

## SERVICES AGREEMENT

This Services Agreement is made this 5th day of April, 2016.

### BETWEEN:

**THE TOWN OF OAKVILLE**  
(hereinafter called the "Town")

- and -

**ADR CHAMBERS INC.**  
(hereinafter called the "Ombudsman")

**WHEREAS** Section 223.13 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes the Town to appoint an ombudsman who reports to Town Council and who is responsible for investigating in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the Town and any municipally-controlled corporations;

**AND WHEREAS** on April 4, 2016, the Town appointed ADR Chambers Inc. as its ombudsman to perform the duties and responsibilities of that office pursuant to the legislation and this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follow:

### **DEFINITIONS & INTERPRETATION**

1. For the purposes of this Agreement:

"Agreement" means this Services Agreement including Schedule A and all amendments or restatements thereof, as agreed to by the Parties, and, except where otherwise indicated, references to "Section" mean the specified Section of this Agreement.

"Complaint" means a written expression of dissatisfaction with any decision or recommendation made or act done or omitted in the course of the administration of the Town.

"Municipal Act, 2001" means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

"Party" means either the Town or the Ombudsman and "Parties" means both the Town and the Ombudsman.

“Town Council” means the Council for the Town of Oakville.

“Terms of Reference” means the terms of reference set out in Schedule A of this Agreement.

2. The following schedule forms an integral part of this Agreement:

Schedule A - Terms of Reference

3. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written in respect of the subject matter hereof. There are no conditions, representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement.

**SERVICES & FEES**

4. Subject to and in accordance with the terms of this Agreement, the Town retains the Ombudsman to carry out the duties of the Ombudsman in an independent manner, and the Ombudsman agrees to assume this role and carry out the role of the Ombudsman.
5. The Ombudsman will perform the duties contained in the Terms of Reference in an independent, professional and consistent manner, in compliance with all applicable laws and expeditiously to meet the requirements of the Town.
6. The Town will cooperate with the Ombudsman and participate in the complaints process as set out in the Terms of Reference.
7. The Ombudsman will establish a complaint procedure and develop any associated forms and documents, such as a complaint form and a consent and confidentiality agreement, required in connection with its duties. The complaint procedure and all associated forms and documents will be subject to the Town’s approval.
8. Any reports required to be made by the Ombudsman will follow the proper administrative reporting procedures as directed by the Town Clerk, whose role it is to transmit such reports to Town Council.
9. The Ombudsman will submit invoices for services performed to the Town Clerk on a monthly basis. The Town will pay invoiced amounts within forty-five (45) days of receipt of such invoice.
10. The Town will pay the Ombudsman a monthly fee of one thousand dollars (\$1,000) plus HST for administrative support needed for complaint investigations; all intake

officer work including the intake process, the drafting and review of any initial view letters; general file management; and attendance at the meeting of Town Council at which the Ombudsman's annual report is considered.

11. The Town will pay the Ombudsman an hourly rate of two hundred and fifty dollars (\$250) plus HST for conducting investigations of complaints.
12. The only disbursement applicable under the terms of this Agreement is mileage, which the Town will pay at the rate of fifty cents (\$0.50) per kilometer.
13. The Ombudsman will not seek reimbursement from the Town for any costs incurred by it which are not specifically set out in this Agreement, unless such costs are pre-authorized in writing by the Town.
14. If requested by the Town, the Ombudsman will make available to the Town such time sheets, accounts, records, receipts, vouchers and other documents as the Town Clerk considers necessary for the purpose of substantiating the Ombudsman's invoices.

#### **INSURANCE & INDEMNITY**

15. The Ombudsman will effect prior to commencement of this Agreement, and will maintain and keep in force during the carrying out of the Agreement, professional liability insurance providing coverage against claims for all liability arising out of this Agreement for the loss of data, and for personal injury arising out of breach of privacy. The limits of the liability under this insurance policy will be in an amount not less than two million dollars (\$2,000,000.00) each claim; if the amount of insurance under this policy is subject to an aggregate limit, the total aggregate must not be less than four million dollars (\$4,000,000). Prior to the execution of this Agreement, the Ombudsman will provide to the Town a certificate of insurance giving evidence of such coverage in a form satisfactory to the Town.
16. Each Party will indemnify and hold harmless the other Party, its successors, assigns, councillors, officers, directors, agents, partners, representatives, and employees from and against any and all liabilities, losses, damages, costs, expenses, actions, claims, and demands whatsoever, including reasonable attorneys' fees, arising from any negligent or willful act or omission by itself, its employees, representatives or agents in connection with this Agreement. In no event will the Parties be liable for any indirect damages hereunder.

#### **REPRESENTATIONS, WARRANTIES & COVENANTS**

17. The Ombudsman represents, warrants and covenants to the Town as follows:
  - (a) The Ombudsman has expertise in the field of dispute resolution and independent ombudsman services and has, and will have during the term

of this Agreement, the technology, personnel, and systems necessary to perform its obligations under this Agreement;

- (b) The Ombudsman will:
  - i) perform the services in a professional and workmanlike manner and in accordance with industry standards;
  - ii) provide any complainant with timely notice of receipt of their complaint;
  - iii) provide both the Town and the complainant with updates regarding the status of the Ombudsman's investigation(s) upon request;
  - iv) ensure that it has, and will maintain in good standing and will cause each of its personnel who perform any part of the services to have and maintain in good standing, all required licenses, consents, approvals and permits from any person necessary to perform the Ombudsman's obligations under this Agreement;
  - v) comply, and will cause each of its personnel to comply, with all applicable laws, rules, regulations and industry and governmental guidelines and standards in the performance of the Ombudsman's obligations under this Agreement; and
  - vi) notify the Town immediately in the event of a breach of its obligations in Section 17(b)(iv) or (v).

18. The Town represents, warrants and covenants to the Ombudsman as follows:

- (a) The Town will comply with the Terms of Reference during the term of this Agreement.
- (b) The Town will make all necessary payments to the Ombudsman pursuant to this Agreement in a timely manner.

### **TERM & TERMINATION**

19. This Agreement will commence on April 5, 2016 and will continue until April 5, 2018 unless terminated earlier by either Party in accordance with the provisions hereof. Subject to Town Council approval and appointment and the agreement of the Parties to any amendments, this Agreement may be renewed for a further term or terms.

20. Either Party (the “terminating Party”) may terminate this Agreement immediately in the event of a breach of any material provision of this Agreement by the other Party, which breach has not been remedied to the terminating Party’s satisfaction within thirty (30) days of providing written notice of the breach.
21. In the event of the termination or expiration of this Agreement,
  - (a) neither Party will be relieved of any obligations incurred prior to such termination or expiration, and each Party will have any and all rights and remedies available to it at law and equity.
22. Upon termination or expiration of this Agreement, the Ombudsman will forthwith deliver all material and documentation related to any investigations underway to the Town’s next ombudsman and all such material and documentation will become the property of the new ombudsman for the Town. In the event that the Town has not contracted the services of a new ombudsman, upon termination or expiration of this Agreement the Ombudsman will make arrangements with the Town Clerk to transfer the material and documentation related to ongoing investigations in such a manner that satisfies the Ombudsman’s concerns respecting the confidentiality of the records, while allowing their use for the purposes that they were created.
23. Sections 2, 3, 16, 17, 18, 21, 22, 23, 30, 33, 35, 36 and 37 will survive the termination or expiration of this Agreement.

### **CONFLICT OF INTEREST**

24. The Ombudsman acknowledges and advises that it does not have any conflicts of interest that would interfere with carrying out the duties under this Agreement and that it will be impartial and neutral and will perform all duties skillfully, competently, independently and in accordance with all applicable law.
25. If the Ombudsman becomes aware of a situation where a conflict of interest could arise, the Ombudsman will:
  - (a) advise the Town Clerk in writing of the nature of the conflict;
  - (b) cooperate with the Town in identifying and implementing an appropriate way of avoiding the conflict of interest.

### **Accessibility for Ontarians with Disabilities Act**

26. The Ombudsman is responsible for meeting the training requirements under Ontario Regulations 429/07 and 191/11 passed under the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 (the “Regulations”) regarding the provision of accessible customer service to the public and regarding the requirements of the accessibility standards referred to in Regulation 191/11 and in the *Human Rights*

Code, R.S.O. 1990, c. H.19, as it pertains to persons with disabilities, respectively. The Ombudsman warrants that it will ensure that all of its employees who provide goods and services to the public are adequately trained in the provision of accessible customer service in accordance with the Regulations.

27. Upon the Town's request, the Ombudsman will provide the Town with evidence of compliance with the training requirements under the Regulations, and permit the Town or its agents to conduct a review or audit of the Ombudsman's fulfillment of these training requirements. The Ombudsman will be required to co-operate with any such request and provide the Town with access to its employees and any records related to the training requirement as may be requested by the Town.
28. The Ombudsman will accept information from and provide information to complainants in alternate formats and/or use communications supports, upon request.

### **MISCELLANEOUS**

29. All notices given under this Agreement will be in writing, and will be deemed to have been duly delivered, effective either upon receipt if faxed or hand delivered, or effective three business days after being deposited (postage prepaid, return receipt requested) in the mail and sent to the addresses or facsimile numbers below. A Party may occasionally change its address or designee for notification purposes by giving the other prior written notice of the new address or designee, and the date upon which it will become effective.

- (a) For the Town:

The Town of Oakville  
Office of the Town Clerk  
1225 Trafalgar Road  
Oakville, Ontario L6H 0H3  
Attention: Town Clerk  
Phone: (905) 815-2003  
Fax: (905) 815-2025  
Email: TownClerk@oakville.ca

- (b) For the Ombudsman:

ADR Chambers Inc.  
P.O. Box 1006  
31 Adelaide St. E.  
Toronto, Ontario M5C 2K4  
Attention: President of ADR Chambers Inc.  
Phone: (416) 362-8555  
Fax: (877) 803-5127

30. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the Town and the Ombudsman irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario for the purpose of any suit, action, or other proceeding arising out of this Agreement, or the subject matter hereof brought by either Party or their successors or assigns.
31. The Ombudsman will perform its obligation under this Agreement as an independent contractor. Nothing herein will be construed to place the Ombudsman or the Town in a relationship of principal and agent, partners or joint venturers, and neither the Ombudsman nor the Town will have the power to obligate or bind the other in any manner whatsoever.
32. Any amendment or modification to this Agreement must be mutually agreed to in writing by the Parties.
33. No waiver hereunder may be granted except by a written instrument signed by the Town or the Ombudsman, as the case may be. This Agreement will be binding upon and will enure to the benefit of and be enforceable by each of the Parties, their respective successors and permitted assigns.
34. The Ombudsman will not assign or subcontract all or any portion of this Agreement without the prior written consent of the Town.
35. The Ombudsman will make no media releases, public announcements or public disclosures relating to this Agreement or the subject matter of this Agreement without the prior written consent of the Town.
36. The Ombudsman will maintain complete and accurate records of supporting documentation for all amounts billable to and payments made by the Town of Oakville under this Agreement and of the Ombudsman's performance hereunder and will retain such records for a period equal to a minimum of seven (7) years following the end of the calendar year during which the relevant complaint file was closed. During the Term of this Agreement and any subsequent periods for which the Ombudsman is required to maintain these records, the Ombudsman will, upon reasonable notice from the Town, make these records available to the Town and its authorized agents and representatives during regular business hours.
37. The Ombudsman will cooperate with the Town and/or its designee in fulfilling reasonable requests made in connection with the Town's internal vendor due diligence and audit functions and with regard to examinations by regulatory authorities.

**IN WITNESS WHEREOF** the Parties have hereunto caused their corporate seals to be affixed and attested to by their proper signing officers duly authorized in that behalf.

**SIGNED, SEALED AND DELIVERED**

This \_\_\_\_\_ day of \_\_\_\_\_, 2016

)  
)  
)  
)  
)

**ADR CHAMBERS INC.**

Per: \_\_\_\_\_  
Name: Allan Stitt  
Title: President

I have the authority to bind the corporation.

**SIGNED, SEALED AND DELIVERED**

This \_\_\_\_\_ day of \_\_\_\_\_, 2015

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**THE TOWN OF OAKVILLE**

Per: \_\_\_\_\_  
Name: R.G (Ray) Green  
Title: CAO

Per: \_\_\_\_\_  
Name: Vicki Tytaneck  
Title: Town Clerk



## SCHEDULE A

### Terms of Reference

#### PURPOSE

1. These Terms of Reference set out the responsibilities and mandate of the Ombudsman for The Town of Oakville and establish the standard protocols that will be followed by the Ombudsman in the course of reviewing and investigating complaints.

#### DEFINITIONS

2. Defined terms used throughout these Terms of Reference are as follows:
  - **ADR Chambers Ombuds Office** means the function within ADR Chambers Inc. involved in providing Ombudsman services to Town of Oakville under the direction of the Ombudsman;
  - **Complainant** means any member of the public who makes a Complaint to the Ombudsman about the Town of Oakville;
  - **Complaint** means a written expression of dissatisfaction with any decision or recommendation made or act done or omitted in the course of the administration of the Town of Oakville. Complaints are not deemed to be submitted until the Ombudsman has received a completed and signed Complaint Submission Form and a signed Consent and Confidentiality Agreement;
  - **Complaint Submission Form** means a form required to be filled out and signed by Complainants wishing to submit a Complaint to the Ombudsman wherein they describe the nature of their complaint;
  - **Consent and Confidentiality Agreement** means an agreement required to be signed by Complainants whereby they agree to certain confidentiality requirements and other conditions of the Complaints procedure;
  - **Initial View Letter** means a letter sent to the Complainant when the Complaint is outside of the Ombudsman's mandate, as defined in these Terms of Reference. An Initial View Letter will provide the Complainant with the reasons for the determination that the Complaint is outside the Ombudsman's mandate;
  - **Ombudsman** means the individual designated by ADR Chambers Inc. to handle Complaints and to direct and coordinate ADR Chambers Ombuds Office activities in accordance with these Terms of Reference.

## PRINCIPLES

3. The role of the Ombudsman and of the ADR Chambers Ombuds Office is founded on the general principles of independence, impartiality, confidentiality and accessibility.

## RESPONSIBILITIES

4. The Ombudsman's responsibilities are to:
  - adhere to the requirements of the *Municipal Act, 2001* and these Terms of Reference and ensure such adherence by the ADR Chambers Ombuds Office and by any delegates;
  - provide information to the public about the process for submitting and commencing Complaints;
  - receive Complaints for assessment;
  - assess incoming Complaints to determine whether they are within the Ombudsman's mandate;
  - attempt early resolution of Complaints where appropriate;
  - if early resolution is not appropriate or possible, investigate Complaints and issue a report with analysis and recommendations;
  - alert the Town of Oakville if it determines that a Complaint or series of Complaints raises a systemic issue;
  - preserve confidentiality in accordance with the requirements of the *Municipal Act, 2001*; and
  - not provide legal representation or advice to a Complainant.
5. The Ombudsman must always act independently and impartially, and not advocate on behalf of the Complainant or the Town of Oakville.
6. The Ombudsman may delegate in writing to any ADR Chambers Inc. personnel any of the Ombudsman's powers or duties, including responsibilities in the investigation and processing of a Complaint.
7. The Ombudsman will act in compliance with all applicable legislation, privacy rules, and codes of conduct.
8. For greater certainty, the Ombudsman will preserve confidentiality and may disclose information in accordance with the provisions of the *Municipal Act, 2001*.
9. When required by law or by order of a tribunal with competent jurisdiction, the Ombudsman shall disclose confidential information, but shall not disclose more information than is required.

## MANDATE

10. The Ombudsman reports to Oakville Town Council and investigates in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of Town of Oakville, and affecting any person or body of persons in his, her or its personal capacity.
11. The Ombudsman provides an independent, impartial and confidential office through which members of the public may pursue just, fair and equitable resolution of concerns within the mandate of the Ombudsman.
12. The Ombudsman receives Complaints, assesses them in order to determine if they are within its mandate and investigates Complaints within its mandate.
13. The Ombudsman will not investigate any Town of Oakville decision, recommendation, act or omission, in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired.
14. The Ombudsman will not investigate a Complaint if the Complainant has not exhausted all internal complaint procedures of Town of Oakville, as applicable.
15. The Ombudsman will not investigate any decision, recommendation, act or omission of any person acting as a legal adviser to Town of Oakville or acting as counsel to them in relation to any proceedings.
16. The Ombudsman will not investigate complaints regarding policing, the conduct of Oakville Councillors and closed meetings of Oakville Council.
17. The Ombudsman may refuse to investigate a Complaint or to continue an investigation of a Complaint when the Ombudsman believes on reasonable grounds that:
  - a) the Complainant has not availed himself or herself of other adequate remedies under the law or existing administrative practices;
  - b) the subject matter of the Complaint is trivial;
  - c) the Complaint is frivolous, vexatious or not made in good faith;
  - d) the Complainant cannot demonstrate sufficient personal interest in the subject matter of the Complaint;

- e) having regard to all of the circumstances of the case, no further investigation is necessary; or
- f) at the time the Complaint is received, more than one year has elapsed since the Complainant learned of the facts on which the Complaint is based, unless the Complainant establishes exceptional circumstances that justify the delay to the satisfaction of the Ombudsman.

18. The Ombudsman may consider representations from the parties in determining if a Complaint falls within his or her mandate.

19. If the Ombudsman determines not to investigate, or to discontinue an investigation, the Ombudsman will inform the Complainant in writing of the decision and the reasons for the decision.

### **RECEIPT AND INITIAL REVIEW OF COMPLAINTS**

20. The Ombudsman will not consider a complaint until it has received a completed and signed Complaint Submission Form and a signed Consent and Confidentiality Agreement.

21. Upon receipt of a Complaint, the Ombudsman will inform the Town of Oakville and conduct an initial review to determine if the Complaint is within the mandate of the Ombudsman to investigate.

22. If a Complaint is not within the Ombudsman's mandate to investigate, an Initial View Letter will be sent to the Complainant advising him or her of the reason why the Ombudsman is unable to investigate the matter.

23. The Ombudsman will inform the Town of Oakville if the Ombudsman is unable to investigate the matter or if an investigation will be undertaken by the Ombudsman.

24. The Ombudsman may act as a liaison between members of the public and the Town of Oakville serving as a communicator or informal conciliator if appropriate.

25. Before undertaking an investigation, the Ombudsman will attempt to mediate or otherwise facilitate the early resolution of a Complaint, if appropriate.

### **INVESTIGATIONS**

26. Every investigation will be conducted in private.

27. The Ombudsman will determine the procedures for assessing and investigating Complaints. The Ombudsman is not bound by the rules of evidence that would apply in a court of law. The Ombudsman will use his or her judgment to evaluate the quality of the evidence, the relevance and weight applicable, and its effect on the final outcome of the investigation.
28. The Ombudsman may hear or obtain information from such persons as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman. However, if at any time during the investigation it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect the Town of Oakville or any other person, the Ombudsman will give him, her or it an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.
29. The Town of Oakville will cooperate with and assist the Ombudsman in the investigation by providing all non-privileged information in its possession/control as soon as is reasonably practical, unless it is demonstrated to the Ombudsman that disclosing this would likely place the Town of Oakville in breach of the law or its duty of confidentiality.
30. In undertaking an investigation, the Ombudsman will have regard to whether the decision, recommendation, act or omission in question may have been:
  - a) contrary to law;
  - b) unreasonable, unjust, oppressive or improperly discriminatory;
  - c) based wholly or partly on a mistake of law or fact;
  - d) based on the improper exercise of a discretionary power; or
  - e) wrong.

## **INVESTIGATION RESULTS**

31. Where the Ombudsman undertakes an investigation, he or she will issue a written report with his or her findings, either rejecting the Complaint or making recommendations to the Town of Oakville as applicable, and containing reasons for its decision.
32. The Ombudsman may disclose in any report made by him or her, matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusion and recommendations.

33. The Ombudsman will make a recommendation or reject a Complaint based on what is fair and reasonable in the circumstances. In determining this, the Ombudsman will take into account the law, any regulatory policies and any relevant code of practice or guidance applicable to the subject matter of the Complaint. Decisions must also be in accordance with accepted standards of fairness, independence, and competence, and tenets of procedural fairness will be followed.
34. Recommendations by the Ombudsman are not binding on the Town of Oakville or the Complainant.
35. Recommendations by the Ombudsman may include recommendations, where appropriate, for changes to the Town of Oakville's policies and procedures. Notwithstanding the rejection of a Complaint, the Ombudsman may bring to the attention of the Town of Oakville any policies, rules or procedures that may appear unclear, inequitable or unfair that have been the subject of a Complaint investigation. The Ombudsman may suggest changes to existing policies, rules or procedures, or offer advice on the development of new policies, rules or procedures.

## **GENERAL**

36. The administrative contact for the Ombudsman is the Town Clerk.
37. The Ombudsman is directly responsible to Oakville Town Council.
38. The Ombudsman will publish an annual report containing information of the number and type of complaints handled by the Ombudsman and identifying any general trends. The Town of Oakville will post the annual report on its website.
39. The Ombudsman will attend at a Oakville Town Council meeting to discuss the annual report.