

Schedule "A" to By-law 2019-26

This Service Agreement dated this ____ day of _____, 2019.

Between:

The Corporation of the City of Clarence-Rockland

(hereinafter referred to as "Clarence-Rockland")

- and -

John Saywell, Lawyer

(hereinafter referred to as the "Integrity Commissioner")

WHEREAS section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "*Municipal Act*") authorizes Clarence-Rockland to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the responsibilities set out in section 223.3 of the *Municipal Act*;

AND WHEREAS in the process of recruiting an Integrity Commissioner, Clarence-Rockland has had regard to, among other things:

- a. the investigator's independence and impartiality;
- b. confidentiality with respect to the investigator's activities;
- c. the credibility of the investigator's proposed investigative process; and
- d. the benefit of uniformity in the Integrity Commissioner function across the local and regional levels.

AND WHEREAS Clarence-Rockland wishes to retain the services of an independent Integrity Commissioner for Clarence-Rockland;

AND WHEREAS Clarence-Rockland is satisfied that the Integrity Commissioner has the skills and abilities to perform the role of the Integrity Commissioner.

NOW THEREFORE in consideration of the covenants, terms and conditions contained herein, Clarence-Rockland and the Integrity Commissioner agree as follows:

1. Appointment

- 1.1. Clarence-Rockland hereby retains and appoints the Integrity Commissioner as the Integrity Commissioner for Clarence-Rockland and the latter accepts such appointment and agrees to carry out the functions and duties of the Integrity Commissioner in accordance with the *Municipal Act* and By-law 2019-26, as amended, during the term of this Agreement.

2. Functions and Duties

2.1. The functions and duties of the Integrity Commissioner shall be:

- a) conduct inquiries in response to a complaint regarding whether a Member of Council has contravened the Council Code of Conduct, Clarence-Rockland's policies, procedures, protocols and rules relating to the Code of Conduct, or sections 5, 5.1. or 5.2 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50;
- b) determine whether a Member of Council has violated any Clarence-Rockland procedures, rules or policies governing ethical behaviour, and report any violation with any recommendation for sanctions to Council;
- c) at least once per term of Council, prepare and provide oral and written educational information for Members of Council, Clarence-Rockland and the public regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of Members of Council under the Council Code of Conduct and any other procedures, rules or policies governing their ethical behaviour;
- d) upon request, provide advice to individual Members of Council regarding their ethical obligations and responsibilities under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour. This advice can include recommendations on the appropriate course of action where Members of Council seek guidance based on specific factual circumstances;
- e) upon request, provide advice and recommendations to Council regarding amendments to the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour; and
- f) prepare and deliver an annual report to Council containing a summary of activities, if any, during the previous calendar year.

3. Term and Renewal

- 3.1. The term of this Agreement shall commence on March 1, 2019, and shall continue until December 31, 2020, unless terminated prior thereto in accordance with the terms of this Agreement.
- 3.2. The Integrity Commissioner's appointment pursuant to this Agreement may be renewed for a further two (2) years at Clarence-Rockland's sole discretion and on the same terms of this Agreement.

4. Termination

- 4.1. Clarence-Rockland reserves the right to terminate this Agreement at its sole discretion upon providing the Integrity Commissioner with thirty (30) days' written notice.

5. Compensation

- 5.1. Clarence-Rockland agrees to pay the Integrity Commissioner an hourly fee of \$125 per hour, plus applicable taxes, during such time that the Integrity Commissioner is actively carrying out his duties pursuant to this Agreement.
- 5.2. Should the Integrity Commissioner require a meeting space at Clarence-Rockland's offices, Clarence-Rockland's Clerk or Chief Administrative Officer shall make arrangements to provide such space at Clarence-Rockland's offices on an as needed and as available basis. In arranging for such space, Clarence-Rockland will be mindful of the importance of confidentiality. The Integrity Commissioner may request space in an external facility if the space offered at Clarence-Rockland's offices could, in the opinion of the Integrity Commissioner, give rise to confidentiality concerns. If this is the case, the Integrity Commissioner shall make the necessary arrangements to find space in an external facility and obtain approval under section 5.5 of this Agreement before incurring any costs.
- 5.3. Clarence-Rockland shall reimburse the Integrity Commissioner for mileage at the following rate, subject to section 5.4:
 - a) \$0.52 per kilometre
- 5.4. Clarence-Rockland shall reimburse the Integrity Commissioner for mileage when he is required to travel in the course of his duties calculated on the following computation:
 - a) the distance which would have been travelled had the point of origin or departure been the offices of the United Counties of Prescott and Russell in L'Orignal, or
 - b) the actual distance travelled from one point of business to another if this distance is shorter than the distance in a).
- 5.5. The Integrity Commissioner shall not seek reimbursement from Clarence-Rockland for any costs incurred by him, which are not specifically set out in this Agreement, unless such costs are pre-authorized in writing by Clarence-Rockland's Clerk or Chief Administrative Officer.
- 5.6. The Integrity Commissioner shall provide Clarence-Rockland with a monthly invoice detailing the hours worked and expenses incurred for the period in question.
- 5.7. Clarence-Rockland shall pay the amount of any invoice submitted in accordance with this Agreement within thirty (30) days of the date of receipt.

6. Integrity Commissioner's Status

- 6.1. In performing his functions and duties as Integrity Commissioner pursuant to this Agreement, it is recognized that the Integrity Commissioner is independent of Clarence-Rockland's administration and shall report directly to the Council of Clarence-Rockland.
- 6.2. The Integrity Commissioner acknowledges that he is an independent contractor and shall not be deemed an employee of Clarence-Rockland, for any purpose. The Integrity Commissioner further acknowledges that, as an independent contractor, he will not be entitled to any employment-related benefits, including such benefits that are applicable to employees of Clarence-Rockland.
- 6.3. For purposes of the Ontario Municipal Employees' Retirement System (OMERS), the Parties acknowledge that, by virtue of the Integrity Commissioner's status as an independent contractor, he will not be enrolled in OMERS and Clarence-Rockland shall not be required to contribute to OMERS in accordance with the prevailing legislation.
- 6.4. In light of the Integrity Commissioner's status as an independent contractor, Clarence-Rockland shall have no responsibility whatsoever with regard to any income taxes or any other remittances which may be payable by the Integrity Commissioner on the fees paid under this Agreement. Clarence-Rockland assumes no obligation or liability as between the Parties to deduct or remit any statutory or government remittances.

7. Confidential Information

- 7.1. During the term of this Agreement, pursuant to subsection 223.4.1(11) of the *Municipal Act*, the Integrity 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 Clarence-Rockland that the Commissioner believes to be necessary for an inquiry.
- 7.2. The Integrity Commissioner and any delegate under section 9.2 of this Agreement shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of carrying out any of the duties of the Integrity Commissioner under this Agreement, except as required by law in a criminal proceeding or in accordance with section 223.5 of the *Municipal Act*.
- 7.3. The Integrity Commissioner and any delegate under section 9.2 of this Agreement acknowledge that Clarence-Rockland is an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.5 (the "*MFIPPA*"). Accordingly, the Integrity Commissioner and any delegate under section 9.2 of this Agreement undertake not to disclose information subject to the *MFIPPA* except as may be necessary in the proper discharge of his functions and duties pursuant to the terms of this Agreement and in accordance with the *MFIPPA* and the *Municipal Act*.

- 7.4. Pursuant to subsection 223.5(3) of the *Municipal Act*, section 223.5 of the *Municipal Act* prevails over the *MFIPPA*.
- 7.5. The Integrity Commissioner and any delegate under section 9.2 of this Agreement shall comply with Clarence-Rockland's Procedure By-law in terms of personal or privileged information.
- 7.6. A disclosure to the Integrity Commissioner and any delegate under section 9.2 of this Agreement of legal advice:
 - a) shall be used only for the purpose of conducting an inquiry and not for any other purpose; and
 - b) the contents or substance of such legal advice shall not be disclosed in any public report prepared by the Integrity Commissioner or and any delegate under section 9.2 of this Agreement.
- 7.7. Section 7 of this Agreement shall survive the termination of this Agreement.

8. Subcontracting

- 8.1. Subject to any delegation authorized pursuant to section 9.2 of this Agreement, the Integrity Commissioner shall not assign or sublet any portion of his functions and duties as the Integrity Commissioner under this Agreement.

9. Conflicts and Delegation

- 9.1. The Integrity Commissioner shall not have any conflicts of interest that would interfere with carrying out the functions and duties under this Agreement. Without limiting the generality of the foregoing, the Integrity Commissioner specifically acknowledges that he:
 - a) is not an employee of Clarence-Rockland;
 - b) does not have a financial interest in any matters involving Clarence-Rockland;
 - c) does not have an interest in matters before the Council of Clarence-Rockland or in any work undertaken by Clarence-Rockland; and
 - d) does not have and never has had, any involvement in the municipal politics of the Council of Clarence-Rockland.
- 9.2. If the Integrity Commissioner becomes aware of a situation where a conflict of interest could arise, the Integrity Commissioner shall advise Clarence-Rockland's Clerk and Members of Council in writing and delegate in writing his functions and duties to conduct an inquiry, including the exercise of powers under the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, and the duty to report on an inquiry.

- 9.3. In making a delegation under section 9.2 of this Agreement, the Integrity Commissioner shall first satisfy himself that the person to whom the duties are to be delegated is fully capable of carrying out these functions and duties.

10. Indemnification and Insurance

- 10.1. Pursuant to subsection 223.3(6) of the *Municipal Act*, Clarence-Rockland agrees to indemnify and save harmless the Integrity Commissioner or any person acting under his instructions for costs reasonably incurred by either of them in connection with the defense of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority under Part. V.1 – Accountability and Transparency of the *Municipal Act* or a by-law passed under it or an alleged neglect or default in the performance in good faith of the duty or authority.
- 10.2. Subject to the exception stipulated in section 10.1 of this Agreement, the Integrity Commissioner shall indemnify and hold Clarence-Rockland harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions whether willful or otherwise by the Integrity Commissioner, its agents, officers, employees or other persons for whom the Integrity Commissioner is legally responsible.
- 10.3. The Integrity Commissioner shall, at his own expense within 10 days of notification of acceptance and prior to the commencement of work, obtain and maintain until the termination of this Agreement, and provide Clarence-Rockland with evidence of:

a) *Commercial General Liability Insurance*

Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$5,000,000 per occurrence / \$5,000,000, annual aggregate for any negligent acts or omissions by the Integrity Commissioner relating to its obligations under this Agreement. Such insurance shall include, but is not limited to, bodily injury and property damage including loss of use; personal injury and advertising injury; contractual liability; premises, property and operations; non-owned automobile; broad form property damage; owners and contractors protective; occurrence property damage; products and completed operations; employees as Additional Insured(s); contingent employers liability; tenants legal liability; cross liability and severability of interest clause.

Such insurance shall add Clarence-Rockland as Additional Insured subject to a waiver of subrogation with respect to the operations of the Integrity Commissioner. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to Clarence-Rockland.

b) *Automobile Liability Insurance*

Automobile liability insurance with respect to owned or leased vehicles used directly or indirectly in the performance of the services under this Agreement

covering liability for bodily injury, death and damage to property with a limit of not less than \$2,000,000, inclusive for each and every loss.

c) *Professional Liability Insurance*

Professional liability (errors and omissions) insurance coverage shall be obtained for a limit of not less than \$2,000,000. If such insurance is issued on a claim made basis, coverage shall contain a 24 month extended reporting period or be maintained for a period of two (2) years subsequent to the conclusion of services provided under this Agreement.

10.4. The insurance as required under subsection 10.3 of this Agreement shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material is given by the insurers to Clarence-Rockland's Clerk at least thirty (30) clear days before the effective date thereof. Any revisions must be submitted to Clarence-Rockland's Clerk for approval.

10.5. The Integrity Commissioner shall provide evidence of WSIB or its equivalent.

10.6. Any and all deductibles applicable to the above insurance shall be the sole responsibility of the Integrity Commissioner and Clarence-Rockland shall bear no cost towards such deductible.

10.7. The Integrity Commissioner shall be responsible to keep their property / assets insured. Failure to do so shall not impose any liability on Clarence-Rockland.

10.8. Section 10 of this Agreement shall survive the termination of this Agreement.

11. General Provisions

11.1. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and as may be amended from time to time, and shall be treated in all respects as an Ontario contract.

11.2. If any provision of this Agreement is declared to be void or unenforceable, such provision shall be deemed to be separate from the remainder of this Agreement to the extent of the particular circumstances giving rise to such declaration, and such provision as it applies to other persons and circumstances and the remaining terms and conditions of this Agreement shall remain in full force and effect.

11.3. This Agreement constitutes the entire agreement between the Parties and supersedes all previous negotiations, understandings and agreement, whether verbal or written, with respect to any matters referred to in this Agreement.

11.4. This Agreement shall enure to the benefit of, and be binding on, the Parties and their successors and assigns.

11.5. This Agreement may only be changed or amended in writing duly executed by the duly authorized representatives of the Parties.

11.6. This Agreement may be signed in counterparts, each of which is an original, and all of which taken together constitute one single document.

IN WITNESS WHEREOF the Parties have executed this Agreement this ___ day of _____, 2019.

SIGNED, SEALED AND DELIVERED)

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) Per:

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I/We Have the Authority to Bind
the Corporation

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Name: Monique Ouellet, Clerk

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Name: Guy Desjardins, Mayor

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INTEGRITY COMMISSIONER)

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Name: John Saywell, Lawyer

) Position: Integrity Commissioner

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Date signed