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Sault Ste. Marie, ON, P6A 5N7

**By-law 2024-13**

February 26, 2024

Steve Hemsworth, Chief Administrative Officer/Clerk  
 Township of Prince  
 3042 Second Line West  
 Prince Township, Ontario  
 P6A 6K4

Dear Steve Hemsworth:

We understand that you wish to engage us to provide consulting services to you as described herein. It would be our pleasure to provide these Services to you.

The purpose of this letter is to confirm our mutual understanding of the Services that we will perform, set out the terms and conditions of our engagement and to serve as an agreement between us. The attached Standard Terms and Conditions form an integral part of this Agreement.

**Our Services to You**

We will provide the Township of Prince with business advisory services for updating the municipality's Asset Management Plan to meet the standards of Ontario Regulation 588/17 coming into effect July 1<sup>st</sup>, 2025. These services will include:

1. **Condition Assessment for Local Infrastructure:** Determine remaining service life of municipal assets for use in the following tasks:
  - o Complete asset inventory
  - o Establish asset values
  - o Identify core and non-core candidate assets and their remaining service life
  - o Identify unexpected, emergency, and critical needs
  - o Finalize asset condition
2. **Desired Level of Service:** using the Condition Assessment, meet with Tulloch Engineering and municipal representatives
  - o Identify candidate assets
  - o Establish desired levels of service
  - o Adjust asset listing to meet repair and replacement costs
3. **Asset Management and Financial Strategies:** use asset listings to provide the following:
  - o Asset management strategy
  - o Financial model (with assumptions or template for annual adjustment)
  - o Lifestyle management and financial strategy
  - o Action plans

Any service not specifically described above is outside the scope of this Agreement.

## **Facts and Assumptions**

The facts and assumptions that will underlie our work will be determined and communicated to you in writing in the course of our engagement.

## **Management's Responsibilities**

You are responsible for the accuracy and completeness of any of the facts, working assumptions or other information that you provide to us in the course of us performing our work. We will independently verify such things.

## **Fees**

As previously communicated to you in our memo dated Feb. 12<sup>th</sup>, 2024, we estimate our professional fees as follows:

- Condition Assessment - \$3,500
- Desired Levels of Service - \$1,000
- Asset Management and Financial Strategies - \$4,000

Our fees are estimated at \$8,500, plus our 7% administrative and technology fee, and applicable tax. We will notify you promptly of any circumstance we encounter, which significantly affects our fee estimate.

Our professional fees will be based on our billing rates which depend on the means by which and by whom our Services are provided. Our billing rates may be subject to change from time to time at our discretion with or without notice to you.

We will also bill you for our out-of-pocket expenses, our administrative and technology charge, and applicable Goods and Services Sales Tax, Harmonized Sales Tax, Quebec Sales Tax and Provincial Sales Tax. Our administrative and technology charge is calculated as 7% of our professional fee and represents an allocation of estimated costs associated with our technology infrastructure and support staff time costs.

Our accounts are due when rendered and invoiced amounts are deemed to be earned when paid. BDO may suspend the performance of Services in the event that you fail to pay an invoice when it is due. Fees that are not paid within 30 days of an invoice or by a specified payment deadline will be considered delinquent. Interest may be charged at the rate of 12% per annum on all accounts outstanding for more than 30 days.

## **Standard Terms and Conditions**

Our Standard Terms and Conditions are attached as Appendix 1. You should ensure that you read and understand them. **The Standard Terms and Conditions include clauses that limit our professional liability.**



## **Appendix 1 - Standard Terms and Conditions**

### **1 Overview and Interpretation**

1.1 This Agreement sets forth the entire agreement between the parties in relation to Services and it supersedes all prior agreements, negotiations or understandings, whether oral or written, with respect to Services, including without limitation any non-disclosure agreements entered into in advance of this Agreement. This Agreement applies to Services whenever performed (including before the date of this Agreement). To the extent that any of the provisions of the accompanying letter conflict with these Standard Terms and Conditions, these Standard Terms and Conditions shall prevail. This Agreement may not be changed, modified or waived in whole or part except by an instrument in writing signed by both parties.

1.2 In this Agreement, the following words and expressions have the meanings set out below:

**This Agreement** - these Standard Terms and Conditions, the letter to which they are attached, any supporting schedules or other appendices to the letter, and any Summary of Services letters issued in future years

**Services** - the services provided or to be provided under this Agreement, and any other services which we agree to provide to you subsequent to the date of this Agreement that are not covered by a separate engagement letter

**We, us, our, BDO** - refer to BDO Canada LLP, a Canadian limited liability partnership organized under the laws of the Province of Ontario

**You, your** - the party or parties contracting with BDO under this Agreement. You and your does not include BDO, its affiliates or BDO Member Firms

**BDO Member Firm or Firms** - any firm or firms that form part of the international network of independent firms that are members of BDO International Limited

**Confidential Information** - all non-public proprietary or confidential information and Personal Information, including Client Documents

**Personal Information** - personal information that is or could be attributed to identifiable individuals

**Client Documents** - information (including internal financial information and internal records and reports) provided to us by you or on your behalf in connection with the performance of the Services

### **2 BDO Network and Sole Recourse**

2.1 BDO is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international network of independent member firms (i.e. BDO Member Firms), each of which is a separate legal entity.

2.2 We may use other BDO Member Firms or subcontractors to provide Services; however, we remain solely responsible for Services. You agree not to bring any claim or action against another BDO Member Firm (or their partners, members, directors, employees or subcontractors) or our subcontractors in respect of any liability relating to the provision of Services.

- 2.3 You agree that any of our affiliates, subcontractors, and other BDO Member Firms and any subcontractors thereof whom we directly or indirectly involve in providing Services have the right to rely on and enforce Section 2.2 above, as well as all liability protections contained herein, as if they were a party to this Agreement. For greater certainty, you agree that other BDO Member Firms that are subcontractors may enforce any limitations or exclusions of liability available to us under this Agreement.

### **3 Respective Responsibilities**

- 3.1 We will use reasonable efforts to complete, within any agreed-upon time frame, the performance of Services.
- 3.2 You shall be responsible for your personnel's compliance with your obligations under this Agreement. We will not be responsible for any delays or other consequences arising from you not fulfilling your obligations.

### **4 Working Papers and Deliverables**

- 4.1 **Ownership** - The working papers prepared pursuant to this Agreement (i.e. BDO's internal documentation to substantiate the Services) are the property of BDO. Such working papers constitute confidential and proprietary information, and will be retained by BDO in accordance with our policies and procedures and all applicable laws.
- 4.2 **Oral advice and draft deliverables** - You should not rely upon any draft deliverables or oral advice provided by us. Should you wish to rely upon something we have said to you, please let us know and, if possible, we will provide the information that you require in writing.
- 4.3 **Reliance by Third Parties** - Our Services will not be planned or conducted in contemplation of or for the purpose of reliance by any party other than you and are intended for the benefit of only you. Items of possible interest to a third party will not be addressed and matters may exist that would be assessed differently by a third party, possibly in connection with a specific transaction. The receipt by any third parties of any advice, opinions, reports or other work product is not intended to create any duty of care, professional relationship or any present or future liability between such third parties and us. For greater certainty, we expressly disclaim any liability of any nature or kind resulting from the disclosure to or unauthorized reliance by any third party on our advice, opinions, reports or other work product.

### **5 Confidentiality**

- 5.1 We will use Confidential Information provided by you only in relation to the Services or for internal and administrative purposes. You agree, however, that we may use such Confidential Information for predictive analytics to provide you with key performance indicators and other analysis and insights. We will not disclose any Confidential Information, except where required by law, regulation or professional obligation. You agree, however, that we may disclose Confidential Information to other BDO Member Firms or other subcontractors assisting us in providing Services, provided that such parties are bound by reasonable confidentiality obligations no less stringent than in this Agreement.

## **6 Analytics**

- 6.1** You agree that we may use anonymized and aggregated usage metrics, metadata or other tag identifiers, and Confidential Information that will not include any personally identifiable information, related to your use of BDO products and/or services to develop, modify and improve tools, services and offerings and for data analytics and other insight generation. Information developed in connection with these purposes may be used or disclosed to current or prospective clients as part of service offerings, however we will not use or disclose your name or any Confidential Information in a way that would permit you to be identified.

## **7. Privacy and Consent for Use of Personal Information**

- 7.1** In order to provide our Services, we may be required to access and collect Personal Information of individuals that is in your custody. You agree that we may collect, use, store, transfer, disclose and otherwise process Personal Information as required for the purpose of providing the Services. Personal Information may be processed in various jurisdictions in which we or applicable BDO Member Firms and subcontractors providing Services operate and as such Personal Information may be subject to the laws of such jurisdictions. Personal Information will at all times be collected, used, stored, transferred, disclosed or processed in accordance with applicable laws and professional regulations and we will require any service providers and BDO Members that process Personal Information on our behalf to adhere to such requirements. Any collection, use, storage, transfer or disclosure of Personal Information is subject to BDO's Privacy Statement available at <https://www.bdo.ca/en-ca/legal-privacy/legal/privacy-policy/>.
- 7.2** You represent and warrant that:
- (a) you have the authority to provide the Personal Information to us in connection with the performance of our Services, and
  - (b) the Personal Information provided to us has been provided in accordance with applicable law, and you have obtained all required consents of the individuals to whom such Personal Information relates in order to permit BDO to collect, use and disclose the Personal Information in the course of providing the Services.

## **8 Professional and Regulatory Oversight and Legal Processes**

- 8.1** As required by legal, regulatory, or professional authorities (both in Canada and abroad) and by BDO policy, our client files must periodically be reviewed by practice inspectors to ensure that we are adhering to professional and BDO standards. It is understood that by entering into this Agreement, you provide your consent to us providing our files relating to your engagement to the practice inspectors for the sole purpose of their inspection.
- 8.2** Certain law enforcement, regulatory and other governmental bodies may also have the right under law or regulation to conduct investigations of you, including the Services provided by us. To the extent practicable and permitted by law or regulation, we will advise you of any such document request or production order we receive in connection with any such investigation prior to providing any documents in response to such request or order.

8.3 We are sometimes required by law, regulation, subpoena or other legal process, or upon your request, to produce documents or personnel as witnesses in connection with legal or regulatory proceedings. Where BDO is not a party to such proceedings, you shall reimburse us at our current standard billing rates for professional time and expenses, including without limitation, reasonable legal fees, expenses and taxes incurred in responding to such compelled assistance or request by you.

## 9 Electronic Communications

9.1 Both parties recognize and accept the security risks associated with email communications, including but not limited to the lack of security, unreliability of delivery and possible loss of confidentiality and privilege. Unless you request in writing that we do not communicate by internet email, you assume all responsibility and liability in respect of risk associated with its use.

## 10 Limitation of Liability

10.1 In any dispute, action, claim, demand for losses or damages arising out of the Services performed by BDO pursuant to this Agreement, BDO's liability will be several, and not joint and several, and BDO shall only be liable for its proportionate share of the total liability based on degree of fault as determined by a court of competent jurisdiction or by an independent arbitrator, notwithstanding the provisions of any statute or rule of common law which create, or purport to create, joint and several liability.

10.2 In no event shall BDO be liable for indirect, consequential, special, incidental, aggravated, punitive damages, or exemplary damages, losses or expenses, or for any loss of revenues or profits, loss of opportunity, loss of data, or other commercial or economic loss or failure to realize expected savings, including without limitation expected tax savings, whether or not the likelihood of such loss or damage was contemplated.

10.3 BDO shall in no event be liable under this Agreement or otherwise in connection with the Services for any actions, damages, claims, fines, penalties, complaints, demands, suits, proceedings, liabilities, costs, expenses, or losses (collectively, "Liabilities") in any way arising out of or relating to the Services performed hereunder for an aggregate amount of more than the higher of:

(a) the fees paid to BDO, in a twelve consecutive month period, for the Services provided pursuant to this Agreement giving rise to the claim; and

(b) \$10,000.

10.4 The limitations of liability in this section apply whether or not the Liabilities asserted by you against BDO are incurred by you directly or as a result of a claim or demand against you by a third party.

10.5 No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment.

10.6 You agree claims or actions relating to the delivery of Services shall be brought against us alone, and not against any individual. Where our individuals are described as partners, they are acting as one of our members.

10.7 For purposes of this Section, the term "BDO" shall include BDO Canada LLP and its subsidiaries, associated and affiliated entities and their respective current and former partners, directors, officers, employees, agents and representatives. The provisions of this Section shall apply to the fullest extent of the law, regardless of the form of the claim, whether in contract, statute, tort (including without limitation, negligence) or otherwise.

## 11 Indemnity

11.1 To the fullest extent permitted by applicable laws, in the event of a claim or demand by a third party against BDO that arises out of or relates to the Services, you agree to indemnify and hold harmless BDO from and against all losses, costs (including solicitors' fees), damages, or expenses resulting from such third party claim or demand, except to the extent that the same is finally determined to have resulted from BDO's negligence or intentional misconduct.

## 12 Alternative Dispute Resolution

12.1 Both parties agree that they will first attempt to settle any dispute arising out of or relating to this Agreement, including any question regarding its existence, interpretation, validity, breach or termination, or the Services provided hereunder, through good faith negotiations.

12.2 In the event that the parties are unable to settle or resolve their dispute through negotiation, such dispute shall be subject to mediation using a mediator chosen by mutual agreement of the parties.

12.3 All disputes remaining unsettled for more than 60 days following the parties first mediation session with a mediator or such longer period as the parties mutually agree upon shall be referred to and finally resolved by arbitration. The parties agree that one arbitrator shall be appointed within twenty (20) days of receipt of the request for arbitration. If the parties cannot agree on the appointment of an arbitrator in such period then either party may immediately apply for the appointment of an arbitrator to a court of competent jurisdiction in the Province of the governing law as contained herein pursuant to such Province's applicable *Arbitration Act*. The place of arbitration shall be in the capital of the Province of the governing law as contained herein. Unless the arbitrator otherwise determines, the fees of the arbitrator and the costs and expenses of the arbitration will be borne and paid equally by the parties. Such arbitration shall be final, conclusive and binding upon the parties, and the parties shall have no right of appeal or judicial review of the decision whatsoever. The parties hereby waive any such right of appeal or judicial review which may otherwise be provided for in any provincial arbitration statute. Judgement upon the award, including any interim award, rendered by the arbitrator may be entered in any court having jurisdiction. The arbitration shall be kept confidential and the existence of the arbitration proceeding and any element thereof (including but not limited to any pleadings, briefs or other documents submitted and exchanged and testimony and other oral submissions and any awards made) shall not be disclosed beyond the arbitrator(s), the parties, their counsel and any person to whom disclosure is necessary to the conduct of the proceeding except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

### **13 Limitation Period**

- 13.1 You shall make any claim relating to Services or otherwise under this Agreement no later than one year after you became aware or ought reasonably to have become aware of the facts giving rise to any such claim.
- 13.2 You shall in no event make any claim relating to the Services or otherwise under this Agreement later than four years after the completion of the Services under this Agreement.
- 13.3 To the extent permitted by law, the parties to this Agreement agree that the limitation periods established in this Agreement replace any limitation periods under any limitations act and/or any other applicable legislation and any limitation periods under any limitations act and/or any other applicable legislation shall not alter the limitation periods specified in this Agreement.

### **14 Québec Personnel**

- 14.1 We may sometimes have individual partners and employees performing Services within the Province of Québec who are members of the Ordre des comptables professionnels agréés du Québec. Any such members performing professional services hereunder assumes full personal civil liability arising from the practice of their profession, regardless of their status within our partnership. They may not invoke the liability of our partnership as grounds for excluding or limiting their own liability. Any limitation of liability clauses in this Agreement shall therefore not apply to limit the personal civil liability of partners and employees who are members of the Ordre des comptables professionnels agréés du Québec

### **15 Termination**

- 15.1 This Agreement applies to Services whenever performed (including before the date of this Agreement).
- 15.2 You or we may terminate this Agreement at any time upon written notice of such termination to the other party. We will not be liable for any loss, cost or expense arising from such termination. You agree to pay us for all Services performed up to the date of termination, including Services performed, work-in-progress and expenses incurred by us up to and including the effective date of the termination of this Agreement.

### **16 Governing Laws**

- 16.1 The terms of our engagement shall remain operative until amended, terminated, or superseded in writing. They shall be interpreted according to the laws of the province or territory in which BDO's principal Canadian office performing the engagement is located, without regard to such province/territory's rules on conflicts of law.

### **17 Survival**

- 17.1 The provisions of this Agreement that give either of us rights or obligations beyond its termination shall continue indefinitely following the termination of this Agreement. Any clause that is meant to continue to apply after termination of this Agreement will do so.

**18 Force Majeure**

18.1 We will not be liable for any delays or failures in performance or breach of contract due to events or circumstances beyond our reasonable control, including acts of God, war, acts by governments and regulators, acts of terrorism, accident, fire, flood or storm or civil disturbance.

**19 Assignment**

19.1 No party may assign, transfer or delegate any of the rights or obligations hereunder without the written consent of the other party or parties. BDO may engage independent contractors and BDO Member Firms to assist us in performing the Services in this Agreement without your consent.

**20 Severability**

20.1 The provisions of this Agreement shall only apply to the extent that they are not prohibited by a mandatory provision of applicable law, regulation or professional standards. If any of these provisions shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such remaining provision shall be valid and enforceable to the fullest extent permitted by law.

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