

Agreement For Municipal Integrity Commissioner

This Agreement dated this 11th day of February, 2019

BETWEEN:

THE CORPORATION OF THE TOWN OF TILLSONBURG
(hereinafter referred to as the "Town")

- and -

GREGORY F. STEWART
(hereinafter referred to as "Stewart" and or the "Integrity Commissioner")

WHEREAS section 223.3 of the *Municipal Act*, 2001 authorizes the Town to appoint an Integrity Commissioner who reports to Municipal Council and who is responsible for performing in an independent manner the functions assigned by Municipal Council in accordance with the legislation and the Municipal Council approved Terms of Reference;

AND WHEREAS the Town wishes to retain Stewart as its Integrity Commissioner under the authority of the *Municipal Act*, 2001 to perform the duties and responsibilities of that office pursuant to the terms of the legislation and this agreement;

NOW THEREFORE, in consideration of the covenants hereinafter set forth, and other good and valuable consideration, the sufficiency and receipt of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Term – The term of this agreement is for the period commencing January 1, 2019 (the "commencement date") and ending on December 31, 2023 unless subject to prior early termination by either of the parties hereto and/or as otherwise renewed or extended by agreement of the parties.

The Town may at any time, suspend or terminate this Agreement and the duties thereunder or any portion thereof at any time. Upon receipt of such written notice, the Integrity Commissioner shall perform no further duties other than those reasonably necessary to close out the Integrity Commissioner's duties. Notwithstanding the foregoing, the Town shall not terminate or suspend this Agreement while the Integrity Commissioner is engaged in an investigation. In such case, the termination or suspension will not take effect until the Integrity Commissioner has completed the investigation and provided his report to Council.

The Integrity Commissioner shall retain all other records and documentation relating to his or her duties for a period of ten years following termination of this Agreement and then shall dispose of such records in a secure fashion.

Subject to the *Municipal Freedom of Information and Protection of Privacy Act* and subject to any other legislative requirement and the provisions of this Agreement, both during and after the term of this Agreement, the Integrity Commissioner shall not publish or issue any information respecting his duties under this Agreement without the prior written consent of the Town's Council.

2. Services – The Town hereby retains and appoints Stewart as Integrity Commissioner in accordance with the *Municipal Act*, 2001 and Stewart accepts such appointment and agrees to perform the functions of Integrity Commissioner in accordance with this Agreement and as set out in the Council Code of Conduct for Members of Council.

3. Functions – As Integrity Commissioner, Stewart shall perform the functions and have the powers provided for in the Act, including but not limited to the following:

- 3.1. Advisory: Upon proper request, provide written and/or verbal advice to individual members of Council respecting the application of the Code of Conduct for Members of Council and/or any other procedures, rules, and policies relating to and reflecting upon their ethical behavior, including but not limited to general interpretation of the Municipal Conflict of Interest Act (Ontario); and furthermore and when appropriate, provide the full Council with specific and general opinions and advice respecting compliance by elected officials in respect of the provisions of governing statutes, the Code of Conduct and any other applicable procedures, rules, and policies.

The Integrity Commissioner may be requested to provide such advice confidentially to the Member of Council, making the request in respect of specific facts, and in a way in which the Member of Council may rely upon the advice provided. In such circumstances and where the Integrity Commissioner is requested to do so, he may provide advice in a general way to all Members of Council respecting the interpretation of the Code of Conduct.

- 3.2. Compliance Investigation/Determinations: upon receipt of a complaint, the Integrity Commissioner shall assess the validity of the complaint to determine if it is appropriate and within the mandate of the Integrity Commissioner to investigate any alleged contraventions of the Code of Conduct identified in the complaint. Where the Integrity Commissioner has determined that the allegations made would, if substantiated, constitute a breach of the Code of Conduct, the Integrity Commissioner will investigate the alleged breach.
- 3.3. Inquiry under s 223.4 of the Municipal Act, 2001: upon proper request from a member of Council or local board, municipal administration or one or more members of the public and having determined it is appropriate in the circumstances to initiate an inquiry under Subsection 223.4 of the *Municipal Act, 2001*, the Integrity Commissioner will conduct an inquiry and make a determination as to any alleged contravention of the Code of Conduct or applicable procedures, rules and policies by a member of Council and, thereafter, will report to Council the details and results of such inquiry.
- 3.4. Reporting: the Integrity Commissioner shall file an annual report to Municipal Council respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the Town's Integrity Commissioner.
- 3.5. Educational: The Integrity Commissioner shall provide outreach programs to members of Council and local boards and relevant staff on legislation, protocols, and office procedures emphasizing the importance of compliance with a Code of Conduct for public confidence in Municipal Government.
- 3.6. Municipal Conflict of Interest Act: Members of Council are governed by the *Municipal Conflict of Interest Act* and the provisions of that Act take precedence over any authority given to the Integrity Commissioner to receive or investigate complaints regarding alleged contraventions under that Act when a complaint involving the very same matter has been made under that Act. Where a proceeding has been commenced under the *Municipal Conflict of Interest Act*, the Integrity Commissioner shall suspend any investigation being conducted by him or her with respect to the same matter until the proceeding under the *Municipal Conflict of Interest Act* has been completed.

- 3.7. Clarification or Withdrawal: If the Integrity Commissioner is unclear about the substance of a request for advice, or if the Integrity Commissioner is unclear as to whether a request received from a Member of Council is a request for advice or a request for an investigation, then before commencing work on the matter, the Integrity Commissioner will first seek clarification from the Member of Council who referred the matter. Likewise, if as a result of any action taken by the Integrity Commissioner the Member of Council who referred the matter believes the action is not what was intended, then the Member of Council may provide clarification to the Integrity Commissioner or may withdraw his or her request to provide advice or to conduct an investigation, whichever the case may be.
- 3.8. Report to Council: the Integrity Commissioner is responsible for performing the duties set out in this section independently, and shall report directly to Council in respect of all such matters.
- 3.9. Documents: the Integrity Commissioner shall provide electronic copies of any reports to the Town Clerk who shall be responsible for ensuring distribution to the appropriate individuals, except for matters received as fact-specific requests from individual Members of Council, in which case the Integrity Commissioner shall correspond directly with that individual Member of Council.

4. Fees

Hourly Rate - Stewart will be paid a fee of TWO HUNDRED FIFTY DOLLARS PER HOUR (\$250.00/hour), plus applicable taxes, for time devoted to services as Integrity Commissioner.

- 4.1. Expenses – Stewart will be entitled to reimbursement of expenses incurred in relation to performance of duties contemplated by this agreement, including but not limited to food and hotel costs, car rental, railway transportation, and/or mileage charges, all at the respective municipal rates then in effect.
 - 4.2. Legal Advice/Fees – The parties agree that, when necessary, Stewart may arrange for and receive legal assistance and advice to properly perform the duties contemplated by this agreement. The parties agree that, as a direct cost and not as a reimbursable expense, the Town shall pay the cost of such legal assistance and advice.
5. Reviewing Records – If requested by the Town, the Integrity Commissioner shall make available to the Town such time sheets, accounts, records, receipts, vouchers and other documents as the Clerk considers necessary for the purpose of substantiating the Integrity Commissioner's invoices.

The Town may, at any time and from time to time during the term of this Agreement and ten (10) years following its termination or expiry, audit and inspect the Integrity Commissioner's accounts, records, receipts, vouchers, records of accessible customer service training (if applicable), and other similar documents relating to performance of the duties and this Agreement and shall have the right to make copies thereof and take extracts therefrom.

The Integrity Commissioner shall make available to the Town the materials referred to in this section in order that the Town may carry out audits and inspections as provided in this section and shall furnish the Town and its authorized representative with all such information as the Town or such representatives may from time to time require with reference to such materials.

6. Confidentiality – During the term of this Agreement, pursuant to Subsection 223.5 of the *Municipal Act, 2001*, the Integrity Commissioner is entitled to have access to all books, financial records, electronic data, processing records, reports, files and any other papers, things or property belonging to or used by the municipality that the Integrity Commissioner believes to be necessary for an inquiry.

The Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner shall reasonably preserve secrecy with respect to all matters that come to his 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 Subsection 223.5(1) of the *Municipal Act, 2001*.

Where the Integrity Commissioner reports to the Town that in his or her opinion a Member of Council has contravened the Code of Conduct, the Integrity Commissioner may disclose in the report such matters as in the Integrity Commissioner's opinion are necessary, subject to applicable law.

If the Integrity 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 of Canada*, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge has been finally disposed of, and shall report the suspension to Council.

Except as may be required by law, the Integrity Commissioner shall not disclose confidential information that was the subject of a closed meeting under Section 239 of the *Municipal Act, 2001*, or which could identify a person concerned.

Upon receipt of a formal complaint pursuant to the Code of Conduct, and where the Integrity Commissioner determines that the complaint meets the criteria to be investigated, the Integrity Commissioner may elect to conduct an informal investigation or alternatively to exercise the powers of a Commission under Parts I and II of the *Public Inquiries Act*, as contemplated by Subsection 223.4(2) of the Act.

Upon receipt of a formal complaint pursuant to the Code of Conduct, the Integrity Commissioner will first determine whether the complaint is invalid by virtue of the reason that the Integrity Commissioner determines the complaint to be

- a) outside of the jurisdiction of the Integrity Commissioner;
- b) frivolous or vexatious;
- c) made in bad faith or without substance; or
- d) insufficient basis to conduct an investigation, including not relevant to the objectives of the Municipal Act, 2001, the Council Code of Conduct or in the public interest;

Where the Integrity Commissioner so determines, he shall report the nature of the formal complaint and the reason for not investigating to Town Council.

If the Integrity Commissioner is satisfied that a formal complaint regarding a Member of Council does not contain sufficient information to set out in a *prima facie* contravention of the Code of Conduct, the Integrity Commissioner shall stay any inquiry into the complaint. The Integrity Commissioner shall notify the complainant that the matter is stayed and provide an opportunity for the complainant to provide additional information to allow the Integrity Commissioner to determine whether there has been a possible contravention of the Code of Conduct. Where satisfied that the information sets out a *prima facie* contravention of the Code of Conduct, the Integrity Commissioner shall lift the stay and conduct the inquiry and where not satisfied, the Integrity Commissioner shall file a report setting out that decision.

If the Integrity Commissioner is satisfied, after considering the information contained in the complaint and any other relevant information, that a complaint regarding a Member of Council is frivolous, vexatious or not made in good faith, or where the complaint is not within the mandate of the Integrity Commissioner, he shall not conduct an inquiry. Where this becomes apparent in the course of an inquiry, the Integrity Commissioner shall terminate the inquiry and prepare and file a report to Council.

7. General Indemnity

The Town will save harmless and fully indemnify the Integrity Commissioner, both during and following the term of this Agreement, from and against all costs, actions, suits, claims, demands whatsoever incurred in the course of actions

taken within the terms of the duties to be performed by the Integrity Commissioner described herein for any act done in good faith in the performance or intended performance of a duty or authority under the *Municipal Act, 2001* or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority. The Town shall indemnify the Integrity Commissioner by i) assuming the cost of defending the Integrity Commissioner in an action or proceeding; ii) paying any damages or costs awarded against the Integrity Commissioner as a result of an action or proceeding, iii) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by the Integrity Commissioner as a result of an action or proceeding or iv) paying any sum required in connection with the settlement of an action or proceeding, to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of any insurance maintained by the Town or the Integrity Commissioner for the benefit and protection of him against any liability incurred by him. The Town shall have the right to select and retain the lawyer to represent the Integrity Commissioner in circumstances where he seeks indemnity pursuant to this Agreement and shall have the right to approve any settlement of any action or proceeding. Where the Integrity Commissioner is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body in connection with any action or proceeding, he shall deliver a copy of the process forthwith to the Clerk if he is seeking indemnity under this Agreement. The Integrity Commissioner shall cooperate fully with the Town and any lawyer retained by the Town to defend such action or proceeding and shall make available to such lawyer all information and documents relevant to the matter subject to applicable requirements of privilege and confidentiality.

8. Conflict of Interest – The Integrity Commissioner acknowledges and advises that he does not have any conflicts of interest that would interfere with carrying out the duties under this Agreement and that he shall be impartial and neutral and shall perform all duties skillfully, competently, independently and in accordance with all applicable law.

If the Integrity Commissioner becomes aware of a situation where a conflict of interest could arise, the Integrity Commissioner shall:

- 8.1. advise the Clerk immediately in writing of the nature of the conflict;
- 8.2. refrain from conducting any further investigation or providing advice on the matter at issue until further direction is given by the Clerk

9. No Amendment – This Agreement may only be changed or amended in writing duly executed by the duly authorized representatives of both parties.
10. Independent Contractor – Notwithstanding the appointment as a statutory officer, the parties agree and acknowledge that Stewart is a contractor independent of the Town. Nothing within this agreement shall be interpreted to render or create a relationship of employer/employee, partnership, franchise, agency, joint venture or other like arrangement as between Stewart and the Town.
11. Statutory Officer – For purposes of the agreement and solely for the purpose of arranging for errors and omission insurance, the Integrity Commissioner shall be deemed to hold the status of "Statutory Officer" under the Municipal Act.
12. Early Termination – The within agreement may be terminated by either party upon fifteen (15) days' notice by delivery of a written notice of such early termination delivered during the term of this agreement.
13. Notice – Any notice required pursuant to this agreement shall be delivered to the respective parties hereto at the following addresses:

For the Town:

Town Clerk
204-200 Broadway
Tillsonburg, Ontario
N4G 5A7
Attention: Clerk

For Gregory F. Stewart:

Donnelly Murphy Lawyers Professional Corporation
18 The Square
Goderich, Ontario
N7A 3Y7

Any written notice between the parties hereto pursuant to this agreement which specifically excludes any invoice rendered herein, shall be delivered or sent by pre-paid registered mail addressed to the parties at the respective addresses listed above. Notice shall be deemed to have been received on the date on which notice was delivered to the addresses designated or, in the case of mailing, on the fifth day after the date of mailing.

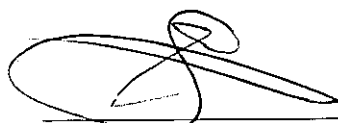
14. Severability – All paragraphs, terms, and conditions of this agreement are severable and the invalidity, illegality or unenforceability of any such paragraph, term, or condition shall be deemed not to affect the validity, legality, or enforceability of the remaining paragraphs, terms and conditions.
15. Complete Agreement – This agreement constitutes the entire agreement between the parties and supersedes all prior agreements, negotiations and discussions, whether oral or written, with respect to the subject matter of this agreement.
16. Enurement – This agreement shall enure to the benefit of and is binding upon the parties hereto and their respective successors, heirs, executors and permitted assigns.
17. Governing Law – This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.
18. Amendments – The Town may in writing at any time after the execution of this Agreement or the commencement of the duties delete, extend, vary or otherwise alter the Code of Conduct and the duties forming the subject of this Agreement. The Town shall consult with the Integrity Commissioner prior to changing the duties. The Integrity Commissioner shall have the option of terminating this Agreement upon giving sixty (60) days notice if the scope of the duties is materially altered without the Integrity Commissioner's consent.

IN WITNESS WHEREOF the Parties have executed this Agreement.

**THE CORPORATION OF THE TOWN
OF TILLSONBURG**

Per: _____
Stephen Molnar, Mayor

Per: _____
Donna Wilson, Town Clerk
We have authority to bind the
Corporation.



GREGORY F. STEWART