

Bruce County and Municipal Planning
Services Agreement

BETWEEN:

The Corporation of the Municipality of Kincardine
(the “Municipality”)

and

The Corporation of the County of Bruce
(the “County”)

WHEREAS:

- A. The County is an upper-tier municipality as defined by the *Municipal Act, 2001*, SO 2001, c 25, (the “*Municipal Act*”);
- B. Subsections 11(1)-(2) of the *Municipal Act* provide broad authority for upper-tier municipalities to manage their respective affairs and to provide any service the upper-tier municipality considers desirable for the public;
- C. Sections 19 and 20 of the *Municipal Act* allows an upper-tier municipality to provide services in a lower-tier 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 municipality enters into an agreement with respect to the provisions of such services;
- D. The *Planning Act*, RSO 1990, c P.13 (the “*Planning Act*”) requires the County to enact and maintain an Official Plan and to approve any Official Plan or Official Plan Amendment adopted by a local Municipality, and makes the County the approval authority for Plans of Subdivision, Plans of Condominium, Consents to sever land and part lot control by-laws;
- E. Section 15 of the *Planning Act* authorizes the County to assume responsibility for planning matters on behalf of a Municipality, on such conditions as may be agreed upon with the council of the Municipality, and to provide general planning advice and assistance to the Municipality;
- F. The Municipality desires and consents for planning services to be provided by the County and confirm that the purpose of delivery of such services from the County is to pool resources with the County in a cooperative effort for the Municipality to receive high quality planning advice, assistance, and services;
- G. The County has assumed such planning responsibilities and provided such

planning advice to the Municipality under prior Memorandums of Understanding; and,

- H. The purpose of this Planning Services Agreement (the “**Agreement**”) is to establish the conditions that shall govern the County’s assumption of the Municipality’s planning matters and the provision of the County’s advice, assistance, and services to the Municipality.

NOW, THEREFORE the County and the Municipality agree as follows:

1) Purpose

- a) The purpose of this Agreement is to outline the framework for the provision of planning services by the County and to establish an updated Agreement that will:
- i) eliminate unnecessary duplication;
 - ii) clarify roles and responsibilities;
 - iii) increase accessibility for applicants;
 - iv) create efficiencies and otherwise maximize benefits; and,
 - v) replace all prior Memorandums of Understanding for planning services.
- b) The Parties acknowledge and agree that:
- i) Each party has in place codes of conduct and policies that apply to staff relationships and staff-councillor relationships to promote core responsibilities about performing duties with integrity and respect, and that maintain public confidence in respect of all persons, whether elected officials, professionals, or administrative support. These apply to the responsibilities set out in this Agreement.
 - ii) the planners employed or engaged by the County (the “**Planners**”), like other professional staff, are responsible for providing independent professional advice to the Municipality, including the County.
 - iii) Planners will provide independent professional advice in accordance with both the County’s code of conduct, and the codes of conduct and ethics of any professional planning associations (including, but not limited to, the Ontario Professional Planning Institute) of which they hold membership.
 - iv) Planners are not advocates for a particular client position when providing professional advice, but rather advance their professional planning opinions based on their professional view of the matter in application of the legislative and policy framework in existence in Ontario and, in doing so, have a duty to serve the public interest.

2) Planning Authority and Responsibilities

- a) It is the role of the Planners to consult with appropriate staff, community and municipal Council, develop plans and related by-laws regarding land use matters

within a Municipality that take into account the requirements of provincial legislation and policy direction, community objectives, land features, environmental features and constraints and public input, and then to apply the by-laws and plans approved by Council to development-related applications that are submitted by third parties. These same considerations apply to the Planner's role in developing policy and addressing special projects.

- b) **County Responsibilities** – The County is required under the *Planning Act* to prepare, adopt and maintain an Official Plan for the County that aligns with Provincial interests as defined in applicable legislation and Provincial Policies. The County is also the approval authority with respect to:
 - i) County Official Plan Amendments;
 - ii) Local Official Plans and Amendments;
 - iii) Plans of Subdivision;
 - iv) Plans of Condominium;
 - v) Consents and severances;
 - vi) Part lot control By-laws; and,
 - vii) Validations of Title.
- c) **Lower-Tier Municipal Responsibilities:** The Municipality is the approval authority for the following under the *Planning Act*:
 - i) Zoning By-laws and amendments;
 - ii) Minor variances and other applications to Committees of Adjustment;
 - iii) Site plan approvals;
 - iv) Local Community Improvement Plans;
 - v) Community planning permit systems, where enacted; and,
 - vi) Any other by-laws or actions authorized under the *Planning Act*.
- d) **Delegation of County Responsibilities:** The County may, by by-law, delegate one or more responsibilities, where authorized by the *Planning Act*, and considered appropriate by the County and a requesting local municipality, to a local Municipality. Notwithstanding the foregoing, where delegation has occurred, the County may continue to provide responsibilities and associated planning services delegated to the Municipality in accordance with this section and subject to the terms of delegation.
- e) **County Planning Service Responsibilities:** The Municipality hereby contracts with the County, and delegates responsibility to receive and process for consideration by the Council of the Municipality, third party applications in respect of the following development matters:
 - i) Local Official Plan amendments under section 17 of the *Planning Act*;
 - ii) Zoning By-law amendments under section 34 of the *Planning Act*;
 - iii) Applications to the Committee of Adjustment under s. 44 and 45 of the *Planning Act* that are related to a Zoning By-law;
 - iv) at least annual consolidations of local Official Plan and Zoning

- amendments to include applications processed by the County;
 - v) any responsibilities delegated by the County to a Municipality in accordance with section 2(d), where the municipality has in turn delegated uncontested applications to County Staff for approval;
- and the County accepts this responsibility.
- f) **Additional Services:** The County may make addendum agreements with one or more local municipalities wherein the Municipality delegates responsibilities to the County in respect of the provision of additional development services including but not limited to:
- i) delegated authority to pass minor Zoning By-law amendments as may be authorized by the *Planning Act*, Official Plan(s) and local delegation by-laws;
 - ii) administration of Community Planning Permit Systems;
 - iii) administration of Site Plan Control, beyond commenting on circulations from local municipal staff; and
 - iv) natural heritage review for matters including but not limited to licensing applications or environmental assessments that are not directly related to planning applications.
- g) **Policy and Project Development:** In addition to the foregoing and to the County's role as a commenting agency, the County may be engaged by a Municipality to carry out a special project or policy update (a "**Special Project**"). Examples of Special Projects this section applies to include, but are not limited to, an Official Plan update, Zoning By-law review, community improvement plan, custom GIS work, servicing reviews and strategies, and other such projects.

The following steps shall be taken in respect of Special Projects:

- i) The Municipality shall provide the County with as much advance notice regarding the timing of an intended Special Project as possible and, at a minimum, shall advise the County when a report to obtain authority to proceed with a Special Project is in the early stages of preparation.
- ii) Where it is the intention of the Municipality to request the County carry out a Special Project, or a portion thereof, on its behalf, the Municipality shall advise the County. The County shall make a determination on whether it can accept the Special Project and respond

to the Municipality's request within 30 days. When making such determination, the County shall take into account the priorities defined in Section 3 of this Agreement.

- iii) Where the County does not have the resources to meet the Municipality's requirements for a Special Project, the Parties shall discuss alternatives to have the Special Project completed, including one or both Parties adjusting priorities (including proposed timelines) or the municipality engaging a third party consultant to carry out the Special Project in full, or in conjunction with the County.
- iv) The County will work with the Municipality to carry out Special Projects in a way that reflects local context in the exercise of professional judgement and which aligns with the Local and County Official Plans.

3) Prioritization of Planning Matters

Planning matters shall be reviewed and handled in the following order of priority and in accordance with the following principles:

- a) **Development Applications:** The Parties acknowledge and agree that applications under the *Planning Act* shall be treated as first priority. The County shall use reasonable efforts to process applications in accordance with the timelines provided by the *Planning Act*. In the event that the County anticipates that it will not be able to process an application in accordance with the timelines provided by the *Planning Act*, the County shall contact the Municipality to discuss alternatives for the processing of the application.
- b) **Legislative Changes:** The Parties acknowledge and agree that the County shall review and engage in changes, including changes to applicable legislation, policies and the planning system, which may, among other things, impact application processing, planning policies, or reporting requirements. The County shall communicate with the municipality for the purposes of: (1) ensuring they are notified of any such changes or potential changes; (2) educating the Municipality on the impact of such changes; and (3) soliciting local municipality input for the purposes of providing input on such changes to any applicable authorities.
- c) **Local Official Plan and Zoning By-Law Comprehensive Reviews:** There is a benefit to updating local Official Plans soon after the County Official Plan has been updated. The Municipality shall work with the County to schedule and prioritize these updates, recognizing that the County will have a role as commenting agency in situations where the Municipality chooses to use an external consultant to carry out the work.
- d) **Special Projects:** From time to time the County shall be engaged to carry out Special Projects on behalf of a Municipality, and, in such circumstances, section

2(g) shall likewise apply.

The Parties acknowledge that the County has similar agreements with other municipalities. Where multiple projects could present a workload issue with projects or applications already being processed or which the County has committed to various parties to undertake, the County will schedule meetings with representatives from each Party impacted to determine priorities, with the objective of meeting the needs of all Parties.

4) Shared Responsibilities

- a) **Administrative Support:** Administrative support for planning matters shall be shared as determined between the Parties with the general expectation that the County will provide notices of applications, meetings, and decisions and maintain a formal record of application submissions, materials, correspondence, notices, and copies of the decisions. All other administrative matters related to meetings and hearings will be carried out and resourced by the Municipality, including the position of Secretary/Treasurer of the Committee of Adjustment;
- b) **Technical and GIS Data Sharing:** The County GIS system shall form the basis for issuing notices on planning matters, and the Municipality shall work to ensure local information is kept current and shared with the County on a regular basis. The County shall work with the Municipality on system upgrades and all Parties shall work to ensure electronic data and systems are procured with the expectation that County and Municipal systems will work together.
- c) **Planner Attendance at Municipal Offices:** To the extent possible, the County agrees to make its planners available to meet with staff and members of council, as well as the public, in the Municipality's offices in order to share information and provide service to the public. Virtual services may also be provided to increase the frequency, accessibility, or timeliness of services.
- d) **Zoning By-law Interpretation:** The Parties acknowledge that the local Zoning By-law administrators and the Planners both have responsibilities related to the interpretation of the Zoning By-law. Planners shall provide all reasonable assistance required by local Zoning By-law administrators in carrying out their statutory duties.
- e) **Agenda:** The Municipality will treat planning reports from the County regarding application status updates, project updates and policy matters, as a staff agenda item, and the County will meet Municipal agenda submission timelines.
- f) **Appeals to Ontario Land Tribunal (the "OLT"):**
 - i) In the event of an appeal to the OLT regarding a Municipal decision (or failure to make a decision) on a development application for which a

- planning report and recommendation has been prepared by the County for a decision by a Municipality is appealed to the OLT, it shall be the responsibility of the Municipality to prepare and submit the appeal record to the OLT and to procure, instruct and pay for its own legal counsel.
- ii) The County agrees that planning staff will support the Municipality in preparing the appeal record and that a planner will be available to attend and provide evidence in respect of the matters at issue as they relate to the evidence in the planning report and planning matters related to relevant planning documents at no cost to the Municipality. In the event the Municipality retains external witnesses to provide planning evidence, the Municipality shall undertake and pay for such consultants.
 - iii) The Municipality acknowledges and agrees that in cases where the decision of the Municipality did not coincide with the recommendation of the Planner, it may be necessary for the Municipality, at its discretion and cost, to procure its own witness to provide planning evidence. The Municipality further acknowledges and agrees that in such cases, the Planner may be summoned before the OLT to give evidence of the recommendation provided to the Municipality and that this shall not be considered to be a conflict of interest.
 - iv) Where the Planner supported an application, the County may collect a fee from applicants in respect of providing additional planning services such as mediation and/or witness statements.
 - v) Where the County is also a party to the appeal, the Municipality and the County may elect to retain counsel and experts jointly and divide costs accordingly.
 - vi) The foregoing provisions of this subsection (f) shall apply, with necessary modifications as the context may require, to applications for judicial review or other proceedings before any Court or tribunal of competent jurisdiction with respect to planning applications subject to this Agreement.

5) Communications

The Parties support two-way communication for mutual benefit, and agree as follows:

- a) The County will share with the Municipality any information it receives from the Province regarding proposed changes to Provincial plans or policy statements, new legislation or regulations that have the potential to impact planning matters within the County or the Municipality, including the timelines to comment on them.

- b) When feasible and as time permits, the County will provide an opportunity for the Municipality to provide input on the impact of such change and provide an opportunity to work together on a common approach to reporting such matters to the respective councils.
- c) When appropriate and time permits, the Municipalities will likewise bring to the attention of the County such information and provide an opportunity for the County to provide input the impact of such change and provide an opportunity to work together on a common approach to reporting such matters to the respective councils.
- d) The County and the Municipality agree to share workplans for land use planning policy and project development for the upcoming years on an annual basis, and to do so more often if appropriate, to facilitate the appropriate allocation of resources and to allow the County to be responsive to local needs for special projects and reviews and to ensure the Municipality is aware of any special projects that the County has decided to undertake. Opportunities for joint participation will be explored and encouraged where appropriate.
- e) The County will provide a mid-year status report to the Municipality advising of all active and newly closed planning applications and will attend to speak to the report if requested.
- f) The Parties will work together to provide the Municipality with an annual report identifying the matters set out in subsection 5(e) above and the planning services that have been provided over the previous year.
- g) The Parties will determine designated spokesperson(s) and coordinate communications accordingly.

6) Records and Compliance

- a) The Parties acknowledge and agree that the *Accessibility for Ontarians With Disabilities Act, 2005*, SO 2005, c 11; the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31; the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56; the *Municipal Act, 2001*, SO 2001, c 25; the *Assessment Act*, RSO 1990, c A.31; and, the *Planning Act*, RSO 1990, c P.13, apply to and govern the maintenance, dissemination, and retention of records, as defined in the applicable legislation above (the “Records”), including the disclosure of such Records to third parties. In this regard the Parties agree:
 - i) to keep Records secure;
 - ii) not to access assessment information unless necessary for a planning purpose;
 - iii) to communicate to the public that information submitted in respect of

planning matters may form part of a municipal agenda and become part of the public record;

- iv) to redact contact information where required by applicable legislation prior to posting or otherwise sharing Records forming part of the public record of an application;
- v) to provide or disclose Records where obligated to do so under applicable legislation, by an order of a court or tribunal or pursuant to a legal proceeding; and,
- vi) the provisions of this paragraph shall prevail over any inconsistent provisions in this Agreement.

7) Costs of County Planning Services

The Parties agree that the County shall:

- a) be solely responsible for determining fees for planning services provided by the County to third parties;
- b) make available to the Municipality up to 105 hours of staff time each year for policy and special projects. The Parties agree that in cases where a Planner is required to attend an OLT appeal or other proceeding in relation to a Special Project, such time will be included in the Municipality's allotted 105 staff hours unless the Parties otherwise agree;
- c) for Special Projects requiring in excess of 105 hours of staff time, or external costs, the County may charge-back to the Municipality a fee of not more than the cost of providing the services requested by the Municipality, including any external costs the County may have to incur in this respect. The County shall provide the Municipality with a quote for the anticipated cost of such services upon request. The Municipality shall then have the opportunity to either accept the County's planning services at the quoted price or to engage a third-party firm to provide the planning services for the Special Project; and,
- d) the hours identified in (b) and (c) may be increased if staffing capacity is increased.

8) Review

- a) The Parties acknowledge that they wish to develop and foster a positive and cooperative relationship, and will make every reasonable effort to notify, and work to resolve, issues that may arise in the delivery of planning services, as they arise.
- b) The Parties shall review the programs and services provided on an annual basis, or such shorter basis as the Parties may agree, to identify levels of satisfaction and areas of concern.

9) Insurance and Indemnification

- a) Each Party shall, at its own expense during the term of this Agreement, cause to be maintained:
 - i) Comprehensive General liability with limits of not less than \$5,000,000.00 per occurrence. Such coverage shall include: (i) the other Party(ies) including their respective elected officials, officers, directors, employees and volunteers as additional insureds; (ii) a cross liability and severability of interest clause; and, (iii) standard Non-Owned Automobile Liability coverage;
 - ii) Professional Liability insurance with limits of not less than \$5,000,000.00 for each claim and in the aggregate for all persons and services connected with this Agreement;
 - iii) Cyber and Breach Response Insurance covering for data breach including liability and restoration of data in an amount of no less than \$1,000,000 per claim.
- b) Each Party shall provide evidence of insurance coverage upon execution of this Agreement and at any other time upon written request.
- c) Each party agrees to indemnify and save harmless (the “Indemnifying Party”) the other party (the “Indemnified Party”) to this agreement from all losses, liability, causes and manner of actions, suits, claims, demands, expenses, and costs whatsoever (including, without limitation, reasonable legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) suffered or incurred by the Indemnified Party arising from negligent actions or errors or omissions committed by the Indemnifying Party and its employees, directors, officers, elected officials, volunteers and representatives stemming from performance of acts in pursuance of the terms of this Agreement.

10) Recitals Form Part of Agreements

The Parties acknowledge and agree that the recitals hereto are true and accurate both in substance and in fact and are hereby incorporated by referenced.

11) Termination or Modification

- a) In the event a party wishes to terminate this Agreement, it shall provide a minimum of one year’s written notice to the other Party. The terminating party shall pay all costs related any transfer of data required from the non-terminating party.
- b) 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.

12) Notice

- a) Any notice to be given under this Agreement shall be provided to the municipal clerk in writing, by email or by post, effective the day it is received.

13) Severability

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.

IN WITNESS WHEREOF this Agreement has been executed by the Parties.

Dated this _____ day of _____, 2024.

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Kenneth Craig, Mayor

Jennifer Lawrie, Clerk

We have authority to bind the Corporation

THE CORPORATION OF THE COUNTY OF BRUCE

, Warden

Linda White, Clerk

We have the authority to bind the Corporation.