

**AGREEMENT FOR CLOSED MEETING INVESTIGATOR AND MUNICIPAL
INTEGRITY COMMISSIONER**

THIS AGREEMENT made as of the 14 day of December, 2018.

BETWEEN: Corporation of the City of St. Thomas
(Hereinafter referred to as "the City")

AND: Mark McDonald, carrying on business as Independent Resolution Inc. (Hereinafter referred to as the "IRI")

WHEREAS Section 223.3 of the Municipal Act, 2001, (the "Act") contemplates and authorizes 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;

AND 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:

- i) the independence and impartiality of the said Independent Investigator;
- ii) confidentiality in respect of the activities of the Independent Investigator;
- iii) the credibility required to be attributed to the role of the Independent Investigator;

WHEREAS Section 239.2(1) of the Municipal Act 2001 authorizes a municipality to appoint a "Closed Meeting Investigator" who has the function of investigating in an independent manner upon complaint made to him or her by any person, whether a municipality or local board has complied with Section 239 of the Act or a procedure by-law under subsection 238(2) of the Act in respect of a meeting or part of a meeting that was closed to the public, and to report on such investigation;

AND WHEREAS Sections 223.3(2) and 239 2(2) of the Act provide that an Integrity Commissioner and Closed Meeting Investigator, respectively may exercise the powers and perform the duties assigned to him or her by the appointing municipality;

AND WHEREAS the City deems it desirable and appropriate to appoint Independent Resolutions Inc. (Mark McDonald) as its Closed Meeting Investigator and Integrity Commissioner on an as needed basis, who may exercise the powers and perform the duties assigned to him, as set out in this Agreement;

AND WHEREAS Independent Resolutions Inc. (Mark McDonald) has the skills and abilities to meet the foregoing criteria and has consented to act as Closed Meeting Investigator and Integrity Commissioner pursuant to the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of payment of the sum of one dollar (\$1.00) now paid by each Party hereto the other such Party and the mutual covenants and obligations set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Term - The term of this agreement is for the period of 24 consecutive months commencing January 1, 2019 (the "commencement date") and ending on December 31, 2020 unless subject to prior early termination by either of the parties hereto and/or as otherwise renewed or extended by agreement of the parties.

2. Appointment and Powers - Pursuant to the authority vested in sections 239 2(1) and 223.3(1) of the Act, the City hereby appoints Independent Resolutions Inc. (Mark McDonald) as its Closed Meeting Investigator and Integrity Commissioner (hereafter referred to as the "Independent Investigator") who may exercise the powers and perform the duties assigned to him below:

3. Services - IRI accepts such appointment and agrees to provide such services as are reflected in the Act and as requested by the municipality, at all times in accordance with and to the standards as set forth in the Act. IRI confirms that such services will be rendered by Mark McDonald, save and accept as otherwise delegated in accordance with this agreement.

4. Duties - As Independent Investigator, IRI shall perform the duties and have the powers provided for in the Act, and the City's Council Code of Conduct, including but not limited to the following:

(a) *Advisory*: upon proper request, provide written and/or verbal advice to individual members of Council respecting the application of the Code of Conduct 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, 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.

(b) *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 City Council.

(c) *Educational*: provide the City Clerk 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, 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, dissemination of information available to the public on the website operated by the City.

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.

The parties hereto also acknowledge and agree that IRI, as Independent Investigator, will perform services, and in particular those services relating to advisory and educational duties, in a manner so as to avoid duplicated advice, opinion, and cost in respect of identical requests and inquiries - for example, the Independent Investigator shall decline to provide individualized advice and opinion to more than one member of Council or a local board on identical issues but should choose to provide general advice to Council or such local board as a whole to answer all such inquiries. In addition, it is recognized that IRI, as Independent Investigator, will likely receive requests for advice on matters involving compliance with the Municipal Conflict of Interest Act (the "MCIA") - while the Independent Investigator may provide general interpretation of the MCIA, it is expected that individual members of Council or local boards will seek independent legal advice on a specific question of individual compliance with such legislation.

In the Role of Closed Meeting Investigator, the Independent Investigator shall on an as needed basis and upon receiving a complaint by any person, investigate in an independent manner, any meeting or part of a meeting of the City and its local board that is closed to the public.

Without limiting and in addition to the duties provided for in the Act, the City hereby confirms that the Independent Investigator shall have regard for the procedures and conditions set out in Schedule "A" - The Municipal Closed Session Investigator - Implementation Policy.

5. Fees

a) Annual Retainer - The City shall pay the Annual Retainer of (\$2,500) per annum.

b) Hourly Rate and Expenses - The City shall pay the fees and expenses of the Independent Investigator at a rate of \$150 per hour, plus applicable taxes and reasonable disbursements, during such time as the Independent Investigator is performing the duties set out in this Agreement. The Independent Investigator agrees that the above rate shall be charged only for such time that he is actively investigating a complaint and preparing/presenting a report to City Council or local board or when responding to written requests for advice from members of Council or local boards relating to the Municipal Conflict of Interest Act.

c) Legal Advice/Fees - The parties agree that, when necessary, IRI 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 City shall pay the cost of such legal assistance and advice.

e) Invoicing - IRI agrees the hourly fees and related expenses for which reimbursement will be sought and as referred to above shall be charged and invoiced to the City of St. Thomas to whom the service was provided. For purposes of clarity, IRI shall not hold the City responsible for the costs of services rendered or expenses incurred save and except for those relating to requests originating in the City.

f) Payment without deduction - The parties hereto agree that invoices rendered by IRI and payments by the City shall be without deduction, specifically for any contributions imposed or required by law for employment insurance, health costs, social insurance, income tax, workers compensation, or mandatory pension. The City assumes no obligation or liability as between the parties hereto to deduct or remit any statutory or government remittances.

6. Delegation - In the event that more than one request or complaint is made at any one time and requiring the rendering of more than one service, including more than one investigation, IRI may determine it necessary to delegate some or all of the powers and duties reflected above and IRI is authorized to arrange for and effect such delegation in writing; provided that such delegation shall not be made to a member of Council and provided further that the person, body, or agency to whom such delegation is made agrees in writing to be governed by the terms of this agreement. The person, body, or agency to whom such delegation shall be made shall be under the supervision and direction of IRI. The afore-noted delegation shall not result in any increased expense to the City. IRI shall prepare and render an invoice to the City which accounts for the costs of the delegatee and IRI shall be responsible for the fees and disbursements of such delegatee.

7. Independent Contractor - Notwithstanding the appointment as a statutory officer, the parties agree and acknowledge that IRI is a contractor independent of the City. 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 IRI and the City.

8. Statutory Officer - For purposes of the agreement and solely for the purpose of arranging for errors and omission insurance, the Independent Investigator shall be deemed to hold the status of "Statutory Officer" under the Municipal Act.

9. Indemnification and Insurance - Subject to any statutory provision in respect of such obligation, the City shall hold harmless and indemnify the Independent Investigator, or any person acting under instructions therefrom, from all claims, demands, liability, and costs incurred or suffered in relation to or connection with the defence of a proceeding if such proceeding relates to an act done in good faith in the performance or intended performance of a duty, authority, or power contemplated by this Agreement or the legislation referred to herein or an alleged neglect or default in the performance in good faith of such duty, authority, or power.

Throughout the term of this Agreement, the Independent Investigator, at its expense, shall secure and maintain in force policies of insurance providing coverages for commercial general liability and errors and omissions, both of terms and conditions acceptable to the City and to be in effect

and providing coverage while the Independent Investigator is acting as contemplated by this Agreement, which policies shall be underwritten by an insurer licensed to conduct business in the Province of Ontario and, further thereto, shall include, among others, the following terms:

- a limit of liability of not less than \$2,000,000.00 per occurrence;
- the City shall be named as an additional insured;
- the policy or policies shall contain a provision for cross-liability in respect of the named insured;
- non-owned automobile coverage with a limit of at least \$1,000,000.00, including contractual non-owned coverage;
- products and completed operations coverage (broad form) with an aggregate limit of not less than \$2,000,000.00; and,
- that thirty (30) days prior notice of an alteration, cancellation, or material change in policy terms, which reduces coverage, shall be given in writing to the City.

Within fifteen (15) days of execution of this Agreement, the Independent Investigator shall provide, and thereafter replace as is required, adequate proof of the said policy or policies of insurance or any renewal or replacement thereof, including but not necessarily limited to a then current Certificate of Insurance or true copy thereof.

10. Notice - Any communication between the Parties must be in writing and either be:

- a) delivered personally or by courier;
- b) sent by prepaid registered mail; or
- c) transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, and

in any such circumstances, all charges (if any) prepaid.

Any Communication must be sent to the intended Party at its address for service listed on the signature pages of the Agreement or to any other address as any party may at any time advise the other by Communication given or made in accordance with this section. Any Communication delivered to a party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that party's address, provided that if that day is not a business day then the Communication will be deemed to have been given or made and received on the next business day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a business day or after 4:00 p.m. (local time of recipient), the Communication will be deemed to have been given or made and received on the next business day.

11. 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.

12. Complete Agreement - This agreement, including any schedule hereto, 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.

13. Governing Law - This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

14. Enurement - This agreement shall enure to the benefit of and is binding upon the parties hereto and their respective successors and permitted assigns.

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:**

Address for Service:
independentresolutions@gmail.com
17 Hummingbird Lane
St. Thomas, ON N5R 6L8

INDEPENDENT-RESOLUTIONS INC.



Mark McDonald

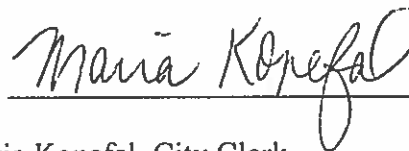
I have the authority to bind the Corporation

**THE CORPORATION OF THE CITY OF
ST. THOMAS**

Address for Service:
Attn: City Clerk
City of St. Thomas
545 Talbot Street
P.O. Box 520
St. Thomas ON, N5P 3V7

Per: 

Joe Preston, Mayor

Per: 

Maria Konefal, City Clerk

Schedule "A"

January 3, 2008

Revised January 12, 2018

THE CORPORATION OF THE CITY OF ST. THOMAS Municipal Closed Session Investigator - Implementation Policy

The City of St. Thomas is committed to ensuring that any request for an investigation under Section 239 of the Municipal Act, 2001 as amended (the Act) is dealt with in a fair, open and expeditious manner.

The City of St. Thomas commits to full co-operation including the provision of all information requested by the Municipal Closed Session Investigator (Investigator), either written or through interviews, to assist the Municipal Investigator in his investigations.

The City of St. Thomas commits to including any report received from the Investigator related to an investigation under the Act, on a public agenda and to considering such report in an open public session of Council or a Standing Committee of Council.

This policy shall be posted on the municipal website and available from the City Clerk's Department:

City Clerk
The Corporation of the City of St. Thomas
545 Talbot Street
P.O. Box 520, City Hall
St. Thomas, Ont.
(519) 631-1680 x4123

This policy applies to all appointed Boards and sub-committees of the municipality with the exception of the Police Services Board and the Public Library Board.

Background

Through By-law No. 6-2018 the City of St. Thomas has appointed Mark McDonald as a Municipal Closed Session Investigator and authorized him to conduct investigations upon receipt of a complaint in respect of meetings or part of meetings that are closed to the public to determine compliance with the Act or the Municipal procedure by-law and to report on the results of such investigations.

Complaints Procedures

Members of the public, including corporations, may submit complaints to the Investigator relating to compliance with the Act or the Municipal Procedure By-law for meetings or part of meetings that are closed to the public.

All complaints will be treated as confidential, unless authorization is given by the complainant to release his or her identity.

Complaint forms can be downloaded from the City's website and they are available in the City Clerk's Department.

Complaints must be submitted on the Complaint form and submitted:

By delivery to the City Clerk in a sealed envelope clearly identified as a Complaint under Section 239 of the Municipal Act

OR

By mail directly to:
Mark McDonald, Independent Resolutions Inc.
17 Hummingbird Lane
St. Thomas, Ontario
N5R 6L8

Application Fee

All complaint applications shall be accompanied by a payment of ONE HUNDRED DOLLARS (\$100.00)

Payments can be made in person, at City Hall, in cash, or by cheque payable to:

The Corporation of the City of St. Thomas

Should the complaint be found to be valid, the payment will be returned to the complainant, in full. Payments received for complaints which are not valid, are non refundable.

All complaints must contain:

- Name of Municipality
- Complainant's name, mailing address, telephone number and e-mail address (if applicable)
- Date of Closed Meeting under consideration
- Nature and Background of the particular occurrence
- Any activities undertaken (if any) to resolve the concern
- Any other relevant information
- Direction with respect to release of identity
- Original signature

When complaints are submitted directly to the City Clerk, the City Clerk shall follow the following procedures:

1. Take all measures to ensure the envelope remains sealed and its contents remain confidential;
2. Assign a file number and record file number on the envelope;
3. Log the file number together with the date and time received;
4. Forward, forthwith to the Municipal Investigator by regular mail.

For all complaints the City of St. Thomas shall supply the following or any other information or documentation, as requested, by the Investigator related to a complaint:

- Certified copy of Notice of Meeting
- Certified copy of Agenda
- Certified copy of Minutes of Meeting
- Relevant Resolutions
- Municipal contact list
- Other

Inquiries only may be submitted by email to Mark McDonald: independentresolutions@gmail.com.

**COMPLAINT FORM
MUNICIPAL INVESTIGATION**

**IN ACCORDANCE WITH
Section 239 of the *Municipal Act 2001***

PLEASE FORWARD COMPLETED FORMS ALONG WITH AN APPLICATION FEE OF \$100.00 TO:

**CITY CLERK
THE CORPORATION OF THE CITY OF ST. THOMAS
545 TALBOT STREET
P.O. BOX 520, CITY HALL
ST. THOMAS, ON
N5P 3V7**

OR TO

**Mark McDonald
INDEPENDENT RESOLUTIONS INC.
17 Hummingbird Lane
St. Thomas, Ontario
N5R 6L8**

January 2018

COMPLAINT FORM MUNICIPAL INVESTIGATION
Section 239 - Municipal Act 2001

COMPLAINANT'S NAME: _____

ADDRESS: _____

TELEPHONE HOME: _____ WORK: _____

EMAIL: _____

CAN YOUR IDENTITY BE REVEALED DURING THE INVESTIGATION? Yes () No ()

- PERSONAL INFORMATION IS COLLECTED UNDER THE AUTHORITY OF SECTION 239 OF THE MUNICIPAL ACT 2001 (AS AMENDED) AND WILL BE USED BY THE MUNICIPAL INVESTIGATOR TO CARRY OUT AN INVESTIGATION UNDER THE ACT.

NAME OF MUNICIPALITY: _____

DATE OF CLOSED MEETING: _____

BACKGROUND: This should provide as much information as is required to explain the nature and background of the particular occurrence. (i.e.) Timing; Municipal Contact; Municipal Explanation.

January 2018

ACTION: Activities that the complainant has undertaken to resolve the matter.

SUMMARY/COMMENTS

Date of signature _____

Signature of Complainant _____

Office Use: Application fee (\$100.00) received:

Date _____

