



THIS AGREEMENT made this 15th day of December, 2020

BETWEEN:

**The Corporation of the Municipality of Huron East
(Hereinafter called "Huron East")**

THE PARTY OF THE FIRST PART

-and-

**The Corporation of the Township of North Huron
(Hereinafter called "North Huron")**

THE PARTY OF THE SECOND PART

WHEREAS Section 2 (5) of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, Chapter 4, as amended ("*FPPA*"), authorizes a municipality to enter into agreements with other municipalities to provide and/or receive fire prevention services;

AND WHEREAS Huron East and North Huron have entered into an Agreement whereby Huron East has agreed to provide Fire Chief Services to North Huron;

AND WHEREAS under Section 7.1 (4) of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, Chapter 4 as amended ("*FPPA*"), North Huron has appointed a Fire Prevention Officer to provide public education and fire prevention services

AND WHEREAS Huron East wishes to engage North Huron to provide the services of the Fire Prevention Officer to Huron East and both municipalities are desirous to enter into an Agreement under the provisions of Section 2(4) of the *Fire Protection and Prevention Act*, 1990, S.O. 1997, Chapter 4;

NOW THEREFORE, in consideration of the mutual covenants, conditions, considerations and payments herein contained, Huron East and North Huron mutually agree as follows:

1. Definitions

In this Agreement:

- a. "FPO" means the Fire Prevention Officer appointed under subsection 2(2) of the *FPPA*;
- b. "North Huron CAO" means the Chief Administrative Officer for North Huron; and

c. "Huron East CAO" means the Chief Administrative Officer for Huron East.

2. **Term of Agreement**

The provision of the Services under this Agreement will commence on January 1st, 2021 and will automatically terminate on December 31st, 2023 (the "Term"), subject to extension or earlier termination in accordance with this Agreement.

3. **Appointment of Fire Prevention Officer**

Huron East Council has by By-Law 30-2018 appointed North Huron's Fire Prevention Officer Michael Roess as Huron East's Fire Prevention Officer.

4. **Fire Prevention Officer Services**

Subject to the terms and conditions of this Agreement, North Huron will provide to Huron East, Fire Prevention Officer Services as set out in Schedule A attached hereto (the "Services") for the duration of the Term.

5. **Fee-for-Service**

In consideration for the Services provided hereunder, Huron East will pay to North Huron the fee-for-service as set out in Schedule B attached hereto (the "Fee-for-Service").

6. **Obligations of Huron East**

Huron East represents and warrants to North Huron that Huron East will be solely responsible for, and will ensure, the following:

- a. Adequate insurance coverage is provided for the fire personnel, equipment, buildings and potential liabilities of Huron East; and
- b. Huron East supports and works cooperatively with the Fire Prevention Officer in order to provide fire inspection services and education within Huron East, such services to be under the direction of the Huron East Fire Chief

7. **Obligations of North Huron**

North Huron represents and warrants to Huron East that North Huron will be responsible for, and will ensure, the following:

- a. Adequate notice is provided to Huron East immediately upon North Huron being aware of changes to the Fire Prevention Officer's employment status, and without intending to limit the generality of the foregoing, North Huron shall give notice to Huron East: in the event the Fire Prevention Officer's employment is terminated; upon North Huron becoming aware the Fire Prevention Officer is leaving the employment of North Huron for any reason (temporary or permanent); or, in the event the Fire Prevention Officer dies or becomes unable to work because of disability;
- b. The Fire Prevention Officer provides the Services and fulfills the obligations as set out in this Agreement.

8. **Insurance**

Huron East will pay for and maintain for its own benefit and for North Huron's benefit, with insurers or through the appropriate governmental department, appropriate insurance concerning the Huron East Fire Department and the Fire Prevention Officer

Services provided by North Huron hereunder to Huron East, including, but not limited to, liability and property damage insurance. Huron East will provide North Huron with satisfactory confirmation of its compliance with this Section 8 and/or copies of the insurance policies when requested by North Huron. North Huron agrees that anyone claiming by, through, under or on behalf of Huron East will have no claim, right of action or right of subrogation against North Huron based on any loss or liability insurance under the above insurance.

9. **Indemnity**

Huron East willfully indemnify and save North Huron, as well as all of its respective officers, councillors, employees (including, but not limited to, North Huron's Fire Prevention Officer), independent contractors and agents (collectively, "North Huron indemnitees" under this Section 9) harmless from and against any and all costs (including, but not limited to, costs resulting from orders, awards, settlements, penalties, fines, damages, expenses, interest, legal fees, disbursements and applicable taxes) incurred by any of the North Huron indemnitees as a result of any claims, actions, causes of action, demands, complaints, applications, investigations or similar proceedings, which result from, or relate to, directly or indirectly:

- a. any act, neglect, default, or breach of applicable law, of or by any of the North Huron indemnitees in respect of the provision or non-provision of the Services, and/or otherwise as a result of this Agreement; and/or
- b. any act, neglect, default, or breach of applicable law, of or by Huron East and/or any of its respective officers, councillors, employees, independent contractors and/or agents.

Notwithstanding the foregoing, it is understood and agreed that Huron East will not indemnify and save harmless the North Huron indemnitees for any such costs that:

- (i) result from the negligence of the North Huron indemnities;
- (ii) arise from any breach by the North Huron indemnities of any provision of this Agreement; or
- (iii) that directly result from any act, neglect, default, or breach of applicable law, of or by any of the North Huron indemnitees performed in bad faith.

10. **Nature of Relationship**

- a. North Huron is not, nor is any person employed or retained by North Huron in the provision of the Services, an employee of Huron East, and no other relationship, including a partnership or a principal and agency relationship, is created by this Agreement. The relationship created by this Agreement is exclusively that of independent contractor.
- b. North Huron will at all times act in its own capacity and right solely as an independent contractor in the provision of the Services under this Agreement and, except as may be expressly provided in this Agreement, North Huron will have full discretion as to the means, method and manner of providing the

Services and will not be subject to the control and/or direction of Huron East in doing so.

11. Dispute Resolution

- a. If, during the Term, a dispute or disagreement arises between the parties that cannot be resolved by the Fire Prevention Officer, then the parties agree to participate in the following dispute resolution procedure:
 - (i) Upon the written request by either party to the other party, the nature of the dispute or disagreement shall be brought to the attention of each party's Chief Administrative Officer (the "CAO"). The CAOs will meet with a view to amicably resolve any dispute or disagreement with respect to any matter in this Agreement, the interpretation thereof, or the performance by the parties.
 - (ii) If the CAOs fail to resolve the dispute within 15 calendar days following the date of their meeting, then they shall each prepare a written report to their respective Councils. The Council of Huron East and the Council of North Huron each agree to appoint two (2) members to work with two (2) members of the other municipality to resolve the dispute or disagreement.
 - (iii) All reasonable requests for information regarding the dispute or disagreement made by one participant of this dispute resolution process to that participant's counterpart in the process, except for any confidential information or information that has no relevance to the dispute or disagreement in question, shall be honoured in order that each of the parties may be fully advised of the other's position.
 - (iv) In the event that the designated Council representatives cannot resolve the dispute within 45 days of the first meeting between the parties, or within such other period of time as the parties may have agreed, either party may, with written notice to the other party, submit the dispute or disagreement to arbitration in accordance with the provisions of the *Arbitrations Act* (Ontario), subject to Subsection 12 b. below.
- b. The party wishing to commence arbitration shall give the other party a written notice describing the dispute or disagreement to be arbitrated. Any arbitration will be carried out by a single arbitrator, who has been chosen jointly by both parties. The costs and expenses of arbitration will be allocated by the arbitrator between the parties, as the arbitrator determines in accordance with applicable law.
- c. Except where clearly prevented by a dispute or disagreement that arises under this Agreement, North Huron will continue to provide the Services under this Agreement while the dispute or disagreement is being resolved in accordance with this Section, unless and until the provision of such Services is terminated or expire in accordance with the Termination provisions of this Agreement.

12. Termination

- a. North Huron's provision of the Services under this Agreement will automatically terminate / expire at the end of the Term, without any further notice or compensation in lieu of notice owed, unless Huron East and North Huron enter into a written Agreement, no later than 6 months before the expiry of the current Agreement, to extend the provision of the Services beyond the end of the Term that sets out the terms and conditions of such extension.
- b. North Huron's provision of the Services under this Agreement may also be terminated, at any time before the end of the Term, as follows:
 - (i) By either party, without cause, upon giving at least 120 days' written advance notice to the other party of the termination date.
 - (ii) By either party, for cause, without any obligation to provide any advance notice or compensation in lieu of notice to the other party. For greater certainty and without intending to limit the generality of the foregoing, a party will have cause to terminate North Huron's provision of the Services under this Agreement if it is determined, by that party acting reasonably, that continued provision of the Services is not in the best interests of that party and/or is likely to risk exposing that party to liability and/or that a fundamental breach of the Agreement has been committed by the other party, including, but not limited to, any breach by Huron East of its obligations under Section 6 of this Agreement.
 - (iii) By North Huron if it is unable to provide the Services under this Agreement, including, but not limited to, in the event of the death, disability or termination of employment of North Huron's Fire Prevention Officer, without any obligation to provide any advance notice or compensation in lieu of notice to Huron East.
 - (iv) By mutual Agreement of both parties.

The parties agree that these Termination provisions are fair and reasonable, and are in full satisfaction of any and all entitlements (statutory, contractual, common law and/or otherwise) resulting from the termination of the Services under this Agreement. The parties further agree that, if a party terminates North Huron's provision of the Services under this Agreement in accordance with these Termination provisions, the other party will have no action, cause of action, claim or demand against the terminating party or any other person or organization as a consequence of such termination and, in particular, the terminating party will not be liable to the other party and/or any of its officers, councillors, employees, independent contractors or agents for damages on account of the termination of the provision of the Services under this Agreement.

13. General

a. Choice of Law

The provisions of this Agreement shall be construed and interpreted in

accordance with the laws of the province of Ontario and the laws of Canada applicable therein.

b. **Interpretation**

This Agreement has been submitted to the scrutiny of all parties to this Agreement and shall be given as fair and reasonable interpretation as possible without consideration or weight being given to the Agreement having been drafted by any party to this Agreement or its counsel.

c. **Sections and Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" or similar expressions refer to this Agreement and not to any particular Section or other portion hereof and include any Agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections and Schedules are to Sections and Schedules of this Agreement.

d. **Benefit of Agreement**

This Agreement shall ensure to the benefit of and be binding upon the successors and assigns of Huron East and North Huron, respectively.

e. **Entire Agreement**

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement in respect of the period commencing January 1st, 2021, and cancels and supersedes any prior understandings and Agreements between the parties hereto with respect to such subject matter. There are no representations, warranties, conditions, undertakings or collateral Agreements, express, implied or statutory, between the parties about such subject matter other than as expressly set forth in this Agreement.

f. **Amendment**

No amendment to this Agreement will be valid or binding, unless it is set forth in writing and duly executed by both parties. Similarly, no waiver of any breach of any provision in this Agreement will be effective or binding, unless it is made in writing and duly signed by the party purporting to give the same and, unless provided in the written waiver, will be limited to the specific breach waived.

g. **Severability**

In the event that any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable in whole or in part for any reason whatsoever, such invalidity or unenforceability shall attach only to such provision or part of such provision and the remaining part of such provision and all other provisions of this Agreement shall continue in full force and effect.

h. **Applicable By-laws**

Each of the parties hereby acknowledges and agrees that they will pass all necessary by-laws to give full force and effect to this Agreement.

i. **Independent Legal Advice**

Each of the parties hereby acknowledges that it has had an adequate opportunity to obtain independent legal advice prior to execution of this Agreement and has either obtained such advice or freely chosen not to do so, and that each of the parties executes this Agreement voluntarily and with full knowledge and understanding of the contents of this Agreement.

j. **Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts shall be accepted in original, electronic, or facsimile form, and the parties to this Agreement adopt any signatures received by receiving facsimile or electronic form as original signatures of the parties.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

THE CORPORATION OF THE MUNICIPALITY OF HURON EAST

Bernie MacLellan, Mayor

Brad Knight, CAO/Clerk-Administrator

We have authority to bind the Corporation.

THE CORPORATION OF THE TOWNSHIP OF NORTH HURON

Bernie Bailey, Reeve

Carson Lamb, Clerk

We have authority to bind the Corporation.

SCHEDULE A

"SERVICES"

1. Services

North Huron will provide the following Fire Prevention Officer services to Huron East and shall be under the direction and supervision of the Huron East Fire Chief:

- a. Ensure compliance with the fire prevention and enforcement provisions of the FPPA and all other codes and standards;
- b. Act as an Assistant to the Fire Marshal in enforcing the provisions of the FPPA;
- c. Provide public education on fire safety, including giving talks, demonstrations and presentations before community groups, schools and other organizations and institutions;
- d. Complete inspections and fire safety surveys in all classes of buildings, properties and occupancies as required or on a complaint basis;
- e. Examining fire scenes in order to investigate the cause, as required;
- f. Liaise with Huron East personnel regarding the issuance of building permits;
- g. Conform to the rules, regulations and standing orders of the Huron East fire department;
- h. Record and report the findings of all fire inspections and issue orders to improve fire safety;
- i. Serve as liaison with architects, consulting engineers, contractors and owners to ensure fire safety requirements are met;
- j. Attend officers' meetings, council meetings, and other meetings as directed to facilitate the smooth operation of the Huron East department;
- k. Assist with the Huron East's Health & Safety Policy, as needed.

SCHEDULE B
“Fee-for-Service”

1. **General Principle** – The general Agreement in principle between Huron East and North Huron is that Huron East will compensate North for payroll costs in exchange for the provision of Fire Prevention Officer services from North Huron equivalent to a service level of one 8-hour day per week.

In addition to payroll costs, Huron East agrees to share equally administration expenses including but not limited to:

- i) Fire Prevention Officer – training, seminars/conferences¹
- ii) Fire Prevention Officer – telecommunication expense
- iii) Fire Prevention Officer – office and equipment supplies
- iv) Fire Prevention Officer – uniform expenses
- v) Fire Prevention Officer – office and meeting expenses

¹ includes mileage and expenses to attend meetings/seminars

2. Mileage and travel expenses that are incurred for travel within Huron East specifically on behalf of Huron East will be reimbursed by as part of the quarterly billing by North Huron.
3. The annual budget shall be prepared by North Huron for the services of Fire Prevention Officer and shall provide the same for review by the Council of the Municipality of Huron East. It is generally understood and agreed by the Parties to this Agreement that the base payroll costs will increase annually in accordance with North Huron payroll policies with respect to annual wage increases.