

## RETAINER AGREEMENT

**THIS AGREEMENT MADE** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**BETWEEN:**

**The Corporation of the County of Bruce**

a municipal corporation incorporated pursuant to the laws of the Province of Ontario  
(the "**County**")

-and-

**Duncan, Linton LLP**

a limited liability partnership carrying on the practice of law in and pursuant to the laws  
of the Province of Ontario  
(**"DL"**)

**WHEREAS:**

1. The County issued Request for Proposal for Legal Services RFP-BC-CAO-21-70 (the "**RFP**");
2. DL submitted a proposal in response to the RFP dated October 15, 2021; and,
3. The parties wish to enter into an Agreement for Legal Services having a four-year term, commencing on February 1, 2024.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements herein contained, and subject to the terms and conditions set out in this Agreement, the parties hereto agree as follows:

1. DL is retained to provide the legal services set out in section 5.2 Scope of Work of the RFP and as may be requested from time to time by the County (the "**Retainer**"). DL's Retainer is non-exclusive and the County shall have the right, in its discretion, to engage other lawyers or law firms at any time during the term of this Retainer if it is determined to be in the best interests of the County; however, the County shall notify DL of any other law firms being retained on matters arising during the term of this Retainer.
2. Peter A. Hertz shall serve as Designated Counsel for the purposes of this Retainer. The provision of legal services under this Retainer may be delegated by

Designated Counsel, acting reasonably, to any member of DL, provided that the County shall not be required to utilize any member of DL to which it may reasonably object. The Designated Counsel is the principal contact of DL and will manage DL's relationship with the County. The principal contact for the County is the Chief Administrative Officer.

3. On a mutually convenient date, representatives of DL and representatives of the County will meet for an introductory meeting to discuss, *inter alia*, issues facing the County, the relevant services that DL provides, and how DL can meet the County's needs in the most efficient and practical manner. There will be no cost to the County for this meeting.
4. For each file where legal services are requested, DL will obtain instructions from the County. Oral instructions on significant matters will be confirmed in writing.
5. DL will assign the work internally to the most appropriate lawyer on a case-by-case basis, considering such factors as the nature of the legal issue, continuity and familiarity with the relevant department or staff member at the County, and the level of experience and responsibility required to complete the legal work as effectively, expeditiously and inexpensively as possible. Junior lawyers with lower hourly rates, under the supervision of senior lawyers, will be utilized as appropriate.
6. DL will review every request for legal advice received from the County within one business day and answer same within a time frame agreed upon by DL and the County, depending on its nature.
7. The fees for services rendered for the term of the Retainer shall be calculated on the basis set out in Schedule A of this Retainer.
8. The County and DL acknowledge that the list of legal services set out in Schedule A is illustrative of the type of work that falls within each category and is non-exhaustive. The applicable category will be specified on each account rendered by DL to the County.
9. In the case of uncertainty as to whether a given matter falls within Category One or Category Two, the principal contacts at DL and the County shall confer to reach agreement on the classification of the matter.
10. The County acknowledges that a change in circumstances may result in a Category One matter becoming a Category Two matter.

11. The County shall reimburse DL for disbursements reasonably incurred on behalf of the County. Disbursements include long distance calls, faxes, postage, deliveries, travel expenses, photocopies, government filing and search charges, and the fees related to agents who conduct investigations, searches, and registrations, and all other reasonable out of pocket expenses and charges.
12. The fees and disbursements charged to the County shall not include:
  - (a) expenses arising from ineffective file management;
  - (b) any premium amount on disbursements;
  - (c) staffing inefficiencies caused by the unavailability of firm personnel;
  - (d) routine administrative tasks such as scheduling meetings or attendances, preparations of accounts, file organizations, etc.; and,
  - (e) hourly rates of legal counsel in transit to and from meetings with the County.
13. Subject to early termination, the Retainer shall commence on February 1, 2024, and shall continue for a term of four (4) years.
14. The County may terminate this Retainer at any time prior to the completion of its term, either in whole or in part, with or without cause. In the event of early termination, DL shall receive payment for the services performed to the date DL's services are terminated and for any services performed on the County's written instructions after the date of termination.
15. Subject to the Rules of Professional Conduct of the Law Society of Ontario, DL may terminate this Retainer at any time prior to the completion of its term, either in whole or in part, upon 60 days' written notice to the County.
16. Notwithstanding section 13, any matters on which the County may have retained DL prior to February 1, 2024, shall be subject to the terms of this Retainer.
17. DL agrees to obtain and keep in force for the duration of this Retainer, at its own expense, professional liability insurance for errors and omissions with limits of not less than two million dollars (\$2,000,000) in respect to all of its responsibilities under this Agreement
18. DL agrees, from time to time, and at all times hereafter, to save, keep harmless and fully indemnify the County, its successors and assigns, its elected officials, officers, employees and agents, from and against all actions, claims and demands whatsoever which may be brought against or made upon the County, and against all loss, liability, judgments, claims, costs, demands or expenses that the County

may sustain as a result from or arising out of DL's negligent actions or omissions in carrying out its responsibilities under this Retainer, including but not limited to DL's failure to exercise reasonable care, skill or diligence expected of solicitors in the performance of any services by it.

19. Without limiting the generality of section 18, DL agrees to save, keep harmless and fully indemnify the County, its successors and assigns from and against all actions, claims and demands whatsoever which may be brought against or made upon the County, its successors and assigns, its elected officials, officers, employees and agents, for the infringement of or use of any intellectual property rights, including any copyright or patent arising out of the reproduction or use in any manner of any plans, designs, drawings, specifications, information, photographs, data, material, sketches, notes, documents, memoranda or computer software furnished by DL in the performance of the services.
20. DL will conduct itself in a professional manner consistent with the By-Laws and Rules of Professional Conduct as established by the Law Society of Ontario and the County agrees that nothing in this Retainer or instructions on any specific matter obligates DL to take any steps or actions contrary to such By-Laws and Rules.
21. Any notice to be given or delivered under this Agreement shall be in writing and 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 the County, to:

The Corporation of the County of Bruce  
Attention: Clerk  
30 Park Street, PO Box 70  
Walkerton, ON N0G 2V0  
clerk@brucecounty.on.ca

and in the case of notice to DL:

Duncan, Linton LLP  
Attention: Peter Hertz  
45 Erb Street East  
Waterloo ON N2J 1L7

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 five (5) days after the mailing.

22. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
23. This Agreement contains and embodies the entire agreement of the parties, and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out.
24. This Agreement may be executed by electronic signature and in one or more counterparts and exchanged in electronic or PDF format by email, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document notwithstanding their actual date of execution.
25. This Agreement is to be governed by and construed according to the laws of the Province of Ontario.
26. Neither this Agreement nor any rights or obligations hereunder shall be assignable by any party without the prior written consent of each of the other parties hereto. Any attempt to assign any of the rights, duties or obligations of this Agreement without written consent is void.
27. Subject to the restrictions on assignment, this Agreement shall enure to the benefit of and be binding upon the parties and their respective successors including any successor formed by reason of amalgamation of any party and permitted assigns. Any and all transfers, assigns or successors of the parties shall be subject to an assumption of the rights and obligations of this Agreement by the new owner thereof as the case may be.

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IN WITNESS WHEREOF the parties have signed and sealed this Agreement as of the day and year first above written.

**THE CORPORATION OF THE COUNTY OF BRUCE**

Per:

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Chris Peabody  
Warden

Per:

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Linda White  
Clerk

We have the authority to bind The  
Corporation of the County of Bruce

**DUNCAN LINTON LLP**

Per:

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Peter A. Hertz

I have the authority to bind the  
Partnership

## **SCHEDULE A**

The legal fees payable by the County shall be calculated according to the following rates and categorization:

### **CATEGORY ONE - GENERAL LEGAL ADVICE**

Category One includes, but is not limited to:

- advising on Council procedure, procedural by-laws and governance issues;
- conducting and advising on real estate and commercial transactions;
- advising on legal issues relating to planning and subdivision of land and development services;
- advising on and assisting with regulatory compliance (inclusive of freedom of information and environmental issues);
- advising on and drafting contracts;
- advising on and drafting municipal procurement documents (eg., RFPs, tenders, etc.);
- advising on municipal election issues;
- advising on financial matters such as assessment, taxation, tax sales and debentures;
- advising on the drafting and enforcement of municipal by-laws and other regulatory statutes, but not including enforcement proceedings in the Superior Court of Justice;
- advising on contract disputes;
- Small Claims Court matters; and,
- advising on municipal liability claims.

The hourly rates for all lawyers for Category One work shall be as follows:

<b>Time Period</b>	<b>Applicable Rate</b>
February 1, 2024, to January 31, 2025	\$320
February 1, 2025, to January 31, 2026	\$350
February 1, 2026 to January 31, 2027	Preceding year's rate adjusted by change in Consumer Price Index
February 1, 2027 to January 31, 2028	Preceding year's rate adjusted by change in Consumer Price Index

**CATEGORY TWO- HEARINGS AND MATTERS THAT PRESENT THE POSSIBILITY OF COST RECOVERY**

Category Two includes but is not limited to:

- the litigation of proceedings in the Superior Court of Justice, Divisional Court, and Court of Appeal;
- representing the County before the Ontario Land Tribunal and other administrative tribunals;
- matters in which the County is entitled at law to recover its legal costs from a third party (eg., costs in relation to subdivision agreements, transfers, easements, site plan agreements, releases, servicing agreements, highway closures and conveyances of land, etc.)



The hourly rate for all Category Two work shall be as follows:

<b>Years of Experience of Lawyer Performing Services</b>	<b>Rate effective until January 31, 2025</b>
Less than 4 years	\$265
4-10 years	\$315
11-20 years	\$370
Over 20 years	\$410
Articling Students	\$145
Clerks	Lesser of \$145 and actual rate

For each year thereafter, the rates for Category Two work set out above shall be adjusted annually effective February 1 by the change in the Consumer Price Index.

#### **ADJUSTMENT FOR CONSUMER PRICE INDEX**

Where this schedule calls for an adjustment to a rate or rates based on the change in the Consumer Price Index, the adjustment in the applicable rate(s) shall be calculated as follows:

$$\text{Previous Rate} \times (\text{Index A/Index B}) = \text{Adjusted Rate}$$

in which,

“Previous Rate” is the Category Two rate that applied immediately before February 1 of the year,

“Index A” is the Consumer Price Index for the previous calendar year,

“Index B” is the Consumer Price Index for the calendar year immediately preceding the calendar year mentioned in the description of “Index A”, and

“Adjusted Rate” is the applicable adjusted rate.

“Consumer Price Index” means the Consumer Price Index for Ontario (all items) published by Statistics Canada under the *Statistics Act* (Canada).

If the adjustment would result in an amount that is not a multiple of five dollars, the amount shall be rounded up or down to the nearest amount that is a multiple of five dollars.