

**THE CORPORATION OF
THE TOWNSHIP OF MCGARRY**

BY-LAW NO. 2019 - 23

**BEING A BY-LAW TO APPOINT A REGISTERED CODE AGENCY,
CHIEF BUILDING OFFICIAL AND BUILDING INSPECTORS FOR THE
ENFORCEMENT OF THE *BUILDING CODE ACT*, 1992.**

WHEREAS subsection 3(1) of the *Building Code Act*, 1992, SO 1992, c 23, provides that the Council of each municipality is responsible for the enforcement of the *Building Code Act*, 1992, in the municipality, except as where otherwise provided for in the *Act*;

AND WHEREAS subsection 3(2) of the *Building Code Act*, 1992, SO 1992, c 23, directs the Council of each municipality to appoint a Chief Building Official and such Inspectors as are necessary for the enforcement of the *Building Code Act*, 1992, in the areas in which the municipality has jurisdiction;

AND WHEREAS subsection 4.1(1) of the *Building Code Act*, 1992, S.O. 1992, c. 23, permits the Council of each municipality to enter into agreements with a registered code agency to perform the functions specified in the agreement in respect of the construction of any building or classed of buildings specified in the agreement.

AND WHEREAS the Corporation of the Township of McGarry deems it necessary to enter into an agreement with Temiskaming Municipal Services Association dated for the provision of enforcement of the *Building Code Act*, 1992, SO 1992, c 23, chief building official services, and building inspector services.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
TOWNSHIP OF MCGARRY ENACTS AS FOLLOWS:**

1. That the Head of Council and the Clerk-Treasurer be authorized to enter into an agreement with Temiskaming Municipal Services Association under the terms and conditions set out in said agreement.
2. That Temiskaming Municipal Services Association be appointed to perform the functions specified in said agreement.
3. That the following staff of Temiskaming Municipal Services Association be appointed as building officials for the Township of McGarry:

David Barton, Chief Building Official/Building Inspector
Francis Rivard, Building Inspector

4. That all by-laws and resolutions, or parts thereof, contrary hereto or inconsistent herewith, be and the same are hereby repealed.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 10th
DAY OF SEPTEMBER, 2019.**

Mayor
SIGNATURES ON FILE

Clerk-Treasurer

THIS AGREEMENT is made effective as of the ____ day of _____, 2019,

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ARMSTRONG
-AND-
THE CORPORATION OF THE TOWNSHIP OF BRETHOUR
-AND-
THE CORPORATION OF THE TOWNSHIP OF CASEY
-AND-
THE CORPORATION OF THE TOWNSHIP OF CHAMBERLAIN
-AND-
THE CORPORATION OF THE MUNICIPALITY OF CHARLTON AND DACK
-AND-
THE CORPORATION OF THE TOWN OF COBALT
-AND-
THE CORPORATION OF THE TOWNSHIP OF COLEMAN
-AND-
THE CORPORATION OF THE TOWN OF ENGLEHART
-AND-
THE CORPORATION OF THE TOWNSHIP OF EVANTUREL
-AND-
THE CORPORATION OF THE TOWNSHIP OF GAUTHIER
-AND-
THE CORPORATION OF THE TOWNSHIP OF HARLEY
-AND-
THE CORPORATION OF THE TOWNSHIP OF HARRIS
-AND-
THE CORPORATION OF THE TOWNSHIP OF HILLIARD
-AND-
THE CORPORATION OF THE TOWNSHIP OF HUDSON
-AND-
THE CORPORATION OF THE TOWNSHIP OF JAMES
-AND-
THE CORPORATION OF THE TOWNSHIP OF KERNS
-AND-
THE CORPORATION OF THE TOWNSHIP OF LARDER LAKE
-AND-
THE CORPORATION OF THE TOWN OF LATCHFORD
-AND -
THE CORPORATION OF THE TOWNSHIP OF MATACHEWAN
-AND-
THE CORPORATION OF THE TOWNSHIP OF MCGARRY
-AND-
THE CORPORATION OF THE VILLAGE OF THORNLOE
-AND-
TEMISKAMING MUNICIPAL SERVICES ASSOCIATION

WHEREAS the Temiskaming Municipal Services Association (the “Service Provider”) is incorporated under the *Canada Not for Profit Corporations Act* by Articles of Incorporation dated December 20, 2017;

AND WHEREAS subsection 4.1 of the *Building Code Act, 1992* (the “Act”) provides authority for municipalities to enter into agreements with registered code agencies to perform the functions specified in such agreements in respect of the construction of any building or class of buildings, subject to the restrictions set in the Act and the building code;

AND WHEREAS the Service Provider is, or will become, a registered code agency;

AND WHEREAS the municipal corporation parties (collectively the “Municipalities”) are members of the Service Provider;

AND WHEREAS the Municipalities wish to engage the services of the Service Provider to perform the functions set out hereunder within each of their respective municipal boundaries;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the terms and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereto agree with each other as follows:

ARTICLE 1 INTERPRETATION

1.1. In this Agreement, unless the context otherwise requires:

- (a) “Act” shall mean the *Building Code Act*, SO 1992, c 23.
- (b) “Administering Municipality” shall mean the Corporation of the Township of Armstrong.
- (c) “Effective Date” shall mean the date first written above.
- (d) “Indemnified Parties” shall mean the Municipalities and each of their officers, servants, and agents.
- (e) “Municipalities” shall have the meaning ascribed in the preamble.
- (f) “Service Provider” shall have the meaning ascribed in the preamble.

ARTICLE 2 SCOPE OF WORK

2.1. Service Provider’s Services. The services to be provided by the Service Provider in respect of all classes of buildings, as applicable, shall include:

- (a) Providing a staff member for appointment as (1) Chief Building Official by each of the municipal corporation parties and (2) such building inspectors as are necessary for the enforcement of the Act within the areas in which each municipal corporation party has jurisdiction.
- (b) Maintaining all required qualifications and registrations as outlined in the Act and the building code.
- (c) The building permit fees charged shall be in accordance with the current schedule of fees set down by each of the Municipalities respectively.
- (d) Exercise responsibilities under legislative authority of the Act and various municipal by-laws and provincial programs.
- (e) Liaise with appropriate provincial agencies, and other professionals to obtain and disseminate information to ensure that policy, procedures and practices are understood.
- (f) Explain, interpret and provide guidance regarding all applicable codes to architects, engineers, owners, Service Providers, developers and other interested parties. Attend pre-construction meetings.
- (g) Supervise and process permit applications by accepting the application, checking for accuracy and completeness, calculating fees, and monitoring application progress.

- (h) Supervise the accurate and timely maintenance of records of the permit process; input, maintain and compile a variety of data on permitting activity, such as the number of permits by type, valuations, permit fees, review time, problem areas, conditions imposed, actions taken, etc.
- (i) Assure that policies and procedures are followed in the receipt, routing and processing of permit applications.
- (j) Coordinate the scheduling of requests for field inspections, complete building inspections at key points of construction and maintain an inspection activity log.
- (k) Respond to complaints of potential by-law violations relating to building construction. Confer with Council and legal representatives as to interpretation and direction.
- (l) Submit forms to Municipal Property Assessment Corporation with details on building permits and status of construction activities with the Municipalities.

2.2. Municipalities' Services. The Municipalities shall provide the Service Provider with the following services:

- (a) Work space for the Service Provider's employees, including the Chief Building Official and any inspectors supplied by the Service Provider and appointed by each of the municipal corporation parties. The location of the said work space shall be within the offices of the Corporation of the Municipality of Township of Armstrong unless all parties agree otherwise in writing.
- (b) Access to and, where necessary, copies of existing reports, plans or other pertinent information showing or pertaining to existing conditions within the areas in which the Municipalities have jurisdiction area.
- (c) Provide general direction to the Service Provider in the provision of the Services, through a designated representative of the Administering Municipality.
- (d) Assist the Service Provider to arrange and make provision for the Service Provider's entry and ready access to properties, as necessary, to enable the performance of Service Provider's services.
- (e) The Service Provider shall be entitled to rely upon the information, direction and approvals provided pursuant to clauses (a) to (c) of this Article 2.2, inclusive, as being accurate in the performance of the Service Provider's services under this Agreement.

2.3. Standard of Conduct. In rendering services under this Agreement, the Service Provider shall conform to high professional standards of work and business ethics.

ARTICLE 3 INDEPENDENT CONTRACTORS

The relationship between the Municipalities and the Service Provider is that of independent contractors, and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between them. Neither the Municipalities nor the Service Provider will have the power to bind the other or incur obligations on the other's behalf except as otherwise expressly provided herein.

ARTICLE 4 TERM AND TERMINATION

Term. This Agreement shall be effective as of the Effective Date and shall continue in full force until terminated as provided for herein.

- 4.1 Termination. The Municipalities may terminate this Agreement for any reason by giving sixty (60) days written notice to the Service Provider.
- 4.2 Withdrawal. A municipal corporation shall be deemed to have withdrawn from this agreement upon ceasing to be a member of the Service Provider.
- 4.4 Survival. The provisions of Articles 5, 7, 8 and 9 of this Agreement shall survive the termination of this Agreement and remain in full force and effect thereafter.

ARTICLE 5 CONFIDENTIAL INFORMATION

The Service Provider shall not divulge any specific information identified as confidential, communicated to or acquired by the Service Provider, or disclosed by the Municipalities in the course of carrying out the services provided for herein. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the Service Provider by a third party without obligation of confidentiality, which is independently developed by the Service Provider without access to the Municipalities' information, or which is required to be disclosed by law or court order. No such information shall be used by the Service Provider without the approval in writing of the Municipalities.

ARTICLE 6 CONFLICT OF INTEREST AND NON-SOLICITATION

Service Provider covenants and agrees not to:

- (a) accept any gifts, favours, hospitality or entertainment from any clients and avoid all circumstances that could comprise professional integrity; or
- (b) perform any service for a local builder, realtor, Service Provider or developer which may be construed as creating a real or perceived conflict of interest. If any doubt exists regarding conflict of interest approval from the Administering Municipality must be granted before performing the service.

ARTICLE 7 RIGHT TO INJUNCTIVE RELIEF

The Service Provider acknowledges that the terms of Articles 5 and 6 of this Agreement are reasonably necessary to protect the legitimate interests of the Municipalities, are reasonable in scope and duration, and are not unduly restrictive. The Service Provider further acknowledges that a breach of any of the terms of Articles 5 or 6 of this Agreement will render irreparable harm to the Municipalities or any of them, and that a remedy at law for breach of the Agreement is inadequate, and that the Municipalities or any one of them shall therefore be entitled to seek any and all equitable relief, including, but not limited to, injunctive relief, and to any other remedy that may be available under any applicable law or agreement between the parties. The Service Provider acknowledges that an award of damages to the Municipalities or any of them does not preclude a court from ordering injunctive relief. Both damages and injunctive relief shall be proper modes of relief and are not to be considered as alternative remedies.

ARTICLE 8 INDEMNIFICATION

The Service Provider shall indemnify and save harmless the Indemnified Parties from and against all claims, allegations, actions, suits, demands, proceedings, liabilities, losses, expenses, professional fees (including all legal fees and disbursements on a solicitor and own client scale), costs or damages of every nature and kind whatsoever, by whomever made, sustained, brought, or prosecuted, whether based in contract, tort, fiduciary duty or any other right at law or in equity occasioned by, arising out of, or in any way related to this Agreement, which may be brought or made against the Indemnified Parties or which the Indemnified Parties may suffer, sustain, pay or incur, even if such arises in whole or in part from the negligence of the Indemnified Parties.

ARTICLE 9 PERSONAL INFORMATION

9.1 Collection. Where the Service Provider is collecting personal information in performing services under this Agreement, it must comply with the provisions regarding the authority to collect, the manner of collection and notice of collection as set out in sections 28, 29(1), and 29(2) of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (“MFIPPA”).

9.2 Retention. The Service Provider must adhere to the minimum retention periods for personal information in accordance with section 5 of MFIPPA Regulation 823 unless the Administering Municipality specifically provides for a different retention period.

9.3 Use and Disclosure. Regardless of how the Service Provider receives personal information, it must use it in accordance with MFIPPA sections 31 and 32, for example: personal information can only be used or disclosed when the individual to whom the information pertains has identified the information in particular and consented to its use and/or disclosure, or for a purpose for which it was obtained or compiled, or for a consistent purpose.

9.4 Return. The Service Provider agrees to promptly return any personal information in whatever form, the Service Provider collected in performing the services hereunder upon the termination of this Agreement or earlier if requested by the Municipalities or any one of them. Where the request is from any one or more of the Municipalities, it is understood that the personal information means the personal information of those residing within their respective jurisdictional boundaries. When said personal information is returned to the Municipalities or any of them the Service Provider shall be relieved of its obligations under Article 9.2 of this Agreement.

ARTICLE 10 DISPUTE RESOLUTION

In the event that a dispute or controversy among the parties arising in connection with the interpretation, performance or implementation of this agreement is not resolved in private meetings between the parties then without prejudice to or in any other way derogating from the rights of the parties and as an alternative to such person instituting a law suit or legal action, such dispute or controversy shall be settled by a process of dispute resolution as follows:

- i. The dispute or controversy shall first be submitted to a panel of mediators whereby the one party appoints one mediator, the other party (or if applicable the board of the Corporation) appoints one mediator, and the two mediators so appointed jointly appoint a third mediator. The three mediators will then meet with the parties in question in an attempt to mediate a resolution between the parties.
- ii. The number of mediators may be reduced from three to one or two upon agreement of the parties.

- iii. If the parties are not successful in resolving the dispute through mediation, then the parties agree that the dispute shall be settled by arbitration before a single arbitrator, who shall not be any one of the mediators referred to above, in accordance with the rules for expedited arbitration of ADR Chambers of Toronto, Ontario, as amended from time to time. The parties agree that all proceedings relating to arbitration shall be kept confidential and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law.

All costs of the mediators appointed in accordance with this Article 10 shall be borne equally by the parties to the dispute or the controversy. All costs of the arbitrators appointed in accordance with this section shall be borne by such parties as may be determined by the arbitrators.

ARTICLE 11 GENERAL PROVISIONS

11.1 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

11.2 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the Province of Ontario without regard to principles of conflict of law that would result in the application of any law other than the law of the Province of Ontario.

11.3 Entire Agreement. This Agreement integrates all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement, the terms, conditions and provisions of this Agreement shall prevail.

11.4 Amendments. This Agreement may only be amended or modified by an instrument in writing signed by each of the Parties hereto or thereto.

11.5 Waiver of Breach. The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other or subsequent breach by the party in breach.

11.6 Successors and Assigns. This Agreement may not be assigned the Municipalities or the Service Provider without the other's prior written consent. The benefits and obligations of this Agreement shall be binding upon and inure to the parties hereto, their successors and assigns.

11.7 Waiver of Contra Proferentem. The parties' desire is that the *contra proferentem* principle of contract interpretation is not to be applied to the Agreement; that is, any ambiguity or inconsistency in the Agreement is not to be resolved strictly against the party that drafted the ambiguous or inconsistent provision(s), but instead is to be resolved in accordance with the most reasonable construction.

11.8 Notice. All notices or other communications required or permitted to be given hereunder shall be in writing to the addresses set forth below and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by facsimile with notice of completion of transmission.

If to the Municipalities: 35 10th Street
Box 546
Earlton, ON P0J 1E0

If to the Service Provider: 35 10th Street
Box 546
Earlton, ON P0J 1E0

11.9 Independent Legal Advice. The parties have had the opportunity to read and understand the Agreement and has been given the opportunity to seek independent legal advice and are signing this agreement voluntarily and not under duress of any kind.

IN WITNESS WHEREOF, this Agreement is executed as of the Effective Date

The Corporation of the Township of Armstrong	<div></div>	Mayor
	<div></div>	Clerk
The Corporation of the Township of Brethour	<div></div>	Reeve
	<div></div>	Clerk
The Corporation of the Township of Casey	<div></div>	Reeve
	<div></div>	Clerk
The Corporation of the Township of Chamberlain	<div></div>	Reeve
	<div></div>	Clerk
The Corporation of the Municipality of Charlton and Dack	<div></div>	Reeve
	<div></div>	Clerk
The Corporation of the Town of Cobalt	<div></div>	Mayor
	<div></div>	Clerk
The Corporation of the Township of Coleman	<div></div>	Reeve
	<div></div>	Clerk
The Corporation of the Town of Englehart	<div></div>	Mayor
	<div></div>	Clerk

The Corporation of the Township of Ewanturel	Reeve
	Clerk
The Corporation of the Township of Gauthier	Reeve
	Clerk
The Corporation of the Township of Harley	Reeve
	Clerk
The Corporation of the Township of Harris	Reeve
	Clerk
The Corporation of the Township of Hilliard	Reeve
	Clerk
The Corporation of the Township of Hudson	Reeve
	Clerk
The Corporation of the Township of James	Reeve
	Clerk
The Corporation of the Township of Kerns	Reeve
	Clerk
The Corporation of the Township of Larder Lake	Reeve
	Clerk

The Corporation of the Town of Latchford

Mayor

Clerk

The Corporation of the Township of Matachewan

Reeve

Clerk

The Corporation of the Township of McGarry

Mayor

Clerk

The Corporation of the Village of Thornloe

Reeve

Clerk

Temiskaming Municipal Services Association

Per:

I have the authority to bind the corporation

