

AGREEMENT FOR
DEVELOPMENT REVIEW SERVICES

Between:

Oakview Land Use Planning
and
The Corporation of the
Municipality of West Elgin

Effective as of July 7, 2022

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THIS AGREEMENT was made as of this 7th day of July, 2022.

BETWEEN:

**OAKVIEW LAND USE PLANNING
("OLUP")**

Party of the first part

- and-

**THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN
(the "Municipality")**

Party of the second part

WHEREAS The Corporation of the Municipality of West Elgin is a municipal corporation in the Province of Ontario, and has deemed it appropriate to retain the services of an outside consultant for the purpose of providing certain planning services for the Municipality.

AND WHEREAS Oakview Land Use Planning is a private consultant with its office in Chatham-Kent, and which carries on the business inter alia of planning consultants to municipal corporation clients.

AND WHEREAS Oakview Land Use Planning has agreed to provide the Planning Services to The Corporation of the Municipality of West Elgin under the terms of the agreement hereinafter set forth;

NOW THEREFORE WITNESSETH THAT in consideration of the terms, covenants and provisions of this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Definitions:**

In this agreement, the following terms shall have the following meanings:

- a. "Applicant" shall mean any person, corporation, or their designated agent, who has made, or proposes to make, a development application;
- b. "Camera Ready" means original documents ready to be reproduced and used by the public;
- c. "Completed Application" shall mean a development application in which all information required is accurate and complete, including disclosure of all interests in the subject land, disclosure of all previous applications, the provisions of appropriate mapping and plans, the provision of necessary supporting documents, and the provision of the required application fee;
- d. "Contractor" shall mean OLUP;
- e. "Development Application" shall mean an application for an Official Plan Amendment, for a Plan of Subdivision, for a Zoning By-Law Amendment, for a Minor Variance, for a Site Plan, for a Consent to Sever, for the lifting of "H" Holding Symbol, for a Condominium development, for a temporary use by-law, for a holding by-law, for permission to expand a non-conforming use pursuant to Section 45 of the Planning Act, for part lot control exemption, and any combination of these applications;
- f. "Electronic Copy" shall mean a computer file containing all of the data and information, which are contained in the original documentation of the author in a form compatible with the software used by the parties

from time to time;

- g. "the Municipality" shall mean The Corporation of the Municipality of West Elgin the party of the second part;
- h. "Planning Services" means the Services set out in Section 3 herein;
- i. "PS" shall mean the Planning Services unit of the Municipality;
- j. "Planner, Principal" shall mean a planner who is a full member of the Ontario Professional Planners Institute with a minimum of 15 years of progressive planning experience, who is the owner of OLUP, and is ultimately responsible for all activities of OLUP;
- k. "Administrative Support" shall mean employees that provide technical support including drafting, computer software application management and clerical works;
- l. "Pre-consultation Phase" shall mean the time between the initial contact by a potential applicant with either the Municipality or OLUP and the date that a completed application is provided by OLUP to the Municipality, and will include some or all of the following activities:
 - meeting with the applicant to:
 - explain the approval process and timelines;
 - identify potential issues and necessary supporting information; and to review assessment and servicing information;
 - conduct a preliminary review of the proposal in consultation with the Municipality;
 - circulation of information to internal departments and any other

relevant agencies as necessary to assist in completion of the application and assessment of its feasibility;

- review application for completeness;
- determine, receive and forward to the Municipality the appropriate application fee;

m. OLUP" shall mean Oakview Land Use Planning, the party of the first part;

n. "West Elgin" means The Corporation of the Municipality of West Elgin and its representatives;

2. The Municipality hereby retains OLUP to be the primary consultant with respect to the Planning Services set out in Section 3 herein (the "Planning Services") for the six month period commencing on July 7, 2022, and ending on January 6, 2023. The parties shall have the right to extend the term of this Agreement after the Initial Term expires by written agreement or letter signed by both parties on the same terms and conditions as the Initial Term.

3. **Planning Services:**

OLUP will provide land use planning assessment of development applications subject to the following terms and conditions:

- a. OLUP will conduct the pre-consultation phase, subject to any protocol developed by the Municipality in conjunction with OLUP;
- b. OLUP will gather all information necessary to properly evaluate the merits of an application(s);

- c. OLUP will work in co-operation with the Municipality in the preparation, posting and circulation of all notices required by the Planning Act, and in conformity with Municipal policy; such notice to include the "Explanatory Note" and key map for each planning application;
- d. OLUP will promptly reply to agency and public enquiries on development applications;
- e. OLUP will identify, review and maintain proficiency in applying all relevant provincial and municipal planning policies, guidelines and regulations as they relate to a development application;
- f. OLUP will conduct a site visit and digitally photograph the subject lands showing the surrounding lands and the posted Public Notice signs, such signs and posting instructions to be provided in co-operation with the Municipality;
- g. OLUP will perform Minimum Distance Separation (MDS) calculations and confirm actual separation distances as part of the site visit, for those applications where MDS calculations are necessary;
- h. OLUP will review all agency and public comments received on the circulation of the application;
- i. OLUP will maintain all require electronic files consistent with Municipal requirements;
- j. OLUP will provide one final draft "electronic copy" (including site location maps and site photos) of each planning report via e-mail for Municipal review and any necessary changes prior to preparing the final report;

- k. OLUP will provide one signed complete final electronic copy of the planning report (including site location maps and site photos), using the Municipal report format;
- l. OLUP will complete all planning reports in a timely manner and in consideration of the applicable Planning Act decision requirements;
- m. OLUP will provide one complete "electronic copy" and one complete original "hard copy" of each Official Plan and Zoning By-law amendment document (including Schedules) via e-mail, using the Municipal amendment format;
- n. OLUP will attend the Public Meeting for each application to present the planning report and answer questions;
- o. OLUP will attend (in-person or via Zoom) any required meetings with internal staff;
- p. OLUP will remain up-to-date on land use planning legislation, regulations, and policy statements;
- q. OLUP will attend Ontario Land Tribunal or other similar hearings related to development applications as required by the Municipality;
- r. OLUP will provide all submissions in computer software programs acceptable to the Municipality;
- s. OLUP will be available to undertake pre-consultation phase activities during normal business hours;
- t. For greater clarity, activities not included in the Scope of Work for OLUP are:

- drafting or negotiating of agreements
- clearing conditions of approval

(collectively, the “Planning Services”)

4. Fees:

The fees to be charged by OLUP to the Municipality for the Planning Services shall be based upon the hourly rates outlined in Appendix A, plus agreed to disbursements. All fees shall be subject to the applicable HST, or any other or additional tax that may be imposed by Federal or Provincial Law during the currency of this agreement. For clarity, any disbursements shall be approved by the Municipality, acting reasonably.

5. Duties and Obligations of Oakview Land Use Planning:

At all material terms it shall be the obligation of OLUP as follows:

- a. To review development applications as required by this agreement within the timelines required by the Municipality and Planning Act;
- b. To maintain appropriate software and hardware, and staffing experience capable of generating all required reports, maps, presentations and photographs in a format acceptable to the Municipality;
- c. That all reports will be reviewed by, signed by and presented by a the owner of OLUP, or by such other person approved by the Municipality;
- d. To permit accessibility by the Municipality or its designated auditors to the OLUP financial records relevant to this contract during normal

business hours without prior notice;

- e. To advise applicants as accurately as possible, and in a timely fashion, of the costs associated with the processing of their planning application(s) and further, to advise of any projected costs over and above the Municipal application fees, prior to costs being incurred, and to confirm the applicant's intention to continue with the application.

6. Duties and Obligations of the Municipality:

At all material times it shall be the obligation of the Municipality as follows:

- a. To provide all Official Plans and Zoning By-laws with all amendments to the best of its ability;
- b. Where such information is in the Municipality's possession, to provide full access to recent assessment and GIS mapping, and most current aerial photographs, as updated from time to time;
- c. To assist OLUP through PS in the gathering of information from other agencies, internal and external to the Municipality, when requested by OLUP;
- d. To make available to OLUP any database, information network, computer software programs and any other technology in the Municipality's possession which would assist OLUP in undertaking its duties and obligations. Nothing in this paragraph 6(d) shall oblige the Municipality to acquire additional computer software programs, databases, information networks or any other technology that is not in its possession;
- e. To review draft reports on a timely basis.

7. **Point of Contact:**

The point of contact for OLUP with the Municipality shall be the CAO/Treasurer, or his/her designate.

8. **Billing and Payment:**

OLUP and the Municipality agree that:

- a. Billings shall be made monthly;
- b. Payment with respect to an account is due within 7 days of receipt of billing.

9. **Conflict of Interest:**

OLUP agrees that it will not during the currency of this agreement or any renewal hereof provide Planning Services to any clients other than the Municipality for matters arising within the Municipality, or for matters outside the Municipality where a conflict of interest might arise.

10. **Subcontracting:**

OLUP shall not subcontract any of its Planning Services except with the prior written approval from the CAO/Treasurer.

11. **Dispute Resolution:**

If requested in writing by either party, OLUP and the Municipality shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a 'without prejudice' basis. The mediator shall be appointed by agreement of the parties.

12. If a dispute cannot be settled within a period of thirty (30) calendar days by the mediator appointed under this paragraph 12, or if no mediator could be agreed upon by the parties within thirty (30) days of the giving of notice under paragraph 26, in either case within such longer period as may be agreed to by the parties, the dispute may, with the prior written concurrence of both OLUP and the Municipality, be referred to and finally resolved by way of binding arbitration by a single arbitrator. The arbitrator shall be appointed by agreement of parties. Failing such agreement, the arbitrator shall be appointed by reference to a Judge of the Superior Court of Ontario.
13. The place of the mediation or arbitration shall be the Municipality of West Elgin, or such other place as the parties may agree.
14. The award of an arbitrator under this agreement shall be final and binding upon the parties, and shall be enforceable by them in any Court of competent jurisdiction.
15. **Ownership of Documents:**
- The Municipality acknowledges OLUP's documents as instruments of professional services. Nevertheless, the technical reports and planning documents prepared under this Agreement shall become the property of the Municipality upon completion of the work and payment in full of all monies due to OLUP.
16. **Insurance:**
- OLUP shall maintain Professional Liability and Comprehensive General

Liability Insurance with a limit of liability of not less than Five Million Dollars (\$5,000,000) inclusive for any occurrence and shall name the Corporation of the Municipality of West Elgin as an additionally named insured.

17. **Indemnification:**

OLUP shall indemnify and save harmless the Municipality from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Municipality, the employees, officers or agents of the Municipality may suffer as a result of the negligence of OLUP or any breach in the performance of this agreement.

18. **Early Termination:**

The Municipality shall have the right to terminate this Agreement at any time during the Term or any renewal term by providing OLUP with thirty (30) days' written notice of termination.

19. **Confidentiality:**

OLUP acknowledges that in the course of providing the Planning Services, OLUP may create or have access to information that is treated as confidential and proprietary by the Municipality, in each case whether spoken, written, printed, electronic or in any other form or medium (collectively, the "Confidential Information"). OLUP shall treat all Confidential Information as strictly confidential and only use the Confidential

Information for the purpose of the Planning Services. OLUP shall not, without the prior written authorization of the Municipality either during the Term or at any time after the termination of this Agreement:

- a. use any Confidential Information for the benefit or purposes of OLUP or any other person, company or organization whatsoever; or
- b. disclose any Confidential Information to any person, company or other organization whatsoever.

20. **Availability:**

OLUP hereby agrees that on average the parties contemplate that OLUP's services shall be used for approximately twenty (20) hours per week during the Term. The parties acknowledge that the number of hours of work for OLUP in the performance of the Planning Services will vary during the Term. OLUP hereby agrees to make reasonable commercial efforts to ensure that the Planning Services are provided reasonably promptly during the Term of this Agreement.

21. **Default Penalties and Remedies:**

If either party shall fail, for any reason, to perform any provision of this agreement to be performed by it, the other may, at its option, perform that provision and upon doing so shall be reimbursed upon demand for all sums paid or incurred in performing that provision and shall be paid such reasonable fee for performing the provision as would be charged by an independent third party.

22. The failure on the part of either party to exercise or enforce any right

conferred upon it under this agreement shall not be deemed to be a waiver of any such right to operate to bar the exercise of enforcement thereof at any time or times thereafter.

23. In the event of the failure of the Municipality to pay any fee at the time fixed by this contract, and upon default having continued for a period of 60 days thereafter, the Municipality shall be liable to pay interest on such outstanding account at the annual rate of 6% per annum, calculated from the date of original account. This interest penalty shall be in addition to any other remedy available by law to OLUP.

24. **Project Management:**

When performing the Planning Services, OLUP will employ proven Project Management processes and rigour around the work to be done to reinforce project success. Success being defined as "deliverables realized on schedule, on agreed to specifications and at or under the agreed to cost of services."

25. **Assignment:**

This agreement is not assignable without the prior written consent of the parties. Any attempt to assign any of the rights, duties or obligations of this agreement without written consent is void.

26. **Notice:**

Any notices under this agreement shall be sufficiently given by personal delivery or by registered letter, postage prepaid and mailed in a Canadian

post office, addressed, in the case of notice to OLUP to

Oakview Land Use Planning

6 Royal Crescent, PO Box 188,

Pain Court, Ontario N0P 1Z0

Attention: Mr. Robert Brown, Owner

And in the case of notice to the Municipality:

Municipality of West Elgin

22413 Hoskins Line,

Rodney, Ontario N0L 2C0

Attention: Magda Badura, CAO/Treasurer

Or to any other address as may be designated in writing by the parties,

and the date of receipt of any notice by mailing shall be deemed

conclusively to be 5 days after the mailing.

27. **Amendments:**

No change or modification of this agreement shall be valid unless it is in writing and signed by each party.

28. **Entirety:**

This agreement and all attached schedules constitute the entire agreement between the parties to this agreement pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understanding, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other

agreements between the parties in connection with the subject matter of this agreement except as specifically set forth herein.

29. **Further Documents:**

The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this agreement.

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30. **Validity and Interpretation:**

The headings used in this agreement are for convenience purposes only and are not to be considered a part of this agreement and do not in any way limit or amplify the terms and provisions of this agreement.

31. The invalidity of any particular provision of this agreement shall not affect any other provision of it, but the agreement shall be construed as if the invalid provision had been omitted.

32. There will be no application of the rule interpreting an agreement against its drafter, because both parties played a joint role in drafting it.

33. This agreement is to be read with all changes in gender or number as required by the context.

34. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

35. This agreement shall ensure to the benefit of and be binding on the respective successors and assigns of each of the parties.

In Witness Whereof the parties have affixed their respective corporate seals,
attested by the hands of their respective officers duly authorized in that behalf.

SIGNED, SEALED and DELIVERED as of the 7th day of July, 2022.

Oakview Land Use Planning

Per: Robert Brown, Owner
I have authority to bind the business

Corporation of the Municipality of West Elgin

Mayor

Clerk:
We have authority to bind the Corporation.

APPENDIX "A"

PLANNING SERVICE FEESCHEDULE

HOURLY RATES

Position	Hourly Rate
Principal Planner	135
Administrative Support	70
Disbursements for Mileage	\$0.61/km
Additional Disbursements will be as per agreement with the Municipality	