

Dated as of this th day of , 2019.

Between:

The Corporation of the Town Fort Frances

(the "Municipality")

- and -

Paul S. Heayn

(the "Integrity Commissioner")

WHEREAS effective March 1, 2019, Subsection 223.3 (1) of the *Municipal Act, 2001* authorizes a 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:

- 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. 2017,

WHEREAS in appointing an Integrity Commissioner and in assigning powers and duties to him or her, a municipality is to have regard to, among other things:

- (a) the Integrity Commissioner's independence and impartiality;
- (b) confidentiality with respect to the Integrity Commissioner's activities; and
- (c) the credibility of the Integrity Commissioner's investigative process.

WHEREAS the Municipality is satisfied that the Integrity Commissioner has the skills and ability to meet these criteria.

NOW THEREFORE BE IT RESOLVED THAT this Agreement is entered in consideration of payment of the Retainer by the Municipality to the Integrity Commissioner, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged.

A. DEFINITIONS

Agreement means this agreement, including its recitals, which form integral parts of it, as amended from time to time.

Complaint means a bona fide Complaint received by the Municipality or by the Integrity

Commissioner from a member of the public with the right to make the Complaint in regard to the application of the Code of Conduct for Members of Council or the application of any procedures, rules and policies of the Municipality governing the ethical behaviour of Members of Council.

Dispute means any controversy, difference, question or claim arising between the Parties in connection with this Agreement.

Expenses means any out-of-pocket sums paid or incurred by the Integrity Commissioner during the course of investigation of a Complaint. Examples include: travel, lodging, meals, photocopying, telephone, facsimile, document binding, mileage, etc. Mileage shall be charged from Dryden to Fort Frances and return at a rate per kilometre travelled in accordance with the Town of Fort Frances Travel Policy.

Fees means the sum of fifty (\$50.00) dollars per hour paid to the Integrity Commissioner for the Services rendered by the Integrity Commissioner with respect to the Complaint.

Integrity Commissioner means Paul S. Heayn, an individual carrying on business under the name and style "P.S. Heayn Municipal Consultant".

Municipality means The Corporation of the Town of Fort Frances

Parties means the Municipality and the Integrity Commissioner.

Retainer means the sum of five hundred (\$500.00) dollars per annum.

Services means the conduct of investigations from time to time on behalf of the Municipality who has received a Complaint, to determine whether or not the Complaint has merit, and to report to the Municipality on the outcome of the investigation.

B. TERM OF AGREEMENT

1. **Term:** The parties agree that the Term of this Agreement will be from March 1, 2019 to December 31, 2022.
2. **Termination without Cause:** Any Party may terminate its participation in this Agreement with thirty (30) days' written notice to the other Party. Termination mid-year does not give the Municipality the right to a refund or partial refund of the Retainer or any Fees or Expenses paid to the Integrity Commissioner. Upon receiving notice of termination, the Integrity Commissioner shall cease any ongoing work and shall issue an invoice to the Municipality for all Fees and Expenses to the date of termination.
3. **Termination for Cause:** If the Municipality is dissatisfied with the Services provided by the Integrity Commissioner, the Municipality shall provide the Integrity Commissioner with written notice stipulating the nature of its concern and request that the Integrity Commissioner rectify any default noted. If the default complained of by the Municipality is not rectified to the Municipality's satisfaction, it may withdraw from participation in this Agreement by providing written notice to the Integrity Commissioner.

If the Integrity Commissioner considers the Municipality to be in breach of its obligations under the terms and conditions of this Agreement, he shall provide the Municipality with written notice stipulating the nature of his concern and requesting that the Municipality rectify any default noted. In any event, if the default complained of by the Integrity Commissioner is not rectified to his satisfaction, the Integrity Commissioner may withdraw his Services from the Municipality by providing thirty (30) days' written notice to the Municipality. After passage of the thirty (30) days, absent agreement or court or tribunal order otherwise, this Agreement shall be considered to have been terminated insofar as the Integrity Commissioner and Municipality are concerned. The Integrity Commissioner acknowledges and agrees that notice under this Section cannot be given during the course of an ongoing investigation into a Complaint, but may

only be given after completion of his report with respect to a Complaint.

C. SERVICES

Appointment: The Municipality retains and appoints the Integrity Commissioner as an Integrity Commissioner for the purposes of Subsection 223.3 (1) of the *Municipal Act, 2001*. The Integrity Commissioner agrees to provide the Services for, and at the request of, the Municipality, and accepts the appointment. In performing such duties, the Integrity Commissioner shall have the powers set out in the *Municipal Act, 2001* under Section 223.3 to Section 223.8.

- 1) **Integrity Commissioner's Duties with Respect to Services:** In providing the Services, the Integrity Commissioner agrees that he shall:
 - (a) follow the procedures outlined in the Integrity Commissioner Inquiry Protocol (Schedule A to By-law xx~19 Code of Conduct);
 - (b) have regard to the importance of the matters listed in the second recital of this Agreement;
 - (c) proceed without undue delay and with due diligence to investigate a Complaint;
 - (d) conduct each investigation in private and in accordance with law;
 - (e) hear or obtain information from such persons as the Integrity Commissioner thinks fit and to make such inquiries as he thinks fit;
 - (f) provide an opportunity to the Members of Council as well as any other person that may be adversely affected by a proposed report of the Integrity Commissioner, an opportunity to make representations respecting the report or recommendation; and
 - (g) preserve confidentiality and secrecy with respect to all matters that come to his or her knowledge in the course of performing duties under the terms of this Agreement, save and except disclosure of such matters as in the Integrity Commissioner's opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.
 - (h) To provide written and oral advice to individual Members of Council about their own situation under the Code of Conduct and other procedures, rules and policies governing the ethical behavior of Members, which advice shall be binding on the Integrity Commissioner.
 - (i) To conduct inquiries within the discretion of the Integrity Commissioner, into a request made by Council, a member of Council, or the General Public into whether a member of Council has contravened any applicable Code of Conduct, procedures, rules and policies governing the ethical behavior of Council Members.
 - (j) To determine whether a member of Council has violated the Municipality's procedure, rules and policies governing ethical behavior and report any Code of Conduct violation with any recommendation for sanction to Council.
- 2) **Report Required:** After concluding a "full investigation", the Integrity Commissioner shall render his opinion as to whether or not the Complaint has merit, including an opinion as to whether a member of Council has contravened the applicable Code of Conduct. Regardless of the outcome, the Integrity Commissioner shall report his opinion and the reasons for it to the Municipality and shall make such recommendations as he thinks fit.
- 4) **Use of Delegates:** At the discretion of the Integrity Commissioner, he or she may at any time delegate, in writing, some or all of his responsibilities under this Agreement, as provided for in the *Municipal Act, 2001*. The Integrity Commissioner agrees that such delegation will be first submitted to the Municipality for its approval. The Integrity Commissioner acknowledges that he

was selected by the Municipality to provide the Services on the basis of his experience and knowledge, and that the Municipality will not be forced to accept any delegate. Consent for any delegation may be held by the Municipality arbitrarily and without reason being provided. Where delegation is consented to, the person to whom the Integrity Commissioner's duties are delegated must agree in writing to be governed by the terms and conditions of this Agreement as if he or she was the Integrity Commissioner. Such person shall always be under the supervision and direction of the Integrity Commissioner. The delegation must not result in any additional costs or fees to the Municipality. Regardless of whether the Services are provided by the Integrity Commissioner or by a delegate, all invoices for the Services shall be rendered by the Integrity Commissioner and payments made to the Integrity Commissioner, and the Integrity Commissioner shall be responsible for the fees and disbursements of any his delegates.

- 5) **Unavailability of Integrity Commissioner:** If the Integrity Commissioner is unable to respond to a Complaint directly or through delegation as set out in Section 4, the Municipality has the right to call in an alternate service provider. In that case, the Integrity Commissioner shall not have any recourse against the Municipality for breach of this Agreement.
- 6) **Covenant to pay the Retainer:** The Municipality agrees to pay the Retainer to the Integrity Commissioner on an annual basis, during the Term, on or before March 31st of each year of the agreement, subject to the submission of an invoice by the Integrity Commissioner.
- 7) **Covenant to pay Fees and Expenses:** The Municipality agrees to pay the Fees to the Integrity Commissioner relating to any Complaint for the Municipality, and to reimburse the Integrity Commissioner for any Expenses relating to any Complaint. The Integrity Commissioner agrees that, to be eligible to receive reimbursement for an expense, the receipt or invoice relating to that Expense will have to be surrendered to the Municipality. The Parties agree that Fees and Expenses relating to any particular Complaint are to be paid by the Municipality. Where the Integrity Commissioner incurs Expenses that relate to the administration of this Agreement as a whole and are not applicable to any particular Complaint, those expenses shall be paid by the Municipality.
- 8) **Calculation of Fees:** The Integrity Commissioner agrees that the Fee will be charged only for such time that he is actively investigating a Complaint and preparing and/or presenting his report with respect to that Complaint.
- 9) **Limiting Expenses:** The Integrity Commissioner agrees that all investigations will, as much as is possible, be conducted without travel to the municipality, so as to limit the Expenses relating to the Complaints.
- 10) **Timing:** The Integrity Commissioner will invoice the Municipality upon completion of his report related to that Complaint. Payment shall be due thirty (30) days after the date of delivery of the Invoice.
- 11) **Taxes:** All amounts payable to the Integrity Commissioner shall be paid without deduction. If goods and services tax is applicable to any Fees or Expenses, the same are payable in addition to the Fee or Expense. The Integrity Commissioner 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 enroll), or pension with respect to any amounts paid to the Integrity Commissioner. The Municipality assumes no obligation or liability to this Agreement to deduct or remit any statutory or government remittances.

- 12) **Liability Insurance:** The Integrity Commissioner agrees to place and at all times maintain general liability (for both bodily injury and property damage) insurance against claims for personal injury, death or damage to property arising out of any of the operations of the Integrity Commissioner under this Agreement, or of any of the acts or omissions of the Integrity Commissioner. This insurance shall be with a company or companies acceptable to the Municipality and shall have a minimum inclusive limit of two million (\$2,000,000.00) dollars per occurrence. In addition, the Integrity Commissioner agrees to place and at all times maintain automobile liability (for both bodily injury and property damage) insurance against claims for personal injury, death or damage to property arising out of any of the operations of the Integrity Commissioner under this Agreement. This insurance shall be with a company or companies acceptable to the Municipality and shall have a minimum inclusive limit of two million (\$2,000,000.00) dollars per occurrence.
- 13) **Insurance Documents:** The Integrity Commissioner agrees, upon request, to provide to the Municipality:
- (a) the insurance policies described, or
 - (b) the certificates of insurance relating to those policies.
- 14) **Indemnification:** The Municipality agrees at all times to indemnify and save harmless the Integrity Commissioner from and against all claims and demands, by whomsoever made, which are occasioned by or attributable to the existence of this Agreement or any action taken or things done or maintained because of this Agreement, or the exercise of rights arising pursuant to this Agreement (excepting claims for damage resulting from the negligence of any officer, servant or agent of the Integrity Commissioner while acting within the scope of his or her duties or employment).

D. Other Covenants, Warranties & Acknowledgements

- 1) **Laws & Rules:** The Integrity Commissioner agrees to abide by all applicable Federal, Provincial, and/or Municipal or local Statutes, Regulations, and by-laws in providing the Services. Where any permits or licences are required, same shall be obtained by the Integrity Commissioner.
- 2) **Communications by Electronic Mail:** The Parties agree that they may communicate with one another with respect to this Agreement by electronic transmission over the internet, but that they do so at their own risk with respect to inadvertent disclosure to third parties resulting from the use of that media. The Parties agree that no formal notice required by this Agreement shall be sent through electronic mail, but rather through regular mail or facsimile transmission.
- 3) **Municipal Freedom of Information and Protection of Privacy Act:** The Parties acknowledge that this Agreement is a public document, and that this Agreement and the Services rendered under it are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. No Party shall be considered to have breached a requirement of confidentiality if disclosure is ordered by the Information and Privacy Commissioner in a procedure under that legislation. The Integrity Commissioner agrees that the Municipality, if involved in any procedure under that legislation with respect to this Agreement or the Services, shall have control of that procedure. The Integrity Commissioner will co-operate in any and all such procedures, and abide by the orders of the Information and Privacy Commissioner that result, but the Municipality will make any decisions with respect to that procedure as it unfolds. Any expenses of the Integrity Commissioner relating to any such procedure shall be reimbursed to the Integrity Commissioner by the Municipality, and the Integrity Commissioner may charge the Municipality a fee that does not exceed the amount of the Fees applicable to the Services, for his time spent in dealing with that procedure.
- 4) **Dispute Resolution:** Any Dispute that cannot be resolved by each Party involved shall be settled in accordance with this Section. The Party wishing to

rectify the Dispute shall send the other Party written notice clearly identifying the Dispute, that Party's position with respect to the Dispute, and the remedy which the Party seeks. The Party receiving such a notice shall enter into good faith negotiations with the other Party. If the Dispute has not been resolved within thirty (30) days of the original notice, either Party may avail itself of any process or means legally available to resolve the Dispute.

E. Miscellaneous

- 1) **Notice:** Any notice to be given under this Agreement shall be sufficiently given if delivered by hand, or facsimile, or if sent by prepaid first class mail and addressed to the Integrity Commissioner at:

Paul S. Heayn, A.M.C.T.
41 Clearwater Crescent
Dryden, Ontario P8N 3H8
Email: psheayn@drytel.net
Telephone: (807) 223-6824
Fax: (807) 223-6824
Cell: (807) 221-8128

or to the Municipality:

Elizabeth (Lisa) Slomke, Clerk
Town of Fort Frances
320 Portage Avenue
Fort Frances, Ontario P9A 3P9
Email: lslomke@fortfrances.ca
Telephone: (807) 274-5323 Ext. 1215
Fax: (807) 274.8479

Receipt of notice shall be deemed on:

- (a) the date of actual delivery of a hand delivered document; or
 - (b) the business day next following the date of facsimile transmission;
- or
- (c) five (5) days following the date of mailing of the notice;
- whichever is applicable. Notice shall not be given by electronic mail. Notwithstanding this, either Party may change its address for notice by giving notice of change of address pursuant to this Section.

- 2) **Amendments:** No supplement, amendment or waiver of or under this Agreement shall be binding unless executed in writing by the parties to be bound. No waiver by a Party of any provision of this Agreement shall be deemed to be a waiver of any other provision unless otherwise expressly provided.
- 3) **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties with respect to the Services. It is agreed that there is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this Agreement and this Agreement fully replaces and supersedes any letter, letter of intent, request for proposals, response to requests for proposals, or other contractual arrangement between the Parties related to the Services that may have been in existence at the time of execution and delivery of this Agreement.
- 4) **Force Majeure/Time:** Notwithstanding anything in this Agreement, no Party shall be in default with respect to the performance of any of the terms of this Agreement if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the Party (unless such lack of control results from a deficiency in financial resources). Otherwise, time shall be of the essence of this Agreement and all the obligations contained in it.

- 5) **Successors:** The rights and liabilities of the Parties shall enure to the benefit of and be binding upon the Parties and their respective successors and approved assignees.
- 6) **Partial Invalidity:** If any article, section, subsection, paragraph, clause or subclause or any of the words contained in this Agreement shall be held wholly or partially illegal, invalid or unenforceable by any court or tribunal of competent jurisdiction, the Parties agree that the remainder of this Agreement shall not be affected by the ruling, but shall remain in full force and effect.
- 7) **Relationship of Parties:** Nothing in this Agreement shall create any formal legal relationship between the Parties. The Integrity Commissioner is a contractor independent of the Municipality.
- 8) **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.
- 9) **Independent Legal Advice:** Each Party acknowledges that it has either received or waived the benefit of its own legal advice with respect to the execution of this Agreement.

Integrity Commissioner

Paul S. Heayn

Date: _____

The Corporation of the Town of Fort Frances

J. Caul, Mayor

Date: _____

E.Slomke, Clerk