

COMPREHENSIVE SERVICE AGREEMENT

This agreement made this of , 2019.

BETWEEN:

*Township of North Huron
274 Josephine Street
Wingham, ON*

(hereinafter called the “Municipality”)

AND:

*GJAJ Holdings Ltd.
22 Park Street
Ripley, ON*

(hereinafter call the “Developer”)

(collectively, the “Parties”)

WHEREAS:

- A. The Municipal Council has approved this Agreement by passing Bylaw No. [Number of Bylaw] at its meeting held on [Date]. A copy of the Bylaw is attached to this Agreement as Schedule [Name of Schedule].
- B. The Municipality wishes to provide winter control services, collectively “Municipal Services”, to the Rutledge Subdivision Lands formally known as Rutledge Street and Gloria Street in the Village of Blyth, Township of North Huron, all in accordance with the terms and conditions set out in this Agreement.
- C. The Developer wishes the Municipality to provide, under the terms and conditions of this Agreement, Municipal Services.
- D. The said Parties deem it to their mutual interest to enter into this Agreement.

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained the sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

1.0 DEFINITIONS

- 1.1 In this agreement, including this section, the recitals and schedules hereto, unless the context otherwise requires:

“**Agreement**” means this agreement, including the recitals and schedules hereto, as amended and supplemented from time to time.

“**Annual Fee**” has the meaning ascribed in Section 17.

“Municipal Services” means the provision of Winter Control services as outlined in this Agreement.

“Overtime Costs” means the costs incurred by the Municipality as a result of an extraordinary event occurring within the Lands for which the Municipality provides Winter Control Services pursuant to this Agreement, and includes overtime costs for personnel responding to the event and overtime costs arising as a result of the need to call in off-time personnel to maintain normal service levels.

“Service” means a Municipal Service.

“Serviced Properties” means any property which falls under the jurisdiction of this Agreement and is receiving Municipal Services.

“Winter Control Services” has the meaning ascribed in Section 16.

“Term” means a period of time which this Agreement remains in force and effect, as described in Section 2.

2.0 TERM

- 2.1 Subject to earlier termination under Section 2.2, or 9.1, below, this Agreement commences on **November 15th, 2019** and shall continue to **April 15th, 2020**.
- 2.2 This Agreement may be terminated on 1-month prior written notice by either Party, at their sole discretion.

PART 1 – PROVISION OF SERVICES

3.0 GENERAL COVENANTS OF THE MUNICIPALITY

- 3.1 The Municipality shall provide, for the Term of this Agreement, Winter Control Services to the Developer in accordance with the terms and conditions in this Agreement.
- 3.2 The Municipality shall bill the Developer for the cost of the Services in accordance with the payment provisions for the Service, as set out in this Agreement.
- 3.3 The Municipality shall inform the Developer of any changes that may affect the quantity, quality, or level of service associated with this Agreement as outlined in Section 14.

4.0 GENERAL COVENANTS OF THE DEVELOPER

- 4.1 The Developer shall ensure that no construction materials or equipment are permitted to be deposited or parked on the road allowance. Parking of vehicles and equipment must be in full compliance with Municipal By-Laws.

- 4.2 The Municipality its elected officials, officers, employees, servants and agents will not be held liable for any loss resulting from non-compliance with the Municipality's bylaws. This indemnity survives the termination or expiration of this Agreement.
- 4.3 The Developer will indemnify and hold harmless the Municipality, its elected officials, officers, employees, servants and agents from any loss, damage, expense or cost suffered or incurred as a consequence of delivery of the services provided:
- 4.4 The Developer shall pay for the Municipal Services in accordance with the terms and conditions of this Agreement as ascribed in Section 17.

5.0 QUALITY OF SERVICE

- 5.1 The quality and quantity of the Services to be provided by the Municipality under this Agreement will be substantially the same as the quality and quantity of Services provided by the Municipality to the users of such Services on municipal property within the Municipality. The Municipality is not obliged to provide Services at a greater level or degree than the level or degree to which the same Service is provided elsewhere within the Municipality. The Municipality makes no representation or warranty that the level or degree of Services provided under this Agreement will be maintained or continued to any particular standard, other than as stated expressly herein. The Developer acknowledges and agrees that there may be from time to time interruptions or reductions in the level of Services, and that the Municipality will not be held liable for any losses, costs, damages, claims or expenses arising from or connected with a temporary interruption or reduction in the level of a Service provided under this Agreement.

PART IX – WINTER CONTROL SERVICES

6.0 WINTER CONTROL SERVICES

- 6.1 During the Term, The Municipality agrees to provide the Developer with the following Winter Control Services, in accordance with the terms and conditions in this Agreement, Provincial Minimum Maintenance Standards, and applicable Bylaws:
- (a) Plow roads on the Lands. Snow removal and hauling services are the responsibility of the Developer.
 - (b) Spread salt and/or sand on the roads on the Lands
- 6.2 Snow Removal Services are not included within the fixed fees and are not included within the scope of this agreement.
- 6.3 The Municipality will be responsible for all personnel providing the Winter Control Services covered under this Agreement.

PART X – PAYMENT FOR SERVICES

7.0 PAYMENT FOR SERVICES

- 7.1 The Developer will pay the Municipality for the supply of Municipal Services in accordance with the terms and conditions of this Agreement.
- 7.2 The fees calculated for the provision of each Municipal Service under this Agreement shall be Fixed at \$5,000.⁰⁰ for the Term if the Agreement.
- 7.3 The Municipality will provide an invoice to the Developer for the Fixed Fee by December 1st, 2019.
- 7.4 The Developer will pay all of the Municipality's invoices within thirty days of issuance. Interest on all outstanding invoices shall accrue at a rate of 1 1/4 percent, calculated monthly.
- 7.5 Additional services otherwise excluded from this agreement may be available at the discretion of the Director of Public Works and are charged on a time and materials basis.

PART XI – GENERAL CLAUSES

8.0 RIGHTS OF ACCESS

- 8.1 Representatives of the Municipality may at any time enter upon the Developers Road Allowance for the purpose of providing any of the Services required in accordance with this Agreement as outlined by Section 3.

9.0 TERMINATION FOR BREACH OF AGREEMENT

- 9.1 If this Agreement is terminated or otherwise cancelled for any reason, a prorated portion of any advance payments made by the Developer will be refunded once all amounts owing to the Municipality have been fully paid.

10.0 LIABILITY

- 10.1 The Municipality does not warrant or guarantee the continuance or quality of any of the services provided under this Agreement and shall not be liable for any damages, expenses, or losses occurring by reason of performance of the work, suspension or discontinuance of the Services for any reason which is beyond the reasonable control of the Municipality, including without limitation acts of God, forces of nature, soil erosion, landslides, lightning, washouts, floods, storms, serious accidental damage, strikes or lockouts, vandalism, negligence in the design and supervision or construction of the Infrastructure, or in the manufacture of any materials used therein, and other similar circumstances.

11.0 COMMUNICATIONS AND CONTRACT PROTOCOL

11.1 All the Parties to this agreement will appoint one or more representatives, with notice to the other Parties of such appointments as the principal contacts for official communications about this Agreement, and as the principal contacts for operational matters pursuant to this Agreement. The Parties further agree to establish a communications protocol to manage issues arising under this Agreement.

12.0 DISPUTE RESOLUTION

12.1 In the interest of cooperative and harmonious co-existence, the parties agree to use their best efforts to avoid conflict and to settle any disputes arising from or in relation to this Agreement.

12.2 In the event that the parties fail to resolve matters, the parties shall seek a settlement of the conflict by utilizing the Council of the Township of North Huron, and recourse to the Courts shall be a means of last resort, except when public health or safety is concerned.

13.0 ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire Agreement between the Parties in relation to the provision of Municipal Services and there are no undertakings, representations or promises express or implied, other than those expressly set out in this Agreement.

13.2 This Agreement supersedes, merges, and cancels any and all pre-existing agreements and understandings in relation to the provision of Municipal Services in the course of negotiations between the Parties.

14.0 NOTICE

14.1 The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Agreement, including any notice advising the other Party of any change of address, shall be as follows:

(a) to Municipality:

*Township of North Huron
274 Josephine Street, P.O. Box 90
Wingham, ON
N0G 2W0*

(b) to the Developer:

*GJAJ Holdings Limited.
C/O Gary Rutledge*

14.2 Any notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. By notice faxed or emailed will be

deemed to have been received on the first (1st) business day following the date of transmission. For the purposes of Section 14, the term “business day” shall mean Monday to Friday, inclusive of each week, excluding days which are statutory holidays in the Province of Ontario.

- 14.3 The Parties may change their address for delivery of any notice or other written communication in accordance with Section 14.1.

15.0 SEVERANCE

- 15.1 In the event that any provision of the Agreement should be found to be invalid, the provision shall be severed and the Agreement read without reference to that provision.
- 15.2 Where any provision of the Agreement has been severed in accordance with Section 15.1 and that severance materially affects the implementation of this Agreement, the parties agree to meet to resolve any issues as may arise as a result of that severance and to amend this Agreement accordingly.

16.0 AMENDMENT

- 16.1 The Agreement shall not be varied or amended except by written agreement of both Parties.
- 16.2 No waiver of the terms, conditions, warranties, covenants, and agreements set out herein shall be of any force and effect unless the same is reduced to writing and executed by all parties hereto and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

17.0 GOVERNING LAWS

- 17.1 The provisions of this Agreement will be governed and interpreted in accordance with the laws of Ontario or Canada, as applicable.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

On behalf of the ***TOWNSHIP OF NORTH HURON***

Bernie Bailey, Reeve

Carson Lamb, Clerk

On behalf of the ***GJAJ HOLDINGS LTD.***

Gary Rutledge, Owner