

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW #2919 (2007)

Being a by-law to appoint Local Authority Services Ltd. as
the Investigator pursuant to Sections 8, 9, 10 and 239.1 of
the Municipal Act, 2001, as amended.

WHEREAS effective January 1, 2008, Section 239.1 of the Municipal Act, 2001, as amended, permits a person to request an investigation of whether a municipality or local board has complied with Section 239 of the Municipal Act, 2001, as amended, or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public;

AND WHEREAS Council deems it desirable to appoint Local Authority Services Limited (LAS) as the Investigator to investigate all requests on behalf of the Municipality and its Local Boards for a two year term commencing January 1, 2008;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT pursuant to sections 8, 9, 10 and 239.2 of the Municipal Act, 2001, as amended, (the "Act") Council hereby appoints LAS as the independent investigator to investigate in accordance with the legislation all requests for an investigation of the Council and Committees of the Municipality and the Local Boards and their Committees of the Municipality. For the purposes of this By-law "committee" and "local board" shall have the meaning as defined in section 238 of the Act.
- (2) The appointment shall be for an initial term of two years commencing the first day of January, 2008 and ending on December 31, 2009 and may be renewed for subsequent two year terms.
- (3) LAS and its delegate shall, in carrying out the functions of Investigator, have regard to, among other matters, the importance of the investigator's credibility, the independence, impartiality and confidentiality with respect to the investigative process.
- (4) The Investigator or the delegate may hear or obtain information from such persons as the Investigator or the delegation thinks fit, and may make such inquiries as Investigator or the delegate thinks fit and it is not necessary for the Investigator or the delegate to hold any hearing.
- (5) Subject to section 6, no person is entitled as of right to be heard by the Investigator or the delegate.
- (6) If at any time during the course of an investigation it appears to the Investigator or the delegate that there may be sufficient grounds for a report or recommendation that may adversely affect the municipality, a local board or any other person, the Investigator or the delegate shall give him, her or it an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.

(7) After conducting an investigation, the Investigator or the delegate shall report to the municipality or in the case of a local board, to the local board and the Municipality. The report shall include an opinion and the reasons for it and may make such recommendations as the Investigator or the delegate thinks fit. The report shall be included on the next agenda of the Council or in the case of a Local Board, the Council and the Local Board agendas, immediately following receipt of the report.

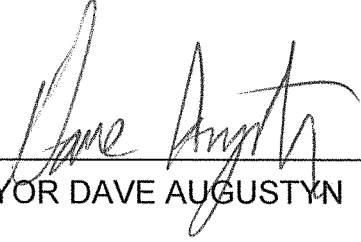
(8) Every request for an investigation by a person shall include all of the following:

- (a) be directed to the Clerk;
- (b) be in writing;
- (c) include reasons for the request;
- (d) be signed, and
- (e) include an address and telephone number of the person making the request.

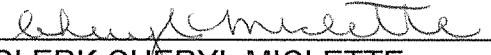
(9) An Agreement between the municipality and LAS for investigative services as shown on Schedule "A" attached hereto is hereby approved and the Head of Council and Clerk are hereby authorized to execute the Agreement on behalf of the municipality.

(10) This by-law shall come into force and take effect immediately upon the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
3rd DAY OF DECEMBER, 2007 A.D.



MAYOR DAVE AUGUSTYN



CLERK CHERYL MICLETTE

INVESTIGATOR SERVICES AGREEMENT

This Agreement made this 3 day of DECEMBER, 2007

BETWEEN

**The Corporation of the Town of Pelham
(the "Municipality")**

-and-

**Local Authority Services Limited
("LAS")**

(each a "Party" and together the "Parties")

RECITALS

WHEREAS effective January 1, 2008, Section 239.1 of the *Municipal Act, 2001*, as amended (the "Act"), will permit a person to request an investigation of whether a municipality or local board has complied with Section 239 of the Act and/or a procedure by-law enacted pursuant to Subsection 238 (2) of the Act in respect of a meeting or part of a meeting that was closed to the public;

AND WHEREAS the investigation of the relevant municipality or local board must be undertaken by an Investigator appointed by the municipality pursuant to Sections 9, 10, 11, and 239.2 of the Act or by an Ombudsman appointed pursuant to the *Ombudsman Act* if the municipality has not appointed an Investigator under the Act;

AND WHEREAS the Municipality deems it desirable that all requests for an investigation be undertaken in the public interest by an appointed independent and impartial investigator (the "Investigator");

AND WHEREAS the Municipality deems it desirable to appoint LAS as the Investigator to investigate all requests received by the Municipality after January 1, 2008 pursuant to the Act respecting any meeting of the Municipality's council, a local board, or a committee of either of them;

AND WHEREAS LAS is dedicated to providing services to Ontario municipalities, and is interested in acting as the Investigator for the Municipality on the terms and conditions set out in this Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Appointment

1. Pursuant to the Act, the Municipality hereby appoints LAS to provide the Investigator Services in accordance with the Act, for all requests for an investigation of the Council and Committees of the Municipality and, the Local Boards, and/or their Committees. For the purposes of this Agreement, “committee” and “local board” shall have the meaning as defined in Section 238 of the Act.
2. Within thirty (30) days of the execution of this Agreement, the Municipality hereby agrees to provide to LAS or its delegate a list of all of the Local Boards and Committees to whom this Agreement applies. The Municipality further agrees to give notice in writing of this Agreement and the appointing by-law to each of the Local Boards and/or Committees affected by this Agreement

Powers

3. The Municipality hereby grants to LAS those powers and duties outlined in Section 239.2 of the Act, and as set out in Schedule “A” to this Agreement.
4. LAS agrees to undertake timely, impartial, and independent investigations and they shall be confidential as required by Section 239.2(5)(b) of the Act.
5. The Parties agree not to disclose any confidential information related to the Services to any party (other than a Party’s legal counsel, accountants or other advisors who have a need to know such information and have agreed to keep such terms confidential) except information as agreed to by the parties or to comply with any applicable law. Either Party shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this confidentiality obligation.

Delegation

6. The Parties acknowledge and agree that LAS, pursuant to Section 239.2(6) of the Act, may delegate all of its powers and duties as Investigator to a third party (the “Delegate”). Any and all rights and obligations of LAS under this Agreement shall also be assigned to the Delegate accordingly. LAS agrees to promptly notify the Municipality of the name of the Delegate.

7. The Parties agree to indemnify and save harmless each other from and against 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 any breach of any representation, warranty, covenant or any provision under this Agreement, provided that the Party not at fault gives prompt written notice of any such losses or claims to the other Party.
8. Notwithstanding Section 7, no Party shall be responsible for any liability in respect of a third-party claim arising under this Agreement due to the wilful misconduct, gross negligence, or bad faith of the other Party.
9. LAS shall not be liable under this Agreement for any consequential, special, or indirect damages whatsoever and the maximum aggregate amount of indemnification payable by LAS under this Agreement for any reason whatsoever shall not exceed the Fees.

Process

10. Upon receipt of a request for an investigation regarding the Meeting, it is agreed that the Clerk of the Municipality shall forthwith forward the following documents to LAS or the Delegate, as appropriate:
 - 1) The original request for an investigation;
 - 2) A certified copy of the municipal procedure by-law and, if applicable, the procedure by-law for the Local Board;
 - 3) A certified copy of the municipal notice by-law and, if applicable, the notice by-law for the Local Board;
 - 4) A certified copy of the agenda with all relevant attachments relating to the Meeting;
 - 5) A certified copy of the notice given for the Meeting;
 - 6) A certified copy of the minutes of the Meeting;
 - 7) A contact list for all members of the Council, Local Board or Committee for which the request is made and for all persons present at the Meeting;
 - 8) Such other information or documentation that the Clerk of the Municipality deems relevant; and
 - 9) Such other information or documentation that LAS or the Delegate may from time to time deem relevant to the investigation.

Fees

11. The Municipality agrees to pay fees and expenses of LAS or the Delegate for the Services (the "Fees"):
 - 1) A retainer fee of Six Hundred Dollars (\$600) per term plus applicable taxes, payable upon execution of this Agreement;
 - 2) A daily investigation fee of One Thousand Two Hundred Fifty Dollars (\$1,250.00) plus all applicable taxes;

- i) A day consists of eight (8) working hours;
 - ii) Daily investigation fees will be billed in hourly increments where appropriate
 - 3) All legal fees incurred by LAS or the Delegate arising out of a claim made by a third-party regarding this Agreement; and
 - 4) All reasonable expenses incurred during the course of providing the Services, including but not limited to any costs associated with transportation expenses, meals, report preparation including translation costs where appropriate, and out-of-pocket administrative costs.
12. The investigation fee shall be billed by LAS or its Delegate, as appropriate.
13. The retainer fee shall be billed by LAS.
14. Any investigation fee submitted by the Delegate shall be deemed to be a debt owed to both LAS and the Delegate until paid in full.

Additional Services Provided by LAS or the Delegate

15. LAS agrees to create and maintain, or cause the Delegate to create and maintain, a password protected website to which the Municipality shall have access during the Term. The website will include the following features:
- a. Information and updates on closed meeting procedures;
 - b. The panel of personnel hired by LAS or the Delegate to fulfill the Services, including experience; and
 - c. Access to all reports made by LAS or the Delegate.
16. Upon execution of this Agreement by the Parties, LAS agrees to provide the Municipality with an information package including but not limited to: an appointing by-law, educational materials, etc.

Term

17. The term of this Agreement shall be two (2) years commencing on the first day of January 2008, or any later day as agreed upon by the Parties, and ending on December 31, 2009 (the "Term").

Renewal

18. Subject to Section 17 herein, this Agreement shall automatically renew from year to year unless and until terminated by either Party upon ninety (90) days prior written notice on the same terms and conditions contained herein except that the retainer fee and investigation fee may be adjusted by LAS, in its sole discretion, acting reasonably. LAS agrees to invoice the Municipality for the retainer fee related to the renewal period at least one hundred and twenty (120) days prior to

the commencement of the renewal term and the Municipality agrees to pay such invoice at least thirty (30) days prior to the commencement of the renewal term.

Termination

19. This Agreement may be terminated by either Party on ninety (90) days written notice to the other Party provided that any investigations 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 herein.

Dispute Resolution

20. Any controversy, dispute, difference, question or claim arising between the Parties in connection with this Agreement that cannot be resolved by a manager from each Party (collectively, the "Dispute") shall be settled in accordance with this Article.
21. The aggrieved Party shall send the other Party written notice identifying the Dispute, its position on the Dispute and the remedy sought. Upon receipt of such written notice, a senior officer of the other Party shall enter into good faith negotiations with a senior officer of the aggrieved Party to resolve the Dispute.
22. If the Dispute has not been resolved within thirty (30) days after such written notice has been given, either Party may avail itself of any process or means legally available to resolve the Dispute.

Miscellaneous

23. All provisions herein shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
24. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In respect of any provision so determined to be unenforceable or invalid, the Parties agree to negotiate in good faith to replace the unenforceable or invalid provision with a new provision that is enforceable and valid in order to give effect to the business intent of the original provision to the extent permitted by law and in accordance with the intent of this Agreement.
25. This Agreement, including any Schedule attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof. This Agreement shall be read with all changes of gender or number required by the context.

26. No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the Parties and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.
27. Each of the Municipality and LAS shall from time to time execute any and all documents and perform such other acts as may be necessary or expedient to further the purposes of this Agreement and the transactions contemplated hereby.
28. Time shall be of the essence of this Agreement.
29. The Municipality and LAS are not and shall not be deemed to be partners or joint venturers with one another and nothing herein shall be construed so as to impose any liability as such on any of them. The Municipality agrees that LAS shall perform its obligations under this Agreement as an independent contractor, and shall not be deemed to be a trustee for any person, whether or not a party to this Agreement, in connection with the discharge by LAS of such obligations.
30. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein.
31. All notices which may be necessary or proper for either Party to serve upon the other shall be served by delivery to the Party to whom the notice is to be given or sent postage pre-paid to the following addresses or by facsimile transmission to the facsimile number set out below.:

To Municipality:
Box 400, 20 Pelham Town Square
Fonthill, ON L0S 1E0

Facsimile Number: (905) 892-5055

To LAS:
200 University Avenue, Suite 801
Toronto, Ontario M5H 3C6

Facsimile Number: (416) 971-6191

All such notices shall be conclusively deemed to have been given and received upon the day the same is personally delivered or, if mailed or sent by facsimile as aforesaid, three (3) business days after the same is mailed as aforesaid. Either

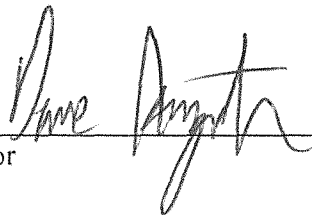
Party may at any time by notice in writing to the other change its address for service of notice.

32. This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original, and such counterparts together shall constitute but one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

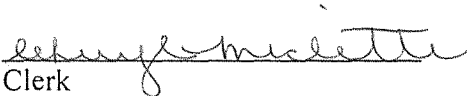
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The Corporation of the Town of Pelham and LAS have respectively executed and delivered this Agreement as of the date first set out above.

The Corporation of the Town of Pelham



Mayor



Clerk

I have authority to bind the corporation

Local Authority Services Limited

Nancy Plumridge
President & Secretary Treasurer

I have authority to bind the corporation