

THIS AGREEMENT FOR PROFESSIONAL SERVICES  
made as of the 4<sup>th</sup> day of February, 2019 (the “Effective Date”)  
(the “Agreement”)

BETWEEN:

**THE TOWN OF PELHAM**  
(hereinafter called the “Town”)

- and -

**ADR CHAMBERS INC.**  
(hereinafter called “ADRC”)

**WHEREAS** the Town would like to retain the services of Edward T. McDermott of ADRC as its Integrity Commissioner under the authority of section 223.3 (1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “Act”) to perform the Services of this position in accordance with the terms of the Act and the provisions of this Agreement;

**AND WHEREAS**, the Regional Municipality of Niagara (the “Region”) solicited, in an Request For Proposals, issued Friday March 24, 2017, the role of Integrity Commissioner on the understanding that the appointed individual would be appointed for both: (a) the Region; and, (b) any interested “Lower Tier Municipalities”;

**NOW THEREFORE**, in consideration of the provision of Integrity Commissioner services to the Town, ADRC and the Town agree as follows:

**Services**

1. As permitted by the Agreement, ADRC agrees to provide Integrity Commissioner services to the Town, wherein Edward T. McDermott (hereinafter the “Commissioner”) shall act as the appointed Integrity Commissioner, in accordance with the authority for such appointment as prescribed in Section 223.3 (1) of the Act, along with other ADRC support persons.
2. ADRC agrees to provide to the Town the deliverables set out in Section A of Appendix D – RFP Particulars (the “Services”) of Niagara Region’s Request for Proposals 2017-RFP-15, issued March 24, 2017 attached hereto as Schedule “A” (the “RFP”). The Services shall be provided in accordance with the terms of the Agreement, the RFP, and the response to the RFP submitted by ADRC attached hereto as Schedule “B” (the “Proposal”). If there

is any contradiction between the Agreement, the RFP, and the Proposal, then the terms of the Agreement shall prevail.

3. Services shall be performed in accordance with the Town's Code of Conduct for Members of Council (the "**Code**"), as amended. A copy of the Town's current Code currently is attached to the Agreement as **Schedule "C"**.
4. The Commissioner is appointed for the purpose of addressing Integrity Commissioner-related complaints made against members of Council, the process for which is outlined in the Town's Code ("**Formal Complaints**"). The Commissioner's jurisdiction over complaints is established only upon ADRC's receipt of a Formal Complaint, which has been sent to ADRC by the Town Clerk. ADRC shall not provide advice, of any kind, to persons who wish to file or are thinking about filing a Formal Complaint to ADRC. ADRC shall not provide advice to any persons who require assistance to initiate the commencement of a Formal Complaint.
5. Any time after the Effective Date, the Town, upon written notice to ADRC, may delete, extend, increase, vary, or otherwise alter: (a) the Code; and, (b) the Services. Except in the case of adding an Optional Service, as contemplated by section 2 of the Agreement, prior to changing the Services, the Town must consult with and seek approval from ADRC. If the scope of Services is materially altered without ADRC's consent, then ADRC may unilaterally terminate the Agreement, which would be effective immediately.
6. (a) Independently, ADRC shall perform the Services to meet the requirements of the Town, as set out in the Code, the RFP, and the Proposal. ADRC shall complete any portion or portions of the Services on a flexible and as-needed basis, as required by the Town. ADRC shall provide a status report to the Town's Council through the Town Clerk from time to time, as required.  
  
(b) In making reports to be delivered to Town Council, ADRC shall use the proper administrative reporting procedures, as directed by the Town Clerk.

### **Term, Termination, and Expiration**

7. (a) Subject to the provisions of this Agreement, the initial Term of this Agreement shall commence on the Effective Date and end on March 31, 2022 (the "**Term**"). The Town shall, in its sole discretion, have the unilateral option to renew for an additional four-year period on the same terms and pricing. This option shall not be impacted by the failure to renew of Niagara Region or of any other Lower Tier Municipality participating in the initial cooperative Request for Proposals for Integrity Commissioner Services.  
  
(b) Upon 30 days written notice to the other party, either party may terminate the Agreement, the Services thereunder, or any portion thereof. If the Town determines or is informed that ADRC has a conflict of interest with respect to the Services, the Town shall ask ADRC to

make arrangements to ensure the Services are provided without a conflict (whether through assignment or otherwise) in a manner satisfactory to the Town. If ADRC is unable to make reasonable and appropriate arrangements, then the Town may terminate this Agreement immediately. Upon receipt of written notice of termination, ADRC shall perform no further Services other than those reasonably necessary to close out ADRC's Services. In such an event, ADRC is entitled to payment for any Services rendered and disbursements incurred.

(c) Should a conflict of interest arise, ADRC shall disclose such conflict to the Town and shall make arrangements to ensure Services are provided without a conflict (whether through assignment or otherwise) in a manner satisfactory to both the Town and ADRC. If unable to address the conflict to the satisfaction of both the Town and ADRC, ADRC may, at any time by notice in writing to the Town, terminate the Agreement. Upon ADRC's delivery of written notice to the Town, ADRC shall not, without the consent of the Town Clerk, perform any further Services other than those reasonably necessary to close out ADRC's Services. In such an event, ADRC is entitled to payment for any Services rendered and disbursements incurred.

(d) Upon any termination of this Agreement, ADRC shall provide to the Town's next Integrity Commissioner all material/documentation related to any investigations underway and such documentation/material shall become the property of the new Integrity Commissioner of the Town. In the event the Town has not contracted the services of a new Integrity Commissioner upon termination of this Agreement, ADRC shall make arrangements with the Town to transfer documentation/material relating to ongoing investigations to the Town Clerk in a manner that satisfies ADRC, in its sole discretion.

(e) Following termination of the Agreement, ADRC shall retain all records and documentation relating to the Services for a retention period of 15 years following termination (TOMRMS Category L04, E+15) (the "**Retention Period**"). Upon the completion of the Retention Period, ADRC shall dispose of records in the manner set out in the Town's Records Retention policy.

### **ADRC Warranties**

8. ADRC warrants that neither ADRC, nor any of its employees or agents providing Services to the Town has any conflicts of interest. Specifically, ADRC warrants that neither the Commissioner, nor any other employee or agent of ADRC providing Services are employed by the Town: have any financial interest in matters involving the Town; have any interest in matters before the Town's Council; or, have any interest in any work undertaken by the Town. ADRC further agrees that neither ADRC, nor its employees or agents involved in providing Services will not have any involvement in political campaigning, endorsements, or related conflicts of interest, with any current member of the Town's Council, Committees, Local Boards, or with any current member of a council, committee or local board of a local municipality within the Town preceding or during the Term of the Agreement. ADRC acknowledges that ADRC and the Commissioner shall be

and always remain impartial and neutral. ADRC warrants that the Services shall be performed professionally and in accordance with the law.

### Compensation

9. (a) On a monthly basis, the Town shall pay ADRC: (i) \$350 per hour (+ HST) for services rendered by the Commissioner; and, (ii) \$275 per hour (+HST) for work of the Commissioner's designates, as well as, administration. In addition the Town shall reimburse ADRC for the following expenses:
- (i) mileage within the Town that is reasonably necessary to perform ADRC's Services at a rate of \$0.50 / km in the Town. The Town agrees that particulars of travel within the Town shall not be disclosed to the Town by ADRC if believed that doing so may compromise confidentiality of a complainant or participant in an investigation;
  - (ii) mileage at a rate of \$0.50/km for reasonable travel to and from the offices of the Town;
  - (iii) reimbursement for other modes of transportation to and from the Town, provided such travel is reasonable. Reimbursement for non-driving modes of transportation are capped at an amount equal to the expense that would be paid for mileage as per section (ii) above;
  - (iv) reasonable accommodation in the Town, provided said accommodation is deemed necessary, and is authorized by the Town Clerk, in advance.
  - (v) a per diem of \$10.00 to cover miscellaneous expenses pertaining to each night of authorized accommodation in the Town, and meals related to such overnight visits will be reimbursed on a receipt basis at rates not to exceed \$12.00/day for breakfast, \$16.00/day for lunch, and \$30.00/day for dinner;
  - (vi) long distance telephone charges, fax expenses, and photocopying.
- (b) The rates set out above are consistent with rates paid to employees of the Town. Such rates will be increased any time the corresponding rates are increased for employees of the Town.
- (c) Should ADRC require a meeting space in the Town during the course of an investigation, the Town shall provide such space in a Town facility on an as needed and as available basis. In arranging for such space, the Town will be mindful of the importance of confidentiality. If the Commissioner, in its sole discretion determines that confidentiality may be compromised in the space provided by the Town, then ADRC may request space in another Town facility.
- (d) With respect to service of summonses or subpoenas, as requested by ADRC, and at the expense of the Town, the Town shall print the Commissioner's reports and will provide documentation of Services provided.
- (e) The Town shall provide public access to the Code through its website. The Town shall also provide information about: the Code; ADRC's and the Commissioner's functions; and,

the complaint process on its website. ADRC's Services do not include development of a website.

(f) If the Town Clerk refuses to authorize any of ADRC's expenses contemplated by the Agreement, ADRC is entitled to appeal directly to the Chief Administrative Officer ("CAO") of the Town.

(g) If the payment of expenses, ADRC feels are necessary for the reasonable performance of the Services, is refused on appeal to the Town's CAO, then ADRC has the option of appealing such decision directly to the Town's Council, and any decision by the Town's Council shall be final and binding on ADRC.

10. Unless such costs are authorized, in writing, by the Town Clerk (in advance), ADRC shall not assume responsibility for, nor seek reimbursement from, the Town for any costs incurred by ADRC not specifically set out in the Agreement.
11. ADRC shall submit an invoice to the Town for all services completed in the immediately preceding month. Interest at the annual rate of 5 percent per annum will be paid on the total outstanding unpaid balance commencing 30 days after the Town has received ADRC's invoice. Any applicable Harmonized Sales Tax shall be added to each monthly invoice as prescribed by law from time to time and shall be paid to ADRC by the Town. ADRC shall provide its HST Registration Number on all invoices to the Town.

### **Insurance and Indemnification**

12. (a) Indemnity, Commercial General Liability Insurance, and Automobile Insurance

ADRC agrees to indemnify and save harmless and shall obtain, maintain, pay for, and provide evidence of insurance and Workplace Safety and Insurance Board Clearance, as required by sections 8.01 to 8.04 of Niagara Region's standard form of Agreement 'Terms and Conditions' found on Niagara Region's website; referenced in the RFP as forming part of the resulting agreement with ADRC and reproduced on Schedule "D" to this Agreement.

- (b) Professional Liability Insurance

ADRC shall obtain, maintain, pay for, and provide evidence of Errors and Omissions insurance with limits of not less than \$2 million (\$2,000,000.00), inclusive per claim, covering services or activities by ADRC and ADRC's agents and employees (inclusive of the Commissioner) that are professional in nature and thereby excluded under the Commercial General Liability Policy. The coverage under the Errors and Omissions policy shall be maintained continuously during the term of this Agreement and for two (2) years after the termination or expiration of this Agreement and shall cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to render the Services. If coverage is cancelled within the two (2) year period after termination or expiration of this Agreement, then ADRC shall provide the Town with notice within

thirty (30) days of Cancellation and shall be required to purchase an extended reporting endorsement to confirm that coverage is maintained.

### **Representation of ADRC**

13. The Commissioner is appointed under authority of subsection 223.3(1) of the Act and, as such, is responsible for performing the Services in an independent manner. The Commissioner may identify himself publicly as the Integrity Commissioner appointed by the Town. ADRC shall be an independent contractor and shall not be considered and shall at no time represent itself or permit any of its employees or agents to represent themselves to be legal counsel, an agent, or an employee of the Town.

### **Confidentiality**

14. The Commissioner is entitled to have access to all books, financial records, electronic data processing records, reports, files, and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.
15. ADRC, the Commissioner, and every person acting under the instructions of either ADRC or the Commissioner shall preserve secrecy with respect to all matters that come to their knowledge in the course of its Services, save and except information that may be disclosed in a criminal proceeding, as required by law or otherwise set out in subsection 223.5(2) of the Act.
16. ADRC shall comply and cause the Commissioner to comply with the confidentiality provisions of the Act and specifically: the requirements set out in sections 223.5, 223.6, 223.7, and 223.8 of the Act; the confidentiality provisions contained in the Form of Terms and Conditions found at [www.niagararegion.ca/business](http://www.niagararegion.ca/business); the requirements set forth in the part titled "Article 6 –Confidentiality", which are incorporated into the Agreement by reference herein; and, the requirements of the Code.
17. Except as may be required by law, ADRC shall not disclose confidential information that was the subject of a closed meeting under section 239 of the Act, or which could create the obvious identification of a person who is subject to an investigation.
18. In the event the Commissioner believes access is required to files and documents for which solicitor client privilege is claimed, then ADRC shall discuss such request with the Town's Legal Counsel. If, in the opinion of the Legal Counsel, such request needs to be approved by the Town's Council, then the direction of Town's Council will be sought by the Legal Counsel.

19. Upon receipt of a Formal Complaint pursuant to the Code, the Commissioner may conduct an informal investigation or may elect to exercise the inquiry powers under sections 33 and 34 of the *Public Inquiries Act*, as contemplated by subsection 223.4(2) of the Act.

### General Conditions

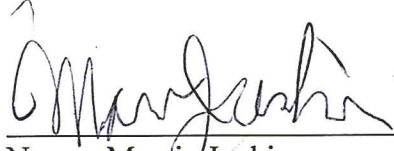
20. Except as set out herein, neither ADRC, nor any person, firm, or corporation associated or affiliated with or subsidiary to ADRC shall have an interest either directly or indirectly with the business of the Town.
21. ADRC is not permitted to assign this Agreement in whole or in part.
22. ADRC recognizes and agrees that the Commissioner has been selected by the Town to perform the Services based on his unique qualifications for the position, combined with the available support systems provided by ADRC as described in the Proposal. In the event of any delegation of the Services by ADRC to an agent, employee, or other person beyond what is expressly set out in the Proposal, ADRC will notify the Town Clerk of the identity of the proposed designate, as well as his or her qualifications, experience, and expertise necessary to perform the Services to the same standard as the Commissioner.
23. Nothing herein shall preclude the Commissioner from delegating his authority to individuals referred to in the proposal or such other individuals who may be agreed to by the Town in accordance with the provisions of the *Municipal Act, 2001*.
24. Powers and Services assigned to ADRC under this Agreement shall apply to ADRC only while in performance of the Services during the Term of this Agreement.
25. This Agreement supersedes all previous agreements, arrangements, or understandings between the parties whether written or oral in connection with or incidental to ADRC's Services.
26. Any dispute, difference or disagreement between the parties hereto in relation to the Agreement may, with the consent of both parties, be referred to arbitration. No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the Services or in the business or other affairs of either the Town or ADRC. The award of the arbitrator shall be final and binding upon the parties. The provisions of *Arbitration Act, 1991*, S.O., 1991, as amended shall apply.
27. The headings used in the Agreement are for convenience of reference only and do not limit or otherwise affect the meaning of the terms, provisions, interpretation, or language of the Agreement.

**IN WITNESS THEREOF** ADRC has set its corporate seal attested by the hands of its duly authorized officers and the Town has affixed its corporate seal attested by the hands of its duly authorized officers on the day and year first above written.

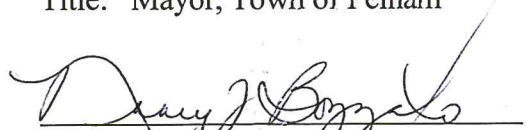
**SIGNED, SEALED AND DELIVERED**

**THE TOWN OF PELHAM**

PER:

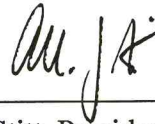


Name: Marvin Junkin  
Title: Mayor, Town of Pelham



Name: Nancy J. Bozzato  
Title: Town Clerk

**ADR CHAMBERS INC.**



Allan Stitt, President  
*I have authority to bind the corporation*