount charged in the invoice, it may request from the County any reasonable information relevant to the amounts invoiced and the County shall provide such reasonable information within ten (10) days of the Municipality's request. In the event the Municipality continues to dispute the invoice, the invoice as invoiced by the County shall nonetheless be paid by the Municipality when due and the dispute shall be resolved in accordance with Section 12 below.

9. Indemnity and Exclusion of Liability

- (a) As the County is providing the services on behalf of and for the Municipality on a cost recovery basis without profit, the Municipality agrees to indemnify and hold harmless the County and its employees, officers, agents and directors (collectively, the "Indemnified

Parties”) from and against any and all losses, damages, costs and expenses (including, without limitation, legal fees, adjuster fees, court costs) suffered or incurred by the Indemnified Parties arising or resulting, directly or indirectly, from the Municipality's breach of any of the terms and conditions hereof and from the services rendered to the Municipality pursuant to this Agreement, save and except for any losses, damages, costs and expenses directly resulting solely from the County's gross negligence and/or wilful misconduct.

- (b) The County shall have the right to defend, compromise or settle any matter that is subject to the above indemnity (the "Indemnified Claim") through its own legal counsel, third party adjusters, or other agents, and any such compromise or settlement by the Contractor shall be final and not subject to challenge by the Municipality. Municipality shall immediately repay or reimburse the County for all amounts paid in respect of such Indemnified Claim and all expenses incurred in connection therewith.
- (c) As the County is providing the services contemplated herein to the Municipality solely on a cost-recovery basis without profit, the County shall have no financial liability whatsoever to the Municipality arising directly or indirectly from the performance and/or non-performance of the services contemplated herein.

10. Condition Precedent

This Agreement is conditional upon both the County and the Municipality receiving approval from its council of elected officials to enter into this Agreement on or before:

- a) for the Municipality, June 18, 2018; and
- b) for the County, July 4, 2018.

If this condition is not fulfilled by both the County and the Municipality within the applicable time period and each party fails to notify the other in writing that the condition has been met within ten (10) days after expiry of the applicable time period, this Agreement shall be terminated, notwithstanding any intermediate act or negotiations, and neither the County or the Municipality shall be liable to the other for any loss, costs or damages arising from such termination.

11. Termination of Prior Agreement

Any and all prior agreements between the County and the Municipality (including its successors) concerning the services to be provided hereunder shall be terminated upon the date this Agreement takes effect.

12. Dispute Resolution

- (a) In the event of a dispute arising between the Municipality and the County under or in connection with this Agreement, such dispute, unless otherwise provided for herein, shall be referred to a member of senior management of each of the Municipality and the County hereto who shall attempt to resolve the dispute. If such members of senior management are unable to resolve any such dispute within twenty (20) days after referral to them or such further time as the County and the Municipality may agree to in writing, the County and Municipality shall resolve such dispute in accordance with paragraph 12(b) below.
- (b) At any time following twenty (20) days after referral of a dispute to senior management or such longer period of time as agreed to by the County and the Municipality pursuant to paragraph 12(a) above, either Party may, within the limitation periods set out in the *Limitations Act* (Ontario) and any successor or replacement legislation, commence arbitration for the final resolution of any dispute not settled by senior management pursuant to paragraph 12(a) above in accordance with the rules of arbitration of the ADR Institute of Canada. The seat of arbitration shall be Sarnia, Ontario. The dispute shall be heard before a single arbitrator. The language of arbitration shall be English. Each Party

shall bear its own costs of the arbitration, including legal fees, unless ordered otherwise by the arbitrator.

13. General

- (a) This Agreement constitutes the entire agreement between the County and the Municipality with respect to the services contemplated by this Agreement.
- (b) There are no warranties, representations, guarantees, promises, or agreements between the County and the Municipality other than those set out in this Agreement.
- (c) Any notice or other communication required or permitted to be given to either party under this Agreement, including any complaints from members of the public pertaining to any services provided under this Agreement, shall be made to the other party by registered mail, prepaid courier or fax at the respective addresses as follows:

if to the County:

Chief Building Official
The Corporation of the County of Lambton.
P.O. Box 3000
789 Broadway St.
Wyoming, Ontario
N0N 1T0
Tel: 519 845-5420
Fax: 519 845-3817

if to Municipality

Township of St. Clair
1155 Emily Street
Mooretown, ON
N0N 1M0
Tel. 519-867-2021
Fax: 519-867-5509

- (d) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the parties hereto irrevocably attorn to the jurisdiction of the Courts of Ontario.
- (e) Any provision of the Agreement may be amended or waived only if such amendment or waiver is in writing and is executed by the County and the Municipality in writing.
- (f) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Communication of an executed copy of this Agreement, or of any counterparts thereto, by facsimile transmission or electronically in portable document format (PDF) shall constitute good and effective delivery.

The parties have executed this Agreement on this 4th day of June, 2018.


**The Corporation of the County
of Lambton**

By: 
Warden - Bill Weber

By: 
Clerk Stephane Thiffeault

**The Corporation of the Township of St.
Clair**

By: 
Mayor - Steve Arnold

By: 
Chief Administrative Officer
John Rodey