

THIS AGREEMENT made the 9<sup>th</sup> day of May, 2024

B E T W E E N:

**Corporation of the County of Elgin**

(hereinafter referred to as “Elgin”)

and

**Corporation of the Municipality of West Elgin**

(hereinafter referred to as the “Municipality”)

WHEREAS:

1. The Corporation of the County of Elgin is an upper-tier municipal corporation incorporated pursuant to the *Municipal Act, 2001* R.S.O. c. M. 25, as amended or replaced (the “*Municipal Act, 2001*”).
2. The Municipality is a lower-tier municipal corporation incorporated pursuant to the *Municipal Act, 2001* and is one of the constituent local municipalities within the geographic limits of Elgin County.
3. The Municipality, from time to time, requires certain on-demand Geographic Information Systems (“GIS”) services with regard to its operations.
4. Elgin is prepared to provide GIS services to the Municipality.
5. Elgin and their GIS staff have the requisite skill, experience and knowledge necessary to carry out the GIS services required;
6. The parties wish to formalize their contractual relationship through this Agreement.

IN CONSIDERATION of the mutual covenants and other terms and conditions hereinafter contained, the parties hereby covenant, promise and agree each with the other as follows:

## Definitions

1. In this Agreement,
  - a) **“Confidential Information”** means any information that is supplied in confidence explicitly or should be reasonably understood to have been supplied in confidence and includes, but is not limited to, Personal Information as defined in the *Municipal Freedom of Information and Protection of Privacy Act*, and information that is subject to confidentiality requirements due to third-party agreements, licences or other instruments;
  - b) **“Director”** means the person holding the position of the Director of Engineering of Elgin;
  - c) **“Elgin”** means the Corporation of the County of Elgin;
  - d) **“Elgin CAO”** means the person holding the position of Chief Administrative Officer of Elgin;
  - e) **“Elgin Council”** means the municipal Council of Elgin;
  - f) **“GIS System”** means the system for capturing, storing, checking and displaying data in a geographic manner, including the hardware and software that, in conjunction, is used to provide the Services, including but not limited to the locally hosted servers, software, software as a service, licences and data;
  - g) **“LMP CAO”** means the person holding the position of Chief Administrative Officer of the Municipality;
  - h) **“Services”** means the registered professional planner services to be provided by the County pursuant to this Agreement and as specified in clause 5 of this Agreement.

## General

2. Elgin is a municipal corporation governed by Warden and Council and operated by administration, who is hereby authorized to administer this Agreement save for those areas specifically limited herein.
3. The Municipality is a municipal corporation governed by Mayor and Council and operated by administration, who is hereby authorized to administer this Agreement save for those areas specifically limited herein.
4. The Schedules attached hereto are incorporated into and form part of this Agreement.

### **Elgin GIS Services**

5. Elgin agrees to perform the GIS services described in Schedule “A” to this Agreement. For clarity, the services identified in Schedule “A” are provided by the County without any additional fees or charges as set out in Schedule “B”. Any services requested by the Municipality that are not included in Schedule “A” or otherwise described as an inclusive service within this Agreement (“Additional Services”) shall be subject to the fee(s) set out in Schedule “B”.
6. Elgin has the unfettered right pursuant to this Agreement to:
  - a) Establish procedures and protocols for how requests for GIS Services are initiated by the Municipality;
  - b) Determine the timing and method of performing the GIS Services;
  - c) Assigning personnel to the GIS Services;
  - d) Determine the deliverables that the County can offer;
7. Elgin will use commercial reasonable efforts, having regard to all of the circumstances including existing workload, personnel availability, the complexity of the GIS Services request and any other factor it deems relevant, to provide timely GIS Services.
8. The Municipality specifically acknowledges that the GIS Services of the County are provided to other local municipal partners within the geographic area of Elgin County and that GIS Services that are requested that are similar in nature to requests by other local municipal partners may be grouped together, the deliverables and work product may be shared with other local municipal partners and the ser

### **Elgin GIS System and Hosting**

9. Elgin hosts the Municipality’s GIS data on Elgin servers and provides access to the Municipality to its GIS system. The Municipality hereby acknowledges and agrees that such hosting and access is subject to the following terms and conditions:
  - a) The Municipality shall have the ability to access the GIS system through credentials provided to it by Elgin. The Municipality is solely responsible for restricting access to such credentials as needed and shall do so at its sole risk and shall release, save harmless and indemnify Elgin from any damages or claim arising out of access to the GIS system by its credentials whether authorized or unauthorized.
  - b) Elgin disclaims, provides no warranties, assurances or representations with regard to GIS data hosting.
  - c) The Municipality acknowledges and agrees that the GIS System is provided on an “as is” and “where available” basis and Elgin makes no guarantee, warranty, representation or condition of accuracy,

completeness or usefulness of the GIS System for the Municipality's purpose or intent, save and except where Elgin has agreed to create specific data or layers pursuant to a GIS Service retainer as set out herein or otherwise described in Schedule "A".

- d) The Municipality acknowledges and agrees that Elgin makes no representation, warranty or condition that its server will be continuously available or will function without interruption; that access to its server or GIS system will be compatible with the Municipality's equipment or software; that its server or GIS system will be error free or that errors will be corrected; that access to its server will be free of viruses or other destructive or disruptive components.

### **Retainer Process**

10. In order for the Municipality to retain the Elgin GIS Services for Additional Services, a request will be made in writing by the Municipal CAO to the Director of Engineering or designate. The written request shall include, at minimum, a detailed description of the issue, the deliverable or goal sought by the Municipality and a timeline for completion. The Director shall give best efforts to respond within two (2) business days acknowledging the request and indicating whether or not the Additional Service can be performed and whether the requested timeline can be met.
11. The Director may decline to provide the GIS Services at Elgin's sole and unfettered discretion. Without limiting the generality of the foregoing, the Director will have regard to the nature of the issue, the timeline for completion, any potential conflicts of interest and the workload of Elgin's GIS Department.
12. Elgin retains the right to terminate any particular file or Service(s) if (i) circumstances arise which create an actual or potential conflict of interest with the best interests of the Municipality or Elgin, as determined in the Director's sole and absolute discretion; and/or, (ii) loss of personnel, qualification and/or experience to render the Service(s). In the event that any Service(s) are terminated pursuant to this provision it shall be without recourse by, or compensation to, the Municipality.
13. The Municipality retains the right to terminate any particular retainer, file or Service(s) at its sole and absolute discretion, by providing written notice from the Municipality's CAO to the Director. If any particular file or Service(s) are terminated by the Municipality then Elgin shall immediately cease work on the file or Service(s) and invoice for all Service(s) rendered up to the time Elgin received the written notice.

### **Non-Exclusive Services**

14. The Municipality shall not be required to retain Elgin to provide all or any of the Municipality's GIS Services.
15. Elgin is permitted to provide GIS Services to entities other than the Municipality.

### **Fees and Disbursements**

#### Services

16. The Municipality shall pay to Elgin for Additional Services the rates set out in Schedule "B" to this Agreement which shall be the effective rate for the calendar year of 2024.
17. The Parties agree that Elgin shall be permitted, pursuant to its unfettered discretion, to increase the said hourly rates, effective as of January 1 in any calendar year during which this Agreement is effective, commencing January 1, 2025, provided that Elgin delivers written notice of such intended rate increase prior to November 1 of the prior calendar year thereof, commencing November 1, 2024.
18. The Municipality agrees that Elgin shall be entitled to obtain reimbursement of all disbursements and expenses incurred by Elgin in relation to any Service(s) for which it is retained by the Municipality, provided that, for any specific disbursement in an amount anticipated to be in excess of \$500.00, Elgin shall obtain prior written authorization from the Municipality before incurring such expense, including but not limited to any third-party fee(s).
19. Elgin shall provide detailed accounts for the Services on a quarterly basis. If requested by the CAO, the County will make available to Elgin such accounts, records, receipts, vouchers and documents for the purpose of substantiating its billings.
20. The Municipality shall pay each invoice within 30 days of receipt of the invoice.

#### Capital – GIS Hosting and Licences

21. The County shall host a GIS server, and pursuant to an ESRI Enterprise Licence, obtain licences necessary to operate a GIS system that shall, subject to the terms and conditions of such licence, be made available for use by the Municipality.
22. Pursuant to the arrangement initiated by the County in 2021, in consultation with its local municipal partners, the Municipality shall not be required to pay to

Elgin any annual fee for GIS server or Elgin ESRI Enterprise licence costs during the Term of this Agreement.

23. Notwithstanding sections 21 and 22, should the Municipality require Elgin to obtain any licence for provision of a specific GIS service requested by the Municipality, or should Elgin be requested by its local municipal partners to increase its hardware or software beyond the level of service offered at the commencement of this Agreement, the Municipality agrees that the County shall not be required to comply with such request at Elgin's own cost.

### **Elgin Covenants**

24. Elgin hereby covenants as follows:

- a) to comply with all applicable laws, legislation, directives, rules and orders, whether International, Federal, Provincial, or local in providing the Services;
- b) to comply with the Workplace Safety and Insurance requirements (WSIA) and Human Rights policies;
- c) to obtain and keep current WSIB insurance;
- d) to ensure that the persons in their organizations who deal with members of the public or other third parties on behalf of the Municipality or who participate in developing the Municipality's policies, practices and procedures governing the provision of goods and services to members of the public or other third parties receive training about the provision of goods or services to persons with disabilities as required by the *Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c.11, as amended*;
- e) to supply at its sole cost and expense all staff, equipment, accommodations and technical assistance necessary to perform the Services and assume all overhead expenses in connection with the Services, save and except those specifically specified in this agreement as being at the cost of the Municipality;
- f) to co-operate with the Municipality CAOs, or his or her designate, and to do all things necessary to enable the Municipality's CAO to evaluate the Services as required.

### **Elgin Representations**

25. Elgin hereby represents as follows:

- a) that it will employ competent GIS staff to render the Services;
- b) that it will assign qualified GIS staff to perform the GIS Service(s) associated with any particular matter;

- c) that it will not render Services that intentionally create a conflict of interest between Elgin and the Municipality and/or any Third Party or any combination thereof;
- d) that where a conflict of interest is foreseeable in the provision of Services, it will identify the potential conflict as soon as practicable to the Municipality's CAO;

### **Municipality Covenants**

26. The Municipality hereby covenants as follows:

- a) that it will communicate with Elgin GIS staff in a timely manner, including with respect to the initial request for Service(s);
- b) to provide Elgin GIS staff with all relevant information and documentation, as may be requested, and to otherwise provide any assistance requested by Elgin and its GIS staff;
- c) that it warrants that it has the right, ability and licence to provide Elgin with all data and information that it provides to Elgin for the purpose of this Agreement;
- d) that it warrants that notwithstanding the generality of section 25(c), it is specifically satisfied that Elgin is a consultant for the purpose of sharing MPAC data and that in forming this agreement the Municipality is further satisfied that it meets all criteria required by MPAC to share data with Elgin;
- e) that it will provide Elgin with current, relevant data or policies of the Municipality that are applicable to any Service(s) that are requested;
- f) to at all times act honestly, ethically, and with integrity in any and all of its dealings with Elgin in respect of any Service(s) being delivered;
- g) that it acknowledges and agrees that Elgin County does not warrant, and specifically disclaims, the GIS Services as being fit for any particular purpose beyond any specific representations that Elgin County may make in delivering the Services;
- h) if required, it will enter into any licence agreement necessary by any third-party in order for the Municipality to receive GIS Services;
- i) that it acknowledges that in requesting the services of Elgin pursuant to this agreement that Elgin is acting as a service provider to the Municipality and that such provision of service does not violate any licence agreement that the Municipality has with any third-party;

### **Dispute Resolution**

27. In the event of a dispute between Elgin and the Municipality relating to any provision, covenant, commitment and/or obligation contemplated herein, or any

other dispute with regard to the delivery of the Service(s), the parties hereto agree that the following process shall be used:

- a) The party identifying the dispute will provide written notice to the other party, including sufficient detail for the party receiving the notice to respond and, where necessary, investigate the issue. Where the Municipality is providing written notice, it shall be from the Municipality's CAO to the Director. Where Elgin is providing written notice, it shall be from the Director to the Municipality's CAO.
- b) The parties agree to discuss the dispute as between the Director and the Municipality's CAO and otherwise reach consensus on a resolution of the dispute within a period of thirty (30) days, or shorter period if there is an applicable time sensitivity to the dispute.
- c) Should the parties not reach a consensus resolution then the dispute may be escalated to the Elgin CAO. The parties agree to discuss the dispute as between Elgin's CAO and the Municipality's CAO and otherwise reach consensus on a resolution of the dispute within a period of thirty (30) days, or shorter period if there an applicable time sensitivity to the dispute.
- d) Should the parties not reach a consensus resolution, either or both parties shall be at liberty to assert and/or protect their respective legal rights and interests in any manner permitted at law.

28. The parties will meet annually to review delivery of the Services and address any issues that remain outstanding that were not addressed through the formal dispute resolution process set out immediately above.

### **Term and Termination**

29. The term of this Agreement shall be from the effective date of this Agreement noted at the top of page one and shall continue until it is terminated pursuant to the provisions of this Agreement (the "Term").

30. Either party may, in its sole discretion, terminate this Agreement by providing the other party with one hundred and eighty (180) days' written notice of termination.

31. Elgin may terminate this Agreement immediately, without Notice, on the occurrence of any of the following:

- a) Elgin no longer has qualified or competent staff to perform the Services;
- b) Elgin does not appropriate the required funds to operate the GIS Services in any budget year;

- c) The Municipality materially breaches its obligations pursuant to this agreement including, but not limited to, failing to pay the required fees in a timely manner;
- d) The Municipality has materially misrepresented or warranted any thing or covenant at the time this Agreement was formed;

32. Upon termination, the annual fee paid by the Municipality shall be prorated to actual number of days in the year, to the termination date.

### **Indemnity**

33. Subject to section 34, the Parties hereby agree that they will, from time to time, and at all times, well and truly save, keep harmless and fully indemnify the other party (the "Indemnified Party"), its successors and assigns, from and against all actions, claims and demands whatsoever which may be brought against or made upon the Indemnified Party and against all loss, liability, judgments, claims, costs, demands or expenses which the Indemnified Party may sustain, suffer or be put to:

- a) resulting from or arising out of any breach, violation or non-performance of any covenant, condition, agreement or other obligation in this Agreement to be fulfilled, kept, observed and performed by the Indemnifying Party; and
- b) resulting or occasioned by any wrongful act, default, omission or negligence of the Indemnifying Party and those for whom it is in law responsible, including but not limited to any damage to property and any injury to any person (including death).

34. The Municipality acknowledges and agrees that it shall release and hold harmless Elgin from any damages, whether direct, indirect, incidental, consequential or special, including any costs associated with any claim or demand, arising out of a cyberattack, ransomware or other malicious attack by a third-party on Elgin information technology hardware or software including the GIS System and any licensed or SaaS product utilized by Elgin. In no event shall Elgin be liable to the Municipality in any manner whatsoever for any damages arising out of third-party interference with Elgin IT systems, including the GIS System, unless the third-party is the approved and authorized agent or contractor of Elgin.

### **Insurance**

35. The Parties shall each maintain a policy of Municipal/Commercial General Liability insurance that shall:

- a) have a limit of liability of not less than Five Million Dollars (\$5,000,000) inclusive for any occurrence;

- b) include damage caused by vehicles owned by the Party and used in conjunction with the work either within or outside the contract limits, and shall have a limit of liability of not less than \$2,000,000 inclusive for any one occurrence;

### **Subcontractors**

- 36. Elgin will be solely responsible for the payment of any subcontractors, consultants, agents or other third-parties employed, engaged or retained by it for the purpose of assisting it in the discharge of its obligations in providing the Services under this Agreement. The employment, engagement or retainer of any subcontractors and/or sub-consultants must have received prior written approval from the Municipality.

### **Confidential Information**

- 37. Elgin shall take all reasonable steps to keep all Confidential Information received from the Municipality confidential and not disclose any such Confidential Information to Elgin's Warden, Councillors, administration, staff, employees, servants, agents, consultants or contractors, other than to its GIS staff and associated support or supervisory staff.
- 38. The parties hereby agree and acknowledge that all rights, obligations and responsibilities set out in this Agreement with regard to confidentiality are subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M 56, as may be amended or replaced ("*MFIPPA*").
- 39. For the purposes of the *MFIPPA* and any amendments thereto, and except as expressly provided in this clause, the parties hereby acknowledge and agree that any GIS records in Elgin's possession as a result of providing the Services are within the custody and control of Elgin. Should Elgin receive an access to information request regarding records that were supplied to Elgin by the Municipality for the purpose of receiving GIS Services, then Elgin shall notify the Municipality of the request for access to the information, unless ordered otherwise by the Information and Privacy Commissioner or other authority of competent jurisdiction. No confidential information shall be disclosed by Elgin in any manner whatsoever, save and except as required by law, without the approval in writing of the Municipality's CAO, and:
  - a) Elgin shall hold all confidential information obtained in trust and confidence for the Municipality and shall not disclose any such confidential information, by publication or other means, to any person, company or other government agency unless required by law so ordered by an authority of competent jurisdiction or unless the information is already public or has been otherwise disclosed by any party that is not Elgin;

- b) any request for approval by Elgin to the Municipality's CAO to use confidential information shall specifically state the benefit to the Municipality of the disclosure of the confidential information;
- c) any use of the confidential information shall be limited to the express purposes as set out in the approval of the Municipality's CAO; and
- d) Elgin shall not, at any time during or after the term of this Agreement, use any confidential information for the benefit of anyone other than the Municipality.

### **No Agency or Employment Relationship**

40. The Municipality and Elgin agree that Elgin, its servants, agents and employees shall under no circumstances be deemed agents or representatives of the Municipality and except as the Municipality may specifically authorize in writing, shall have no right to enter into any contracts or commitments in the name of or on behalf of the Municipality or to bind the Municipality in any respect whatsoever.

### **Force Majeure**

34. The performance of the respective parties hereto or their respective obligations hereunder shall be subject to force majeure, including, but not limited to, insurrections, riots, wars and warlike operations, explosions, governmental acts, epidemics, strikes, fires, accidents, acts of any public enemy, or any similar occurrence beyond the reasonable control of the party affected. Any party temporarily excused from performance hereunder by any such circumstances shall use its best efforts to avoid, remove or cure such circumstances and shall resume performance with utmost dispatch when such circumstances are removed or cured. Any party claiming circumstances as an excuse for delay in performance shall give prompt notice in writing thereof to the other party.

### **Notices**

35. Any notification or written communication required by or contemplated under the terms of this Agreement shall be in writing and sent by electronic mail, in which case the electronic mail shall be deemed to have been delivered the day after it is sent to an e-mail address specified below, or Registered Mail, Return Receipt Requested and which shall be deemed to have been delivered five business days after the date of mailing. Addresses for such notices shall be:

If to the Municipality:

If to Elgin:                    Director, Engineering Services  
450 Sunset Drive,  
St. Thomas, ON, N5R 5V1  
engineering@elgin.ca

### **Miscellaneous**

36. The waiver of any provision hereof or the failure of any party hereto to enforce any right hereunder shall apply to that provision or right only and shall not be deemed to affect the validity of the remainder hereof.
37. No departure from or waiver of the terms of this Agreement shall be deemed to authorize any prior or subsequent departure or waiver and neither party shall not be obligated to continue any departure or waiver or to permit any subsequent departure or waiver.
38. This Agreement shall be constructed with all changes in number and gender as may be required by the context. Any titles used within this document are for reference purposes only and not an aid to interpretation.
39. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
40. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.
41. The parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
42. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
43. This Agreement embodies the entire agreement between the parties with regard to the provision of the Services and associated deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the deliverables and additional deliverables, existing between the parties at the date of execution of the

agreement.

- 44. The parties have entered into this Agreement voluntarily and have had the opportunity to seek independent professional and legal advice prior to the execution of this Agreement. Where such advice has not been sought or received the party is deemed to have intentionally waived such opportunity.
- 45. This Agreement shall not be assignable by the either party without the prior written consent of the other party, and such written consent may be refused at the other party's sole and absolute discretion.
- 46. This Agreement may be signed electronically, may be executed in counterpart, and may be exchanged by scanned or faxed copy. A combination of counterparts, including counterparts bearing electronic signatures, shall be deemed to be an original.
- 47. This Agreement shall enure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

**IN WITNESS WHEREOF**, Elgin and the City have respectively executed and delivered this Agreement on the date set out above.

**Corporation of the County of Elgin**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ed Ketchabaw, Warden

\_\_\_\_\_  
Date

\_\_\_\_\_  
Blaine Parkin, Chief Administrative Officer

*//We have the authority to bind the Corporation.*

**Corporation of the Municipality of West Elgin**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title: Richard Leatham, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title: Terri Towstiuc, Clerk

*//We have authority to bind the Corporation.*

## **SCHEDULE "A" SERVICES**

- Provide secure access to the GIS server, Municipal Databases, ArcGIS Online, Geocortex and Portal.
- Act as the administrator of the GIS server, providing permissions/licenses and access credentials to municipal users.
- Ensure data backups are completed and software licenses are renewed.
- Maintain and update as required: property parcel fabric, municipal addressing and road network shapefiles.
- Add datasets to the Geocortex internal and external facing websites, as requested.
- Provide training for municipal staff to access and navigate GIS products.
- Circulate County-wide GIS data to approved third party agencies (e.g. MOH, OPP, OMAFRA, Tillsonburg Dispatch);
- On-going maintenance of GIS datasets including addresses, highways and property information;
- GIS data creation, maintenance, updating and quality control/quality assurance;
- GIS data entry, attributing, and metadata creation;

\* The above Services are provided by Elgin County without the Municipality incurring the fee(s) set out in Schedule "B":

**SCHEDULE "B"**  
**FEES**

All Fees below are expressed on a per-hour basis, exclusive of HST and any disbursements, and are applicable to Additional Services:

\$75/hr