



THIS AGREEMENT made as of the 1st day of April, 2022.

B E T W E E N:

THE CORPORATION OF THE TOWN OF PELHAM

("the Town")

– and –

DAVID G. BOGHOSIAN

("the Consultant")

WHEREAS on February 14, 2022, the Town issued Request for Proposal #2022-CS-02 for Integrity Commissioner Services ("the Request for Proposal");

AND WHEREAS on or about March 7, 2022, the Consultant submitted a proposal in response to the Request for Proposal ("the Submission"), which was selected by the Town;

AND WHEREAS the Town and the Consultant wish to enter into an agreement under the authority of subsection 223.3(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("the Act") for the Consultant to provide the services described in the Request for Proposal and the Submission in accordance with the provisions of the Act and upon the terms and conditions contained herein;

NOW THEREFORE in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Consultant (each "a party" and collectively "the parties") agree as follows:

1. AGREEMENT

- 1.1. The Town hereby agrees to retain the Consultant to provide the services described in the Request for Proposal and the Submission ("the Services"), in accordance with the provisions of the Act and upon the terms and conditions contained herein, and the Consultant hereby accepts such retainer.

- 1.2. The Request for Proposal, including any attachments, is appended hereto as Schedule "A" and forms an integral part of this Agreement to the same extent and with the same force as if fully set out herein.
- 1.3. The Submission, including any attachments, is appended hereto as Schedule "B" and forms an integral part of this Agreement to the same extent and with the same force as if fully set out herein.
- 1.4. Unless otherwise specified, all references herein to "this Agreement" shall be deemed to include Schedule "A" and Schedule "B".
- 1.5. In the event of any conflict or inconsistency between the documents that form this Agreement, the documents shall prevail in the following order: (i) this Agreement, including any amendments but excluding Schedule "A" and Schedule "B"; (ii) Schedule "A"; and (iii) Schedule "B".
- 1.6. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, understandings or agreements of the parties, whether oral or written, and there are no representations or other agreements between the parties in connection with the subject matter of this Agreement.

2. TERM

- 2.1. This Agreement comes into effect on April 1, 2022 and shall continue for a period of three (3) years unless it is extended or terminated in accordance with the provisions herein ("the Term").
- 2.2. Upon the agreement of Council for the Town and the Consultant, the Term may be extended by up to two (2) additional terms of one (1) year each on the same terms and conditions as set out herein.

3. SERVICES AND PAYMENT

- 3.1. The Consultant shall provide the Services to the Town during the Term and any extension(s) of the Term in accordance with the terms and conditions of this Agreement and shall at all times comply with the Act and all applicable by-laws, policies and procedures of the Town.
- 3.2. The Town shall provide payment to the Consultant during the Term and any extension(s) of the Term in accordance with the terms and conditions of this Agreement.

- 3.3. The parties acknowledge and agree that the amounts payable by the Town to the Consultant for the Services are as follows:
- i. an hourly rate of \$300.00 plus HST for Services rendered by David G. Boghosian, other than the Services of providing advice to members of Council and Town staff and providing general education sessions;
 - ii. an hourly rate of \$225.00 plus HST for any Services rendered by junior lawyers employed by Boghosian + Allen LLP, which Services shall be provided at the direction of David G. Boghosian;
 - iii. an hourly rate of \$150.00 plus HST for any Services rendered by law clerks employed by Boghosian + Allen LLP, which Services shall be provided at the direction of David G. Boghosian;
 - iv. an annual retainer of \$1,500.00 plus HST for the Services of providing advice to members of Council and Town staff and for general education sessions during the Term and any extension(s) of the Term, which shall be provided by David G. Boghosian and for which no hourly fee shall be charged; and
 - v. disbursements for travel mileage at the reimbursement rate prescribed by the Canada Revenue Agency from time to time, corporate and land title searches, summonses, reasonable hotel and meal expenses to a maximum of \$150.00 per day, and any other expenses incurred on behalf of the Town but excluding photocopies, scanning, postage, binding, facsimile transmission or other office overhead expenses incurred by the Consultant in providing the Services.
- 3.4. The Consultant shall provide the Services on an as-needed basis.
- 3.5. Where the Consultant provides Services for which an hourly rate is payable in accordance with paragraph 3.3, the Consultant shall render an invoice to the Town within thirty (30) days of completing all of the Services required for a particular matter. The invoices shall set out the date(s) and nature of the Services provided and shall provide an itemized list of any disbursements payable under paragraph 3.3 of this Agreement.
- 3.6. The Town shall pay all invoices submitted in accordance with paragraph 3.5 within thirty (30) days of receipt.
- 3.7. The Town shall pay the annual retainer for the first year of the Term upon execution of this Agreement. The Town shall pay the annual retainer for subsequent years of the Term and any extension(s) of the Term on or the first (1st) day of April in each year.
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4. CONFLICT OF INTEREST

- 4.1. The Consultant is appointed under the authority of subsection 223.3(1) of the Act and is responsible for providing the Services in an independent and impartial manner.
- 4.2. The Consultant warrants that neither he nor any of his employees or agents providing Services has any conflict of interest, including but not limited to any financial interest in matters involving the Town, any interest in matters before Town Council or any interest in any work undertaken by the Town.
- 4.3. The Consultant further warrants that during the Term and any extensions of the Term, neither he nor any of his employees or agents providing Services shall have any involvement in political campaigns, endorsements or related matters for any member of Town Council and/or any candidate seeking election to Town Council.

5. INSURANCE

- 5.1. The Consultant shall obtain and maintain a policy or policies of professional liability and errors and omissions insurance in relation to the Services, with limits of not less than two million dollars (\$2,000,000.00) per claim, and shall provide the Town with proof of insurance upon request.

6. REPRESENTATION

- 6.1. The Consultant may identify himself publicly as the Integrity Commissioner appointed by the Town. Notwithstanding the foregoing, the Consultant shall be an independent contractor and nothing in this Agreement shall create or be deemed to create any partnership, agency or joint venture between the Consultant or any employees or agents of the Consultant and the Town.

7. AMENDMENT AND TERMINATION

- 7.1. The parties may revise or amend this Agreement only by mutual agreement. If at any time during the Term or any extension(s) of the Term the parties deem it expedient to make any revision or amendment, they may do so only by way of a written document, signed by the parties, which shall be appended to and form part of this Agreement.
 - 7.2. At any time during the Term or any extensions of the Term, this Agreement may be terminated upon mutual agreement of the parties, which shall be made in writing, signed by the parties and appended to this Agreement.
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- 7.3. Subject to section 8, at any time during the Term or any extension(s) of the Term, either party may terminate this Agreement by providing sixty (60) days' written notice to the other party.
- 7.4. Subject to section 8, either party may terminate this Agreement at any time by notice in writing to the other party:
- i. if the other party commits a material breach of its obligations under this Agreement and fails to remedy the default within thirty (30) days of being required by the non-defaulting party to do so;
 - ii. if the Consultant becomes insolvent, incapacitated or otherwise ceases operation; or
 - iii. if a conflict of interest arises that cannot be resolved in a manner that is satisfactory to both the Town and the Consultant within thirty (30) days after it is identified.
- 7.5. Termination of this Agreement shall be without prejudice to the rights of either party against the other party that may have accrued up to the date of termination.

8. DISPUTE RESOLUTION

- 8.1. If a dispute arises as to the interpretation, application and/or execution of this Agreement, including a party's rights or obligations, an allegation of default and/or an allegation of material breach, the party that disputes the other party's position or conduct shall immediately provide written notice of the dispute to the other party.
- 8.2. Where a notice of dispute is received in accordance with paragraph 8.1, the parties will attempt to resolve the dispute through negotiation for a period of thirty (30) days from the date on which the notice is delivered. The parties may extend the negotiation period if they agree that a reasonable extension is likely to resolve the dispute.
- 8.3. If the parties are unable to resolve a dispute through negotiation, the matter shall be mediated and/or arbitrated. If the matter is not resolved through mediation, it shall proceed to, and be resolved by, arbitration. The decision of the arbitrator shall be final and binding on the parties.
- 8.4. The parties shall bear their own costs associated with the determination of disputes arising under this Agreement, including but not limited to legal costs and arbitration costs.
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9. GENERAL

- 9.1. The Consultant is not permitted to assign this Agreement in whole or in part. However, nothing contained in this Agreement shall preclude the Consultant from delegating his authority in accordance with the Act.
- 9.2. The invalidity or unenforceability of any particular term of this Agreement shall not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms of this Agreement.
- 9.3. Waiver by a party of any provision of this Agreement in one instance shall not constitute a waiver in any other instance and any such waiver by either party must be made in writing.
- 9.4. Any delay or failure on the part of either party to exercise or enforce any right, power or remedy conferred by this Agreement shall not constitute a waiver of the right, power or remedy and shall not operate as a bar to exercising or enforcing it at any subsequent time.
- 9.5. If either party defaults on its obligations under this Agreement, the other party has available to it all rights and remedies provided by law and by this Agreement.
- 9.6. This Agreement will be governed by and construed in accordance with the law of the Province of Ontario and laws of Canada applicable therein.
- 9.7. This Agreement may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email or facsimile transmission.

[signature page follows]



IN WITNESS WHEREOF the parties have executed this Agreement and agree to be bound thereby as of the date first written above.

DAVID G. BOGHOSIAN



Date: April 20, 2022

THE CORPORATION OF THE TOWN OF
PELHAM

By: 

Name: Holly Willford

Title: Town Clerk

By: 

Name: Marvin Dunkin

Title: Mayor

I/We have authority to bind the Corporation.

Date: April 26, 2022