

THE CORPORATION OF THE TOWNSHIP OF PERTH EAST

BY-LAW NUMBER 71-2022

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT TO
APPOINT A MUNICIPAL INTEGRITY COMMISSIONER
BETWEEN THE CORPORATION OF THE TOWNSHIP OF PERTH EAST, AND
GUY W. GIORNO OF THE FIRM FASKEN MARTINEAU DUMOULIN LLP**

DECEMBER 20, 2022

WHEREAS Section 223.3 through 223.8 of the of the *Municipal Act* authorizes municipalities to appoint an Integrity Commissioner to provide advice and guidance to members of Council and local boards as to the application of any Code of Conduct and municipal procedures, rules, and policies;

AND WHEREAS the Council of the Corporation of the Township of Perth East deems it necessary to appoint an Integrity Commissioner for the Township of Perth East;

NOW THEREFORE the Council for the Corporation of the Township of Perth East enacts as follows:

1. THAT the Mayor and the Clerk are hereby authorized to sign and enact the Agreement to Appoint Guy W. Giorno as Municipal Integrity Commissioner for the Township of Perth East, in the form, or substantially the same form as the draft agreement attached hereto as Schedule 'A' and forming a part of this By-law; and
2. THAT this By-law comes into force and effect on the date of final passing.

READ A FIRST AND SECOND TIME THIS 20th DAY OF DECEMBER, 2022.

READ A THIRD TIME AND PASSED THIS 20th DAY OF DECEMBER, 2022.

Ashley Carter, Municipal Clerk

Rhonda Ehgoetz, Mayor

AGREEMENT FOR MUNICIPAL INTEGRITY COMMISSIONER

THIS AGREEMENT made as of the day of January, 2023,

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF
NORTH PERTH, THE CORPORATION OF THE
TOWNSHIP OF PERTH EAST
(hereinafter each referred to as the “Municipality”, and collectively as the
“Municipalities”)

AND:

GUY W. GIORNO
(hereinafter referred to as “Guy W. Giorno”)

AND:

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

WHEREAS:

- A. Sections 223.3 through 223.8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “Act”) contemplate and authorize a municipality to appoint an Integrity Commissioner to, among other things, provide advice and guidance to members of Council and local boards as to the application of any Code of Conduct and municipal procedures, rules, and policies relating to their ethical behavior, and, furthermore, to making inquiry into requests as to alleged contraventions of any such Code of Conduct by a member of Council or board and to report the results of such inquiry to the municipality;
- B. 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:
 - i) the independence and impartiality of the said Commissioner;
 - ii) confidentiality in respect of the activities of the Integrity Commissioner;
 - iii) the credibility required to be attributed to the role of the Integrity Commissioner;
- C. The Municipalities are satisfied that Guy W. Giorno has the skills and ability to meet the foregoing criteria; and
- D. Guy W. Giorno is a partner in the Law Firm; the services covered by this agreement, except as lawfully delegated under subsection 223.3(3) of the Act, will be provided through the Law Firm by Guy W. Giorno in his capacity as a lawyer and other professionals within the Law Firm working under his supervision; and the Law Firm agrees to make the services of Guy W. Giorno available to each Municipality on the terms set out in this agreement.

NOW THEREFORE, in consideration of the payment of the sum of one dollar (\$1.00) by each party to the other and the covenants and hereinafter set forth, 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, 2023 (the “commencement date”) and ending on December 31, 2026 unless subject to prior early termination by any of the parties hereto and/ or as otherwise renewed or extended by agreement of the parties.
2. Services - The Municipalities hereby each retain and appoint Guy W. Giorno as Integrity Commissioner for the purposes of Sections 223.3 through 223.8

3. 8 of the Act and Guy W. Giorno accepts such appointment and agrees to provide such services as are reflected in the Act and as requested by the Municipalities, at all times in accordance with and to the standards as set forth in the Act.

3. Duties - As Integrity Commissioner, Guy W. Giorno shall perform the duties and have the powers provided for in the Act, and his performance of duties and his exercise of powers shall at all times be subject to the requirements of the Act. Those duties and powers include but are not limited to the following,:

(1) *Advisory*: Providing 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.

(2) *Compliance Investigation/Determinations*: upon proper request from a member of Council or local board, municipal administration or one or more members of the public, to 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 or local board and, thereafter, to report the details and results of such inquiry to municipal Council, and similarly to handle requests for inquiries into alleged contraventions of the *Municipal Conflict of Interest Act* in accordance with section 223.4.1 of the *Municipal Act*.

(3) *Educational*: in a manner compliant with the Act, provide the Chief Administrative Officer or as directed with an annual report of activities during the previous calendar year as Integrity Commissioner, including but not necessarily limited to advice given to Council or individual members of Council and a summary of inquiry results and determinations; furthermore, upon the request of each Municipality, 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; and, furthermore, upon the request of each Municipality, dissemination of information available to the public on the website operated by that Municipality.

Notwithstanding that set forth above, the parties acknowledge and agree that the function of the Integrity Commissioner is to provide advice and opinion to Council and members thereof, to provide independent complaint prevention, investigation, adjudication, and resolution to members of Council and the public, and education respecting adherence with the Code of Conduct for members of Council and other procedures, rules, and policies governing ethical behavior.

While the requirements of the Act must at all times be satisfied and upheld, Guy W. Giorno undertakes to discharge his functions in a manner that is reasonable and efficient and that avoids duplication and unnecessary cost.

Without limiting the extent of the undertaking to avoid unnecessary cost, Guy W. Giorno, as Integrity Commissioner, will avoid unnecessary duplication by using opportunities such as, for example, the provision of general advice to an entire Council or local board.

4. Fees

Hourly Rate – For the services of Guy W. Giorno as Integrity Commissioner to each Municipality, the Law Firm will be paid a fee of Three Hundred Dollars per Hour (\$300.00/hour), plus applicable taxes,. For the services of junior and other support staff (researcher, paralegal) assisting the Integrity Commissioner, the Law Firm will be paid a fee of Two Hundred and Twenty-

Five Dollars per hour (\$225.00/hour), plus applicable taxes. For time spent travelling, the fees paid to the Law Firm will be based on 50 per cent of these hourly rates.

- a) Expenses Upon presentation of receipts, the Law Firm 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 fuel charges, all at the respective municipal rates then in effect.
 - b) Legal Advice/Fees - The parties agree that, when necessary, Guy W. Giorno may arrange for and receive external 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 affected Municipality shall pay the cost of such external legal assistance and advice. Nevertheless, Guy W. Giorno undertakes not to ask either Municipality to pay for external legal advice to him concerning the laws that Integrity Commissioner is supposed to know and understand, namely, the *Municipal Conflict of Interest Act* and Part V.1 of the *Municipal Act*. Before engaging external legal advice concerning any other legislation, Guy W. Giorno will consult with the Chief Administrative Officer about the need for external advice, the selection of external counsel, and the reasonableness and estimated amount of such counsel's fees.
 - c) Litigation/Fees - The parties acknowledge that sometimes, though infrequently, an Integrity Commissioner may be a party to litigation, and the parties agree that, in such instance, as a direct cost and not as a reimbursable expense, the affected Municipality shall pay the cost of the Integrity Commissioner's litigation counsel. Guy W. Giorno will first consult with Chief Administrative Officer about the selection of litigation counsel and the reasonableness and estimated amount of such counsel's fees. Where it is more efficient to do so, and only with the prior approval of the Chief Administrative Officer, the Law Firm itself may act as the Integrity Commissioner's litigation counsel.
5. Independent Contractor - Notwithstanding the appointment as a statutory officer, the parties agree and acknowledge that Guy W. Giorno and the Law Firm are contractors independent of the Municipalities. 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 Guy W. Giorno and either Municipality or the between the Law Firm and either Municipality. Each Municipality understands, agrees and confirms that Guy W. Giorno is not the Municipality's lawyer and the Law Firm is not the Municipality's law firm. No solicitor-client relationship is created by this agreement or by the appointment of Guy W. Giorno as Integrity Commissioner.

Each Municipality confirms, agrees and consents that this agreement and the appointment of Guy W. Giorno as Integrity Commissioner do not prohibit Guy W. Giorno from acting as Integrity Commissioner for other municipalities.

6. Statutory Officer – The parties recognize that an Integrity Commissioner is a “Statutory Officer” under the Act.
7. Indemnification - Each of the Municipalities agree to indemnify and save harmless the Law Firm and Guy W. Giorno, his 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 provision of services and carrying out of duties as contemplated hereunder, including but not necessary limited to any alleged breach of this agreement, any

procedural defect, or any breach of relevant statutory provisions.

8. Early Termination - This agreement is composed of two separate agreements: one agreement between each Municipality and Guy W. Giorno and the Law Firm. Either individual agreement may be terminated by the respective Municipality or Guy W. Giorno and the Law Firm on ninety (90) days' written notice to the other party, provided that any investigations (inquiries) commenced prior to the termination date shall be completed pursuant to this agreement and the appointing by-law and all related fees shall be paid as set out in the agreement. In such event, the agreement between the remaining Municipality and Guy W. Giorno and the Law Firm shall remain in full force and effect unless and until it is also terminated pursuant to the terms of this paragraph.
9. Notice - Any notice required pursuant to this agreement shall be delivered to the respective parties hereto at the following addresses:

For Municipality of North Perth:
330 Wallace Avenue North
Listowel, Ontario
N4W 1L3

For Township of Perth East:
P.O. Box 455
25 Mill Street East
Milverton, Ontario
N0K 1M0

For Guy W. Giorno:
c/o Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, PO Box 20
Toronto, Ontario
M5H 2T6

For the Law Firm:
Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, PO Box 20
Toronto, Ontario
M5H 2T6

Any written notice between the parties hereto 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.

10. 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.
11. 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.
12. Enurement - This agreement shall enure to the benefit of and is binding upon the parties hereto and their respective successors and permitted assigns. Despite this provision, it is understood that the appointment of an individual as Integrity Commissioner does not survive the individual's death or incapacity.

13. Counterparts - This agreement may be signed in any number of counterparts each of which is an original and all of which together form a signed document.
14. Confidentiality – The parties acknowledge that an Integrity Commissioner is subject to the confidentiality requirements of Part V.1 of the Act. Nothing in this agreement is intended to prevent Guy W. Giorno, as Integrity Commissioner, from complying with those confidentiality obligations.

The Law Firm and Guy W. Giorno will, inside the law firm, create a “confidentiality wall” so that only those professionals within the Law Firm working on each Municipality’s Integrity Commissioner files have access to such information related to the Municipality.

15. Conflict of Interest

The Law Firm declares that, to its knowledge, (i) no Councillor, official or employee of either Municipality has any direct or indirect beneficial interest, whether financial or otherwise, in the Law Firm, or in the performance of the services under this agreement; (ii) the Law Firm is not engaged in any other projects nor is it providing services to any other client that would give rise to an actual or potential conflict of interest; and (iii) the Law Firm is not engaged in any direct or indirect beneficial interest, whether financial or otherwise with any other consultant or company retained by either Municipality.

The Law Firm and Guy W. Giorno declare that they have no direct or indirect financial interest in any matter in which the Municipality is concerned that would give rise to an actual or potential conflict of interest. If a conflict of interest exists or arises pursuant to this section during the term of the agreement then the Municipality may, at its discretion, suspend any services being performed until the matter is resolved to the Municipality’s sole satisfaction or terminate the agreement.

Each Municipality confirms, agrees and consents that the appointment of Guy W. Giorno and this agreement do not prohibit the Law Firm 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: Guy W. 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 the Law Firm possesses no confidential information obtained in the course of providing services under this agreement that is relevant to the other mandate.

16. *Municipal Act* Prevails – Should any portion of this agreement be inconsistent with the Act then, to the extent of the inconsistency, the Act shall prevail over that portion.

IN WITNESS WHEREOF the parties are to have caused the agreement to be signed and sealed and/or executed by their respective officers which are duly authorized as of the date first written above.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

MUNICIPALITY OF NORTH PERTH:

Per: _____
Mayor – Todd Kasenberg

Per: _____
Clerk – Lindsay Cline

We have authority to bind the Municipal Corporation

TOWNSHIP OF PERTH EAST:

Per: _____
Mayor – Rhonda Ehgoetz

Per: _____
Clerk – Ashley Carter

We have authority to bind the Municipal Corporation

Witness

Per: _____
Guy W. Giorno

FASKEN MARTINEAU DUMOULIN
LLP

Per: _____

I have authority to bind the partnership