

FORM OF CONTRACT

PROFESSIONAL CONSULTING SERVICES AGREEMENT

CONSULTING AGREEMENT

THIS AGREEMENT is made as of the 1st day of January, 2025 (hereinafter, the “Agreement”)

BETWEEN:

THE CORPORATION OF THE COUNTY OF MIDDLESEX

(hereinafter, the “Company”)

OF THE FIRST PART

and

AIRD & BERLIS LLP

(hereinafter, the “Contractor”)

OF THE SECOND PART

WHEREAS, the Company and the Contractor have agreed to engage the Contractor to provide certain prescribed services to the Company for a fixed term as an independent contractor;

AND WHEREAS, the Company and the Contractor wish to set out the terms and conditions under which the Contractor will provide the prescribed services during the term of the engagement;

NOW THEREFORE, in consideration of the terms and conditions described below the sufficiency and receipt of which is hereby acknowledged, the Company and the Contractor agree as follows:

1. Services Engagement

1.1 The Company retains the Contractor as an independent contractor to provide the services relating to an Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman described in Schedules “A” and “B” (defined in Section 2.2) for the charges set out in Article 3.0 hereof, and in accordance with all other terms and conditions of this Agreement. Schedules “A” and “B” are appended to and form part of this Agreement.

1.2 The Contractor shall undertake the Services diligently, in a good, workmanlike and professional manner, in accordance with accepted industry standards, in good faith and in the best interests of the Company. The Contractor shall adhere to all applicable federal, provincial and municipal laws and regulations in the provision of the Services.

1.3 The Company acknowledges and agrees that the Contractor may provide the same or similar services to other parties, provided that the provision of services to other parties does not conflict

with, or in any manner detract from, the Contractor providing the Services or otherwise undertaking its responsibilities under this Agreement.

2. Term and Commitment

2.1 Subject to the provisions for earlier termination as hereinafter provided, the term of this agreement shall begin effective on January 1st, 2025, and continue in effect until December 31st, 2027, at which time the agreement will cease. This contract may be extended up to an additional two (2) years upon mutual agreement between the parties.

2.2 The Contractor shall perform the services required by this Agreement for the Company for Consulting Services for the described work in section 2 of Middlesex County RFP # ADMN-2024-02 during the term of this Agreement (the “Services”).

3. Charges and Payment Terms

3.1 As complete consideration for provision of the Services, the Company shall pay the hourly rates as set out in the Proposal for Consulting Services (Additional Document – Supplemental Pricing Details) for the Services. As a Contractor, the Contractor will not be eligible for any benefits offered by the Company.

3.2 The Contractor will be solely responsible for any of its regular business expenses which are independent of this Agreement, including office rent, utilities, telephone, insurance and other of its ongoing expenses. The Company shall reimburse the Contractor for costs incurred by the Contractor in performing the Services of this Agreement, including costs of travel, meals and accommodation if personal attendance is required.

3.3 Payment shall be made in Canadian currency and payable upon signoff from the County at project completion, within thirty (30) Business Days following receipt of an invoice from the Contractor to the Company prescribing the amount earned and how it was determined. In order to process an invoice, the Company must be provided with the Contractor’s HST registration number.

3.4 The Contractor shall be responsible for any tax on the income of the Contractor. Any taxes levied on such income of the Contractor shall be separately identified on any invoice submitted by the Contractor. The Contractor shall remit all taxes relating to the performance of the Services and shall indemnify and hold the Company harmless for any costs, charges, penalties or other legal liability caused to the Company as a consequence of the non-payment or delay in payment by the Contractor of such taxes.

4. Limitation of Liability

4.1 Save for the gross negligence or willful misconduct of the Company, the Company shall not be liable for any death or injury to the Contractor, its Contractors, or agents, or for any damage or loss to equipment or other material of the Contractor in the course of provision of Services or otherwise arising out of this Agreement.

5. Termination

5.1 This Agreement and the contractor relationship between the parties may be terminated in each of the following circumstances:

- (a) the Company may immediately terminate this Agreement upon giving notice to the Contractor where:
 - i. the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Contractor's insolvency;
 - ii. the Contractor, either prior to or after executing the Agreement, fails to disclose a conflict of interest, makes a material misrepresentation, omission, or provides materially inaccurate information to the Company;
 - iii. the Contractor undergoes a change in control that, in the Company's sole discretion, could adversely affect the Contractor's ability to fulfill any of its obligations under the Agreement;
 - iv. the Contractor assigns the Agreement without first obtaining the written approval of the Company;
 - v. the Contractor's assigned partners, John Mascarin or Meghan Cowan, leave the organization or are no longer assigned to work with the Company;
 - vi. the Contractor's acts or omissions constitute a substantial failure of performance. The above rights of termination are in addition to any other rights of termination available at law, or arising by operation of law.
- (b) Subject to the above, if the Contractor fails to comply with any of its obligations under the Agreement, including fulfilling the Services as defined in RFP # ADMN-2024-02 (*Schedule "A"*), the Company may issue a rectification notice to the Contractor setting out the manner and timeframe for rectification. Within seven (7) business days of receipt of that notice, the Contractor shall either:
 - i. Comply with that rectification notice or;
 - ii. Provide a rectification plan satisfactory to the Company

If the Contractor fails to comply with the rectification notice or fails to provide a satisfactory rectification plan, the Company may immediately terminate the Agreement. Where the Contractor has been given a prior rectification notice, the same subsequent type of non-compliance by the Contractor shall allow the Company to immediately terminate the Agreement.
- (c) at the option of the Company, upon giving written notice to the Contractor, in the event of a material breach by the Contractor of this Agreement or the attached Confidentiality and Proprietary Information Agreement signed by the parties;
- (d) at the option of the Contractor, for convenience, upon the giving of three (3) weeks' prior notice, in writing, to the Company; or
- (e) by mutual agreement of the parties, in writing.

5.2 Termination or cancellation of this Agreement will not affect any rights or duties arising under it with respect to those provisions intended to survive and remain in effect.

6. Confidential Information

6.1 The Company acknowledges that in carrying out the Services, the Contractor is subject to a statutory duty of confidentiality in accordance with the *Municipal Act, 2001*, and that it is entitled to disclose such information as may be necessary in its discretion in order to support its conclusions, recommendations, findings and determinations in carrying out the Services.

6.2 The Contractor acknowledges that in the course of fulfilling its duties hereunder, it may have access to and be entrusted with confidential information, the disclosure of which could be detrimental to the Company that does not relate to information related directly its reporting or advice pertaining to the Services and that the Contractor further agrees that the right to maintain the confidentiality of such information constitutes a proprietary right which the Company is entitled to protect. Accordingly, the Contractor agrees that it will not, during the continuance of this agreement, disclose any such confidential information to any person, firm or corporation, nor shall they use, copy, transfer or destroy same, except in the normal course of work hereunder, and thereafter will not disclose or make use of same. The Contractor agrees to take all reasonable precautions to prevent inadvertent disclosure, use, copying, transfer or destruction of any confidential information.

6.3 The Contractor agrees and acknowledges that confidential information includes but is not limited to: work product whether generated by Contractor or others, internal personnel of the Company, contracts, and all information which becomes known to the Contractor, even if such information is not identified as confidential, if the Contractor knew or ought to have known was confidential. Confidential information does not include the general skills and experience gained during the Agreement which the Contractor could reasonably have been expected to acquire in similar work or that which was publicly known without the breach of this Agreement.

6.4 The Contractor agrees and acknowledges that all documentation containing Confidential Information in the Contractor's possession will be returned to the Company within five days of the termination of the Agreement, or upon request of the Company.

6.5 The Contractor agrees and acknowledges that these obligations regarding Confidential Information remain in effect perpetually and will exist notwithstanding any breach or repudiation or any alleged breach or repudiation of this Agreement by either party. Further, the Contractor agrees and acknowledges that any dissemination of Confidential Information or use of Confidential Information for personal gain will cause the Company irreparable harm that may not be compensated for by damages alone.

6.6 The Contractor acknowledges that any breach or threatened breach of this section by the Contractor will entitle the Company to terminate the Agreement for just cause immediately and without notice, and without compensation in lieu of notice.

7. Personal Information Protection

7.1 The parties acknowledge that in performance of the Services under this Agreement, the Contractor may be provided with or otherwise obtain access to personal information collected, used or disclosed by the Company for business purposes. The Contractor shall not access, use, disclose or otherwise make available any such personal information except as permitted to do so by the Company in undertaking the Services under this Agreement.

8. Recourse on Breach

8.1 The Contractor acknowledges that damages may not be a sufficient remedy for the Contractor's breach or threatened breach of this Agreement. The Contractor agrees that the Company may apply for and obtain any interim relief, including injunctive relief, which relief is in addition to such rights as the Company may have to damages arising from any Contractor breach, or threatened breach, of this Agreement.

9. Indemnification

9.1 The Contractor, at its own expense, will defend and indemnify the Company, its directors, officers, and employees from any third-party claims or actions for loss, damage or liability, including reasonable legal costs, as a result of or in connection with the provision of Services by the Contractor or its breach of this Agreement.

9.2 The Company, acknowledges that the Contractor's services related to the Integrity Commissioner will be indemnified in accordance with subsection 223.3(6) of the *Municipal Act, 2001* and that each of the Services are being provided as an officer or agent of the Company and thus subject to the immunity provisions in section 448 of the *Municipal Act, 2001*. In addition, the Company, at its own expense, will defend and indemnify the Contractor, its directors, officers, or employees from any third-party claims or actions for loss, damage or liability, including reasonable legal costs, as a result of or in connection with the undertaking by the Company of its duties or obligations under this Agreement.

10. Dispute Resolution

10.1 In the event of any dispute arising out of or relating to this Agreement, the parties agree first to engage in prompt and serious good faith discussions to resolve the dispute. If such discussions fail to resolve the dispute within thirty (30) days, the parties shall try to resolve the dispute through mediation. If such mediation fails to resolve the dispute, Consultant and the Company agree that any and all disputes, claims or controversies arising out of or related to this Agreement, including any claims under any statute or regulation, shall be submitted for binding arbitration.

11. Assignment

11.1 This Agreement shall be binding upon the Company, and any successor government into which the Company may hereafter be merged, unified or consolidated. This Agreement may not be assigned by the Contractor.

12. Entire Agreement

12.1 This Agreement, including all attached Schedules, and the particulars contained in the RFP (attached as Schedule "A"), constitutes the entire Agreement between the Contractor and Company, superseding in all respects any prior oral or written agreements or understandings pertaining to the relationship of the Contractor to the Company. This Agreement may not be modified or amended except in writing by the Company with the agreement of the Contractor.

13. Amendment & Waiver

13.1 Any waiver, modification, or cancellation to this agreement must be in writing and signed by the Parties to have any force or effect.

14. Severability

14.1 In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

15. Governing Law

15.1 This Agreement shall be governed by and construed in accordance with the laws applicable in the Province of Ontario.

16. Titles/Headings

16.1 All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

17. Notice

17.1 Any notice required to be given under this agreement shall be delivered personally or by email to the opposite party, or shall be deemed delivered personally four (4) days after depositing in the mail postage prepaid addressed as follows:

To the Company: Marci Ivanic, Legislative Services Manager/Clerk
The Corporation of the County of Middlesex
399 Ridout Street North
London, Ontario, N6A 2P1

To the Contractor: John Mascarin
Aird & Berlis LLP
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

18. Insurance

18.1 A Commercial General Liability (“CGL”) Insurance policy with coverage of not less than five million dollars (\$5,000,000.00) per occurrence for general liability, contractual liability, products & completed operations, bodily and personal injury (including death), damage to property (including loss of use thereof), and automobile insurance for both owned and non-owned vehicles.

18.2 The Consultant shall carry Errors and Omissions coverage for potential errors and omissions arising from the provision of its work in an amount determined to be appropriate by the Municipality, underwritten by an insurer licensed to conduct business in the Province of Ontario. The Errors and Omissions coverage shall be in force for each year of any potential contract and renewed for three (3) years post termination of any potential contract.

19. Independent Legal Advice

19.1 The Contractor acknowledges that he has had the opportunity to obtain independent legal advice before executing this Agreement and acknowledges that he fully understands the nature of this Agreement, which the Contractor voluntarily enters into.

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective as set out at the top of page one (1) of this Agreement.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Date: _____

Marci Ivanic, Legislative Services Manager/Clerk


Date: _____

Aina DeViet, Warden

We have authority to bind the Corporation.

AIRD & BERLIS LLP

Date: October 11, 2024



Name: John Mascarin
Title: Partner

I have authority to bind the firm.