

INVESTIGATOR SERVICES AGREEMENT

This Agreement made this _____ day of _____, 2017

BETWEEN

**The Corporation of the County of Hastings
(the "Municipality")**

-and-

**Local Authority Services
("LAS")**

(each a "Party" and together the "Parties")

RECITALS

WHEREAS effective January 1, 2008, Section 239.1 of the *Municipal Act, 2001*, as amended (the "Act"), will permit a person to request an investigation of whether a municipality or local board has complied with Section 239 of the Act and/or a procedure by-law enacted pursuant to Subsection 238 (2) of the Act in respect of a meeting or part of a meeting that was closed to the public;

AND WHEREAS the investigation of the relevant municipality or local board must be undertaken by an Investigator appointed by the municipality pursuant to Sections 9, 10, 11, and 239.2 of the Act or by an Ombudsman appointed pursuant to the *Ombudsman Act* if the municipality has not appointed an Investigator under the Act;

AND WHEREAS the Municipality deems it desirable that all requests for an investigation be undertaken in the public interest by an appointed independent and impartial investigator (the "Investigator");

AND WHEREAS the Municipality deems it desirable to appoint LAS as the Investigator to investigate all requests received by the Municipality after the date of this agreement pursuant to the Act, respecting any meeting of the Municipality's council, a local board, or a committee of either of them;

AND WHEREAS LAS is dedicated to providing services to Ontario municipalities, and is interested in acting as the Investigator for the Municipality on the terms and conditions set out in this Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Appointment

1. Pursuant to the Act, the Municipality hereby appoints LAS to provide the Investigator Services in accordance with the Act, for all requests for an investigation of the Council and Committees of the Municipality and, the Local Boards, and/or their Committees. For the purposes of this Agreement, "committee" and "local board" shall have the meaning as defined in Section 238 of the Act.
2. Within thirty (30) days of the execution of this Agreement, the Municipality hereby agrees to provide to LAS or its delegate a list of all of the Local Boards and Committees to whom this Agreement applies. The Municipality further agrees to give notice in writing of this Agreement and the appointing by-law to each of the Local Boards and/or Committees affected by this Agreement

Powers

3. The Municipality hereby grants to LAS those powers and duties outlined in Section 239.2 of the Act, and as set out in Schedule "A" to this Agreement.
4. LAS agrees to undertake timely, impartial, and independent investigations and they shall be confidential as required by Section 239.2(5)(b) of the Act.
5. The Parties agree not to disclose any confidential information related to the Services to any party (other than a Party's legal counsel, accountants or other advisors who have a need to know such information and have agreed to keep such terms confidential) except information as agreed to by the parties or to comply with any applicable law. Either Party shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this confidentiality obligation.

Delegation

6. The Parties acknowledge and agree that LAS, pursuant to Section 239.2(6) of the Act, may delegate all of its powers and duties as Investigator to a third party (the "Delegate"). Any and all rights and obligations of LAS under this Agreement shall also be assigned to the Delegate accordingly. LAS agrees to promptly notify the Municipality of the name of the Delegate.

7. Each Party to this Agreement agrees to indemnify and save harmless the other (hereinafter referred to as the "Innocent Party") from and against all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever or which may be incurred, sustained or paid by the Innocent Party in consequence of the defaulting Party's (or their Delegate's) wilful misconduct, negligence, bad faith, non-performance or breach of any of the terms, conditions, representations, warranties, covenants or any provision under this agreement, provided that the Innocent Party shall give prompt written notice of any such liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature, to the defaulting Party. Nothing in this Agreement shall be interpreted as conferring liability on an Innocent Party for the wilful misconduct, gross negligence, or bad faith of the defaulting Party or their Delegate.

Process

8. Upon receipt of a request for an investigation regarding the Meeting, it is agreed that the Clerk of the Municipality shall forthwith forward the following documents to LAS or the Delegate, as appropriate:
- 1) The original request for an investigation;
 - 2) A certified copy of the municipal procedure by-law and, if applicable, the procedure by-law for the Local Board;
 - 3) A certified copy of the municipal notice by-law and, if applicable, the notice by-law for the Local Board;
 - 4) A certified copy of the agenda with all relevant attachments relating to the Meeting;
 - 5) A certified copy of the notice given for the Meeting;
 - 6) A certified copy of the minutes of the Meeting;
 - 7) A contact list for all members of the Council, Local Board or Committee for which the request is made and for all persons present at the Meeting;
 - 8) Such other information or documentation that the Clerk of the Municipality deems relevant; and
 - 9) Such other information or documentation that LAS or the Delegate may from time to time deem relevant to the investigation.

Fees

9. The Municipality agrees to pay fees and expenses of LAS or the Delegate for the Services (the "Fees"):
- 1) A retainer fee of Six Hundred Sixty Dollars (\$660) per term plus applicable taxes, payable upon execution of this Agreement;
 - 2) An hourly investigation fee of Two Hundred Twenty Five Dollars (\$225.00) plus all applicable taxes;

- 3) All legal fees incurred by LAS or the Delegate arising out of a claim made by a third-party regarding this Agreement; and
 - 4) All reasonable expenses incurred during the course of providing the Services, including but not limited to any costs associated with transportation expenses, meals, report preparation including translation costs where appropriate, and out-of-pocket administrative costs.
- 10. The investigation fee shall be billed by LAS or its Delegate, as appropriate.
 - 11. The retainer fee shall be billed by LAS.
 - 12. Any investigation fee submitted by the Delegate shall be deemed to be a debt owed to both LAS and the Delegate until paid in full.

Additional Services Provided by LAS or the Delegate

- 13. LAS agrees to maintain, or cause the Delegate to maintain, a website to which the Municipality shall have access during the Term. The website will include the following features:
 - a. Information and updates on closed meeting procedures;
 - b. The panel of personnel hired by LAS or the Delegate to fulfill the Services, including experience; and
 - c. Access to all reports made by LAS or the Delegate.
- 14. Upon execution of this Agreement by the Parties, LAS agrees to provide the Municipality with an information package including but not limited to: an appointing by-law, educational materials, etc.

Term

- 15. The term of this Agreement shall be two (1) year commencing on the first day of January 2018, or any later day as agreed upon by the Parties, and ending on December 31, 2018 (the "Term").

Renewal

- 16. Subject to Section 15 herein, this Agreement shall automatically renew from year to year unless and until terminated by either Party upon ninety (90) days prior written notice on the same terms and conditions contained herein except that the retainer fee and investigation fee may be adjusted by LAS, in its sole discretion, acting reasonably. LAS agrees to invoice the Municipality for the retainer fee related to the renewal period at least one hundred and twenty (120) days prior to the commencement of the renewal term and the Municipality agrees to pay such invoice at least thirty (30) days prior to the commencement of the renewal term.

Termination

17. This Agreement may be terminated by either Party on ninety (90) days written notice to the other Party provided that any investigations commenced prior to the termination date shall be completed pursuant to this Agreement and the appointing by-law, and all related Fees shall be paid as set out herein.

Dispute Resolution

18. Any controversy, dispute, difference, question or claim arising between the Parties in connection with this Agreement that cannot be resolved by a manager from each Party (collectively, the "Dispute") shall be settled in accordance with this Article.
19. The aggrieved Party shall send the other Party written notice identifying the Dispute, its position on the Dispute and the remedy sought. Upon receipt of such written notice, a senior officer of the other Party shall enter into good faith negotiations with a senior officer of the aggrieved Party to resolve the Dispute.
20. If the Dispute has not been resolved within thirty (30) days after such written notice has been given, either Party may avail itself of any process or means legally available to resolve the Dispute.

Miscellaneous

21. All provisions herein shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
22. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In respect of any provision so determined to be unenforceable or invalid, the Parties agree to negotiate in good faith to replace the unenforceable or invalid provision with a new provision that is enforceable and valid in order to give effect to the business intent of the original provision to the extent permitted by law and in accordance with the intent of this Agreement.
23. This Agreement, including any Schedule attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof. This Agreement shall be read with all changes of gender or number required by the context.
24. No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the Parties and no waiver

of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

25. Each of the Municipality and LAS shall from time to time execute any and all documents and perform such other acts as may be necessary or expedient to further the purposes of this Agreement and the transactions contemplated hereby.
26. Time shall be of the essence of this Agreement.
27. The Municipality and LAS are not and shall not be deemed to be partners or joint venturers with one another and nothing herein shall be construed so as to impose any liability as such on any of them. The Municipality agrees that LAS shall perform its obligations under this Agreement as an independent contractor, and shall not be deemed to be a trustee for any person, whether or not a party to this Agreement, in connection with the discharge by LAS of such obligations.
28. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein.
29. All notices which may be necessary or proper for either Party to serve upon the other shall be served by delivery to the Party to whom the notice is to be given or sent postage pre-paid to the following addresses or by facsimile transmission to the facsimile number set out below.:

To the Municipality:

Facsimile Number:

To LAS:

200 University Avenue, Suite 801
Toronto, Ontario M5H 3C6

Facsimile Number: (416) 971-6191

All such notices shall be conclusively deemed to have been given and received upon the day the same is personally delivered or, if mailed or sent by facsimile as aforesaid, three (3) business days after the same is mailed as aforesaid. Either Party may at any time by notice in writing to the other change its address for service of notice.

30. This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original, and such counterparts together shall constitute but one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

Municipality and LAS have respectively executed and delivered this Agreement as of the date first set out above.

Municipality

Mayor

Clerk

I have authority to bind the corporation

Local Authority Services

Judy Dezell
Director AMO Enterprise Centre, Business
Partnerships and LAS

I have authority to bind the corporation

SCHEDULE "A"

The following are the relevant statutory authorities enacted at the time of execution of this Agreement:

The Municipal Act, 2001, as amended

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation. 2006, c. 32, Sched. A, s. 104.

Powers and duties

(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 104.

Matters to which municipality is to have regard

(3) In appointing an investigator and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

Same, investigator

(4) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

Same

(5) The matters referred to in subsections (3) and (4) are,

- (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. 2006, c. 32, Sched. A, s. 104.

Delegation

(6) An investigator may delegate in writing to any person, other than a member of council, any of the investigator's powers and duties under this Part. 2006, c. 32, Sched. A, s. 104.

Same

(7) An investigator may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 104.

Status

(8) An investigator is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 104.

Application

(9) Subsection 223.13 (6) and sections 223.14 to 223.18 apply with necessary modifications with respect to the exercise of functions described in this section. 2006, c. 32, Sched. A, s. 104.

Report and recommendations

(10) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. 2006, c. 32, Sched. A, s. 104.

Publication of reports

(11) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 104.

Ombudsman

223.13

Powers paramount

(6) The powers conferred on the Ombudsman under this Part may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect of them, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question. 2006, c. 32, Sched. A, s. 98

Investigation

223.14 (1) Every investigation by the Ombudsman shall be conducted in private. 2006, c. 32, Sched. A, s. 98.

Opportunity to make representations

(2) The Ombudsman may hear or obtain information from such persons as he or she thinks fit, and may make such inquiries as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect the municipality, a local board, a municipally-controlled corporation or any other person, the Ombudsman shall give him, her or it an

opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel. 2006, c. 32, Sched. A, s. 98.

Application of Ombudsman Act

(3) Section 19 of the *Ombudsman Act* applies to the exercise of powers and the performance of duties by the Ombudsman under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(4) For the purposes of subsection (3), references in section 19 of the *Ombudsman Act* to “any governmental organization”, “the *Freedom of Information and Protection of Privacy Act*” and “the *Public Service Act*” are deemed to be references to “the municipality, a local board or a municipally-controlled corporation”, “the *Municipal Freedom of Information and Protection of Privacy Act*” and “this Act”, respectively. 2006, c. 32, Sched. A, s. 98.

Note: On the day the Statutes of Ontario, 2006, chapter 35, Schedule C, section 134 comes into force, subsection (4) is amended by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 134 (3) by striking out “the *Public Service Act*” and substituting “the *Public Service of Ontario Act, 2006*”. See: 2006, c. 35, Sched. C, ss. 134 (3), 137 (1).

Duty of confidentiality

223.15 (1) Subject to subsection (2), the Ombudsman and every person acting under the instructions of the Ombudsman shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

Disclosure

(2) The Ombudsman may disclose in any report made by him or her under this Part such matters as in the Ombudsman’s opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations. 2006, c. 32, Sched. A, s. 98.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

D

No review, etc.

223.16 No proceeding of the Ombudsman under this Part shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court. 2006, c. 32, Sched. A, s. 98.

Testimony

223.17 (1) The Ombudsman and any person acting under the instructions of the Ombudsman shall not be called to give evidence in any court, or in any proceedings of a

judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(2) Anything said or any information supplied or any document or thing produced by any person in the course of any investigation by or proceedings before the Ombudsman under this Part is privileged in the same manner as if the inquiry or proceedings were proceedings in a court. 2006, c. 32, Sched. A, s. 98.

Effect on other rights, etc.

223.18 The rights, remedies, powers, duties and procedures established under sections 223.13 to 223.17 are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Part limits or affects any such remedy or right of appeal or objection or procedure. 2006, c. 32, Sched. A, s. 98.

Ombudsman Act, R.S.O. 1990, CHAPTER 0.6

Evidence

19. (1) The Ombudsman may from time to time require any officer, employee or member of any governmental organization who in his or her opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him or her any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person. R.S.O. 1990, c. O.6, s. 19 (1).

Examination under oath

- (2) The Ombudsman may summon before him or her and examine on oath,
- (a) any complainant;
 - (b) any person who is an officer or employee or member of any governmental organization and who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1); or
 - (c) any other person who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath. R.S.O. 1990, c. O.6, s. 19 (2).

Secrecy

(3) Subject to subsection (4), no person who is bound by the provisions of any Act, other than the *Public Service Act*, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure. R.S.O. 1990, c. O.6, s. 19 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 94 (3) by striking out “the *Public Service Act*” and substituting “the *Public Service of Ontario Act, 2006*”. See: 2006, c. 35, Sched. C, ss. 94 (3), 137 (1).

Providing personal information despite privacy Acts

(3.1) A person who is subject to the *Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004* is not prevented by any provisions in those Acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2). 2004, c. 3, Sched. A, s. 94.

Idem

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement. R.S.O. 1990, c. O.6, s. 19 (4).

Privileges

(5) Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things as witnesses have in any court. R.S.O. 1990, c. O.6, s. 19 (5).

Protection

(6) Except on the trial of any person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person. R.S.O. 1990, c. O.6, s. 19 (6).

Right to object to answer

(7) A person giving a statement or answer in the course of any inquiry or proceeding before the Ombudsman shall be informed by the Ombudsman of the right to object to answer any question under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. O.6, s. 19 (7).

Prosecution

(8) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with any requirement of the Ombudsman under this section. R.S.O. 1990, c. O.6, s. 19 (8).

Fees

(9) Where any person is required by the Ombudsman to attend before him or her for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he or she were a witness in the Superior Court of Justice, and the provisions of any Act, regulation or rule in that behalf apply accordingly. R.S.O. 1990, c. O.6, s. 19 (9); 2006, c. 19, Sched. C, s. 1 (1).