THE CORPORATION OF THE TOWNSHIP OF SPRINGWATER

BY-LAW 2015-036

Being a by-law to provide indemnification for members of Council and employees with respect to certain actions or proceedings arising from their duties, and to repeal 2003-021.

INDEMNIFICATION BY-LAW

WHEREAS Section 279 of the Municipal Act, S.O. 2001, as amended, (the Act) provides that, despite the Insurance Act, a municipality may be or act as an insurer and may exchange with other municipalities in Ontario, reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the Insurance Act with respect to the following matters:

1. Protection against risks that may involve pecuniary loss or liability on the part of the municipality or any local board of the municipality.

2. The protection of its employees or former employees or those of any local board of the municipality against risks that may involve pecuniary loss or liability on the part of those employees.

3. Subject to Section 14 of the Municipal Conflict of Interest Act, the protection of the members or former members of the council or of any local board of the municipality or any class of those members against risks that may involve pecuniary loss or liability on the part of the members.

4. Subject to Section 14 of the Municipal Conflict of Interest Act, the payment of any damages or costs awarded against any of its employees, members, former employees or former members or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees or members, including while acting in the performance of any statutory duty.

5. Subject to Section 14 of the Municipal Conflict of Interest Act, the payment of any sum required in connection with the settlement of an action or other proceeding referred to in Paragraph 4 and for assuming the cost of defending the employees or members in the action or proceeding.

AND WHEREAS Council deems it desirable to enact a By-law to have The Corporation of the Township of Springwater indemnify its members and former members of Council and local boards as well as its employees and former employees against certain pecuniary loss or liability which may arise as a result of their duties on behalf of the Township as more particularly set out herein;

NOW THEREFORE the Council of The Corporation of the Township of Springwater enacts as follows:

DEFINITIONS

1. In this By-law, unless a contrary intention appears:

   (a) "action or proceeding" means an action or proceeding referred to in Section 5;

   (b) "Council" means the Council of The Corporation of the Township of Springwater;

   (c) "employee" means any salaried officer, or any other person in the employ of the Township or of a local board and includes persons that provide their services on behalf of the Township without remuneration, exclusive of reimbursement of expenses or honoraria provided that such persons are appointees of the Township or volunteers acting under the direction of a person in the employ of the Township.

   (d) "former employee" means a person who was formerly an employee of the Township or of a local board;

   (e) "former member" means a person who was formerly a member of Council of the Township or of a local board;

   (f) "individual" means a person who was a member of Council or local board or who was an employee, as the case may be, at the time the cause of action or proceeding arose or at the time that the act or omission occurred that gave rise to the action or proceeding, notwithstanding that prior to judgment or other settlement of the proceeding, the person may have become a former member or former employee;

   (g) "local board" means a local board of the Township as defined in the Municipal Act, S.O. 2001;

   (h) "Township" means The Corporation of the Township of Springwater.

EXCLUDED ACTIONS AND PROCEEDINGS

2. This By-law does not apply to:

   (a) an action or proceeding where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to

disciplinary action taken by the Township as an employer;

(b) an action or proceeding brought under the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended and the Criminal Code, R.S.C. 1985, c. C-46, as amended unless such proceedings arose as a result of the individual's good faith pursuit or performance of the individual's assigned duties;

(c) any expenses incurred by members of council or a local board in obtaining legal advice to determine whether the member has a pecuniary interest in a matter which is the subject of a determination or consideration by Council or a local board as defined herein.

INDEMNIFICATION

3.

(1) The Township shall indemnify an individual in the manner and to the extent provided by Section 4 in respect of any civil, criminal or administrative action or proceeding, including appeals, by a third party for acts or omissions arising out of activities or duties performed or carried out on behalf of the Township that are within the scope of the individual's authority or within the course of the individual's employment or office if:

1. the individual acted honestly and in good faith with a view to the best interests of the Township; and

2. in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that his or her conduct was lawful.

(2) In the event that any determination is required as to whether an individual meets the requirements of this Section, the Township's solicitor shall obtain the advice and assistance of a qualified and independent solicitor, including advice on any terms and conditions that Township's solicitor may apply to the indemnification of an individual.

MANNER AND EXTENT OF INDEMNIFICATION

4. The Township shall indemnify an individual who meets the requirements of Section 3 by:

1. assuming the cost of defending such individual in an action or proceeding;

2. paying any damages or costs, including a monetary penalty, awarded against such individual as a result of an action or proceeding;

3. paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such individual as a result of an action or proceeding; and

4. paying any sum required in connection with the settlement of an action or proceeding.

The indemnification shall apply to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of the Township's insurance program for the benefit and protection of such individual against any liability incurred by such individual.

PERSONS SERVED WITH PROCESS

5. Where an individual is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena, in connection with any action or proceeding, the individual shall forthwith deliver the process or a copy thereof to the Township Clerk and to the Chief Administrative Officer (CAO), who in turn shall deliver a copy thereof to the Township's Solicitor.

SOLICITORS RETAINED BY TOWNSHIP'S INSURERS

6. Notwithstanding any other provision of this By-law to the contrary, any solicitor retained by the Township's insurers from time to time to defend the Township in any action or proceeding shall represent an individual with respect to that action or proceeding unless the Township instructs such individual otherwise.

TOWNSHIP'S RIGHT TO SELECT SOLICITOR

7. Subject to Section 11 and to paragraph 2 of this section, the Township shall have the right to select and retain the solicitor to represent an individual and the Township's Solicitor shall:

1. advise such individual of the solicitor selected to represent the employee; and

2. advise the CAO and Council of the final disposition of the matter.

CONDUCT OF DEFENSE

8. Where possible, the Township's Solicitor shall conduct the defense of such actions or proceedings. In exceptional circumstances the use of the Township's Solicitor may not be possible and, subject to Section 6 and Section 12, outside

legal counsel may be retained having regard to:

1. whether the Township's Solicitor has the required expertise;

2. whether the Township's Solicitor can provide the commitment of time and resources which is required;

3. whether the Township's Solicitor is (are) or may be in a conflict of interest situation by virtue of conducting the defense of the individual.

SETTLEMENT

9. Council shall have the right to approve, as a condition of indemnification by the Township, the settlement of any action or proceeding.

APPROVAL OF OTHER SOLICITOR

10. Subject to the provisions of this by-law, an individual may request approval to be represented by the solicitor of the individual's choice by writing to the Township's Solicitor.

11. The Township's Solicitor shall within 10 days from receiving the request, either approve the request or deny the request and nominate a solicitor of the Township's choice and, in either case, advise the individual in writing of such decision.

12. If, after 10 days from receiving the request, the Township's Solicitor has not advised the individual in writing of the disposition of his or her request, the individual may retain his or her choice of solicitor to act on his or her behalf until the Township retains another solicitor to represent the individual, and shall forthwith so advise the Township's Solicitor in writing of any such retainer.

13. If the Township retains another solicitor to act on behalf of an individual in place of the solicitor originally retained by him or her in accordance with Section 12, the Township shall, subject to the Solicitors Act, R.S.O, 1990, c, S.17, pay to the individual's solicitor all of the reasonable legal fees and disbursements for services rendered and work done in connection with the action or proceeding from the time that the individual retained the solicitor in accordance with Section 12, until replaced by the solicitor retained by the Township.

DUTY TO CO-OPERATE

14. An individual involved in any action or proceeding shall co-operate fully with the Township and any solicitor retained by the Township to defend such action or proceeding, shall make available to such solicitor all information and documentation relevant to the matter as are within his or her knowledge, possession or control, and shall attend at all proceedings when requested to do so by such solicitor.

FAILURE TO COMPLY WITH BY-LAW

15. If an individual fails or refuses to comply with the provisions of this By-law, the Township shall not be liable to assume or pay any of the costs, damages, expenses or sums arising from the action or proceeding and shall not be subject to the requirements of Section 4 of this By-law.

CONFLICT

16. The Township maintains many different policies of insurance for both the Township and members of Council, officers and employees. The provisions of this By-law are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this By-law and the terms of such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

APPEALS

17. Where an individual seeks to appeal a judgment in a covered action or proceeding, the Township shall have the sole discretion to determine whether an appeal should be pursued, and whether the cost of the appeal will be covered by this By-law. If an individual pursues an appeal without representation by the Township and is successful in that appeal, the Township shall have the sole discretion to determine whether the individual shall be indemnified for his or her legal fees.

REPEAL

18. That By-law 2003-021 is hereby repealed.

FORCE AND EFFECT

19. That this By-law shall come into force and effect on the date of passage hereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 21th DAY OF September, 2015.

THE CORPORATION OF THE TOWNSHIP OF SPRINGWATER

[redacted]

Bill French, Mayor

[redacted]

John Daly, Clerk