

THE CORPORATION OF THE TOWNSHIP OF NORTH DUNDAS

BY- LAW NO. 2019-07

Being a By-law to appoint an Integrity Commissioner for a 5-year period commencing March 1, 2019

WHEREAS Section 5(3) of the *Municipal Act, 2001, S. O. 2001, Chapter 25*, as amended, provides that the powers of the Corporation of the Township of North Dundas, shall be exercised by by-law.

AND WHEREAS pursuant to Subsection 223.3 of the *Municipal Act, 2001 (the Act)*, the Township is required to appoint an integrity commissioner.

NOW THEREFORE the Council of the Township of North Dundas hereby enacts as follows:

- 1.0 That Tony Fleming, of Cunningham Swan Carty Little & Bonham LLP be hereby appointed as the Integrity Commissioner for The Corporation of the Township of North Dundas.
- 2.0 That Agreement, attached hereto as Schedule "A" is hereby declared to form part of this by-law.
- 3.0 That the Mayor and Clerk be hereby authorized to sign said Agreement on behalf of the Corporation.
- 4.0 That this by-law shall come into force and take effect on the date of its final passing.

READ and passed in Open Council, signed and sealed this 11th day of February, 2019.

MAYOR

CLERK

SCHEDULE "A"

INTEGRITY COMMISSIONER SERVICES

This Agreement is executed this _____ day of _____, 2019.

BETWEEN: THE CORPORATION OF THE TOWNSHIP OF NORTH DUNDAS
(hereinafter referred to as "the Municipality")

- and -

CUNNINGHAM SWAN CARTY LITTLE & BONHAM LLP

(hereinafter referred to as "the Consultant")

1. WHEREAS, the Municipality is authorized, pursuant to Subsection 223.3 of the *Municipal Act, 2001* (the *Act*), as amended, to appoint an integrity commissioner (the "Integrity Commissioner") who has the function to investigate in an independent and confidential manner, a complaint made to him or her by any person, as to whether a member of council or a member of a local board has complied with the Code of Conduct or other ethics-related policies, rules or procedures, and to report on the investigation;
2. AND WHEREAS, the *Act* has been amended to include additional powers of Integrity Commissioners, effective March 1, 2019;
3. AND WHEREAS, the Municipality intends that the Integrity Commissioner shall exercise all powers available at law once such powers are available, this contract shall empower the Integrity Commissioner to act in accordance with the amendments to the *Act* under the terms of this contract after March 1, 2019 without further amendment to this contract;
4. AND WHEREAS, the Consultant has represented, and the Municipality is satisfied, that the Consultant has the skills and abilities necessary to perform the role of the Integrity Commissioner;
5. AND WHEREAS, the Municipality wishes to retain the Consultant as an independent Integrity Commissioner for the Municipality;
6. NOW THEREFORE, in consideration of the covenants, terms and conditions contained herein, the Municipality and the Consultant agree as follows:

POWERS AND DUTIES

1. The Municipality hereby retains and appoints the Consultant as an Integrity Commissioner for the Municipality and the Consultant accepts such appointment and agrees to carry out the responsibilities of the Integrity Commissioner, as more specifically described in the Statement of Duties and Responsibilities, attached as Schedule "A" to this Agreement, during the term of this Agreement.
2. The Integrity Commissioner shall have all of the powers set out in Section 223.1 to 223.8 of the *Act*, as amended from time to time.

TERM OF AGREEMENT

3. The Consultant's appointment pursuant to this Agreement is effective on March 1st, 2019, and will continue for a period of five (5) years, ending on February 28th, 2024, unless terminated earlier in accordance with this clause:
 - a. The Municipality may be released from the Agreement at any time, with thirty (30) days written notice.
 - b. The Consultant shall provide thirty (30) days written notice to the Municipality of his intention to resign as the Municipality's Integrity Commissioner and his resignation shall only be effective at the expiry of the notice period.

RECORDS

4. All records are the property of the Municipality and the records should be submitted to the Clerk upon termination of the contract.

RENEWAL

5. The Consultant's appointment pursuant to this Agreement may be renewed for a further five (5) years, on the same terms and on the mutual agreement of the Parties.

COMPENSATION

6. The Consultant will not require an annual retainer and will provide services on an as needed basis.
7. The Municipality agrees to pay to the Consultant an hourly fee of Two Hundred and Ninety-Five Dollars (\$295.00) per hour, plus applicable taxes, during such time that the Consultant is actively carrying out his duties pursuant to this Agreement. The

Consultant shall provide the Municipality with a monthly invoice detailing the hours worked and expenses incurred for the period in question and the Municipality agree to pay such invoices within thirty (30) days of the receipt thereof.

8. The Municipality agrees to reimburse the Consultant for all reasonable expenses and disbursements, including mileage, incurred by the Consultant, which are necessary to enable the Consultant to perform his duties pursuant to this Agreement. All such expenses must be supported by appropriate receipts.

CONSULTANT STATUS

9. In performing his duties and responsibilities as Integrity Commissioner pursuant to this Agreement, it is recognized that the Consultant is independent of the Municipality's administration and shall report directly to Council.
10. The Consultant acknowledges that he is an independent contractor and shall not be deemed an employee of the Municipality, for any purpose. The Consultant further acknowledges that, as an independent contractor, he will not be entitled to any employment-related benefit, including such benefits that are applicable to employees of the Municipality.
11. In light of the Consultant's status as an independent contractor, the Municipality shall have no responsibility whatsoever with regard to any income taxes or any other remittances which may be payable by the Consultant on the fees paid under this Agreement. The Municipality assume no obligation or liability as between the Parties to deduct or remit any statutory or government remittances.

CONFIDENTIAL INFORMATION

12. The Consultant acknowledges that the Municipality is an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. Accordingly, the Consultant undertakes not to disclose information subject to the *MFIPPA* except as may be necessary in the proper discharge of his duties and responsibilities pursuant to the terms of this Agreement and in accordance with the *MFIPPA*.
13. This Article shall survive the termination of this Agreement.

DELEGATION

14. The Consultant shall not assign the whole or any part of this Agreement without the prior written consent of the Municipality.

INSURANCE

15. The Consultant shall, at its expense, obtain and keep in force during the term of this Agreement, Comprehensive General Liability Insurance satisfactory to the Municipality, including the following:

Issued on an occurrence basis for an amount of not less than \$2,000,000 per occurrence / \$2,000,000 annual aggregate for any negligent acts or omissions by the vendor relating to its obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal & advertising injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; owners & contractors protective; occurrence property damage; products & completed operations; employees as Additional Insured(s); contingent employers liability; tenants legal liability; cross liability and severability of interest clause.

Such insurance shall not contain a failure to perform exclusion.

The Consultant shall also, at its expense, obtain and keep in force during the term of this Agreement errors and omissions insurance satisfactory to the Municipality in an amount of at least \$5,000,000. The Consultant shall submit insurance documents listing all coverages and amounts as indicated, in a form satisfactory to the Municipality, upon the signing of the Agreement.

WSIB

16. The Contractor is required to submit the Workplace Safety and Insurance Board (WSIB) Clearance Certificate, in a form satisfactory to the Municipality, upon the signing of the Agreement.

INDEMNITY

17. The Municipality hereby agree to indemnify and save harmless the Consultant and his delegates from and against any and all liabilities, losses, expenses, costs (including legal costs), demands, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever arising out of the carrying out by the Consultant and his delegates in good faith of their duties and responsibilities under this Agreement including, but not limited to, any alleged breach of this Agreement, any procedural defect or other breach of the relevant statutory provisions.

The consultant shall indemnify and hold the Municipality harmless from and against any alleged breach of this Agreement, any procedural defect or other breach of the relevant statutory provisions. Further, this indemnity shall hold the Municipality harmless from and against any liability, loss, claims, demands, costs (including

legal costs), damages, suits, judgments, penalties, and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence, acts or omissions whether willful or otherwise by the consultant, their agents, officers, employees or other persons for whom the consultant is legally responsible.

In the event of any dispute with respect to the payment of the invoices, or any other matter in dispute which cannot otherwise be resolved between the Consultant and the affected Municipality, the Consultant and affected Municipality hereby agree to submit the matter to an impartial arbitrator under the *Arbitrations Act*, whose decision shall be final and binding. In the event that a matter is referred to an arbiter under this Article, the affected Municipality and the Consultant agree to equally share the cost of the arbiter and any related expenses.

This Article shall survive termination of this Agreement.

GENERAL PROVISIONS

18. This Agreement shall be governed by and construed exclusively in accordance with the laws of the province of Ontario.
19. If any provision of this Agreement is declared to be void or unenforceable, such provision shall be deemed to be separate from the remainder of this Agreement to the extent of the particular circumstances giving rise to such declaration, and such provision as it applies to other persons and circumstances and the remaining terms and conditions of this Agreement shall remain in full force and effect.
20. This Agreement, along with the attached Schedule(s), constitutes the entire agreement between the Parties and supersedes all previous negotiations, understandings and agreement, whether verbal or written, with respect to any matters referred to in this Agreement.
21. This Agreement shall ensure to the benefit of, and be binding on, the Parties and their successors and assigns.

The Parties have executed this Agreement this ____ day of _____, 2019.

THE MUNICIPALITY

**THE CORPORATION OF THE TOWNSHIP OF
NORTH, DUNDAS**

Tony Fraser, Mayor

Jo-Anne McCaslin, Clerk

CONSULTANT

Cunningham Swan Carty Little & Bonham LLP

"I have the authority to bind the Corporation"

SCHEDULE 'B' STATEMENT OF DUTIES AND RESPONSIBILITIES

The duties of the Integrity Commissioner shall be:

EDUCATION AND ADVICE

1. To provide advice, education, and training on the Council Code of Conduct to Members of Council and those to whom the Code applies, either collectively or individually, for Members of Council;
2. To provide advice, education, and training on the Code of Conduct for Local Boards (if applicable) to the Members of the Local Board and those to whom the Code applies, either collectively or individually, for Members of Local Boards;
3. To provide advice and opinions to Members of Council and those to whom the Code applies, either collectively or individually, with respect to the *Municipal Conflict of Interest Act*, the Code of Conduct and other procedures, rules and policies of the Municipality governing ethical behaviour.
4. To provide advice and opinions to the Chair, Members of Local Boards and those to whom the Code applies, either collectively or individually, with respect to the *Municipal Conflict of Interest Act*, the Code of Conduct and other procedures, rules and policies of the Municipality governing ethical behaviour.
5. To provide educational information to the Municipality and the public about the Municipality's codes of conduct for members of council and members of local boards (if applicable), and about the *Municipal Conflict of Interest Act*.
6. To develop policies and procedures for the Office of the Integrity Commissioner, and to review these on an annual basis.
7. To review the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable) and any related policies and procedures, as required, and to make recommendations for any needed changes in respect thereof;
8. To assist with the creation of a Council-Staff Relations Policy.
9. To assist in confirming the list of applicable local boards of the Municipality.

INVESTIGATIONS

10. In accordance with the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable), other applicable ethics-related policies, rules or procedures and the policies and procedures for conducting investigations, to engage in dispute resolution activities as deemed appropriate in advance of or as part of any investigation.
11. In conducting any investigations under this Agreement, to have regard to the importance of:
 - a. the investigator's independence and impartiality;
 - b. confidentiality with respect to the investigator's activities; and
 - c. the credibility of the investigator's investigative process.
12. To conduct investigations from time to time upon receipt of a request for investigation (a "Request") in respect of complaints and alleged breaches of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable), or other applicable ethics-related policies, rules or

procedures and to provide recommendations based on the outcome of the investigation.

13. To proceed without undue delay and with due diligence to investigate a Request and to report to the Council within a reasonable period of time.
14. To conduct each investigation in private and to not disclose the identity of the complainant to any person/body unless written authorization to do so is obtained from the complainant.
15. To hear or obtain information from such persons as the Integrity Commission thinks fit and to make such inquiries as he/she thinks fit.
16. To provide an opportunity to the affected Municipality or any person that may be adversely affected by a proposed report of the Integrity Commissioner, the opportunity to make representations respecting such report or recommendation.
17. To preserve confidentiality and secrecy with respect to all matters that come to his or her knowledge in the course of performing duties hereunder, save and except disclosure of such matters as in the Integrity Commissioner's opinion ought to be disclosed in order to establish grounds for his/her conclusions and recommendations.
18. After making an investigation into an alleged breach of the Council Code of Conduct, the Integrity Commissioner shall render his/her opinion as to whether or not a member of Council has contravened the Council Code of Conduct and, if so, recommend to the Council of the affected Municipality any appropriate sanction(s) or remedial action(s).
19. After making an investigation into an alleged breach of the Code of Conduct for Local Boards (if applicable), the Integrity Commissioner shall render his/her opinion as to whether or not a member of Council has contravened the Council Code of Conduct and, if so, recommend to the Local Board any appropriate sanction(s) or remedial action(s).
20. After making an investigation into an alleged breach of the *Municipal Conflict of Interest Act*, the Integrity Commissioner shall render an opinion as to whether or not a Member of Council or a Member of a Local Board has contravened the *Act*, and if so whether any sanction or further action is recommended.