

CONSULTING SERVICES AGREEMENT

B E T W E E N:

THE CORPORATION OF THE TOWN OF TILLSONBURG

(the "**Client**")

- and -

RON SHAW & ASSOCIATES INC.

(the "**Consultant**")

AND WHEREAS Ron Shaw ("Shaw") is the President and primary or sole shareholder or partner, officer and director of the **Consultant**.

AND WHEREAS the **Client** has agreed to retain the **Consultant** to provide consulting services to the **Client** as more fully described in this Agreement and the **Consultant** has agreed to act in that capacity on the terms and conditions set forth in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree each with the other as follows:

ARTICLE 1 **INTERPRETATION**

SECTION 1.01 - DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- a) All references to currency herein are deemed to mean currency of Canada;
- b) Any reference to "agreement", "approval", "authorization" or "consent" of a party hereto means the written agreement, written approval, written authorization or written consent of such parties;
- c) "Business Day" means any day, other than Saturday, Sunday or any statutory holiday in the Province of Ontario;
- d) "Business" means the business of the administration of services by a local government;

- e) "Services" means those services as defined section 3.01 of this Agreement;
- f) "Governmental Body" shall mean:
 - (i) any federal, state, provincial, municipal or other government body;
 - (ii) any subdivision, department, bureau, agency, commission, board, instrumentality or authority of any of the foregoing governments or bodies;
 - (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing governments or bodies; or
 - (iv) any judicial, quasi-judicial, arbitration or administrative court, grand jury, commission, board or panel.
- g) "Confidential Information" means all confidential or proprietary information, intellectual property (including trade secrets) and confidential facts relating to the administration of local government and protected under the *Municipal Freedom of Information and Protection of Privacy Act*:

For greater certainty "Confidential Information" excludes information that is:

- (i) in the public domain before disclosure to the **Consultant**, or becomes in the public domain thereafter otherwise than as a result of a breach by the **Consultant** of its obligations of confidentiality under this Agreement;
- (ii) known to the Consultant before it is disclosed by the **Client**;
- (iii) developed independently by the **Consultant** without reference to the information disclosed by the **Client**, as evidenced by written or other tangible records; or
- (iv) received by the **Consultant** from a third person, who is not under any obligation to the **Client** to restrict disclosure.

ARTICLE 2

APPOINTMENT AND TERM

SECTION 2.01 - APPOINTMENT

The **Client** confirms the engagement of the **Consultant** to provide the Services as set out in this Agreement. The Services to be provided by the **Consultant** will be as an independent contractor during the term of this Agreement and the **Consultant** confirms its agreement to provide the Services to the **Client** in accordance with the terms of this Agreement. The Services shall be primarily provided by Shaw, which is a fundamental term of this Agreement.

SECTION 2.02 - TERM

The term of this Agreement shall commence on September 16, 2019 and shall continue until December 20, 2019, unless terminated earlier in accordance with the provisions of this Agreement or otherwise extended by mutual written agreement of the parties. Both parties recognize that Shaw has previous commitments already scheduled for September 13, September 20 and December 11, 2019 with AMCTO.

ARTICLE 3

SERVICES

SECTION 3.01 - SERVICES TO BE PROVIDED

During the term of this Agreement the **Consultant** shall provide the consulting services described in Schedule A attached to this Agreement and such other services as may be agreed upon in writing from time to time by the parties (the “**Services**”).

SECTION 3.02 - TIME AND ATTENTION

The **Consultant** shall devote the necessary time and attention to the performance of the Services under this Agreement. The hours are expected to be variable and will be based on the requirements of the Services to be performed for the **Client** and the availability of the **Consultant**. The **Consultant** is at liberty to provide services for any other person, firm, corporation or entity provided it meets the requirements as set out in this Agreement.

SECTION 3.03 - DILIGENCE

In providing the Services under this Agreement, the **Consultant** shall:

- a) Act honestly and in good faith with a view to the best interests of the **Client**; and
- b) Exercise the care, diligence and skill that a reasonably prudent consultant would exercise in comparable circumstances.

SECTION 3.04- OMAA

The Client shall permit Shaw to attend the Fall Workshop of the Ontario Municipal Administrators’ Association on October 17 and 18, 2019 at the **Client’s** expense

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ARTICLE 4

COMPENSATION

SECTION 4.01 - FEES

The **Client** shall pay to the **Consultant** for the performance of the Services the fees set out in Schedule B attached to this Agreement (the “**Fees**”).

SECTION 4.02 - EXPENSES

Expenses relating to performance of the **Services** shall be the responsibility of the **Consultant** or reimbursed by the **Client** as set out in Schedule B.

SECTION 4.03 - NO WITHHOLDINGS

The **Consultant** shall pay on its own account or remit, as applicable, all expenses related to Income Tax, Canada Pension Plan, Employment Insurance, group health, H.S.T. and any other income or business tax as may be required by any Governmental Body. It is understood and agreed that all the above are the sole and exclusive responsibility of the **Consultant**. As an independent contractor, the **Consultant** acknowledges that it is responsible for and shall remit to the appropriate Governmental Body any tax and other amounts as required by any Governmental Body.

For greater certainty, payment of the Fees shall be made without withholdings for Income Tax, Canada Pension Plan or Employment Insurance contributions or other like deductions.

SECTION 4.04 - NO ADDITIONAL FEES

For greater certainty, unless otherwise agreed to in writing by the parties hereto, no additional fee, wage, salary, commission or other payment shall be paid to the **Consultant** on account of the Services herein contemplated.

SECTION 4.05 - RECORDS

The **Consultant** shall maintain such records as reasonably prescribed by the **Client** from time to time to verify and substantiate the Services rendered by the **Consultant** to the **Client**.

ARTICLE 5 **CONFIDENTIALITY**

SECTION 5.01 - CONFIDENTIALITY

The **Consultant** is aware of the **Client's** needs to maintain confidentiality of its business. Therefore, except with the consent in writing of the **Client**, the **Consultant** shall not, at any time, directly or indirectly use or disclose to any person or persons, firm, association, syndicate, company or corporation as principal, agent, shareholder or in any other manner whatsoever, any **Confidential Information**, except as reasonably required in performance of the Services.

On the termination of this Agreement, the **Consultant** shall return all of the **Client's** papers, effects and materials which have been entrusted to it.

SECTION 5.02- COVENANTS

The parties agree that by reason of the **Consultant's** unique knowledge and association with the **Business**, all restrictions contained in this section are all necessary and fundamental to the protection of the legitimate interests of the **Client** and are reasonable and valid. The covenants contained in this section 5 shall subsist even if the rest of this Agreement shall be terminated for any reason whatsoever and are severable for such purpose.

ARTICLE 6 **PROPERTY RIGHTS**

SECTION 6.01- PROPERTY RIGHTS

All reports created by the **Consultant** and provided to the **Client** in connection with the **Services** (the "**Work Product**") shall be the property of the **Client** and, to the extent that the **Consultant** retains ownership of, or other proprietary rights in, any **Work Product**, the **Consultant** hereby assigns and transfers all of such rights, title and interest in and to such **Work Product** to the **Client**, and the **Consultant** agrees at the **Client's** reasonable request and expense to execute any and all other documents and to give all aid and assistance that, in the opinion of the **Client**, may be necessary or desirable in connection with this assignment and transfer or to enable the **Client**, its successors and assigns to protect or exploit any **Work Product** in any country of the world.

ARTICLE 7 **ASSIGNMENT**

SECTION 7.01 - ASSIGNMENT BY THE PARTIES

This Agreement shall be binding upon the parties hereto and shall enure to the benefit of the **Client's** successors and assigns. This Agreement is personal to the **Consultant** and is not assignable and shall not enure to the benefit of its successors and assigns.

ARTICLE 8 **LEGAL RELATIONS**

SECTION 8.01 - LEGAL RELATIONSHIP

The legal relationship between the **Consultant** and the **Client** arising under this Agreement shall only be that of an independent contractor and the purchaser of services and, in particular, nothing in this Agreement shall be construed so as to render the relationship between the **Client** and the **Consultant** to be that of an employer and employee, principal and agent, partnership or joint venture.

ARTICLE 9

TERMINATION

SECTION 9.01 - EVENTS OF DEFAULT

It is an event of default (a “**default**”) if:

- a) either party fails to observe, perform or carry out any of its obligations hereunder and such failure is not remedied within 20 days of the other party giving it written notice of such failure;
- b) either party engages in any act, omission or conduct which would entitle the other party at common law to terminate this Agreement;
- c) either party ceases to operate its business;
- d) either party becomes bankrupt or commits any act of bankruptcy or makes an assignment for the benefits of creditors or otherwise.

Notwithstanding the above, the **Consultant** shall be deemed not to be in default if any of the events described in this Section 9.01 are caused by the death, illness or disability of Shaw.

SECTION 9.02 - ELECTIVE REMEDIES

In the event of a **default**, the non-defaulting party may do any one or more of the following:

- a) Pursue any remedy available to it in law or equity, it being acknowledged that specific performance, injunctive relief (mandatory or otherwise) or equitable relief may be the only adequate remedy for a default;
- b) Take all action in its own name as may be reasonably required to cure the default, in which event, all reasonable payments, expenses and costs incurred therefore shall be payable by the **other party** on demand;
- c) Terminate this Agreement by notifying the other party of the default and the exercise of such election; or
- d) Waive the default except, however that a waiver of a particular default shall not operate as a waiver of any subsequent or continuing default.

SECTION 9.03 – TERMINATION ON NOTICE

This Agreement may be terminated for any reason by the **Client** immediately upon giving notice in writing to the **Consultant**. In the event of any such termination, the **Consultant** shall be

entitled to payment for time spent performing the duties of the interim CAO of The Town of Tillsonburg to date plus 20 days on a prorated basis, but in any event not to exceed the total value of this Agreement. The **Consultant** shall also be paid any expenses to which it is entitled in accordance with this Agreement.

ARTICLE 10

CONFLICT OF INTEREST

SECTION 10.01 – CONFLICT OF INTEREST

The **Consultant** represents that it is not a party to any agreement which represents a conflict of interest with its role as the **Client's** consultant or the terms of this Agreement or which materially and adversely affects the **Consultant's** ability to perform the Services. Further, the **Consultant** agrees it will not enter into any agreement or business relationship during the term of this Agreement that could place it in a conflict of interest position.

ARTICLE 11

LIABILITY LIMITATIONS

SECTION 11.01 – LIABILITY EXCLUSIONS/MAXIMUMS

Neither party shall be liable to the other for special, punitive, contingent, indirect or consequential loss or damage. The maximum aggregate liability of the **Consultant** to the **Client** for any claim, demand, action, cause of action, suit or proceeding under or relating to this Agreement (collectively, the “**Claims**”), whether arising in contract, tort, including negligence, by statute or as matters of strict or absolute liability, shall be limited to an amount equal to the total Fees payable to the **Consultant** hereunder. Notwithstanding the above, the limits on **Consultant's** liability under this Agreement shall not apply to **Claims** arising out of the wilful, fraudulent or criminal misconduct of the **Consultant** or its directors, officers, employees or agents.

The **Consultant** shall fall under the **Client's** liability policies and insurance while performing the duties of interim CAO for The Corporation of the Town of Tillsonburg.

ARTICLE 12

GENERAL PROVISIONS

SECTION 12.01 - SEVERABILITY

Each provision of this Agreement is declared to constitute a separate and distinct covenant and to be severable from all other such separate and distinct covenants.

SECTION 12.02 - VALIDITY

If any covenant or provision herein is deemed to be void or unenforceable in whole or in part, then it shall not be deemed to affect or impair the enforceability or validity or any other covenant or provision of this Agreement or any part thereof.

SECTION 12.03 - ENTIRE AGREEMENT

The provisions herein constitute the entire agreement between the **Client** and the **Consultant** and supersedes all previous expectations, understandings, communications, representations and agreements, whether verbal or written, between the **Client** and the **Consultant** with respect to the subject matter hereof and may not be modified except by subsequent agreement in writing and executed by the **Client** and the **Consultant**.

SECTION 12.04 - GOVERNING LAW

The validity, enforcement and interpretation of this Agreement, and the rights and liabilities of the parties, shall be construed and governed by the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

SECTION 12.05 - INDEPENDENT LEGAL ADVICE

Each party acknowledges that it has an opportunity prior to executing this Agreement to review and seek independent legal advice with respect to the terms and conditions of this Agreement.

SECTION 12.06 - CAPTIONS

The captions or headings appearing in this Agreement are inserted for convenience of reference only and shall not affect the construction thereof.

SECTION 12.07 – NOTICE IN WRITING

Any notice to be given hereunder shall be in writing and shall be sufficiently given if delivered personally or by prepaid courier or registered mail:

(a) If to the **Consultant**, to: Attention: Ron Shaw, 146 Unger Island Road, Napanee, ON K7R 3L1

(b) If to the **Client**, to: Attention: Donna Wilson, Clerk, Town of Tillsonburg, 200 Broadway, Suite 204, Tillsonburg, ON N4G 5A7.

Any notice given personally or by prepaid courier shall be deemed to be given when so delivered, and any notice given by prepaid registered mail shall be deemed to be given on the fourth Business Day after it was mailed.

IN WITNESS WHEREOF, the **Client** and the **Consultant** have executed this Agreement as of the ____ day of _____, 2019.

THE CORPORATION OF THE TOWN OF TILLSONBURG

By: _____
Steven Molnar, Mayor

By: _____
Donna Wilson, Clerk

RON SHAW & ASSOCIATES INC.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

By: _____
Ron Shaw, President

SCHEDULE A

SERVICES

Reporting to the Mayor/Council the **Chief Administrative Officer** is the senior official of the municipality providing organizational leadership. This position is responsible to Council for administration and coordination of the delivery of services to the municipality's residents and businesses in a manner that will ensure the effective utilization of the available human, financial and physical resources. Through Directors and Corporate Managers, implement policies approved by Council, advise Council on all matters under its jurisdiction, act as a liaison between Council and staff, represent the Town as directed with other governments and/or organizations.

PRINCIPAL RESPONSIBILITIES:

- Reports to, is accountable to and receives direction from Council in the performance of their duties.
- Coordinates the policy advice that is prepared by Directors/Corporate Managers, external agencies and consultants to ensure that Council is presented with clear, comprehensive information and alternatives on which to make reasoned policy decisions.
- Attends Council and, when required, advisory Committee meetings, being available to provide advice and information in the formulation of Corporate policy.
- Oversees the overall interpretation, implementation and administration of Council direction.
- Provides a well coordinated communications network from all administrative levels to the political level and vice-versa.
- Coordinates all functions of the various departments/offices working with the area municipalities and special boards and commissions to provide a high level of service to the residents of the Town.
- Hires, directs, motivates, evaluates the performance, and disciplines up to and including termination, of the following:
 - Director of Operations
 - Director of Recreation, Culture & Parks
 - Director of Finance
 - Fire Chief
 - Clerk
 - Manager of Human Resources
 - General Manager, Hydro Operations
 - Chief Building Official
 - Development Commissioner
- Directs and assists with Human Resource matters within the mandates approved by Council.
- Acts as central reference source for inquiries from the public regarding Town operations, providing prompt and accurate responses and referring technical items to the appropriate department/office.

- Maintains positive public relations for the Town, dealing with the media and community groups. Will be the primary contact with officials of local municipalities, County of Oxford and all others concerned with Town operations.
- Maintains up-to-date knowledge of trends and developments affecting Town operations including legislation, Ministry directives, funding opportunities, procedural rulings & related matters, bringing relevant items to the attention of Council and/or Committees and Boards.
- Has signing authority.
- May represent the Town's interests as a member of the Board of Directors of Tillsonburg Hydro Inc.
- Performs such additional duties and exercises additional responsibilities that may be required in the interest of the Town and as Council may assign.

SCHEDULE B

FEES

Total fees (the “**Fees**”) earned and payable as follows:

- \$13,333 per month to be paid monthly.
- Shaw may invoice for each month within one week of beginning each 30 day period and which shall be paid within two weeks.
- Any reasonable travel expenses are in addition and will be invoiced at cost and in accordance with the Town’s travel policy.
- It is Shaw’s responsibility to get to and from work at his expense.
- Services provide from December 16 to December 20, 2019 will not be billed.
- Fees are subject to H.S.T.