

**MUNICIPAL OMBUDSMAN, CLOSED MEETING INVESTIGATOR AND
INTEGRITY COMMISSIONER AGREEMENT**

MEMORANDUM OF AGREEMENT effective the 1st day of January, 2023.

B E T W E E N:

CORPORATION OF THE COUNTY OF MIDDLESEX
(hereinafter, the “**County**”)

OF THE FIRST PART

- and -

INDEPENDENT RESOLUTIONS INC.
(hereafter referred to as “**Independent Resolutions Inc.**” or the “**Independent Investigator**”)

OF THE SECOND PART

(hereinafter, collectively referred to as the “**Parties**”)

WHEREAS:

- A. Middlesex County issued Request for Proposals (Reference No. ADM 2022-001) to seek out and retain the services of a Municipal Ombudsman, Closed Meeting Investigator, and Integrity Commissioner for the County of Middlesex;
- B. Section 223.13(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (the “*Act*”), authorizes municipalities to appoint an Ombudsman (hereafter, “Municipal Ombudsman”) who reports to municipal council and whose function it is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the appointing municipality, its local boards and specified municipally-controlled corporations;
- C. Section 239.2(1) of the *Act* authorizes a municipality to appoint an investigator (hereafter, Closed Meeting Investigator”) who has the function of investigating in an independent manner upon a complaint made to him or her by any person, whether a municipality or local board has complied with Section 239 of the *Act* or a procedure by-law under subsection 238(2) of the *Act* in respect of a meeting or part of a meeting that was closed to the public, and to report on such investigation;
- D. Section 223.3(1) of the *Act* authorizes a municipality to appoint an Integrity Commissioner (hereafter, “Integrity Commissioner”) who reports to municipal council and who is responsible for performing in an independent manner functions assigned by the municipality with respect to,
 - (a) the application of the code of conduct for members of council, its local boards and/or their committees;
 - (b) the application of procedures, rules and policies governing the ethical behavior of members of council, its local boards and/or committees; or
 - (c) both of clauses (a) and (b).
- E. Sections 223.13(2), 239.2(2) and 223.13(2) of the *Act* provide that a Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner may exercise the powers and perform the duties assigned by the appointing municipality;
- F. Sections 223.13(10), 239.2(8) and 223.4(1) of the *Act* provide that a Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner are not required to be an employee of the appointing municipality;

Initials

- G. Section 223.4(5) of the *Act* does not preclude a municipally-appointed Integrity Commissioner from recommending to municipal council such remedial measures other than those measures listed in 223.4(5) to carry out the objectives of the procedures, rules and policies governing the ethical behavior of members of council and/or local boards, so long as such measures are not penalties and do not constitute offences;
- J. County Council deems it desirable to appoint and/or retain the Independent Resolutions Inc. as its respective Municipal Ombudsman, Closed Meeting Investigator and/or Integrity Commissioner on an as needed basis, who may exercise the powers and perform the duties assigned to it, as set out in this Agreement;
- K. Independent Resolutions Inc. holds out that it has the skills and abilities to act as the Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner for the County and consents to do so in accordance with the terms and conditions set out in this Agreement; and
- K. In appointing the Independent Investigator as Municipal Ombudsman and assigning powers and duties as set out in this Agreement, the County has had regard to the importance of the matters set out in section 223.13(5) of the *Act*, as required by section 223.13(3) of the *Act*.

NOW THEREFORE, in consideration of payment of the sum of ONE DOLLAR (\$1.00) now paid by each Party hereto to the other such Party and the mutual covenants and obligations set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties hereto agree as follows:

1 Interpretation

- 1.1 The above recitals are true and are hereby incorporated into this Agreement by reference.
- 1.2 For the purposes of this Agreement, “**committee**” and “**local board**” shall have the meanings as defined in section 1(1) of the *Act*, as amended or replaced.
- 1.3 For the purposes of this Agreement, “**inquiry(ies)**” shall have the meaning as defined in the *Public Inquiries Act, 2009*, SO 2009, c 33, Sch 6, as amended or replaced.
- 1.4 In this Agreement, “**Communication**” means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a party.

2 Appointment and Powers

- 2.1 Pursuant to the authority vested in sections 223.13(1), 239.2(1) and 223.3(1) of the *Act* and thereby as a statutory officer, the County appoints Independent Resolutions Inc. as its respective Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner (hereafter, collectively referred to as the “**Independent Investigator**”), who may exercise the powers and perform the duties assigned to him below:
 - 2.1.1 In the role of Municipal Ombudsman, the Independent Investigator shall on an as needed basis and upon receipt of a request, investigate and report to Council in an independent manner on any decision or recommendation made or act done or omitted in the course of the administration of the County and its local boards, in accordance with section 223.13(1-2) of the *Act*.
 - 2.1.2 In the role of Closed Meeting Investigator, the Independent Investigator shall on an as needed basis and upon receiving a complaint by any person, investigate in an independent manner, any meeting or part of a meeting of the Municipality and its local boards, that is closed to the public in accordance with section 239.2(1-2) of the *Act*; and
 - 2.1.3 In the role of Integrity Commissioner, the Independent Investigator shall in accordance with sections 223.3(1-2) of the *Act*:
 - (a) upon receiving a request by Council, a member of Council, the CAO-Clerk or a member of the public, conduct inquiries in an independent manner with respect to adherence to the procedures, rules and policies of the County and the County’s local boards, excluding the Middlesex-London Health Unit;

- (b) upon request made by Council, a member of Council or a member of the public, conduct inquiries in an independent manner with respect to the ethical behaviour of Councillors and Members of Council and the Municipality's local boards, excluding the Middlesex-London Health Unit, in accordance with section 223.4 of the *Act*; and
 - (c) following any inquiry conducted pursuant to section 2.1.3(a-b) above, make a report and recommendations to Council or local boards as applicable; and,
 - (d) without limiting that set forth above or herein and in respect of any such applicable inquiry:
 - (i) The Independent Investigator, when conducting an inquiry in accordance with section 2.1.3(b) of this Agreement and section 223.4 of the *Act*, shall treat the procedures, rules and policies of the County and its local boards, excluding the Middlesex-London Health Unit, as part of the code of conduct applicable for the purposes of carrying out inquiries.
 - (ii) Following an inquiry pursuant to 2.1.3(b) herein and section 224.4 of the *Act*, the Independent Investigator may make recommendations to Council and/or local boards, as set out in subsection 223.4(5) of the *Act* and in addition, may recommend to Council and the County's local boards, excluding the Middlesex-London Health Unit, at his or her discretion, such other remedial measures (including but not limited to apologies, return of property, etc.) necessary to carry out the objectives set out in the procedures, rules and policies, so long as such remedies are not penalties and do not constitute offences do not provide that any Councillor or member is guilty of an offence.
- 2.2 In addition to and in furtherance of the appointments and powers provided to the Investigator in section 2.1 above, the County hereby confirms that the Independent Investigator shall have the powers set out in **Schedule "A"** in its role as Ombudsman, the powers set out in **Schedule "B"** in its role as Closed Meeting Investigator, and the powers set out in **Schedule "C"** in its role as Integrity Commissioner.
- 2.3 The County shall provide to the Independent Investigator the following documents for the County and its local boards:
- 2.3.1 A certified copy of the County's procedural by-law;
 - 2.3.2 A certified copy of the County's notice by-law;
 - 2.3.3 A certified copy of the procedures, rules and policies of the County and the County's local boards, excluding the Middlesex-London Health Unit;
 - 2.3.4 A listing of applicable local boards subject to this Agreement; and
 - 2.3.5 A certified copy of the County's Council Code of Conduct.

3 Process and Duties

- 3.1 Every request for an investigation or inquiry of: (a) any decision or recommendation made or act done or omitted in the course of the administration of the County or its local boards, excluding the Middlesex-London Health Unit; (b) any meeting or part of a meeting of the County or its local boards, excluding the Middlesex-London Health Unit, that is closed to the public; (c) adherence to the procedures, rules and policies of the County or its local boards; or (d) the ethical behavior of members of Council or the County's local boards, shall:
- 3.1.1 Be directed to the Independent Investigator;
 - 3.1.2 Be in writing;
 - 3.1.3 Include the reasons for the request;
 - 3.1.4 Be signed; and
 - 3.1.5 Include an address and telephone number of the person making the request or complaint.

Should a request for an investigation or inquiry noted in section 3.1(a)-(d) be received by any other person employed by the County other than the Independent Investigator, that person shall forthwith notify the County CAO and Clerk who shall provide the requesting party with the contact information of the Independent Investigator so that the requesting party may make the request directly to the Independent Investigator.

- 3.2 Upon receipt of a request for investigation or inquiry, the Independent Investigator will be provided immediate access to the following information by the CAO, Clerk or any other Department Head that the Investigator deems appropriate:
- 3.2.1 The original request or complaint;
 - 3.2.2 A contact list for all members of County Council or local board relevant to the request or complaint; and
 - 3.2.3 Such other information or documentation that the Independent Investigator or Independent Investigator's Delegate may from time to time deem relevant to the investigation or inquiry.
- 3.3 The Independent Investigator shall fulfill the following duties:
- 3.3.1 To conduct investigations and inquiries from time to time upon receipt of a request to determine compliance with the *Act*;
 - 3.3.2 To report in writing on such investigations to Council and local boards of the County, as applicable;
 - 3.3.3 To proceed without undue delay and with due diligence to investigate a complaint, and to consider time to be of the essence with any and all investigations or inquiries;
 - 3.3.4 To proceed to investigate a complaint impartially and independently of the County and its local boards;
 - 3.3.5 To hear or obtain information from such persons in accordance with the *Act*;
 - 3.3.6 To preserve the confidentiality of all matters of any investigation or inquiry that require secrecy, save and except disclosure of such matters permitted by the *Act* to establish grounds for report conclusions and/or recommendations;
 - 3.3.7 To properly apply the doctrine of legal privilege, as applicable to Councillors and members of local boards;
 - 3.3.8 If at any time during the course of an investigation or inquiry it appears to the Independent Investigator that there may be sufficient grounds for a report or recommendation that may adversely affect the Municipality, a local board of the Municipality, a Municipal Councillor, a municipally-controlled corporation or any other individual person, the Independent Investigator shall give Council the local board, or the individual an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel;
 - 3.3.9 To draft written report to County Council and/or local board, as applicable, with appropriate recommendations; and
 - 3.3.10 To dismiss complaints that are without merit or deemed to be vexatious and prepare a report confirming the non-meritorious nature of such complaints.
- 3.4 Without limiting and in addition to the duties provided for in section 3.3 above, the County hereby confirms that the Independent Investigator shall be subject to the rules and shall have the duties set out in **Schedule "A"** in its role as Ombudsman, set out in **Schedule "B"** in its role as Closed Meeting Investigator, and set out in **Schedule "C"** in its role as Integrity Commissioner.
- 3.5 Upon receipt by the Municipality or a local board, a report of the Independent Investigator shall be part of the public record.

4 Fees & Disbursements

- 4.1 The County shall pay the Independent Investigator an Annual Retainer in the amount of five thousand dollars (\$5,000.00) plus applicable taxes, in respect of services contemplated by this Agreement.
- 4.2 The County shall pay the Independent Investigator at the hourly rate of two hundred dollars (\$200.00) per hour when the Independent Investigator is actively investigating a complaint and preparing/presenting a report to Council or local board.

4.3 The County shall pay to the Independent Investigator as a reasonable disbursement, three thousand dollars (\$3,000.00) annually as reimbursement to the Independent Investigator for its expenses incurred in retaining a chartered accountant, maintaining its books, and maintaining insurance.

4.4 The County shall reimburse the Independent Investigator, as a reasonable disbursement, its actual expenses incurred in retaining legal opinions that it requires at its discretion in connection with the delivery of its Integrity Commissioner duties to the County, in an amount up to seven thousand, five hundred dollars (\$7,500.00) per year. Any amount above seven thousand, five hundred dollars (\$7,500.00) per year will not be considered a reasonable disbursement.

5 Term of Agreement

5.1 Subject to the termination and amendment provisions of this Agreement (sections 8 and 9), this Agreement shall commence at 12:00 a.m. on January 1, 2023 and expire at 11:59 p.m. on December 31, 2024 (hereinafter be referred to as the **“Initial Term”**).

5.2 The County at its sole discretion, may elect to extend the term of this Agreement by an additional two (2) years following the end of the Initial Term to December 31, 2026, subject to the termination and amendment provisions of this Agreement (sections 8 and 9) (hereinafter referred to as the **“Renewal Option”**) by providing written notice of exercise of the Renewal Option to the Independent Investigator at any time in advance of the expiry of the Initial Term.

5.3 In the event the County does not exercise its Renewal Option in writing as set out in this clause prior to the expiry of the Initial Term, this Agreement shall terminate due to expiry.

5.4 In the event the County exercises its election to use the Renewal Option, at least six (6) months prior to December 31, 2026, the Parties agree to discuss renewal terms. If no agreement is reached prior to December 31, 2026, this Agreement shall terminate due to expiry unless the Parties mutually agree in writing to extend the negotiation period for an sixty (60) days (hereinafter referred to as the **“Extension Period”**). In the event renewal terms have not been agreed to by the Parties at the end of the Extension Period, this Agreement shall terminate immediately on the last day of the Extension Period.

5.5 For the purposes of this Agreement, its **“Term”** shall be considered to run from the commencement of this Agreement on January 1, 2023 through such time that this Agreement is terminated in accordance with a provision of this Agreement.

6 Responsibility, Insurance, Statutory Immunity, and Indemnification

6.1 Throughout the Term of this Agreement, the Independent Investigator shall perform the services under this Agreement with the degree of care, skill and diligence normally provided in the performance of such services at the time such services are rendered and at its own its own expense and risk, subject to clauses 6.3 and 6.4 below.

6.2 Throughout the Term of this Agreement, the Independent Investigator shall secure and maintain in force policies of insurance providing coverage for commercial general liability and errors and omissions to the satisfaction of the County, to be in effect and providing coverage while the Independent Investigator is acting as contemplated by this Agreement and underwritten by an insurer licensed to conduct business in the Province of Ontario. Further, the policies shall include, among others, the following terms:

6.2.1 a limit of liability of not less than \$2,000,000.00 per occurrence;

6.2.2 the County shall be named as an additional insured;

6.2.3 a provision for cross-liability in respect of the named insured;

6.2.4 non-owned automobile coverage with a limit of at least \$1,000,000.00, including contractual non-owned coverage;

6.2.5 products and completed operations coverage (broad form) with an aggregate limit of not less than \$2,000,000.00; and,

- 6.2.6 that thirty (30) days prior notice of an alteration, cancellation, or material change in policy terms, which reduces coverage, shall be given in writing to the County.

Within fifteen (15) days of execution of this Agreement, the Independent Investigator shall provide, and thereafter replace as is required, adequate proof of the said policy or policies of insurance or any renewal or replacement thereof, including but not necessarily limited to a then current Certificate of Insurance or true copy thereof.

- 6.3 The County acknowledges that when the Independent Investigator provides each of the Municipal Ombudsman, Closed Meeting Investigator, Integrity Commissioner, and Independent Investigator functions to the County, the Independent Investigator is a statutory officer pursuant to the *Act*, which can further on its own behalf the applicability of immunity when acting in good faith pursuant section 448 of the *Act*.

- 6.4 In accordance with subsection 223.3(6) of the *Act*, when the Independent Investigator serves in its Integrity Commissioner role for the County, the County agrees to indemnify and save harmless the Independent Investigator:

a) in any defence or response to any report or investigation in a judicial or other investigation, proceeding or hearing (including commercially reasonable defence preparation and legal costs);

b) from any and all costs, claims, demands, suits, actions or judgments brought or recovered against the Independent Investigator in relation to the provision of services by the Independent Investigator in the course of serving as Integrity Commissioner only; and from

c) any costs, claims, demands, suits, actions or judgment brought or recovered against the Independent Investigator by any person, including a member of Council in his or her personal capacity or in their capacity as a member of the Council;

provided that the investigation, proceeding or hearing relates to an act done in good faith in the performance or intended performance of a duty or authority of the Integrity Commissioner or an alleged neglect or default in the performance in good faith by the Integrity Commissioner.

7 Dispute Resolution

- 7.1 Upon written request to resolve any disputes arising from this Agreement that is sent by one party to another, the parties hereby agree to resolve all disputes pursuant to this section. Upon receipt by the receiving party of a written request to resolve disputes, the Parties shall first attempt to resolve all disputes by way of formal negotiation between the Parties and their appointed representatives. If the disputes cannot be settled within thirty (30) days from the receipt of the written request to resolve disputes by the receiving party, then the Parties shall enter into a structured negotiation on a without prejudice basis with the assistance of a mediator appointed by them. If the disputes cannot be settled within ninety (90) days from the receipt of written request to resolve disputes by the receiving party, or such longer period as may be agreed to by the Parties, the Parties shall, refer the matter forthwith to an arbitration which shall finally resolve the dispute(s). The aforementioned arbitration shall be conducted in accordance with the *Ontario Arbitration Act, 1991*, SO 1991, c 17, as amended or replaced.

8 Termination

- 8.1 Notwithstanding any other clause of this Agreement, this Agreement may be terminated by either party upon the provision of ninety (90) days written notice to the other party, provided that any investigations or inquiries commenced prior to the termination date shall be completed pursuant to this Agreement, unless otherwise determined by the County, and all related fees for said investigations or inquiries shall be paid as set out in the Agreement.

9 Amendment

- 9.1 No amendment, discharge, modification, restatement, supplement, or termination of this Agreement is binding unless it is in writing and executed by the Parties.

- 9.2 No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

10 Notices

- 10.1 Any Communication between the Parties must be in writing and either be:

- (a) delivered personally or by courier;
- (b) sent by prepaid registered mail; or
- (c) transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, and

in any such circumstances, all charges (if any) prepaid.

Any Communication must be sent to the intended Party at its address for service listed on the signature pages of this Agreement or to any other address as any party may at any time advise the other by Communication given or made in accordance with this section. Any Communication delivered to a party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that party's address, provided that if that day is not a business day then the Communication will be deemed to have been given or made and received on the next business day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a business day or after 4:00pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next business day.

11 Assignment

- 11.1 The Parties agree that the Independent Investigator shall not assign or alienate, in whole or in part, this Agreement or the power or authority granted hereunder without the prior written approval of the Municipality, which approval may be unreasonably withheld.

12 Entire Agreement

- 12.1 The Parties agree this Agreement, including any Schedule hereto, constitutes the entire agreement and consensus between the Parties as of the date hereof. There are not and shall not be any verbal statements, representations, warranties, undertakings, or other agreements relating to the specific power or authorization contemplated herein as between the Parties.

13 Severability

- 13.1 Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:
- (a) the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
 - (b) the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

14 Governing Law

14.1 This Agreement is governed by and is to be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

15 Electronic Endorsement and Counterparts

15.1 This Agreement may be executed and initialed by the Parties by original or electronic signature and be delivered by the parties in separate counterparts by e-mail or other functionally equivalent electronic means of transmission. Execution and delivery copy of this Agreement as set out above shall be deemed to effectively bind the parties and meets the requirements of the *Electronic Commerce Act 2000*, S.O. 2000, c. 17, as amended or replaced. Each counterpart will be considered an original and each, when held together, shall constitute one and the same instrument.

16 Enurement

16.1 The Parties hereto agree that this Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, and assigns.

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 on the date set out at the top of page one (1) of this Agreement.

CORPORATION OF THE COUNTY OF MIDDLESEX

Date: December 13, 2022

Address for Service:

County Building
399 Ridout Street North
London, ON N6A 2P1

Per: _____
Name: _____
Position: Warden

Per: _____
Name: Marci Ivanic
Position: Clerk

We have authority to bind the Municipal Corporation

INDEPENDENT RESOLUTIONS INC.

Date: November 28, 2022

Address for Service:

Needed

Per: _____
Name: Mark McDonald
Position: President

I have authority to bind the Corporation

SCHEDULE “A”

ADDITIONAL RULES & DUTIES: MUNICIPAL OMBUDSMAN

(by reference to applicable statutory authorities)

Municipal Act, 2001, S.O. 2001, c.25, as amended

Same, Ombudsman

223.13 (4) In carrying out his or her functions under subsection (1), the Ombudsman shall have regard to, among other matters, the importance of the matters listed in subsection (5).

Same

- (5) The matters referred to in subsections (3) and (4) are,
- (a) the Ombudsman's independence and impartiality;
 - (b) confidentiality with respect to the Ombudsman's activities; and
 - (c) the credibility of the Ombudsman's investigative process.

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.

Decisions not reviewable

- (7) Nothing in this Part empowers the Ombudsman to investigate any decision, recommendation, act or omission,
- (a) in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired; or
 - (b) of any person acting as legal adviser to the municipality, a local board or a municipally-controlled corporation or acting as counsel to any of them in relation to any proceedings. 2006, c. 32, Sched. A, s. 98.

Delegation

- (8) The Ombudsman may delegate in writing to any person, other than a member of council, any of the Ombudsman's powers and duties under this Part.

Same

- (9) The Ombudsman may continue to exercise the delegated powers and duties, despite the delegation.

Investigation

223.14 (1) Every investigation by the Ombudsman shall be conducted in private.

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.

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 and, for the purpose, references in section 19 of that Act to “any public sector body” are deemed to be references to “the municipality, a local board or a municipally-controlled corporation”.

(secondary statutory reference set forth immediately below)

Ombudsman Act, R.S.O. 1990, c. O.6, as amended

Evidence

19. (1) *The Ombudsman may from time to time require any officer, employee or member of any public sector body 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.*

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 public sector body 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.

Secrecy

- (3) *Subject to subsection (4), no person who is bound by the provisions of any Act, other than the Public Service of Ontario Act, 2006, the Municipal Act, 2001 or the City of Toronto Act, 2006, as the case may be, 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.*

Providing personal information despite privacy Acts

- (3.1) *A person who is subject to the Freedom of Information and Protection of Privacy Act, the Municipal 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).*

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.*

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.*

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.*

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.*

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.*

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.*

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.

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.

Section prevails

- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

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.

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.

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.

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.

SCHEDULE “B”

ADDITIONAL RULES & DUTIES: CLOSED MEETING INVESTIGATOR

(by reference to applicable statutory authorities)

Municipal Act, 2001, S.O. 2001, c.25, as amended

Meetings open to public

239. (1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
- (a) the security of the property of the municipality or local board;
 - (b) personal matters about an identifiable individual, including municipal or local board employees;
 - (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
 - (d) labour relations or employee negotiations;
 - (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
 - (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.
 - (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
 - (i) a trade secret or scientific, technical, commercial, financial, or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or,
 - (k) a position, plan, procedure, criteria, or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Other criteria

- (3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,
- (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
 - (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).

Educational or training sessions

- (3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:
1. The meeting is held for the purpose of educating or training the members.
 2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Resolution

- (4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,
 - (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
 - (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

Open meeting

- (5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

Exception

- (6) Despite section 244, a meeting may be closed to the public during a vote if,
- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
 - (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.\

Record of meeting

- (7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

Same

- (8) The record required by subsection (7) shall be made by,
- (a) the clerk, in the case of a meeting of council; or
 - (b) the appropriate officer, in the case of a meeting of a local board or committee.

Record may be disclosed

- (9) Clause 6 (1) (b) of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply to a record of a meeting closed under subsection (3.1).

Same, investigator

- 239.2 (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).

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.

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.

Same

- (7) An investigator may continue to exercise the delegated powers and duties, despite the delegation.

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.

(Secondary Statutory Reference Set Forth Immediately Below)

Powers paramount

223.13 (6) *The powers conferred on the Ombudsman under this Part may be 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.*

Investigation

223.14 (1) *Every investigation by the Ombudsman shall be conducted in private.*

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.*

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 and, for the purpose, references in section 19 of that Act to “any public sector body” are deemed to be references to “the municipality, a local board or a municipally-controlled corporation”.*

(further secondary statutory reference set forth immediately below)

Ombudsman Act, R.S.O. 1990, c. O.6, as amended

Evidence

19. (1) *The Ombudsman may from time to time require any officer, employee or member of any public sector body 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.*

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 public sector body 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.

Secrecy

- (3) Subject to subsection (4), no person who is bound by the provisions of any Act, other than the Public Service of Ontario Act, 2006, the Municipal Act, 2001 or the City of Toronto Act, 2006, as the case may be, 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.

Providing personal information despite privacy Acts

- (3.1) A person who is subject to the Freedom of Information and Protection of Privacy Act, the Municipal 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).

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.

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.

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.

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.

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.

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.

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.

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.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

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.

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.

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.

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.

Report and recommendations

239.2 (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.

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.

SCHEDULE “C”

**ADDITIONAL RULES & DUTIES:
INTEGRITY COMMISSIONER**

(by reference to applicable statutory authorities)

Municipal Act, 2001, S.O. 2001, c.25, as amended

Delegation

223.3 (3) The Commissioner may delegate in writing to any person, other than a member of council, any of the Commissioner’s powers and duties under this Part.

Same

(4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation.

Powers on inquiry

223.4 (2) The Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry.

(secondary statutory reference set forth immediately below)

Public Inquiries Act, 2009, SO 2009, c 33, Sch 6, as amended

Definition

33. (1) *In this section,*

“inquiry” includes a determination, examination, hearing, inquiry, investigation, review or other activity to which this section is applicable.

Definition

34. (1) *In this section,*

“inquiry” includes an inquiry or other activity to which this section is applicable.

Application

(2) *This section applies to,*

(c) *an inquiry conducted under subsections 223.4 (2) and 223.12 (2) of the Municipal Act, 2001; and*

Information

(3) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

Same

(4) The Commissioner is entitled to have free access to all books, accounts, 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.

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

Same

- (6) The local board may impose either of the penalties described in subsection (5) on its member if the Commissioner reports to the board that, in his or her opinion, the member has contravened the code of conduct, and if the municipality has not imposed a penalty on the member under subsection (5) in respect of the same contravention.

Duty of confidentiality

- 223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner 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.

Exception

- (2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part.

Section prevails

- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

Report to council

- 223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.

Report about conduct

- (2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

Publication of reports

- (3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public.

Testimony

- 223.7 Neither the Commissioner nor any person acting under the instructions of the Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part.

Reference to appropriate authorities

- 223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council.