

THIS AGREEMENT, effective January 1, 2024.

B E T W E E N:

Corporation of the County of Elgin

(hereinafter referred to as "Elgin")

and

10042986 Canada Inc., carrying on business as "Re: Public Urbanism"

(hereinafter referred to as the "Consultant")

WHEREAS:

1. Elgin from time to time requires certain on-demand planning services with regard to carrying out its obligations under the *Planning Act*, RSO 1990, c. P. 13, as amended or replaced (the "*Planning Act*").
2. The Consultant is prepared to provide planning services to Elgin.
3. The Consultant, including both its employed professional planners and support staff, possess the requisite skill, experience and knowledge necessary to carry out the planning services required;
4. Elgin has authorized the execution of this agreement in conformance with its procurement policies and by-laws in effect from time to time;
5. 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) "**Consultant**" means 10042986 Canada Inc., carrying on business as "Re: Public Urbanism";
 - b) "**Director**" means the person having responsibility over the planning operations of the County 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) **"Services"** means the registered professional planner services to be provided by the Consultant 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 on a day-to-day basis by administration, who is hereby authorized to administer this Agreement save for those areas specifically limited herein.
- 3. The Consultant is an interprovincial corporation established and governed pursuant to the laws of the Dominion of Canada with head office in the City of Montreal in the Province of Quebec and, at all material times, carried on business as a planning consultant within, amongst other places, the Province of Ontario.
- 4. The Schedules attached hereto are incorporated into and form part of this Agreement.

Services of the Consultant

- 5. The Consultant agrees to perform the planning services described in Schedule "A" to this Agreement upon request from the Director or CAO. The Services shall be provided in a timely manner, having regard to any time limitations and/or notice periods required by the *Planning Act* or any Elgin By-Law.

Fees and Disbursements

- 6. Elgin shall pay to the Consultant for its Services the rate of \$160/hr, exclusive of HST, for the Services. Pre-approved, reasonable disbursements incurred in the delivery of the Services shall be paid by Elgin and submitted on the invoices described in section 7.
- 7. Payments under this Agreement will be made only after this Agreement has been duly executed by both parties and the Services have been rendered to the satisfaction of Elgin. The Consultant shall provide detailed accounts for the Services on a monthly basis. If requested by the CAO, the Consultant will make available to Elgin such accounts, records, receipts, vouchers and documents for the purpose of substantiating its billings.
- 8. The monthly invoices as referenced in section 7 above shall apply to services rendered by the Consultant during the course of the previous calendar month. Save and except for any element of any such invoice in dispute, Elgin shall pay each such monthly invoice within 30 days of receipt of such invoice.

Consultant's Covenants

- 9. The Consultant 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 Elgin or who participate in developing Elgin'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;
- f) that, in addition to complying with all applicable legislation, regulations, directions and orders of any regulatory body, the Consultant covenants to comply with all policies of Elgin applicable to consultants and contractors, which may include particular policies with regard to COVID-19 safety. Where there is any conflict between applicable legislation, regulation, directions and orders, the Consultant agrees to adhere to the highest standard established. In addition, the Consultant agrees to review and execute any documents reasonably required by Elgin in relation to its policies, including but not limited to acknowledgment agreements regarding the policies;
- g) that Elgin shall be permitted to monitor the Services in such ways as the Elgin CAO, or his or her designate, may determine; and
- h) to co-operate with the Elgin CAO, or his or her designate, and to do all things necessary to enable the Elgin CAO to evaluate the Services as required.

Consultant's Representations

10. The Consultant hereby represents as follows:

- a) that it will not render Services that intentionally create a conflict of interest between Elgin and Consultant and/or any Third Party or any combination thereof;
- b) 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 Director and the Elgin CAO;
- c) that it understands that it must obtain its own financial, legal or other professional advice regarding the Services, and this Agreement, and that it has had the opportunity to do so;
- d) that it will refrain from contacting members of Council, members of the Land Division Committee, or the Warden without written approval from the Elgin CAO, or his or her delegate; provided that Elgin acknowledges and agrees that the foregoing representation shall not be violated if and when, without invitation or initiation on its part, the Consultant is contacted by any such member of Council, member of the Land Division Committee, or Warden, in which circumstances the

Consultant shall not engage with such person and shall seek direction from the Elgin CAO.

- e) that it will refrain from discussing the Services via the media or any social media services without written approval from the Elgin CAO, or his or her delegate, provided that the Consultant shall be entitled to mention the project and the Services provided as proof of the Consultant's experience with this type of work; and,
- f) without limiting the specificity of any representation set forth above, the Consultant acknowledges and agrees that, in addition to its covenants herein and in rendering the Services contemplated by this Agreement, its conduct shall at all times also be governed by and in compliance with the provisions of the Code of Professional Conduct and Standards of Practice for the Ontario Planners Institute.

Elgin Covenants

11. Elgin hereby covenants as follows:

- a) During the Term of this Agreement, Elgin agrees to furnish the Consultant with access to all files, documents, correspondence, plans, reports, and other documents within its possession that are required by the Consultant to perform the Services listed in Schedule "A" hereto;
- b) During the Term of this Agreement, Elgin agrees to furnish the Consultant with access to its digital mapping system to assist the Consultant in performance of the Services listed in Schedule "A" hereto; and,
- c) During the Term of this Agreement, Elgin agrees to identify and furnish the Consultant with all legislation, regulations, directions, protocols, and orders relevant to the conduct of any consultant or contractor to Elgin to ensure that the Consultant, and its employees, are aware of such obligations to Elgin.

Elgin Acknowledgement

12. Elgin acknowledges that,

- a) the Consultant has advised that it is bound by the Code of Professional Conduct and Standards of Practice for the Ontario Planners Institute and that such document(s) is or are available for review at www.ontarioplanners.ca; and,
- b) the Consultant has advised that, in rendering the Services contemplated by this Agreement, it must abide by the professional obligations owed to the said Ontario Planners Institute

Term and Termination

- 13. The term of this Agreement shall commence on January 1, 2024 and continue through to and including December 31, 2024, at which time it shall expire.
- 14. For convenience, Elgin or the Consultant may, in its sole discretion, terminate this Agreement by providing the other Party with ninety (90) days' written notice of termination.

Municipal Termination

15. Notwithstanding the generality set forth in section 14 above, Elgin may immediately terminate the Agreement upon giving notice to the Consultant where:

- a) the Consultant breaches any provisions of this Agreement, including but not limited to poor performance by the Consultant in respect of the provision of Services as contemplated by this Agreement, the final determination of which is held by Elgin in its unfettered discretion;
- b) the Consultant is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Consultant's insolvency;
- c) the Consultant breaches any confidentiality or conflict of interest obligation set out in this Agreement;
- d) the Consultant, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to Elgin;
- e) the Consultant undergoes a change in control which adversely affects the Consultant's ability to satisfy some or all of its obligations under this Agreement;
- f) The acts or omissions of the Consultant constitute a substantial failure of performance; or
- g) If the Consultant assigns this Agreement without consent of Elgin; and

the above rights of termination are in addition to all other rights of termination available under this Agreement, at law, or as events of termination by operation of law.

Indemnity

16. 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);

provided at all times that the said indemnity shall not exceed the limits of the policies of insurance referenced in sections 18 and 19 below.

Insurance

17. During the Term of this Agreement, the Parties hereto shall each maintain a policy of Commercial General Liability insurance that shall:
 - a) have a limit of liability of not less than Two Million Dollars (\$2,000,000.00) 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 also have a limit of liability of not less than \$2,000,000 inclusive for any one occurrence; and,
 - c) be endorsed to include the other Party as additional insured.
18. In addition to the policy of Commercial General Liability insurance required by section 18 and during the Term of this Agreement, the Consultant shall also maintain Professional Liability/Errors and Omissions insurance of a limit of not less than Five Million Dollars (\$5,000,000.00) inclusive for any occurrence, pursuant to which policy of insurance Elgin shall be added as additional insured.

Limitations of Liability

19. The liability of the Consultant, including its employees, to Elgin in respect of services rendered pursuant to this Agreement shall not exceed the monetary limits of the policies of insurance referenced in sections 18 and 19 above.
20. Save and except for a Third Party Claim against the Consultant relative to Services rendered pursuant to the within Agreement, Elgin shall not initiate a claim against the Consultant, including its employees, in relation to the rendering of Services as contemplated by this Agreement more than two (2) years after such Services were completed or the within Agreement was terminated.

Subcontractors

21. The Consultant will be solely responsible for the payment of any subcontractors employed, engaged or retained by it for the purpose of assisting it in the discharge of its obligations under this Agreement. The employment, engagement or retainer of any subcontractors and/or sub-consultants must have received prior written approval from Elgin. The Consultant shall co-ordinate the services of all subcontractors so employed, engaged or retained by it, and the Consultant shall be liable to Elgin for costs or damages arising from errors or omissions of the subcontractors, or any of them.

Confidential Information

22. Upon termination or expiry of this Agreement, the Consultant shall return to Elgin all written or descriptive matter, including but not limited to drawings, prints, descriptions or other papers, documents or any other material maintained in any format, including digital format, which contains any confidential information whatsoever.
23. Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 and any amendments thereto, and except as expressly provided in this clause, no confidential information shall be disclosed by the Consultant in any manner

whatsoever without the approval in writing of the Director, and, without limiting the generality of the foregoing:

- a) the Consultant shall hold all confidential information obtained in trust and confidence for Elgin and shall not disclose any such confidential information, by publication or other means, to any person, company or other government agency nor use same for any other project other than for the benefit of Elgin as may be authorized by the Elgin CAO in writing;
- b) any request for such approval by the Elgin CAO shall specifically state the benefit to Elgin 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 Elgin CAO; and
- d) the Consultant shall not, at any time during or after the term of this Agreement, use any confidential information for the benefit of anyone other than Elgin.

No Agency or Employment Relationship

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

Right of Audit

25. The Consultant shall furnish Elgin and its authorized representatives with all such information as it, or they, may from time-to-time require with reference to such accounts, records, receipts, vouchers, and other documents. The Consultant shall cause all such accounts, records, receipts, vouchers, and other documents to be preserved and kept available for audit and inspection at any reasonable time, and from time-to-time, until the expiration two (2) years from the date of termination of this Agreement or expiry of this Agreement, or until the expiration of such lesser or greater period of time as shall be approved in writing by Elgin.

Right of Ownership and Use

26. From the date of termination or expiry of this Agreement, all information, negatives from original photography, computer software, data, material, sketches, plans, designs, notes, documents, memoranda, specifications or other paper writing gathered, assembled or prepared by the Consultant, its employees, officials, subcontractors or agents, for the purpose of this Agreement, (the "Material") shall become the sole property of Elgin including copyright with respect to all such Material. The Consultant represents and warrants to Elgin that it owns or shall own all copyright in the Material and no other person shall own any copyright in the Material. The Consultant does hereby transfer and assign and does hereby agree to transfer and assign and to sign all documents to give effect to such transfer and assignment to Elgin of all right, title and interest of the Consultant, including without limitation, all copyright in all the Material. The Consultant, its employees, officials, subconsultants and agents shall forthwith deliver to Elgin any or all of the aforesaid subject matter and Elgin may use

any such Material for the purposes of the Services and for any other similar purpose as is deemed necessary by the Director.

27. The Consultant waives in whole and in part any and all moral rights arising under the Copyright Act, R.S.C. 1985, c. C-42 in the Material as against Elgin and anyone claiming rights of any such nature from or through Elgin. Further, the Consultant represents and warrants that its employees, officials, subconsultants and agents have waived or shall waive in whole and in part any and all moral rights arising under the Copyright Act in the Material as against all parties including but not limited to Elgin and anyone claiming rights of any such nature from or through Elgin.

Force Majeure

28. 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

29. Any notification or written communication required by or contemplated under the terms of this Agreement shall be in writing and sent by 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 Consultant: Re: Public Urbanism
6779 Rue Drolet,
Montreal, QC H2S 2T1

If to Elgin: CAO
cao@elgin.ca
450 Sunset Drive,
St. Thomas, ON N5R 5V1

Miscellaneous

30. 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.
31. No departure from or waiver of the terms of this Agreement shall be deemed to authorize any prior or subsequent departure or waiver and Elgin shall not be obligated to continue any departure or waiver or to permit any subsequent departure or waiver.

32. 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.
33. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
34. 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.
35. 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.
36. 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.
37. This Agreement embodies the entire agreement between the parties with regard to the provision of deliverables and additional 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.
38. This Agreement shall not be assignable by the Consultant without the prior written consent of Elgin, in its sole discretion.
39. This Agreement, executed in counterpart, may be exchanged by scanned or faxed copy. A combination of counterparts shall be deemed to be an original.
40. 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 Consultant have respectively executed and delivered this Agreement on the date set out above.

Corporation of the County of Elgin

Date

, Warden

Date

Don Shropshire, Chief Administrative Officer

I/We have the authority to bind the Corporation.

**10042986 Canada Inc., carrying on business
As "Re: Public Urbanism"**

Date

Paul Hicks, President / CEO

//We have authority to bind the Corporation.

SCHEDULE "A"

SCOPE OF SERVICES

PART A Services – Planning Applications

1. Provision of as-needed / as requested professional planning services primarily related to the review and processing of Planning Act applications, including:
 - a) Pre-consultation with applications and lower tier municipalities (by any medium including virtual or in person meetings or via email / telephone);
 - b) The review and processing of planning applications for which the County is approval authority for including the management of the application review process, issues resolution, and the draft of required staff reports and decisions;
 - c) The review of planning application for which the County is a commenting agency for including the drafting of comment letters and technical issues resolution with lower tier municipalities;
 - d) Coordination and monitoring of the review of planning applications by the County's solicitor, engineering consultant, or other subconsultants, as and when required; and,
 - e) Providing planning opinions to Council / Committees and preparation of necessary written report, by-laws or resolutions
 - f) If at any time required by Elgin during the term of this Agreement, performance of the role and duties of the Secretary-Treasurer of the Land Division Committee for the County of Elgin and the processing of severance consent applications thereto
2. Provision of general planning advice and opinions on individual issues or matters as they may arise, and the completion of special projects / assignments as required.
3. Attendance at public hearings, Council meetings and other meeting on an as-needed basis.

PART B Services – Official Plan

1. Implementing the work plan necessary to bring the official plan review to completion, including providing overall project management and planning resources to ensure that the review is dealt with in an efficient and professional manner in order to bring the review to adoption.
2. Liaising with the Province, the County's lower tier municipalities, conservation authorities having jurisdiction, and other regulatory stakeholders on overall project progress and to review resolve technical issues that pose a risk to timely project completion.

3. Meeting and corresponding with members of the public and community groups and organizations to answer inquiries regarding the official plan process and to accept and record submissions on the office plan review.
4. Reviewing the Growth Management studies undertaken by Hemson and providing professional expertise on the allocation of settlement area land inventories amongst the County's lower tier municipalities.
5. Reporting to and updating County Council on the status of the review and of important milestones and advancements.
6. Drafting and implementing the necessary *Planning Act* instruments necessary to give effect to the new Official Plan;
7. Coordinate the statutory circulation of the amendment and the adoption process with County Council, working with Provincial Staff to resolve any outstanding technical comments or issues and lobbying the Ministry for timely approval of the amendment.

Effective Date: January 1, 2024

CORPORATION OF THE COUNTY OF
ELGIN

and

10042986 Canada Inc., carrying on
business as “Re: Public Urbanism”

PLANNING SERVICES AGREEMENT

450 Sunset Drive
St. Thomas, ON
N5R 5V1