

INTEGRITY COMMISSIONER AGREEMENT

THIS AGREEMENT dated the day of ___, 2023

BETWEEN:

THE CORPORATION OF THE TOWN OF MINTO
(hereinafter referred to as the “Municipality”)

- AND-

FASKEN MARTINEAU DUMOULIN LLP
(hereinafter referred to as the “Consultant”)

WHEREAS:

- (A) Section 223.2 of the *Municipal Act, 2001*, as amended (the “Act”) provides that a municipality shall establish codes of conduct for members of the council of the municipality and of its local boards;
- (B) Section 223.3 of the Act authorizes the municipality 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 the following:
 - 1) The application of the code of conduct for members of council and the code of conduct for members of local boards;
 - 2) The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards;
 - 3) The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards;
 - 4) Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member;
 - 5) Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members;
 - 6) Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*;
 - 7) The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality’s codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*;

- (C) The Municipality is satisfied that the Consultant has the skills and ability to meet the foregoing criteria and deems it desirable to appoint Guy Giorno (“Giorno”), a partner in the Consultant, as the Integrity Commissioner to provide the services of “Integrity Commissioner of the Town of Minto”, in accordance with Section 223.3 of the *Municipal Act*, and to investigate requests pursuant to the Act respecting alleged contraventions of the Municipality’s Code of Conduct for Members of Council and of the *Municipal Conflict of Interest Act*;

NOW THEREFORE, the parties agree as follows:

1. Services: The Municipality hereby appoints Giorno as Integrity Commissioner and retains the Consultant to provide Integrity Commissioner services for the purposes of the new Section 223.3 of the *Act* and the Consultant agrees to provide such services for and at the request of the Municipality and accepts such retainer. The parties acknowledge that the Municipality has appointed Giorno as Integrity Commissioner and that, unless the Municipality by resolution approves, the Consultant has no right to replace him.
2. Duties: The duties of the Consultant shall be to perform in an independent manner any functions assigned by the municipality with respect to any or all of the areas identified in Recital B above in accordance with the provisions of the Act. In performing such duties, the Consultant shall have the powers and be subject to the obligations set out in Sections 223.3 through 223.8 of the *Act*. While the requirements of the Act must at all times be satisfied and upheld, Giorno undertakes to discharge his functions in a manner that is reasonable and efficient and that avoids duplication and unnecessary cost.
3. Fees:
Hourly Rate: The Consultant shall be paid a fee of THREE HUNDRED TWENTY-FIVE DOLLARS (\$325.00) per hour plus applicable taxes during such time as Giorno is providing services as Integrity Commissioner under this Agreement, and a fee of TWO HUNDRED TWENTY-FIVE DOLLARS (\$225.00) per hour plus applicable taxes during such time as any junior lawyer or other professional employee of the Consultant is performing research, conducting interviews, or providing other services under this Agreement. Travel time is to be charged at half the applicable hourly rate. Provided always that if the Consultant is providing services as Legal Counsel in court proceedings, the Consultant’s hourly rate to be negotiated between the parties will apply. The Consultant agrees such rate shall be charged only for such time that the Consultant is actively providing services and preparing and presenting the Integrity Commissioner’s report with respect thereto. The Consultant would be entitled to be reimbursed other reasonable receipted expenses related to their duties, including food, hotel and travel costs, subject to any applicable travel policy or expense policy of the Municipality and subject to providing receipts if the Municipality requests. It is understood that, unless the Council requests otherwise, the Integrity Commissioner appearances before Council will be by electronic participation.
4. Term: The term of this Agreement (the “Term”) is for a four (4) year term commencing March 1, 2023, and ending on the fourth anniversary date thereof unless renewed and/or extended by agreement of all the parties. The Consultant or the Municipality shall give at

least 30 days written notice prior to the end of the Term of the intent not to renew this Agreement if such renewal were to be available.

5. Termination: Either party, without liability, cost or penalty may terminate this Agreement for any reason and at any time without penalty upon giving (30) days' written notice.
6. Taxes: All amounts payable to the Consultant shall be paid without deduction. The Consultant shall be responsible for any contributions imposed or required under employment insurance, health tax, social insurance, income tax laws, Worker's Compensation (if elected to enrol), pension with respect to any amounts paid to the Consultant. The Municipality assumes no obligation or liability as between the parties to this Agreement to deduct or remit any statutory or government remittances.
7. Independent Contractor: The Consultant is a contractor independent of the Municipality. Nothing herein shall be interpreted to create a relationship of employer/employee, partnership, franchise, agency or joint venture or other like arrangement.
8. Delegation:
 - a. Delegation inside the Consultant: In the event more than one investigation is required at any one time, Giorno may determine that it is necessary to delegate some or all of his powers and duties, then he may do so in writing to any person employed by the Consultant. Such person shall always be under the supervision and direction of Giorno. Such delegation shall not be a member of council or staff of any Municipality and shall not result in any additional costs or fees to the Municipality. Invoices shall be rendered by the Consultant and payments made to the Consultant and the Consultant shall otherwise be responsible for the fees and disbursements of any of his delegates.
 - b. Delegation outside the Consultant: If due to recusal to avoid a perceived conflict of interest or for other reasonable cause for recusal, Giorno delegates powers or duties to an individual who does not belong to Consultant then Giorno shall make best efforts to identify a delegate who will agree to discharge the powers or duties for the fees set out in section 3 of this Agreement and agree in writing to accept the terms and conditions of this Agreement. Consistent with the recusal, such delegate shall report directly to the Municipality and Council and invoice the Municipality directly.
 - c. Approval: Consistent with the statutory independence of the Integrity Commissioner, for a delegation under subsection 223.3(3) of the *Municipal Act* the Municipality's approval is not required.
9. Confidentiality: The Consultant shall at all times be responsible for keeping confidential, any files, data and other forms of information belonging to the Municipality that is encountered while fulfilling work within this Agreement. The Consultant shall take all necessary measures to guard any such information to ensure that it is kept secure at all times. The foregoing obligations shall not apply to information which (i) shall have otherwise become publicly available other than as a result of disclosure by the Consultant in breach hereof, (ii) was disclosed to the Consultant on a non-confidential basis from a source other than the Municipality, which is not prohibited from disclosing such

information as a result of an obligation in favor of the Municipality, (iii) is developed by the Consultant independently of, or was known by the Consultant prior to, any disclosure of such information made by the Municipality, or (iv) is disclosed with the written consent of the Municipality.

A receiving party also may disclose confidential information to the extent required by an order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or other administrative or legal process, or by applicable regulatory or professional standards, or in connection with any judicial or other proceeding involving the Consultant and the Municipality relating to the Consultant's services for the Municipality or this Agreement.

Should it be necessary to remove information, or systems which contain information, from Town premises, the Consultant will take additional precautions during transportation and at the Consultant's premises to make certain that the information is not accessed by or transmitted to a third party, either directly or indirectly. The Consultant, employees of the Consultant and shall not view information contained on any system that is not absolutely necessary in order to complete the task assigned. Further they shall not copy, share or transmit any of the Municipality's information, without seeking the written consent of the Municipality.

This clause shall not limit the right of the Municipality or other party to seek remedy via any municipal, provincial or federal legislation guarding against the release of private or sensitive information.

10. Transparency: The Municipality shall make Giorno's reports to Council publicly available and easily accessible on its Website. The Municipality shall also post Giorno's contact information on the same section of its Website.
11. Legal Services, Independence and Conflict of Interest
 - a. The parties confirm that the services covered by this agreement, except as lawfully delegated under subsection 223.3(3) of the *Municipal Act*, will be provided by the Consultant through Giorno in his capacity as a lawyer and other professionals within the Consultant working under his supervision.
 - b. The Consultant and Giorno will, inside the Consultant law firm, create a "confidentiality wall" so that only those professionals within the firm working the Municipality's Integrity Commissioner files have access to such information related to the Municipality.
 - c. The Municipality confirms, agrees and consents that the appointment of Giorno and this Agreement with the Consultant and does not prohibit Giorno from acting as Integrity Commissioner for other municipalities
 - d. The Municipality understands, agrees and confirms that Giorno is not the Municipality's lawyer and the Consultant is not the Municipality's law firm.
 - e. The Municipality understands that an Integrity Commissioner must exercise functions independently of the Municipality and of Council. Giorno is appointed

and the Consultant is engaged only to provide integrity commissioner services under the *Municipal Act* and the Code of Conduct. The Municipality understands and accepts the Giorno and the Consultant do not represent the Municipality or the Council, and Giorno and the Consultant do not represent and do not advance the interests of the Municipality and the Council.

- f. The Municipality confirms, agrees and consents that the appointment of Giorno and this Agreement with Consultant do not prohibit the Consultant from accepting from another client a mandate that is adverse to the interests of the Municipality, provided that all of the following conditions are satisfied: Giorno does not act in the other mandate; no one else providing services under this agreement acts in the other mandate; the other mandate is unrelated to Integrity Commissioner services; and Consultant possesses no confidential information obtained in the course of providing services under this Agreement that is relevant to the other mandate.
 - g. A mandate that satisfies the conditions in paragraph f, above, does not constitute a conflict of interest, either actual or potential, and does not require notice to the Municipality or provide cause to terminate the appointment or this agreement.
12. Binding: This Agreement shall enure to the benefit of and bind the parties and their respective heirs, successors and permitted assigns. Despite the preceding sentence, it is understood that the appointment of an individual as Integrity Commissioner does not survive the individual's death or incapacity.
13. Indemnification: The Municipality agrees to indemnify and save harmless the Consultant, its agents and assigns, from and against any and all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever arising out of or in connection with the Consultant's provision of services and carrying out of its duties including, but not limited to, any alleged breach of this agreement, any procedural defect or other breach of relevant statutory provisions.
14. Applicable Laws: This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario.
15. Entire Agreement: This Agreement contains the entire agreement between the parties and supersedes all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this agreement.
16. Notices: Any notice required to be given by the parties to each other under this Agreement will be sufficiently given if delivered or if sent by prepaid registered mail as follows:
- The Municipality: The Corporation of the Town of Minto
 5941 Highway 89
 Harriston, ON N0G 1Z0
- The Consultant: Fasken Martineau DuMoulin LLP
 333 Bay Street, Suite 2400
 Toronto, ON M5H 2T6

or to such other address as any of them may indicate in writing.

Any notice given hereunder by prepaid registered mail will be deemed to have been received on the 5th day after depositing such notice with a post office.

17. Assignment: A party shall not assign this Agreement without the prior written consent of the other parties, which consent may be withheld in their absolute discretion. A delegation of powers or duties by Giorno under the *Municipal Act* does not constitute an assignment of this Agreement.
18. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by receiving fax machine as original signatures of the parties.

IN WITNESS HEREOF each of the parties hereto have set its hand and seal as of this _____ day of _____, 2023.

THE CORPORATION OF THE TOWN OF
MINTO

Dave Turton, Mayor

Annilene McRobb, Clerk

The Consultant hereby accepts and agrees to the terms and conditions herein contained.

DATED: _____, 2023

FASKEN MARTINEAU DuMOULIN LLP

WITNESS:

Guy Giorno, Partner