

Date: January 12, 2021

To: Chair and Members of General Committee

From: Andra L. Maxwell B.A., LL.B., CIC.C, City Solicitor

Originator's files:

Meeting date:  
January 27, 2021

## **Subject**

**Investigator Services Agreement with Local Authorities Services Limited with respect to Closed Meeting Investigation Services**

## **Recommendation**

1. That the Investigator Services Agreement, dated December 12, 2007, between The Corporation of the City of Mississauga and Local Authority Services Limited be renewed for the 2021 term in accordance with the automatic renewal provisions contained therein.
2. That the City Solicitor be authorized to approve further renewal terms as well as changes to the retainer (administrative) fee or investigation fee amounts under the Investigator Services Agreement, dated December 12, 2007, between The Corporation of the City of Mississauga and Local Authority Services Limited between now and December 31, 2023, after which the City Solicitor shall report to Council and obtain authorization for any further renewals.
3. That the City Solicitor be authorized to execute any amendments or addendums to the Investigator Services Agreement, dated December 12, 2007, between The Corporation of the City of Mississauga and Local Authority Services Limited, in a form satisfactory to Legal Services.
4. That all necessary by-laws be enacted.

## **Report Highlights**

- Under the *Municipal Act, 2001*, a municipality must appoint a closed meeting investigator, or the provincial Ombudsman will be the default appointed investigator.
- By By-law 0438-2007, Council appointed Local Authority Services ("LAS"), owned by the Association of Municipalities of Ontario ("AMO"), to act as the City's closed meeting investigator.
- In 2020, Council approved a change in LAS' retainer (administrative) fee from \$330 per year to \$200 plus applicable taxes and an increase in its hourly investigation fee from

\$225 per year to vary between \$325 - \$725 per hour (excluding expenses) for the 2020 term.

- For the 2021 term, LAS has slightly increased its hourly investigation fee to vary between \$325 - \$775 per hour (excluding expenses) in the event of a closed meeting investigation.
- Currently, even small changes to the LAS fee structure from year to year require a report to General Committee and Council authorization to renew.
- The purpose of this report is to recommend that the City renew its agreement with LAS for the 2021 term and that the City Solicitor be delegated authority to approve further renewals and changes to fee amounts for the next 3 years, after which the City Solicitor must report to Council regarding any further renewals.

## Background

Section 239.1 of the *Municipal Act, 2001*, provides that a person may request an investigation into whether a municipality, a local board, or a committee of either has complied with the closed meeting provisions of the *Municipal Act, 2001*. Such an investigation may be undertaken by:

- (a) an investigator appointed by the municipality, who has the function to investigate in an independent manner and report on the investigation; or
- (b) the Provincial Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator.

In 2007, Council appointed LAS as the City's closed meeting investigator, should an investigation be requested. LAS was created in 1992 by the AMO and it supports municipalities and the broader public sector by delivering programs and services that takes advantage of economies of scale and cooperative procurement efforts.

The City entered into the Investigator Services Agreement (the "Agreement") with LAS in 2007. The Agreement allows for LAS to delegate its closed meeting investigation services, while LAS remains ultimately responsible for the services rendered as a contracting party. In 2020, LAS' service provider for the Closed Meeting Investigator Program (the "Program") changed from Amberley Gavel Ltd. to Aird & Berlis LLP. The Agreement automatically renews at the start of each year unless terminated by either Party by giving 90 days prior written notice.

LAS charges 2 fees as part of the Program: 1) an annual retainer (administrative) fee and; 2) an hourly investigation fee for each investigation. In 2020, the City paid LAS an administrative fee of \$200 plus applicable taxes and in the event of a closed meeting investigation, an hourly investigation fee of \$325-\$725 per hour plus applicable taxes would have been payable. The City is also responsible for reasonable actual expenses incurred in the course of conducting an investigation.

## Present Status

LAS advised the City that commencing January 1, 2021, its hourly investigation fee rate will slightly increase from \$325-\$725 per hour (excluding expenses) to \$325-\$775 per hour (excluding expenses). This fee varies dependent upon the staff leading and are only payable in the event of a closed meeting investigation. The 2021 retainer (administrative fee) remains unchanged at \$200 plus applicable taxes.

## Comments

To date, the City has not received any request for a closed meeting investigation. Given the cost effective, defined and confidential process in handling closed meeting investigations offered by LAS, Legal Services recommends that the City renews its Agreement with LAS for the 2021 term to provide for closed meeting investigations. The other options available to the City are to appoint an individual to be the City's closed meeting investigator or to not appoint any person but default to the Provincial Ombudsman as the investigator for closed meeting complaints.

Staff's evaluation of the options and recommendation to renew the City's agreement with LAS to provide closed meeting investigations remains unchanged from those outlined in the January 22, 2020 corporate report from the City Solicitor to General Committee, entitled "Renewal of the Investigator Services Agreement with Local Authorities Services Limited with respect to closed meeting investigation services."

Since the City entered into the Agreement with LAS in 2007, the retainer (administrative) and investigator fee amounts have not significantly increased. Rather than reporting to the General Committee each time the fees increase, Legal Services recommends that the City Solicitor be authorized to approve further renewals and fee changes made pursuant to the Agreement and also to execute any amendments or addendums that may be required for a period of three (3) years, after which she must bring a report and obtain authorization from Council for any further renewals.

## Financial Impact

If the City continues to utilize the services of LAS, the retainer (administrative fee) will be \$200 plus applicable taxes and the hourly investigation fee will vary between \$325 - \$775 per hour. The City will also be responsible for reasonable out of pocket expenses. All proposed costs can be accommodated in the proposed 2021 Operating Budget in cost center 22705.

## Conclusion

The City has appointed LAS as the City's closed meeting investigator since January 1, 2008. For reasons of cost effectiveness, and its timely, confidential and professional investigative process, Legal Services recommends that the Agreement be renewed for 2021 term. It is also recommended that the City Solicitor be authorized for a period of three years to approve further renewal terms, any changes to the fee amounts under the Agreement and also to execute any addendums or amendments under the Agreement, after which she shall report to Council.



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Andra L. Maxwell B.A., LL.B., CIC.C, City Solicitor

Prepared by: Nupur Kotecha, Legal Counsel