



CONSULTING SERVICES AGREEMENT

This consulting services agreement is between:

The Corporation of the Town of Tillsonburg,
an Ontario Municipality

- and -

RSM Building Consultants Inc.,
an Ontario company.

("Consultant").

The parties agree as follows:

1. Retainer

- (1) The Municipality hereby retains the Consultant to provide the consulting services set out herein (the "**Services**"), and the Consultant shall provide those Services to the Municipality under the general direction and control of the Municipality and subject to the provisions of this agreement.

2. Services

- (1) The Services provided by the Consultant shall commence on August 10th, 2021 and continue for a period of two (2) years unless terminated earlier in accordance with the provisions of this agreement.
- (2) The Consultant agrees to provide the following Plans Examination Services:
 1. Review of building permit applications to identify any notable building code deficiencies;
 2. When there are notable building code deficiencies, the Consultant will issue a deficiency list to the applicant;
 3. The Consultant will correspond with the applicants related to the deficiency lists;
 4. Complete reviews of any amended drawings submitted based on the deficiency lists;
 5. Reviewing any mark ups and redlining to permit approval documents;

6. Making recommendations to issue permit to Chief Building Official based on technical review portion of the permit;
7. The review of the Applications does not include other applicable law as described in Section 8 (2) of the Building Code Act;
8. The review of the application does not include Zoning By-Laws and guidelines from the local Conservation Authority(s) having jurisdiction in the Municipality.

and any other services as may from time to time be agreed upon between the Parties.

- (3) The Consultant shall, provide services in accordance with the following work plan;
Commencing: August 10th, 2021 and continuing for a period of two (2) years unless terminated earlier in accordance with the provisions of this agreement.
Note: Sufficient notice to modify the work plan by either party is 5 business days in advance.
Duration: Services will continue until such time as the Municipality determines service levels do not require the services of the Consultant. The Consultant only provides services to the Municipality when there is a need. Plan review services can be stopped and then started again throughout the contract based on the needs of the Municipality.
- (4) The Consultant shall provide in good faith the Services skilfully, competently, efficiently, effectively, and economically, in a good and worker like manner, consistent with industry standards and current state of the art principles, law and practice.

3. Personnel

- (1) The Consultant shall ensure that it has sufficient Personnel to provide the Services in accordance with this agreement.
- (2) The Consultant shall ensure that its Personnel have the requisite competence, knowledge, skill, ability, experience, expertise, and Ministry of Housing Qualifications required to provide the Services.

4. Use of Confidential Information

- (1) In this agreement the following terms have the corresponding meanings:
 - (a) **“Confidential Information”** means any information, whether oral, written, visual, electronic, or in any other form, which is identified as confidential or that would reasonably be considered as being confidential;

- (b) **“Disclosing Party”** means the party disclosing Confidential Information;
 - (c) **“Insider”** means, in respect of a party, every director, officer, partner, associate, employee, sub-consultant, contractor or agent of the party; and
 - (d) **“Receiving Party”** means the party receiving Confidential Information and includes all Insiders.
- (2) The Receiving Party shall use Confidential Information relating to the Services only for the purposes of this agreement.
 - (3) Except as provided in this agreement, the Receiving Party shall keep confidential all Confidential Information disclosed to it by the Disclosing Party.
 - (4) The Receiving Party shall not copy or transcribe into another form, any Confidential Information received from the Disclosing Party except as reasonably necessary.
 - (5) The Receiving Party shall protect the Confidential Information disclosed to it by the Disclosing Party, in the same manner and to the same extent that it protects its own Confidential Information.
 - (6) Upon the termination of this agreement, or earlier upon the request of the Disclosing Party, the Receiving Party shall promptly destroy or return (as directed by the Disclosing Party) all copies of the Confidential Information disclosed to the Receiving Party.
 - (7) The Receiving Party may disclose Confidential Information if:
 - i. The Disclosing Party consents;
 - ii. The Receiving Party is required by law to disclose it; or
 - iii. The Confidential Information is generally and publicly available.
 - (8) If the Receiving Party is required by law to disclose Confidential Information, it shall promptly notify the Disclosing Party so that the Disclosing Party may intervene to prevent the disclosure.
 - (9) The Receiving Party shall ensure that all Insiders of the Receiving Party comply with all the foregoing provisions regarding the use of Confidential Information and the Receiving Party shall be responsible for any failure by any Insider to do so.
 - (10) All the foregoing provisions regarding the use of Confidential Information shall remain in effect for five years after the termination of this agreement.
 - (11) The harm that would be suffered by a party in the event of a breach of any of the foregoing provisions regarding the use of Confidential Information by the other party would not be compensable by monetary damages alone. Therefore, a party

shall be entitled, in addition to any other remedies, to seek an injunction against a breach or threatened breach of any such provision.

5. **Contacts and Communication**

- (1) The Consultant shall treat Geno Vanhaelewyn, Chief Building Official, as the Municipality's principal contact and source of instructions in respect of all aspects of this agreement, unless otherwise directed or permitted in writing by the Municipality.
- (2) The Municipality shall treat Gerald Moore, RSM President, as the Consultant's principal contact and source of reporting in respect of all aspects of this agreement, unless otherwise directed or permitted in writing by the Municipality.

6. **Chargeable Amounts**

- (1) The Municipality shall pay the Consultant for the Services at the established rate(s) identified in the list below. The Consultant shall submit an invoice to the Municipality for all Services completed in the immediately preceding month.
- (2) The Consultant may charge the Municipality, for the provision of the Services, amounts based on the following fee rates:
 - (a) Plan review rates based on the current RSM Plans Examination Price List.
Annual review of fee rates occur each November, the beginning of RSM's fiscal year.

or such other amounts, which are agreed to in writing by the parties for specific portions of the Services.
- (3) The Consultant may charge the Municipality for any Harmonized Sales Tax payable on the fees and disbursements charged to the Municipality by the Consultant.
- (4) The Consultant shall not charge the Municipality for value-added or premium billing.

7. **Accounts**

- (1) The Consultant shall provide detailed monthly accounts of amounts charged for its provision of the Services, including the following particulars:
 - i. the number of permits reviewed and its agreed rate;
 - ii. the amount of approved disbursements for which the Consultant is requesting reimbursement; and

- iii. The amount of Harmonized Sales Tax payable on its fees and disbursements.

8. Payment

- (1) The Municipality shall pay the Consultant the properly charged amounts incurred by the Consultant in providing the Services.

9. Insurance

- (1) The Consultant shall not be liable for costs or damages arising from errors or omissions in any of the information which is supplied to the Consultant by the Municipality.
- (2) The Consultant shall obtain, and for as long as this agreement is in effect, maintain, pay for and, upon request by the Municipality from time to time, provide evidence, satisfactory to the Municipality, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario and satisfactory to the Municipality's Procurement:
 - (a) Commercial General Liability Insurance:
 - i. Including the Town of Tillsonburg as an additional insured;
 - ii. To a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence;
 - iii. Including bodily injury, personal injury, death and damage to property, including loss of use thereof;
 - iv. In a form satisfactory to the Municipality's Procurement; and
 - v. Endorsed to provide the Town of Tillsonburg with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage;
 - (b) Professional Liability Insurance:
 - i. To a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence; and
 - ii. Subject to an annual aggregate of two million dollars (\$2,000,000).
 - (c) Workers' Compensation Insurance
 - i. Sufficient workers' compensation insurance to cover its Personnel performing services.

10. Relationship between Parties

- (1) The Consultant is an independent contractor of the Municipality. The Consultant shall not, except as the Municipality may specifically authorize in writing, enter into any contracts or commitments in the name of or on behalf of the Municipality, or bind the Municipality in any respect whatsoever. The

Consultant is not a partner, joint venturer, agent, or employee of the Municipality.

- (2) This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior commitment, representation, warranty, arrangement, understanding or agreement, written or oral, collateral, or other, with respect to the subject matter hereof, existing between the parties at the date of execution of this agreement.

11. Municipality Responsibilities

- (1) The Municipality shall provide instructions, guidance and assistance to the Consultant relating to the provision of the Services.
- (2) The Municipality shall use reasonable efforts to make available any relevant municipal reports, background information, data, drawings, plans, surveys and any other materials relevant to the Services, which are in its possession, for use by the Consultant, and shall make available Municipality employees for the purpose of any necessary consultation.
- (3) The Municipality shall insure that the staff of RSM Building Consultants are appointed as building officials as per Section 3-(2) of the Building Code Act.

13. Notices

- (1) A party required or permitted under this agreement to give any notification or communication ("**Notice**") shall give it in writing and shall deliver it by personal delivery, email, facsimile, courier or prepaid regular mail to an address of the other party provided for herein.
- (2) Either party may from time-to-time change any of its addresses by Notice given in accordance with this section.
- (3) A Notice sent by personal delivery is deemed to be delivered on the date it is personally delivered. A Notice sent by email is deemed to be delivered upon the sender receiving from the recipient a written acknowledgment of receipt. A Notice sent by facsimile is deemed to be delivered one day after the date it is sent. A Notice sent by courier is deemed to be delivered two days after the date it is sent. A Notice sent by prepaid regular mail is deemed to be delivered three days after the date it is sent, provided that if a postal interruption occurs, the Notice is deemed to be delivered three days after the resumption of postal service.

(4) The initial address for the Municipality is as follows:

Town of Tillsonburg
10 Lisgar Ave,
Tillsonburg, ON, N4G 5A5
E GVanhaelewyn@tillsonburg.ca

(5) The initial address for the Consultant is as follows:

RSM Building Consultants
885 Glasgow Street, Unit #5,
Kitchener, ON, N2M 2N7
E gerald@rsmbuildingconsultants.com

14. Force Majeure

(1) Whenever and to the extent a party is unable to fulfil, or is delayed or restricted in fulfilling, any of the obligations under this agreement by reason of any cause beyond the party's reasonable control, then the time for fulfilling such obligation is to be extended for such reasonable time as may be required by the party to fulfil such obligation, provided that any such inability, delay or restriction does not relate to any extent to any act or omission by such party or any of its employees, agents or others for whom it is at law responsible.

15. Waiver

(1) A party may waive any of its rights, powers or remedies hereunder. No waiver is effective unless made in writing.

(2) The failure of either party to exercise any of its rights, powers or remedies hereunder or its delay in doing so, does not constitute a waiver of any rights, powers or remedies. A single or partial exercise of a right, power or remedy does not prevent its subsequent exercise or the subsequent exercise of any other right, power or remedy.

16. Termination

(1) The Municipality may, with or without cause, terminate this agreement upon providing a minimum of thirty (30) business days' written notice.

(2) The Consultant may, with or without cause, terminate this agreement upon providing a minimum of thirty (30) business days' written notice.

17. Interpretation

- (1) This agreement is to be construed with all changes in number and gender as may be required by the context.
- (2) The division of this agreement into sections, subsections and clauses is for convenience of reference only and does not affect the interpretation.
- (3) The obligations of the parties contained herein have, where applicable, the status of representations, warranties and covenants by the respective obligated party.
- (4) This agreement is to be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (5) Time is to be of the essence of this agreement, including if any extension is permitted.

18. Signing

- (1) The parties may sign this agreement in counterparts with the same effect as if the parties had executed the same document. Any counterparts are to be construed together and shall constitute one and the same original document. The parties shall deliver any executed counterparts of this agreement in accordance with the provisions set out in this agreement for delivery of Notices.

19. Miscellaneous

- (1) All provisions of this agreement are severable, and if any provision is declared invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this agreement remain in full force and effect.
- (2) This agreement is to ensure to the benefit of and bind the parties and their respective heirs, executors, administrators, successors and permitted assigns.

[SIGNATURE PAGE FOLLOWS]

Each party is signing this agreement on the date stated opposite that party's signature.

CORPORATION OF THE TOWN OF TILLSONBURG

Date

By: _____
Name: Geno Vanhaelewyn
Title: Chief Building Official

I have authority to bind the Corporation.

RSM BUILDING CONSULTANTS

Date

By: _____
Name: Gerald Moore
Title: President

I have authority to bind the Consultant.