



Hamilton

REPORT 12-004

Accountability and Transparency Sub-Committee

Thursday May 17, 2012

11:00 a.m.

Room 192

Hamilton City Hall

71 Main Street West

Present: Councillors L. Ferguson (Chair), J. Partridge (Vice-Chair),
T. Whitehead
J. Chapman, D. Arbuckle and L. Ryan

Absent with Regrets: Mayor B. Bratina
Citizen Member D. Broom

Also Present: R. Caterini, City Clerk
L. Pasternak, Senior Solicitor
V. Robicheau, Legislative Coordinator

**THE ACCOUNTABILITY AND TRANSPARENCY SUB-COMMITTEE PRESENTS
REPORT 12-004 TO THE GENERAL ISSUES COMMITTEE AND
RESPECTFULLY RECOMMENDS:**

- 1. Integrity Commissioner's Draft Bylaw and Contract (verbal) (Item 6.1)**
 - (a) That the Integrity Commissioner's By-law, attached hereto as Appendix "A", be approved;
 - (b) That the Integrity Commissioner's Contract, attached hereto as Appendix "B", be approved.

FOR THE INFORMATION OF COMMITTEE:**(a) CHANGES TO THE AGENDA (Item 1)**

None.

(b) DECLARATIONS OF INTEREST (Item 2)

None.

(c) APPROVAL OF MINUTES (Item 3)

The Minutes of the May 8, 2012 Accountability and Transparency Sub-Committee, were approved.

(d) PRESENTATIONS**5.1 Lobbyist Registries – Linda Gehrke – Lobbyist Registrar, City of Toronto**

Linda Gehrke, Lobbyist Registrar, City of Toronto, provided an overview of the workings of the City of Toronto's Lobbyist Registry with the aid of a PowerPoint presentation. A copy of the presentation has been included in the public record.

Discussion included, but was not limited to: the costs of operating a registry; defining what constitutes a lobbyist; the FTEs required to operate the registry; incorporating the Code of Conduct; and promoting compliance through education.

(e) DISCUSSION (Item 6)**6.1 Integrity Commissioner's Draft Bylaw and Contract (verbal)**

Lisa Pasternak, Senior Solicitor, provided an overview of the Integrity Commissioner's Contract and Bylaw and the changes outlined in the draft copies distributed.

For disposition on this item, refer to Item 1.

(f) ADJOURNMENT (Item 8)

There being no further business, the Accountability and Transparency Sub-Committee adjourned at 12:28 p.m.

Respectfully submitted,

Councillor L. Ferguson
Chair, Accountability and
Transparency Sub-Committee

Vanessa Robicheau
Legislative Coordinator
Office of the City Clerk
May 17, 2012

Authority: Item , Committee
Report (Staff report number)
CM: (Date)

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

To Amend By-law No. 08-154, a By-law to Establish the Office of Integrity Commissioner.

WHEREAS Council enacted a by-law to establish the Office of Integrity Commissioner, being City of Hamilton By-law No. 08-154;

AND WHEREAS this By-law provides for the amendment of By-law No. 08-154, as amended;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Subsection 22.(1) of By-law No. 08-154 is deleted and replaced with the following new subsection 22.(1):

22.(1) Where the Integrity Commissioner has received a Complaint regarding a member of Council, they shall, within 60 days of receiving the Complaint, prepare and file with the City Clerk a report to Council regarding their inquiry into the Complaint.

2. This By-law comes into force on the day it is passed.

PASSED this _____ day of _____, 2012.

MAYOR
R. Bratina

CITY CLERK
R. Caterini

INTEGRITY COMMISSIONER CONTRACT FOR SERVICES

THIS AGREEMENT made this 1st day of July, 2012,

BETWEEN:

CITY OF HAMILTON
(the "City")

- and -

Basse & Associates Inc.
(the "Contractor")

WHEREAS Earl Basse is being appointed the Integrity Commissioner by the City's Council under the Integrity Commissioner By-law No. 08-154, as amended;

AND WHEREAS in order to have Earl Basse carry out his appointment as the Integrity Commissioner, the City is entering into this Agreement, contracting for services, with the Contractor, subject to the following terms and conditions and in mutual consideration of the promises made between the parties in this Agreement;

THEREFORE the parties agree as follows:

(1) SERVICES

In this Agreement "services" means the duties and responsibilities of the Integrity Commissioner as set out in the Integrity Commissioner By-law No. 08-154, as amended, and the Integrity Commissioner Job Description, such services including but not limited to:

preparing written materials for distribution to and use by members of Council regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of members of Council under the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour;

preparing written materials and content for the City's website for distribution to and use by the public to aid in their understanding of the role of Integrity Commissioner and ethical obligations and responsibilities of members of Council under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour;

delivering an oral presentation, at least once each Council term, to members of Council, regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of members of Council under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour;

providing, upon request, advice to individual members of Council regarding their ethical obligations and responsibilities under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour;

providing advice and recommendations to Council regarding amendments to the Code of Conduct and any other procedures, rules or policies governing their ethical

behaviour;

preparing and delivering an annual report to Council containing a summary of activities delivered during the calendar year;

determining the appropriateness of conducting an inquiry into a complaint under the Integrity Commissioner By-law;

conducting inquiries promptly and thoroughly, including,

- exercising, as required, powers under the Integrity Commissioner By-law or under Part V.1 of the *Municipal Act, 2001*, including the power to conduct or not to conduct an inquiry under the *Public Inquiries Act*,
- making initial contact with a Councillor who is the subject of a Complaint, whether or not the Integrity Commissioner has delegated their duties to conduct an inquiry;

determining and imposing penalties on a member of Council who contravenes the Code of Conduct;

preparing reports and other documents related to inquiries including such reports and other documents in respect of a completed inquiry or a decision not to proceed with or to terminate an inquiry;

ensuring that reports and other documents prepared comply at all times with the *Municipal Freedom of Information and Protection of Privacy Act* and with the Council Procedural By-law regarding personal and personnel information;

preparing and submitting an annual budget containing all anticipated costs and expenditures (e.g. hiring staff, arranging for facilities, obtaining expert services) for the operation of the office of the Integrity Commissioner; and

providing notice of receipt, by e-mail or otherwise in writing, not later than three business days (a business day being a day on which the City of Hamilton administrative offices are open for business) after receiving a request for advice or a Complaint to the person who submitted the request for advice or the Complaint.

(2) TERM

The Contractor shall commence to provide the services commencing on July 1, 2012 and, unless earlier terminated under section (6) of this Agreement, continuing until July 31, 2015.

(3) REMUNERATION

- (a) In consideration of the services, the City shall pay the Contractor in accordance with Schedule A attached to and forming part of this Agreement.
- (b) The Contractor is responsible for completing all required documentation for and submitting all required amounts to the federal and provincial governments with respect to payments under subsection (a).

(4) INSURANCE

The Contractor agrees to obtain and maintain a policy of commercial general liability insurance in the amount of \$2,000,000 endorsed to include the City of Hamilton as additional insured, evidence of which shall be made available to the City at the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5, Attn: City Clerk, prior to the Contractor rendering any service hereunder. The premiums payable under such policy shall be paid in full by the Contractor.

(5) INDEMNITY

- (a) The Contractor acknowledges that the City shall not be liable to the Contractor or any other party in relation to the provision of the services under this Agreement and the parties agree that the Contractor shall not be deemed an agent of the City for any purpose.
- (b) The Contractor hereby covenants and agrees to defend, indemnify and save harmless the City from any and all claims, demands, losses, charges, liabilities, actions, causes of action and any other proceeding of any nature made or brought against, suffered or imposed upon the City or its property in respect of any loss, damage, injury or death to any person or property directly or indirectly arising out of, resulting from or sustained by reason of the performance of the Contractor of its obligations under this Agreement.

(6) TERMINATION OF AGREEMENT

- (a) The Contractor may terminate this Agreement by providing the City with at least ten days' written notice of the Contractor's intention to terminate this Agreement. The requirement to provide the minimum of ten days' written notice may be waived by the City, in its sole discretion, upon request by the Contractor.
- (b) The City may terminate this Agreement at any time:
 - (i) For cause, without the provision of any notice or payment to the Contractor. "Cause" includes, but is not limited to, those events defined as constituting cause under this Agreement.
 - (ii) For any reason, upon providing the Contractor with payment of \$3,000.00.

(7) RECORD OF OFFENCES

- (a) The Contractor affirms that Earl Basse does not have a record of criminal offences for which a pardon has not been granted or a record of provincial offences for the previous five years. The Contractor shall provide the City with a record of offences (criminal or provincial) at the City's request during the term of this Agreement. The Contractor agrees to notify the City about any criminal or provincial offence of which Earl Basse has been convicted during the term of this Agreement that would detract from the performance of the services.
- (b) The Contractor acknowledges that a false statement with respect to criminal or provincial offences constitutes a breach of this Agreement and is cause for

termination or this Agreement without notice or compensation. The Contractor further acknowledges that certain convictions for criminal or provincial offences, depending on the nature and severity of the offence and the *bona fide* requirements of the position of Integrity Commissioner, may be cause for termination of this Agreement without notice or compensation.

(8) PREVAILING LAWS

- (a) The Contractor agrees to comply at all times with the prevailing laws, including but not limited to the *Municipal Act, 2001*, the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*.
- (b) The Contractor's intentional failure, or failure caused by lack of due diligence on behalf of the Contractor, to comply with this section constitutes both a breach of this Agreement and cause for termination of this Agreement without notice or compensation.

(9) CONFIDENTIALITY/NON-DISCLOSURE

- (a) The Contractor recognizes that in providing the services the Contractor may acquire detailed and confidential knowledge of the City's operations, its taxpayers and residents, and other confidential documents and information.
- (b) The Contractor agrees that the Contractor shall not in any way use, divulge, furnish or make accessible to any person, either during the term of this Agreement or any time thereafter, any confidential information relating to the business of the City or of its taxpayers and residents, acquired by the Contractor in the course of providing the services to the City.
- (c) This section shall survive the termination of this Agreement and the Contractor's provision of services hereunder.
- (d) A failure to comply with this section constitutes both a breach of this Agreement and cause for termination of this Agreement without notice or compensation.

(10) CITY'S PROPERTY

Upon ceasing to provide the services to the City, the Contractor shall promptly deliver to the City any and all property, technology, data, manuals, notes, records, plans or other documents, including any such documents stored on any video or software related medium, held by the Contractor concerning the City's services and programs, know-how, developments, and equipment.

(11) INDIVIDUALS PROVIDING SERVICES

The Contractor agrees that sections (8), (9) and (10) of this Agreement apply to Earl Basse and any other individual providing the services and shall ensure the individuals' compliance with the sections.

(12) ENTIRE AGREEMENT

This Agreement, including Appendix A, constitutes the entire agreement between the parties, and it is agreed that there is no term, condition, warranty, or representation, collateral or otherwise, that may govern or affect the relationship between the parties, other than those contained in this Agreement. This Agreement may not be modified or amended except in writing by the parties to this Agreement.

(13) SEVERABILITY

- (a) In the event that in any legal proceedings it is determined that any section or part of a section of this Agreement is invalid or unenforceable it shall be deemed to be severed from the remainder of this Agreement for the purpose only of the particular proceeding. This Agreement shall, in every other respect, continue in full force and effect.
- (b) The invalidity or unenforceability of any provision or part of any section of this Agreement shall not affect the validity or enforceability of any other provision or part of any section.

(14) INDEPENDENT ADVICE

The Contractor acknowledges that the Contractor has been given an opportunity to seek independent advice prior to signing this Agreement.

The Contractor states that the entire Agreement has been read and its contents understood. The Contractor further acknowledges that the Contractor relied upon its own sources of information in signing this Agreement and did not rely on any assertions, promises or information from the City other than the terms of this Agreement.

(15) GOVERNING LAW

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF this Agreement has been signed on behalf of the City by the Mayor and City Clerk and on behalf of Contractor by its authorized signing officer(s).

City of Hamilton

Mayor
R. Bratina

City Clerk
R. Caterini

Basse & Associates Inc.

(signature of authorized signing officer)

Name: _____

Position: _____

I have authority to bind the corporation.

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Schedule A

The services provided by the Contractor will be “free on board” to the City and the City will not reimburse the Contractor for mileage from the Contractor’s office to and from Hamilton for the purpose of providing the services with the exception of mileage, parking and similar out-of-pocket expenses for attendance at up to three meetings with the public during each year of the contract.

The City agrees to pay to the Contractor the sum of \$1,500.00 per month during the term of this Agreement. In consideration of the payment of the monthly retainer, the Contractor shall deliver to the City the services set out below in the table entitled **Ongoing Services – not including an inquiry under Bylaw 08-154, as amended** without further charge or remuneration.

In addition to the payment of the monthly retainer, the City agrees to pay the Contractor the sum of \$150.00 per hour for inquiry services including but not limited to conducting the investigation and preparing any required reports. The City also agrees to reimburse the Contractor for any reasonable out-of-pocket expenses that are incurred in the course of conducting investigations.

Ongoing Services – not including an inquiry under Bylaw 08-154, as amended

Services
<p><u>Webpage</u></p> <p>Further information to aid Members of Council and the public in their understanding of the role of the Integrity Commission and the ethical obligations and responsibilities of Member of Council</p>
<p><u>Oral presentation to Members of Council</u></p> <p>At least once each Council term, with additional presentations if warranted</p>
<p><u>Advice to individual Members of Council</u></p> <p>Upon request</p> <p>By telephone or e-mail</p>
<p><u>Advice and recommendations to Council</u></p> <p>Regarding amendments to the Code of Conduct, etc.</p>
<p><u>Notice of receipt</u></p> <p>Provided by e-mail or otherwise in writing not later than three business days after receiving a request for advice or a Complaint, either directly or through the City Clerk</p>

Services
<u>Annual report to Council</u> Prepare and deliver
<u>Meetings with the Public</u> Attend, upon invitation, up to three meetings with the public during each year of the contract
<u>Other Ongoing Services – not including an inquiry under Bylaw 08-154, as amended</u>

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