

The Corporation of the Township of Southgate

By-law Number 2019-002

**Being a By-law to appoint an Integrity Commissioner
for the Township of Southgate**

WHEREAS the Municipal Act, 2001, as amended (the "Municipal Act") provides that the powers of a municipal corporation are to be exercised by its Council through the adoption of by-laws; and

WHEREAS the Municipal Act authorizes the Municipality to establish codes of conduct for members of Council and to appoint an Integrity Commissioner who reports to Council; and

WHEREAS the Township of Southgate has adopted a Code of Conduct for Council, Boards and Committees; and

WHEREAS an Integrity Commissioner is responsible for performing in an independent manner the functions assigned by the municipality; and

WHEREAS by March 1, 2019, the Municipal Act, pursuant to Part V.1, Accountability and Transparency, will oblige all municipalities in Ontario to appoint an Integrity Commissioner to perform the following functions:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards and committees.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council, committees 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 and committees.
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, committees 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, committees 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 committees and 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; and


WHEREAS Council deems it expedient to appoint Principles Integrity, through its principals Jeffrey A. Abrams and Janice Atwood-Petkovski, as the Township of Southgate Integrity Commissioner to perform the functions, powers and duties recited above and as may be set out in the Municipal Act from time to time,

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the township of Southgate hereby enacts as follows:

1. **That** Principles Integrity through its principals Jeffrey A. Abrams and Janice Atwood-Petkovski is hereby appointed as the Township of Southgate Integrity Commissioner pursuant to Part V.1, Accountability and Transparency, of the Municipal Act; and
2. **That** upon appointment, Principles Integrity will have all the functions, powers and duties of an Integrity Commissioner as set out in Part V.1, Accountability and Transparency, of the Municipal Act, and in addition such functions, powers and duties as may be assigned by Council from time to time; and
3. **That** the Township of Southgate hereby indemnifies and save harmless the Integrity Commissioner or any person acting under the instructions of the Integrity Commissioner for costs reasonably incurred in connection with the defense of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a function, duty or authority under Part V.1 of the Municipal Act, or a by-law passed thereunder, or an alleged neglect or default in the performance in good faith of the function, duty or authority; and
4. **That** all actions taken and required to be taken by the Mayor and Clerk on behalf of the Corporation of the Township of Southgate to complete this matter including the execution of the Agreement attached hereto as Schedule "A" and forming part of this By-law, and any other associated documentation, are hereby authorized, confirmed and ratified; and
5. **That** this By-law shall come into force and take effect on the 1st day of March, 2019.

Read a first and second time this 16th day of January 2019.

Read a third time and finally passed this 16th day of January 2019.


John Woodbury, Mayor


Joanne Hyde, Clerk

THIS AGREEMENT is made as of this 16th day of January, 2019

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE

(hereinafter called the "Municipality")

- and -

PRINCIPLES INTEGRITY, through its principals
Jeffrey A. Abrams and Janice Atwood-Petkovski

(hereinafter called the "Integrity
Commissioner")

Professional Services Agreement

WHEREAS Section 223.3 of the *Municipal Act, 2001*, as amended, authorizes the Township of Southgate to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by legislation and by Council pursuant to that legislation; and

WHEREAS the Council of the Township of Southgate deems it expedient to appoint Principles *Integrity* as Integrity Commissioner commencing on March 1, 2019 for the term specified herein subject to such extension(s) as the Parties may agree, 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 foregoing background, the covenants in this Agreement, and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged), the Parties agree as follows:

1.1 Definitions

In this Agreement, the following terms shall have the following meanings:

"Advice" means a request by Council or a Member of Council, or a Member of a local board or committee of the Municipality, requesting the Integrity Commissioner to provide a general or specific interpretation of:

- (i) obligations under the Code of Conduct applicable to the Member;
- (ii) obligations under a provision of any procedure, rule or policy of the municipality or local board of the municipality, as the case may be, governing the ethical behaviour of Members;
- (iii) obligations under the *Municipal Conflict of Interest Act*.

"Agreement" means this Agreement;

"Clerk" means the Clerk of the TOWNSHIP OF SOUTHGATE, or his/her designate;

"Code of Conduct" means any code of conduct adopted from time to time in respect of the Members of Council or of a local board of the municipality, but excludes any code of conduct applying to staff of the TOWNSHIP OF SOUTHGATE or of a local board;

"Complaint" is a request asking the Integrity Commissioner to conduct an inquiry into an alleged contravention of a Code of Conduct or of the *Municipal Conflict of Interest Act* ("MCIA"), or of a provision of any procedure, rule or policy of the municipality or local board of the municipality, as the case may be, governing the ethical behaviour of Members;

"Member" means, respectively, a Member of the Council of the TOWNSHIP OF SOUTHGATE, or a Member of a local board or committee of the TOWNSHIP OF SOUTHGATE.

1.2 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 therein, and as may be amended from time to time, and shall be treated in all respects as an Ontario contract.

2.0 Duties

2.1 Subject to and in accordance with applicable legislation and the terms of this Agreement, the Municipality retains the Integrity Commissioner to carry out the duties of the position in an independent manner, and the Integrity Commissioner agrees to assume this role and carry out the role of the Integrity Commissioner as it may be defined from time to time in legislation and as otherwise contemplated by this Agreement.

2.2 The role of the Integrity Commissioner includes the following duties:

- a. to provide advice on the application of the Code of Conduct, and on Township policies, procedures, protocols and rules relating to the ethical conduct of Members, and the *Municipal Conflict of Interest Act*;
- b. to conduct inquiries in response to a complaint regarding whether a Member has contravened the Code of Conduct, Township policies, procedures, protocols and rules relating to the ethical conduct of Members, or sections 5, 5.1. or 5.2 of the *Municipal Conflict of Interest Act*;

- c. to provide opinions on policy matters and make other reports to Council as requested on issues of ethics and integrity;
- d. to provide educational information and training to Council, to Members and to the public on matters related to the Code of Conduct and issues of ethics and integrity and to the *Municipal Conflict of Interest Act*;
- e. to provide general information to members of the public, on request, about the Code of Conduct and any related Complaint Protocol and the availability of complaint resolution services or referrals as contemplated by the Complaint Protocol;
- f. to maintain custody and control of the Integrity Commissioner's complaint and inquiry files and, on completion of his or her term of appointment, to transfer open files relating to ongoing matters to the incoming Integrity Commissioner appointed by Council;
- g. to provide such other services respecting ethical and integrity matters as assigned by Council or as may be required by the *Municipal Act, 2001*, and
- h. to provide an annual report to 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 Municipality's Integrity Commissioner.

2.3 The Integrity Commissioner shall perform the duties expeditiously in an independent and professional manner, in compliance with all applicable laws. For greater certainty, the Integrity Commissioner is entitled to establish such procedures, practices, protocols and policies to support the performance of the Integrity Commissioner's duties in a manner which best serves the public interest.

2.4 The Integrity Commissioner acknowledges and advises that the principals of the Integrity Commissioner do not have any conflicts of interest that would interfere with carrying out the duties under this Agreement and that they will be impartial and neutral and shall perform all duties skillfully, competently, independently and in accordance with all applicable law.

2.5 The Integrity Commissioner may after first advising Members of Council in writing, delegate certain duties, including the exercise of powers under the *Municipal Conflict of Interest Act* or the *Public Inquiries Act*, and the duty to report on an inquiry, in circumstances where both principals of the Integrity Commissioner become aware of a private interest in a matter that conflicts or could be perceived to conflict with the proper

administration of the Integrity Commissioner's role. The Integrity Commissioner recognizes and agrees that it has been selected by the Municipality to perform its duties based on the unique qualifications of its principals, and so any delegate will have qualifications, experience and expertise necessary to perform the duties to the same standard as the Integrity Commissioner.

2.6 The Municipality shall provide public access to all Codes of Conduct through its web site. The Municipality shall also provide information about the Codes of Conduct, the role of the Integrity Commissioner and the complaint process on its website. As such, the Integrity Commissioner's duties do not include development of a website or similar public information, but any concern surrounding appropriate dissemination of information relevant to the duties of the Integrity Commissioner may be forwarded to the Clerk for consideration. Review of website content does not constitute part of the Integrity Commissioner's duties, unless specifically requested to do so by the Municipality.

2.7 The Municipality 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 Municipality shall consult with the Integrity Commissioner prior to changing the duties. The Integrity Commissioner shall have the option of terminating this Agreement immediately if the scope of the duties is materially altered without the Integrity Commissioner's consent.

3.0 Fees

3.1 Commencing on March 1, 2019, the Municipality shall pay the Integrity Commissioner an annual retainer of \$1,000.

3.2 The Municipality shall pay the Integrity Commissioner a block fee of \$1,600 per day for attendance, including preparation, at any meeting of Council or a local board for the purpose of conducting training or education. It is anticipated that the Integrity Commissioner will be called upon to provide at least one educational session.

3.3 For the performance of the remaining duties under this Agreement, the Municipality shall pay the Integrity Commissioner an hourly rate of \$230, to be billed monthly, subject to:

- a. a cap of \$3,000 in respect of the initial preparation or review of any applicable Code of Conduct and related protocols; and
- b. the Integrity Commissioner apprising the Municipality with some explanation when the fee for investigations will exceed \$5,000 in a single month;

3.4 As travel to municipal offices will be required from time to time, the Integrity

Commissioner will consider auto and rail transportation services, subject to what is most feasible in terms of timing. The Municipality shall reimburse the Integrity Commissioner for auto travel at the following rate: **\$0.54 per km**

- 3.5 Where overnight accommodation is required, the reasonable cost of such accommodation. Other disbursements at cost (receipts required).
- 3.6 Should the Integrity Commissioner require a meeting space at the Municipality, the Clerk will make arrangements to provide such space in a municipal facility on an as needed and as available basis. All such requests will be arranged by the Clerk. In arranging for such space, the Municipality will be mindful of the importance of confidentiality. The Integrity Commissioner may request space in another Municipal facility where the space offered could, in the opinion of the Integrity Commissioner give rise to confidentiality concerns and the Municipality will make all reasonable efforts to accommodate such requests in a timely fashion.
- 3.7 Any reports prepared by the Integrity Commissioner shall be provided to the Clerk who will be responsible for printing and distributing the Integrity Commissioner's report at the expense of the Municipality.
- 3.8 The Integrity Commissioner shall submit monthly invoices for services performed with a brief breakdown with the name of the Member who contacted them.
- 3.9 Payments to the Integrity Commissioner will be by cheque, Electronic Funds Transfer or such other method as the Parties may agree to from time to time.
- 3.10 The Integrity Commissioner shall not seek reimbursement from the Municipality for any costs incurred by him/her which are not specifically set out in this Agreement, unless such costs are pre-authorized in writing by the Clerk.
- 3.11 The Municipality shall pay the amount of any invoice submitted in accordance with this Agreement within 30 days of the date of receipt.
- 4.0 Confidentiality
- 4.1 During the term of this Agreement, pursuant to Subsection 223 .1 of the *Municipal Act, 2001*, as amended, 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.
- 4.2 The Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her 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 the provisions of Subsection 223.5(1) of the *Municipal Act, 2001*, as amended.

- 4.3 Pursuant to Subsection 223.5(3) of the *Municipal Act, 2001*, as amended, 4.2 prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.
- 4.4 Where the Integrity Commissioner reports to the Municipality that in his or her opinion a Member 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.
- 4.5 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, including the *Criminal Code of Canada*, the Integrity Commissioner will refer that portion of the matter to the appropriate authorities and suspend an inquiry of that portion of the matter until any resulting police investigation and charge has been finally disposed of, and shall report the suspension to Council.
- 4.6 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*, as amended, or which could identify a person concerned.
- 5.0 Indemnity and Insurance
- 5.1 The Municipality shall indemnify and save harmless the Integrity Commissioner or any person acting under the instructions of that officer for costs reasonably incurred by either of them in connection with the defense of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority under this Part or a by-law passed under it or an alleged neglect or default in the performance in good faith of the duty or authority.
- 5.2 During the term of this Agreement, the Integrity Commissioner shall procure and maintain errors and omissions insurance of not less than \$5 million.
- 5.3 The insurance as required under subsection 5.2 shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material is given by the insurers to the Municipality at least thirty (30) clear days before the effective date thereof. Any revisions must be

submitted to the Clerk for approval.

6.0 Term and Termination.

6.1 This agreement shall be effective on March 1, 2019 and expire December 31, 2023 unless otherwise terminated in accordance with the terms of this Agreement or by mutual agreement of the Municipality and the Integrity Commissioner in writing.

6.2 The Municipality may at any time by notice in writing to the Integrity Commissioner, suspend or terminate this Agreement and the duties thereunder or any portion thereof at any stage of the retainer. 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. In such an event, the Integrity Commissioner shall be entitled to payment for those duties rendered and disbursements incurred to the date of such termination.

6.3 The Integrity Commissioner may at any time by notice in writing to the Municipality, terminate this agreement and the duties there under. Upon giving such written notice, the Integrity Commissioner shall not, without the consent of Council, perform any further duties other than those reasonably necessary to close out the Integrity Commissioner's duties. In such an event, the Integrity Commissioner shall be entitled to payment for those duties rendered and disbursements incurred to the date of such termination.

6.4 This Agreement may be extended or renewed upon mutual agreement of the Parties.

6.5 Upon termination of this Agreement, the Integrity Commissioner shall forthwith deliver all material and documentation related to any investigations underway to the Municipality's next Integrity Commissioner, and all such material and documentation shall become the property of the new Integrity Commissioner of the Municipality. In the event of the Municipality not having contracted the services of a new Integrity Commissioner, upon termination of this Agreement, the Integrity Commissioner shall make arrangements with the Clerk to transfer the material and documentation related to ongoing investigations in such a manner that satisfies the Integrity Commissioner's concerns respecting the confidentiality of the records, while allowing their use for the purposes that they were created.

6.6 The Integrity Commissioner shall retain all other records and documentation relating to its duties for a period of seven years following the earlier of the finalization of a matter or termination of this agreement.

7.0 Integrity Commissioner's Representation & Warranties

7.1 The Integrity Commissioner represents and warrants to and in favour of the Municipality and acknowledges that the Municipality is relying thereon as follows:

7.2 The Integrity Commissioner has full power and authority and has obtained all necessary approvals to execute, deliver and perform this Agreement.

7.3 The Integrity Commissioner's execution, delivery and performance of this Agreement shall not constitute:

- a. a violation of any judgment, order or decree;
- b. a material default under any material contract by which it or any of its material assets are bound; or
- c. an event that would with notice or lapse of time, constitute such a default.

7.4 The obligations and services of the Integrity Commissioner hereunder will be performed in a professional manner consistent with the highest industry standards reasonably applicable to the performance of such obligations.

7.5 The Integrity Commissioner does not have any conflicts of interest that would interfere with carrying out the duties under this Agreement. Without limiting the generality of the foregoing, the principals of the Integrity Commissioner specifically acknowledge that they:

- a. are not employees of the Municipality;
- b. do not have a financial interest in any matters involving the Municipality;
- c. do not have an interest in matters before Municipality Council or in any work undertaken by the Municipality;
- d. do not have and never have had, any involvement in the municipal politics of the TOWNSHIP OF SOUTHGATE.

7.6 The Integrity Commissioner will be impartial and neutral and shall perform all duties skillfully, competently, independently and in accordance with all applicable law.

8.0 Conflicts

8.1 If the Integrity Commissioner becomes aware of a situation where a conflict of interest could arise, subject to the provisions of Section 2.5 above, the Integrity Commissioner shall:

- a. advise the Clerk immediately in writing of the nature of the conflict;
- b. refrain from conducting any further investigation or providing advice on the matter at issue.

8.2 Upon receipt of a notice in writing from the Integrity Commissioner, the Clerk may request the Integrity Commissioner to remove himself or herself from an investigation/inquiry or to stop any further work on a matter, in which case, the Integrity Commissioner shall immediately make arrangements to transfer all related documentation to the Clerk as soon as possible. In that case, the Clerk may retain another person to conduct the investigation/inquiry or to carry on the work in question in place of the Integrity Commissioner, as the Clerk deems appropriate.

9.0 General

9.1 The Integrity Commissioner is appointed pursuant to Subsection 223.1 of the *Municipal Act, 2001* as amended, and as such is responsible for performing the duties under this Agreement in an independent manner. The Integrity Commissioner may be identified publicly as the TOWNSHIP OF SOUTHGATE's Integrity Commissioner however the Integrity Commissioner is an independent contractor and shall not be considered at any time to be an agent or employee of the Municipality.

9.2 Where in this Agreement any notice is required to be given or made by either party to this Agreement, it shall be in writing and is effective if delivered in person, sent by ordinary or registered mail, or email addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:

- a. if delivered personally, on the date of such delivery;
- b. if by ordinary mail, on the second business day following the date of mailing;
- c. if by registered mail, on the day the postal receipt is acknowledged by the other party;
- d. if by email, on the day it is acknowledged by reply e-mail.

9.3 Any notices intended for the Municipality shall be delivered and addressed to:

TOWNSHIP OF SOUTHGATE
Office of the Clerk
185667 Grey Road 9
Dundalk, ON N0G 1B0
jhyde@southgate.ca
519.923.2110 ext. 230

- 9.4 Any notices intended for the Integrity Commissioner shall be delivered and addressed to:

Principles *Integrity*
30 Haddon Street, Toronto, ON M5M 3M9
Attention: Jeffrey A. Abrams and Janice Atwood-Petkovski
Tel No.: 647-259-8697
Email: postoffice@principlesintegrity.org

- 9.5 The address of either party may be changed by notice in the manner set out in this section.
- 9.6 This Agreement may only be changed or amended in writing duly executed by the duly authorized representatives of both parties.
- 9.7 In the event of a breach of any provision of this Agreement by one party to this Agreement, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any such breach, except as may be specifically agreed to in writing by the party that is not in breach.
- 9.8 If any of the provisions of this Agreement shall be illegal or invalid, such illegality or invalidity shall not render the whole agreement illegal or invalid, but the Agreement shall be construed as if it did not contain the illegal or invalid provision(s), and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 9.9 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersede all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written, unless they are expressly incorporated by additional reference in the Agreement.
- 9.10 Articles 4 and 5 shall survive upon termination of this Agreement.
- 9.11 Time shall be of the essence in all respects of this Agreement.
- 9.12 Each of the parties hereby covenants and agrees to execute and deliver such further and other agreements, assurances, undertakings, acknowledgements or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every

part hereof.

9.13 Any dispute, difference or disagreement between the parties in relation to this agreement may, with the consent of Council and the Integrity Commissioner, be referred to arbitration. No person shall be appointed to act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the duties or in the business or other affairs of either the Municipality or the Integrity Commissioner. The determination of the arbitrator shall be final and binding upon the parties.

9.14 This Agreement may be signed in counterparts, each of which is an original, and all of which taken together constitute one single document.


IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as duly attested to by the hands of their proper signing officers authorized in that behalf.


SIGNED, SEALED AND DELIVERED

I/We Have the Authority to Bind
the Corporation

) **THE CORPORATION OF THE MUNICIPALITY OF**
) **SOUTHGATE**


) Per:

) 
) John Woodbury, Mayor

) 
) Joanne Hyde, Clerk

) **PRINCIPLES INTEGRITY**

) Per:

) 
) Jeffrey A. Abrams
) Co-Principal

) 
) Janice Atwood-Petkovski
) Co-Principal

) _____
) _____