

Corporation of the County of Perth

By-Law Number 3577-2017

Being a By-law to Enter Into an Agreement For Weed and Tree Inspection Services and Municipal Law Enforcement For Tree Conservation

January 19, 2017

Whereas Sections 8, 9 and 11 of the *Municipal Act, 2001*, authorizes Council to enter into agreements for the purpose of enforcement; and

Whereas Section 5(1) of the *Municipal Act, 2001*, provides that the powers of Municipal Corporation shall be exercised by its Council; and

Whereas Section 5(3) of the *Municipal Act, 2001*, provides that the powers of every council shall be exercised by By-law; and

Whereas Subsection 135(2) of the *Municipal Act, 2001*, authorizes an upper-tier municipality to prohibit or regulate the destruction or injuring of trees in woodlands designated by by-law; and

Whereas the *Weed Control Act, 1990*, provides for the appointment of persons as area Weed Inspectors to enforce the provisions of the *Weed Control Act, 1990*; and

Whereas the County of Perth deems it desirable to enter into a contract with Marvin L. Smith to provide weed and tree inspection services and municipal law enforcement related to the County of Perth's Forest Conservation By-law and the *Weed Control Act, 1990*;

Now Therefore the Council of the Corporation of the County of Perth hereby enacts as follows:

1. THAT the Corporation of the County of Perth approves the agreement with Marvin L. Smith for the provision of weed and tree inspection services and municipal law enforcement, a copy of which agreement is attached as Schedule "A".
2. THAT the Warden and Clerk are hereby authorized to execute the agreement on behalf of the Corporation and to affix thereto the Official Seal of the Corporation;
3. That By-law 3496-2015 is hereby repealed.
4. That this by-law shall come into force and take effect upon the final passing thereof.

Read a first and second time this 19th day of January 2017.

Read a third and finally passed this 19th day of January 2017.

Meredith Schneider, Warden

Jill Bellchamber-Glazier, County Clerk

**AGREEMENT FOR WEED AND TREE INSPECTION SERVICES AND MUNICIPAL
LAW ENFORCEMENT OFFICER (FOREST CONSERVATION BY-LAW)**

THIS AGREEMENT made this 19 day of January, 2017.

BETWEEN:

THE CORPORATION OF THE COUNTY OF PERTH,
of the City of Stratford, in the County of Perth
hereinafter referred to as the "**County**"

OF THE FIRST PART

AND:

MARVIN L. SMITH
hereinafter referred to as the "**Contractor**"

OF THE SECOND PART

WHEREAS the County is desirous of retaining the services of the Contractor, as an independent contractor, to provide Weed and Tree Inspection services and be the Municipal Law Enforcement Officer (Forest Conservation By-law) to the County;

NOW, THEREFORE, THIS AGREEMENT WITNESSES that in consideration of the mutual promises hereinafter set forth and other good valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the County and the Contractor agree as follows:

1. The Contractor is to provide Weed and Tree Inspection services and be the Municipal Law Enforcement Officer (Forest Conservation By-law) to the County with respect to the Municipal Act, and the Weed Control Act, as amended in the Province of Ontario (the "**Services**"). Details of the Services to be provided are outlined in Schedule "A" attached hereto. As an independent contractor, the Contractor shall determine the method, details and means of performing the Services, and will not be under the direction, control or supervision of the County concerning the performance of the Services.
2. Subject to the terms and conditions of this Agreement, County hereby engages the Contractor, as an independent contractor, to perform the Services, and the Contractor hereby accepts such engagement.
3. The term of the agreement shall be from January 1, 2017 to December 31, 2018 (the "**Term**"). The Term may be extended for a further two (2) year period as mutually approved by the County and Contractor. The rate of pay shall be \$22.42 per hour, payable monthly upon receipt of an invoice detailing the work and hours incurred for

the month, plus reimbursement of mileage and other miscellaneous expenses.

4. In the event at any time that the Contractor is unable to perform the Services, an alternate contractor as recommended by the Contractor and otherwise approved by the County may be allowed to execute the duties under this contract, and the Contractor shall pay the alternate contractor for such said duties. Such duties shall be performed by the alternate contractor to same standards and guidelines pursuant to the terms set out herein.
5. The Contractor agrees to provide the County:
 - a. a police records/information check
 - b. a WSIB clearance certificate
 - c. proof of the following insurance requirements:
 - i. Commercial General Liability with a limit no less than \$2,000,000 with the County added and shown as an Additional Insured
 - ii. Errors and Omissions with a limit no less than \$2,000,000, Legal Liability Cross Liability, with Notice of Cancellation (30 Days)
 - iii. Commercial Automobile Liability Insurance with a limit no less than \$2,000,000
 - d. completed Form 10.1(b) – H&S Contractor Declaration
 - e. completed Form C – Contractor Accessibility Agreement
6. This Agreement shall not render the Contractor an employee, partner or agent of the County for any purpose. The Contractor is, and will remain, an independent contractor in its relationship with the County. The Contractor is expressly free to perform services for other parties during the Term, except for any work within the County associated with a Notice of Intent issued by the County under the Forest Conservation By-Law (i.e. tree marking). The County shall not be responsible for withholding, deducting or remitting to any party or entity any income tax or other amounts required or permitted to be deducted from the compensation of an employee in connection with the Services. The Contractor shall have no claim, and hereby waives any claim, against the County hereunder or otherwise for standard payroll deductions or employee benefits of any kind.
7. The Contractor shall be responsible for making such remittances or payments as are required by the laws of the Province of Ontario and the laws of Canada in connection with the Services including, but not limited to, any income, sales, goods and services or other taxes, and the Contractor shall be responsible for submitting payments for employment insurance, Canada Pension, Ontario health, workers' compensation premiums, and other taxes, statutory remittances or charges on any amounts paid to the Contractor under this Agreement. The Contractor further agrees that he will hold harmless and indemnify the County from all claims arising from any failure to pay such taxes, remittances or charges.
8. The Contractor will indemnify and save harmless the County against and from any and all claims and civil proceedings, including without limiting the generality of the foregoing, for any claims for bodily injury while carrying out duties on behalf of the

County while under this or any other contract, or claims for property damage arising from or by or through any act or omission of the Contractor.

9. Either party shall have the right to terminate this agreement without cause by providing the other party with no less than three (3) months prior written notice. The County may terminate this Agreement for cause at any time, effective immediately upon written notice to the Contractor. Without limitation, any one of the following events shall constitute good and sufficient reason for termination of this Agreement for cause, provided however that the following events shall not constitute the only reasons for termination for cause:
 - a) the Contractor committing any serious or persistent breach of any of the provisions of this Agreement;
 - b) the Contractor being guilty of any grave misconduct, dishonesty or willful neglect in the discharge of his duties hereunder;
 - c) the Contractor being convicted of any criminal offence;
 - d) the Contractor making any false representation, report or claim relative hereto;
 - e) the Contractor becoming insolvent, bankrupt or making any arrangement for the benefit of creditors.

10. Any notice required to be given to the Contractor shall be sufficiently given if sent by registered mail addressed to the Contractor, Marvin L. Smith, 570 Riverview Drive, Listowel, Ontario, N4W 3T7 and such notice shall be deemed to have been received by the Contractor on the fourth day after the date on which it shall have been so mailed.

Any notice required to be given to the County shall be sufficiently given if hand delivered to or sent by registered mail addressed to the County of Perth at 1 Huron Street, Stratford, Ontario, N5A 5S4 and such notice shall be deemed to have been received by the County on the fourth day after the date on which it shall have been so mailed or on the day it shall be hand delivered.

11. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. This Agreement shall be construed in accordance with the laws of the Province of Ontario.

13. This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument. The parties hereto agree that this Agreement may be transmitted by fax or such similar device and that the reproduction of signatures by fax or such

similar device will be treated as binding as if original and each party undertakes to provide to the other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.

SCHEDULE A

SERVICES Duties and Responsibilities

A) Tree Inspection Services and Municipal Law Enforcement Officer (Forest Conservation)

1. Administer and enforce the County of Perth's Forest Conservation By-law, and By-laws of member municipalities delegating their authority for tree preservation to the County;
2. Review and response to "Notices of Intent" that are submitted and any accompanying silvicultural prescription for completeness and accuracy. If tree destruction or injury is to be carried out pursuant to Section 3(1) of the By-law, conduct a pre-logging inspection of the woodlot/woodland to determine if the submitted silvicultural prescription is appropriate for that forest condition, and if the tree marking followed the silvicultural prescription and By-law requirements. Also, conduct a post-logging inspection to assess logging impact, such as damage to residual trees and injury to root systems by mechanical soil compaction or rutting; Matters requiring correction or further attention are to be brought to the attention of the person responsible for the Notice of Intent, with such matters documented in writing to that person. A follow-up inspection may be required to assess corrected work;
3. If tree destruction or injury is to be carried out pursuant to Section 3(2) of the By-law, a post logging inspection must be carried out to determine if logging complied with the By-law, specifically with respect to size limits specified for trees in Schedule "A" to the By-law. In addition, an assessment must be made of logging impact, such as damage to residual trees and injury to root systems by mechanical soil compaction or rutting;
4. Conduct woodlot/woodland inspections to:
 - a. clarify for the landowner, logging contractor how the By-law applies to specific logging proposals;
 - b. investigate complaints regarding tree destruction or injury, to determine if a violation of the By-law has occurred. Inspections sometimes result from my personal observation of tree destruction or injury while I am carrying out routine work activities;
5. Prepare and submit monthly tree inspection reports to the Director of Planning and Development;

6. Answer general inquiries from landowners, logging contractors, drainage contractors, and other members of the public regarding the Forest Conservation By-law;
7. In the event a potential violation of the By-law has occurred, the Tree Inspector will:
 - a. collect evidence on site, including photographs, under the authority of a search warrant, if necessary, with any search warrant application documentation being reviewed by the County attorney before being presented to a Justice of the Peace for issuing;
 - b. obtain aerial photograph coverage of the site from County staff;
 - c. obtain a certified copy of the property deed through the Registry Office;
 - d. provide an initial report and recommendation to the Director of Planning and Development;
 - e. upon direction from the Director of Planning and Development, provide an initial report to the County's attorney, and ask for a legal opinion as to whether prosecution should be undertaken;
 - f. if the County attorney concurs that prosecution is warranted, prepare a complete briefing report to the County attorney, along with "draft" versions of "information" and "Summons" documents;
 - g. lay charges with a Justice of the Peace at the court office in Stratford prior to expiry of the six month "window" available;
 - h. serve Summons documents to the defendant(s);
 - i. meet with the County attorney regarding details of the case, as required;
 - j. attend the Provincial Offences Act court sessions, including pre-trials, to support the County attorney with information and advice as required;
 - k. if no prior resolution is reached, providing professional testimony at trial and assist with preparation of any required court orders; and
8. Additional related activities include suggesting additions or changes to the Forest Conservation By-law, and attending the annual meeting of Forest Conservation By-law enforcement officers.

B) Weed Inspection Services Pursuant to the Weed Control Act, R.S.O. 1990, Chapter W.5

As the County's appointed Area Weed Inspector, responsible for the enforcement of the Weed Control Act with respect to the 25 weeds designated provincially, and two weeds designated locally, as "noxious" weeds in the County of Perth. Specifically, this role requires:

1. Responding to general inquiries from landowners, municipal staff and members of the public with respect to weed control matters;
2. Co-ordinating the efforts of member municipalities in placing newspaper notices each spring to remind landowners to control noxious weeds in compliance with the Weed Control Act and municipal property standards by-laws, and assist with similar notification on municipal websites etc., as required;

3. In response to complaints, or in response to personal observation, conducting weed inspections to determine if a violation of the Weed Control Act has occurred;
4. Assisting landowners with the eradication of noxious weeds, and where necessary, issuing written orders for the control of noxious weeds;
5. Providing an annual report on noxious weed matters to the Director of Planning and Development; and
6. Attending OMAFRA's annual conference for weed inspectors.