

THIS AGREEMENT made in quadruplicate this xx day of xx, 2019

BETWEEN:

CITY OF TORONTO
(the "City")

Of The First Part

- and -

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
(the "Consultant")

Of The Second Part

WHEREAS the City issued the RFP in connection with obtaining professional consulting services for **Description and Location** (herein referred to as the "Project"), and the Consultant submitted a Proposal in response to the Request For Proposal No. **xxxx-xx-xxxx**, (the RFP); and

WHEREAS the Consultant has agreed to perform Services in connection with the Project dated **Month/date/Year** in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS the Consultant was selected in accordance with the provisions of Municipal Code Chapters 71 and 195 to provide the Services in connection with the Project in accordance with all the terms and conditions of the RFP and the Proposal at a total cost not in excess of **\$xxxxxxx.xx** inclusive of contingency (and cash allowance) and applicable taxes, being within the delegated authority and financial authority of the Division Head;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. INTERPRETATION

(1) The Interpretation provisions of and definitions contained in the RFP are incorporated into and form part of this Agreement.

(2) Definitions

In addition to the foregoing, the following terms shall have the meanings as specified in this section unless the context otherwise specifies or requires:

- (a) "Additional Services" are those services which are not contemplated or provided for in the scope of Services set out in the RFP and which are expressly authorized by the Division Head in writing and in advance in accordance with this Agreement.
- (b) "Addendum" and "Addenda" means a written addendum or written addenda issued by the City which modify the RFP and include(s) the following:

Addendum No. 1, dated xxxxxxxxxxxxxxxx
Addendum No. 2, dated xxxxxxxxxxxxxxxx
Addendum No. 3, dated xxxxxxxxxxxxxxxx

- (c) "Business Day" means any day other than a Saturday, Sunday or a statutory or civic holiday in the Province of Ontario.
- (d) "Claims" or "Claim" means any damages, losses, costs, demands, claims, actions, causes of action, suits, proceedings, executions, liens or otherwise for, without limitation, compensation, liabilities, damages or loss of any kind and any nature whatsoever and howsoever caused including property damage or loss, bodily injury or death, loss of reputation, loss of opportunity, economic loss, royalties, judgments, fines, penalties, interest, charges, expenses and costs (including legal costs

on a substantial indemnity basis).

- (e) “City” means the City of Toronto and where an authority or discretion is conferred upon the City under this Agreement, means the appropriate official or representative of the City as designated or appointed under its governing by-laws, resolutions or policies from time to time or under this Agreement.
- (f) “Clarification Letter(s)” means a written document issued by the Consultant clarifying its Proposal.

The Consultant's Proposal has been clarified by the following letter(s) of the Consultant:

- N/A

Each reference in this Agreement to the Consultant’s Proposal (or individually to the Consultant’s Technical Proposal or Cost of Services Proposal) shall be taken as a reference to the respective Proposal as modified by the foregoing Clarification Letter(s).

- (g) “Confidential Information” means, with respect to the City, all documents, information and material which are identified by the City to the Consultant as confidential or containing confidential information; or which ought by their nature to be considered as confidential or as containing confidential information of the City, which the Consultant and/or its subcontractors receive or are exposed to by reason of this Agreement or performing the Services including: (i) any personal information; (ii) any software code and associated documentation owned or licensed by the City; and (iii) any administrative, commercial, financial, proprietary, technical, commercial labour relations, statistical or regulatory information of the City, or of any third party which may be contained in records of the City and was supplied in confidence to the City and identified as such to the Consultant. Notwithstanding the foregoing, Confidential Information shall not include any document, information or material that is or becomes publicly available through no act or failure of the Consultant from a source other than the Consultant prior to receipt from the City; or becomes independently available to the Consultant as a matter of right.
- (h) “*Construction Act*” means the *Construction Act*, R.S.O. c. C.30 and regulations thereunder, as amended from time to time.
- (i) “Division Head” means the General Manager, Facilities Management and includes such person’s designate.
- (j) “including” means “including but not limited to”.
- (k) “Indemnitees” means the City, its elected officials, officers, directors, employees, agents, representatives, successors and assigns.
- (l) “Optional Item” means an item which has not been set out in the scope of work of the RFP but has been proposed by the Consultant in its Proposal as an enhancement or additional service which may benefit the Project.
- (m) “Personnel” means the Consultant’s personnel and includes:
- (i) the Consultant’s officers, directors, partners, employees, agents and subcontractors;
 - (ii) any person employed or engaged by or under the control of the Consultant or its subcontractors to perform or supply any part of the Services including goods related thereto; and
 - (iii) any other person for whom the Consultant is responsible at law.
- (n) “Project” means the **Description and Location of project**
- (o) “Proposal” means the Consultant’s Technical Proposal dated **Month/Date/Year** and Cost of Services Proposal dated **Month/Date/Year**, including all appendices, exhibits and attachments thereto, submitted in response to the RFP (individually the “Technical Proposal” and the “Cost of Services Proposal”, respectively). Each reference to the Proposal in this Agreement shall be taken as a reference to the Proposal as modified by the Clarification Letter(s), if any.

- (p) "Provisional Item" means a Service identified in Schedule A which shall only be undertaken by the Consultant at the request and upon the prior written authorization of the Division Head.
- (q) "RFP" means the Request for Proposal No. xxx-xx-xxxx, issued by the City on Month/Date/Year, in connection with obtaining professional consulting services for the Project. Each reference to the RFP in this Agreement shall be taken as a reference to the RFP as modified by the Addenda, if any.
- (r) "Services" means those services, and goods related thereto, and obligations detailed in this Agreement, including Schedule A, to be provided and undertaken by the Consultant for the City and shall include Provisional Items and Additional Services, unless the context requires otherwise, authorized by the Division Head in accordance with this Agreement.
- (s) "Working Day" shall have the same meaning as set out or described in the RFP and, where there is no meaning or description of Working Day set out in the RFP, it shall have the same meaning as Business Day.

(3) Interpretation

- (a) For the purposes of this Agreement, any reference to a "subcontractor" of the Consultant shall include a sub-consultant of the Consultant.
- (b) Any reference to the Division Head or other officer or representative of the City shall be construed to mean the person holding that office from time to time, and the designate or deputy of that person, and shall be deemed to include a reference to any person holding a successor office or the designate or deputy of that person.
- (c) Without restricting or limiting the rights and privileges of the City to any broader interpretation, any breach or default of or in respect of a term, covenant, warranty, condition or provision of the Agreement, or a liability caused, by any of the Consultant's Personnel shall constitute a breach or default or liability caused by the Consultant.
- (d) A reference to any Act, bylaw, rule, policy or regulation or to a provision thereof shall be deemed to include a reference to any Act, bylaw, rule, policy or regulation or provision enacted in substitution thereof or amendment thereof.
- (e) This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties, and no third party shall have any right of action arising in any way under this Agreement for any cause whatsoever.
- (f) Any services, goods or incidentals not explicitly specified in this Agreement but which are necessary to conform to professional or safety standards or codes governing such Services, or which may be fairly implied as "included", shall be done or supplied by the Consultant as if such services, goods or incidentals had been explicitly specified.
- (g) Any words and abbreviations, which have well-known professional, technical or trade meanings, are used in this Agreement in accordance with such recognized meanings, unless expressly provided otherwise.
- (h) All amounts are expressed in Canadian dollars and are to be payable in Canadian dollars and all references to time shall be deemed to be references to current time in the City.

(4) Priority of Documents

In the event of any conflict or disagreement between the various documents or any omissions contained in the documents making up this Agreement, the documents shall govern in the following order of precedence:

- (a) A written amendment to this Agreement in accordance with the terms hereof, the amendment bearing the later date having priority (if any);
- (b) This Agreement including Schedules "A" and "B";
- (c) Addenda, the addendum bearing the later date having priority (# addenda);
- (d) RFP;

- (e) Statutory Declaration by the Consultant (Schedule "SD-Final");
- (f) Clarification Letter(s) of the Consultant (if any), the Clarification Letter bearing the later date having priority; and
- (g) Consultant's Proposal (including the Technical Proposal and Cost of Services Proposal).

The foregoing documents are incorporated into and form part of this Agreement, even if said documents are not physically attached hereto. The Consultant acknowledges receipt of all such documents.

2. PERFORMANCE

- (1) The Consultant agrees and covenants, and represents and warrants, to the City and acknowledges that the City is relying on such representations, warranties and covenants in entering into this Agreement, as follows:
 - (a) to supply and perform the Services, more particularly set forth in Schedule "A" attached hereto, and undertake, perform and complete its undertakings and obligations provided for in this Agreement to the satisfaction of the Division Head in accordance with all the terms and conditions of this Agreement;
 - (b) to supply and provide, at its sole cost, save as otherwise expressly provided in this Agreement, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, personnel, technical assistance and incidentals required in performing or supplying the Services, and all overhead expenses in connection therewith;
 - (c) to supply, perform and provide the Services in a careful, professional, skilful, diligent, timely and workmanlike manner according to the best standards of practice, care, skill and diligence to be expected of professionals and contractors in the performance of services similar to those called for under this Agreement including the use of materials and methods as are properly suited to the function and performance intended;
 - (d) to make available and employ for the purposes of this Agreement only such persons as are professionally qualified, careful, skilled and experienced in the duties required of them to perform the Services properly and in a competent and professional manner and ensure that every such person is properly and thoroughly trained and instructed;
 - (e) to ensure that its Personnel, when using any buildings, premises, equipment, hardware or software owned, leased or licensed by the City shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software of which the Consultant has received oral or written notice;
 - (f) to use, in the performance of the Services, those Personnel specifically named in its Proposal and to not add to or substitute any such Personnel or engage any other subcontractor without the prior written approval of the Division Head. The City reserves the right to require the Consultant to immediately replace any of its Personnel supplying or performing the Services, upon written notice by the Division Head, where such person in the reasonable opinion of the Division Head has performed unsatisfactorily or breached an obligation of the Consultant under this Agreement or has otherwise acted improperly. The City shall not pay any fee or compensation whatsoever in respect of the time required by the replacement for any such Personnel to gain familiarity with the Project.
 - (g) to be solely responsible for the payment of all its Personnel employed or engaged for the purpose of assisting in or undertaking any of its obligations under this Agreement;
 - (h) to adhere to the Project time schedule and any amendments thereto approved in writing by the Division Head; and
 - (i) to comply with and conform to all statutes, laws, by-laws, regulations, requirements, ordinances, notices, rulings, orders, directives and policies (including the City policies referenced in the RFP) of the municipal, provincial and federal governments and any other lawful authority and all court orders, judgments and declarations of a court of competent jurisdiction (collectively referred to as

the "Laws"), applicable to the Services to be provided by, and the undertakings and obligations of, the Consultant under this Agreement.

- (2) The Consultant represents and warrants that its Personnel and, where applicable, the respective workforce of each are fully qualified to perform the Services and the obligations under this Agreement and hold all requisite licences, rights and other authorizations required by any Laws with respect thereto and all powers, capacities and authorities under its governing legislation. Where required by any Laws, the Personnel shall be duly licensed in performing the Services to the satisfaction of the Division Head.
- (3) The Consultant shall ensure that all its Personnel comply with the terms of this Agreement and, in particular without limiting the foregoing, the responsibilities of the Consultant with respect to matters concerning safety, compliance with all Laws and the conduct of the Services.
- (4) The Consultant shall co-ordinate the services of all its Personnel in a manner acceptable to the Division Head. The Consultant shall ensure that its Personnel at all times work in a professional, co-operative and collegial manner with City staff and the City's other consultants. It shall be the Consultant's responsibility to control and check the Services of all of its Personnel and to ascertain that all Services are performed in accordance with this Agreement.
- (5) The Consultant, in providing the Services, shall and is deemed to be an independent contractor and not the agent or employee of the City.
- (6) No subcontracting of any part of the Services or this Agreement by the Consultant shall relieve the Consultant of any responsibility for the full performance of all of its obligations under this Agreement. Notwithstanding the approval of any of its Personnel by the City, the Consultant shall be fully responsible for every such Personnel's activities, works, Services and acts or omissions. Without limiting the generality of any other provision of this Agreement, the Consultant shall be solely responsible and liable to the City for all its costs, losses or damages arising from errors or omissions or non-compliance with this Agreement of or by the Consultant's Personnel or any of them. The Consultant's responsibility and liability as set out in this Agreement shall survive the termination or expiry of this Agreement.

3. PAYMENT

- (1) The City will pay the Consultant for the Services performed by the Consultant pursuant to this Agreement, in the amounts and manner, and at the times, set forth in Schedule "B" Fees and Expenses hereto attached.
- (2) The Consultant shall, even if the rate of payment set forth in Schedule "B" hereto attached is based on an hourly, daily or other time-based rate, perform all of the Services notwithstanding that the value of the time spent by the Consultant in performance thereof exceeds the maximum amount specified in the Schedule, on the basis that neither such rate nor any provision of this Agreement shall relieve the Consultant from performing all the Services or all its undertakings and obligations under this Agreement.
- (3) The Consultant agrees to keep and maintain accurate and complete records and accounts related to any costs payable by the City under this Agreement. All such records, including timesheets, correspondence, receipts and memoranda pertaining to the Services shall be available for inspection by any authorized employee or agent of the City at all reasonable times for the purpose of auditing the Consultant's costs and the Consultant shall provide every reasonable assistance for that purpose. Such records shall be kept for a period of 12 months after completion of all of the Consultant's services in respect to the Project or termination of this Agreement, whichever occurs last.
- (4) The Consultant's fee shall include all disbursements. No additional payment for any disbursements shall be payable to the Consultant.
- (5) Upon completion of all Services pursuant to this Agreement, the Consultant shall submit to the Division Head a statutory declaration attached as Schedule SD-FINAL (Final Payment) to this Agreement, completed by a fully authorized representative of the Consultant, detailing the Services, or part thereof,

for which payment is being claimed, certifying that such Services have been in accordance with the provisions of this Agreement. The details of the performance of the Services, or part thereof, to be contained in the statutory declaration shall be satisfactory to the Division Head.

- (6) At the time of submission of the final statement or within a reasonable time thereafter, the Consultant shall submit to the Division Head the certificate of an auditor duly licensed under the Public Accounting Act, 2004 to the effect that in his/her opinion the charges set forth in such final statement (exclusive of any Services to be paid on a fixed fee basis) are properly chargeable under this Agreement. Audit reports must be in the format prescribed by The Canadian Institute of Chartered Accountants (CICA). Reports which are not in accordance with current CICA guidelines will not be accepted. The City reserves the right to conduct an audit of the records of the Consultant at the option of the Division Head. In the event that the Services are scheduled to extend or, while not scheduled to do so, do extend beyond a period of two years, audit reports satisfactory to the Division Head shall be required at the end of the second year of Services and on the last day in each subsequent year in which Services are performed; provided, however, that in the final year of Services, the audit report shall be provided within 60 days of the last day of performance of the Services.

4. CONSTRUCTION ACT

- (1) For the purposes of this section, "supply of services", "improvement" and "holdback" shall have the same meaning, respectively, as defined by the *Construction Act*.
- (2) Where any part of the Services constitutes a supply of services upon or in respect to an improvement, the City shall retain a holdback as required by the *Construction Act* from each sum otherwise payable to the Consultant under this Agreement with respect to those Services. The holdback shall be retained, held and released by the City in accordance with the *Construction Act*.

5. RIGHT OF OWNERSHIP/CONFIDENTIAL INFORMATION

- (1) Any item, including tangible and intangible property, created, prepared or purchased by the Consultant or any person on its behalf in connection with the Services or this Agreement and charged to the City's account, including all original written materials, programs, card decks, tapes, disks, listings, books, reports, drawings, maps plans, and all other documents, items, materials and information,
- (a) is and shall be deemed and shall remain the sole and absolute property of the City, including all copyright therein and rights of use and reproduction, without the payment of any additional compensation by the City to the Consultant; and
- (b) shall be delivered to the Division Head upon completion of the Services or other termination of this Agreement, whichever occurs first, or as otherwise directed by the Division Head.
- (2) All proprietary rights in, connected with or arising out of, the ideas, concepts, know-how, techniques, computer data or programming developed by the Consultant or the Consultant's Personnel, or by the Consultant or the Consultant's Personnel and the City and its personnel jointly, during the course of this Agreement relating to the Services provided under this Agreement shall be the sole and absolute property of the City and shall be treated as trade secrets to which the City alone is entitled, with the concomitant duty of confidentiality and non-disclosure. The Consultant shall obtain all necessary assignments of copyright and waivers of moral rights in all Services and related goods to be delivered to the City in accordance with this Agreement and shall provide satisfactory proof thereof to the Division Head upon request.
- (3) The Consultant acknowledges that any item, document or other matter which is the property of the City, or in which the City has proprietary rights, pursuant to subsections (1), (2) and (3) of this section and the information contained therein are the property of the City having been developed in confidence for the City for its own and sole use.
- (4) Any documents, data or other information obtained from the City or prepared by the Consultant for the City shall be disclosed only to those of the Consultant's employees, agents or subcontractors who have a "need to know" for purposes of assisting the Consultant in the performance of the Services.

- (5) The Consultant shall not use, disclose, disseminate or reproduce or in any way making known to third parties or to the public any Confidential Information of the City communicated to or acquired by the Consultant in the course of carrying out the Services, except:
 - (a) as may be strictly required for the purposes of carrying out the Services, or
 - (b) as expressly permitted in advance by the City in writing, or
 - (c) as may be required by law to be disclosed pursuant to a court or tribunal order or other legal compulsion and, if so compelled, the Consultant shall only furnish the portion of the City Confidential Information that it is legally required to furnish. Where the Consultant is required by law to disclose any such documents, data or information, the Consultant shall promptly notify the Division Head upon such legal requirement being imposed to permit the City an opportunity to seek an order or other remedy to prohibit or restrict such disclosure.
- (6) The Consultant shall deliver to the Division Head, upon completion of the Services, any computer data or program used by the Consultant in performing the Services and paid for by the City, subject to any third party proprietary rights with respect to any computer data or program used by the Consultant but which was developed by a third party with resources unrelated to this Agreement which may be purchased or licensed directly by the City, at the City's option.
- (7) The Consultant shall return forthwith and without demand all Confidential Information of the City as may be in documentary form or recorded electronically or otherwise upon the termination of its Services.
- (8) Any reports or other documentation delivered to the City by the Consultant shall become the property of the City and may be subject to disclosure under the terms of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56 (the "MFIPPA"). While the City is not responsible for the interpretation of any of the provisions of MFIPPA, if the Consultant believes that any part of the reports or other documentation delivered to the City reveals any trade secret, intellectual property right or any scientific, technical, commercial, financial or other similar information belonging to the Consultant and the Consultant wishes the City to attempt to preserve the confidentiality of the trade secret, intellectual property right or information, the trade secret, intellectual property right or information must be clearly and specifically designated as confidential.

6. INSURANCE

- (1) The Consultant agrees to purchase and maintain in force, at its own expense, the policies of insurance and coverages set out in the RFP, for the duration of this Agreement, except in the case of professional liability (errors and omissions) insurance which shall be maintained for a period ending no sooner than two (2) years after the termination of this Agreement or the completion of the Project, whichever occurs last. Such insurance shall be in accordance with the requirements of the RFP and be provided by an insurer licensed to carry on the business of an insurer in Ontario and acceptable to the City. The Consultant shall provide the City with certificates of insurance as proof of such coverage, in a form acceptable to the City in accordance with the RFP, originally signed by the insurer or its authorized agent and delivered to the City prior to the execution of this Agreement and the commencement of the Consultant's Services.
- (2) Prior to the execution of this Agreement and the commencement of the Consultant's Services, the Consultant shall also provide the City with proof of professional liability insurance maintained by any subcontractor engaged by the Consultant in relation to the Services, where such subcontractor is under a professional obligation to maintain the same, in a form and with an insurer acceptable to the City.
- (3) The City reserves the right to require the Consultant to purchase additional insurance coverage or alter existing insurance coverage as the City's Manager of Insurance & Risk Management may reasonably require. The City agrees to pay the reasonable incremental cost to the Consultant of such additional insurance or any increase in existing coverages, where applicable. Provided, however, the City's obligation to pay any incremental cost shall not include any costs attributable to risk factors unrelated to the increase of coverage requested by the City, including the Consultant's claims history,

or any costs that exceed generally available market prices for such coverages available to consultants providing like services. The Consultant shall obtain the prices for such coverage changes and provide same to the City.

- (4) Any premiums due on any insurance policy under this section but not paid by the Consultant may be paid directly to the insurer(s) or broker(s) by the City, which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Consultant by the City either under this Agreement or otherwise.
- (5) To ensure there is no gap in coverage, the Consultant shall provide original signed Certificates evidencing renewals or replacements to the City prior to the expiration date of the original policies, without notice or request by the City.
- (6) The Consultant agrees that insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the Consultant. The certificates of insurance must include details of the insurance coverage, exclusions, deductibles and any conditions of coverage.
- (7) The Consultant shall bear all costs, expenses, losses and damages of its own and those of the City which may arise as a result of the Consultant failing to or delaying in promptly complying with this section.

The successful vendor agrees to purchase and maintain in force, at its own expense and for the duration of the services, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to the City. A certificate evidencing these policies signed by the insurer or an authorized agent of the insurer must be delivered to the City prior to the commencement of services:

1. Commercial General Liability provided that the policy:
 - a) is in the amount of not less than **Two** Million Dollars **(\$2,000,000.00)**, per occurrence;
 - b) adds the City of Toronto as an additional insured;
 - c) includes Non-Owned Automobile Liability, Employer's Liability and/or Contingent Employer's Liability, and any other provision relevant to the services;
 - d) includes a clause which will provide the City with thirty (30) days' prior written notice of cancellation (15 days if cancellation is due to non-payment of premium).
2. Professional Liability (errors and omissions) coverage provided that the policy:
 - (i) is in the amount of not less than **two** Million Dollars **(\$2,000,000)**;
 - (ii) will extend to infringement of copyright and other intellectual property, including misuse of trade secrets, if appropriate.

Notwithstanding anything to the contrary contained in this Agreement, kept in full force and effect for a period of time ending no sooner than TWO YEARS after the termination or expiry of this Agreement, (including option years), as the case may be.

3. Automobile Liability insurance with a minimum limit of **One** Million Dollars **(\$1,000,000)** for all owned or leased licensed motorized vehicles used in the performance of services.

It is understood and agreed that the coverage and limits of liability noted above are not to be construed as the limit of liability of the vendor in the performance of services. It is also agreed that the above insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the vendor. At the expiry of the policies of insurance, original signed Certificates evidencing renewal will be provided to the City without notice or demand.

The successful vendor is responsible for any loss or damage whatsoever to any of its materials, goods, equipment or supplies and will maintain appropriate all-risk coverage as any prudent owner of such materials, goods, supplies and equipment. The successful vendor shall have no claim against the City or the City's insurers for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the City.

7. WORKPLACE SAFETY AND INSURANCE ACT

The Consultant shall be in good standing with the Workplace Safety and Insurance Board ("WSIB") throughout the term of this agreement. If requested by the Division Head or his designate, the Consultant shall produce certificates issued by the WSIB to the effect that they have paid in full their assessment based on a true statement of the amount of payrolls. If the Consultant is considered by WSIB to be an independent operator without coverage, the Consultant shall provide a letter to that effect from the WSIB.

8. INDEMNITIES

- (1) The Consultant shall indemnify and save harmless the Indemnitees from and against any and all Claims resulting from:
 - (a) any breach, violation or non-performance by or on behalf of the Consultant of any covenant, obligation or agreement of the Consultant contained in this Agreement, including any express or implied warranty;
 - (b) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Consultant relating to the Services to be provided under this Agreement;
 - (c) any acts performed by or on behalf of the Consultant beyond the authority of the Consultant hereby conferred, whether negligent or otherwise;
 - (d) any inaccuracy in or breach of any of the representations or warranties of the Consultant contained in this Agreement;
 - (e) any preserved or perfected lien under the *Construction Act* filed or made on account of the Services performed under this Agreement, provided that such liens are not the direct result of the default in payment by the City to the Consultant of amounts properly due under this Agreement. The Consultant shall cause any such lien or claim which may be filed or made to be released, vacated or otherwise discharged within 5 days of obtaining notice of the lien or claim or from receipt by the Consultant of written notice from the City. If the Consultant fails to release, vacate or discharge any such lien or claim, then the City may, but is not obligated to, obtain a discharge or release of the lien or claim or otherwise deal with the lien or claim, and the Consultant shall pay all reasonable costs and expenses, including reasonable legal fees, incurred by the City in so doing;
 - (f) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to the City or performed by the Consultant, or anyone else for whom at law it is responsible.
- (2) The Consultant shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnitees in connection with any Claim with respect to a matter for which the Consultant is obligated to indemnify the Indemnitees pursuant to this section, provided that the indemnity obligations of the Consultant under this section shall not extend to loss or damage attributable to the negligence or wilful misconduct of any Indemnitee to the extent that such Indemnitee's negligence or wilful misconduct caused the loss or damage.
- (3) In the event any Claim is asserted in respect to which an Indemnitee is entitled to indemnification under this section, and without prejudice to any other right or remedy the City may have, the City shall be entitled to deduct or withhold a reasonable sum on account of such Claim, including reasonable legal costs, from monies owed or payable by the City to the Consultant under this Agreement pending the final determination or settlement of any such Claim. In the event (i) the Consultant is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency Act (Canada); (ii) the Consultant makes a general assignment for the benefit of creditors; or (iii) a receiver

or interim-receiver is appointed with respect to some or all of the Consultant's business, assets, or property, then the City shall be entitled, without prejudice to any other right or remedy the City may have, to further deduct or withhold a reasonable sum on account of such Claim, including reasonable legal costs, from any monies owed or payable by the City to the Consultant under the Project or any other agreement or account. The provisions of this subsection shall not apply in the event that such Claim is otherwise fully provided for under any insurance provided by the Consultant to or for the benefit of the City.

- (4) This section shall survive the expiration or earlier termination of this Agreement.

9. DEFAULT & TERMINATION

- (1) The following shall constitute, without limitation, Acts or Events of Default ("Default") by the Consultant:
- (a) where the Consultant fails or neglects to commence the Services within ten (10) Working Days of a formal direction by the Division Head to commence;
 - (b) where the Consultant fails or neglects to proceed, once commenced, with the provision of Services diligently and at a rate of progress that, in the reasonable opinion of the Division Head, will ensure entire completion of the Services within the time provided for in the Agreement or where the City reasonably determines that the Consultant has abandoned its duties with respect to this Agreement;
 - (c) where the Consultant fails or neglects to complete the Services within the time limit(s) under this Agreement;
 - (d) where the Consultant has made any material misrepresentation in respect to this Agreement or any part thereof;
 - (e) where the Consultant fails to comply with and maintain in good standing any insurance policies and coverages, securities, professional certificates, permits, licences or approvals required by this Agreement or commits any acts or omissions that, in the opinion of the Division Head, jeopardizes or may jeopardize these policies, securities, certificates, permits, licences or approvals;
 - (f) where the Consultant fails or refuses to correct, rectify or remedy any unsatisfactory or defective Services, when so ordered by the City in writing, or fails to prosecute the Services with the required skill and diligence;
 - (g) where the Consultant fails to comply with any Law applicable to the Services;
 - (h) where the Consultant subcontracts the whole or any part of this Agreement or the Services or makes an assignment of this Agreement or the Services thereunder or any part thereof, without the prior written consent of the City;
 - (i) where a lien arises with respect to the Services undertaken by the Consultant under the Agreement and remains unpaid by the Consultant after demand to pay therefore, unless vacated or discharged and released by payment into a court of competent jurisdiction or otherwise, within Five (5) Working Days of such demand, save and except a valid and proper lien of the Consultant registered against the property affected by the Agreement;
 - (j) where any of the goods, chattels or effects of the Consultant shall at any time during the Term be seized or taken in execution of attachment; or if a writ of execution shall be issued against the goods, chattels or effects of the Consultant; or if the Consultant shall make any assignment for the benefit of creditors; or if the Consultant shall be adjudged bankrupt or insolvent, commit any act of bankruptcy or insolvency or make any proposal under or take advantage of any of the provisions of any act or statutes whatsoever that may be in force regarding bankrupt or insolvent debtors or debtors who are not able to or do not pay their debts promptly and in full; or if a receiving order or winding up order shall be made against or in respect of the Consultant; or if any actions or proceedings shall be taken to wind up, dissolve or liquidate the Consultant or its assets by, against or in respect of the Consultant; or where a resolution is passed or any other act undertaken for the winding up of the Consultant; or a receiver, manager or trustee is appointed in respect of the business or assets of the Consultant, or any part of thereof, by a court of competent jurisdiction, or under an agreement;

- (k) where the Consultant ceases or threatens to cease to carry on its business, or where the Consultant makes or agrees to make a bulk sale of its assets; or defaults in payment of any indebtedness or liability to a chartered bank or other lending institution, whether secured or not; and
 - (l) where the Consultant fails to comply with or observe or perform, or breaches or violates, any material provision, term, covenant, warranty, condition and/or obligation of the Agreement.
- (2) In the event that the Consultant has committed a Default or a Default has occurred, the Division Head may provide written notice ("Default Notice") to the Consultant to the effect that if the Consultant does not completely remedy the Default to the satisfaction of the Division Head within Five (5) Working Days of delivery of the Default Notice or otherwise expressly granted in writing by the Division Head in his or her absolute discretion, then the Division Head may, in his/her sole discretion, on the behalf of the City:
- (a) suspend the performance of the Agreement by the Consultant and either perform the Services on a temporary basis itself or engage another consultant to perform the Services on a temporary basis;
 - (b) terminate the Agreement and/or the Services of the Consultant immediately by giving notice to that effect to the Consultant;
 - (c) cease all payments to the Consultant, save for the payment of those Services, if any, that have been furnished by the Consultant to the satisfaction of the Division Head up to the time of such termination and that have not yet been paid by the City (the Consultant shall have no claim of any kind otherwise against the City), subject to any rights or remedies the City may have against the Consultant;
 - (d) enforce any performance security provided by the Consultant or deduct or set-off from funds retained under such performance security or otherwise held, but such enforcement shall not preclude the City from recovering any further amounts or damages incurred by the City as a result of the Default by the Consultant;
 - (e) engage another consultant to complete the Project or may itself complete the Project, without further liability to the Consultant,
 - (f) where the City performs or engages another consultant to perform the Services, either on a temporary basis or otherwise, the City may employ such means as the Division Head may deem necessary or advisable to complete the Services to his satisfaction with such changes therein as in the Division Head's opinion are necessary or advisable by reason of the Consultant's Default, or any combination of the foregoing.
- (3) Notwithstanding subsection (2) of this section and without prejudice to or foregoing any other right, privilege or remedy of the City, in the event that any emergency services are necessitated as a result of the Default of the Consultant, such services may be undertaken immediately, without notice, by the City and all reasonable costs incurred by the City arising from such emergency or as a result of such emergency services shall be borne by the Consultant and payable forthwith upon written demand by the City, with particulars of the emergency and services necessitated thereby, and the City shall have no liability to the Consultant for any loss or damage or compensation whatsoever resulting from such action by the City.
- (4) In addition to the rights and remedies in subsection (2) and (3) of this section, if the City terminates the Consultant's Services in whole or part, as a result of a Default by the Consultant, the City may but is not obliged to:
- (a) take possession of and utilize any items, goods, material and equipment of the Consultant devoted to that part of the Services terminated, within the Project site, which is intended to be utilized in the Services, subject to the secured rights of third parties;
 - (b) withhold further payments to the Consultant with respect to the Services or the portion of the Services withdrawn from the Consultant until the Services or portion thereof withdrawn are completed to the satisfaction of the Division Head;
 - (c) charge the Consultant the additional cost over the Consultant's Proposal price for completing the Services or portion thereof withdrawn from the Consultant;
 - (d) charge the Consultant a reasonable allowance, as determined by the Division Head, to cover correction to the Services performed by the Consultant that may be required;
 - (e) charge the Consultant for any costs and damages the City may have sustained as a result of the

- Default; and
- (f) charge the Consultant the amount by which the cost of corrections to the Services exceeds the allowance provided for such corrections, or any combination of the foregoing.
- (5) The Consultant's obligation under this Agreement as to quality, correction and warranty of the Services, performed prior to the time of termination of this Agreement or termination of the Consultant's right to continue with the Services in whole or in part, shall continue to be in force after such termination.
- (6) In addition to the foregoing rights of the City, the Division Head may, at his or her sole option and upon providing not less than ten (10) Working Days' prior written notice to the Consultant, elect to suspend the Services for up to ninety (90) calendar days or discontinue the Services and terminate this Agreement for any reason. In such an event, the Consultant shall have no claim, including for any loss or damages, against the City except for payment for such of the Services as have been satisfactorily performed by the Consultant to the satisfaction of the Division Head to the date of notice of the suspension or discontinuance of Services, subject to any rights or remedies the City may have against the Consultant. The Consultant shall immediately suspend or discontinue the Services, as the case may be, on the date and to the extent specified in the notice and place no further orders for materials or services for the terminated portion of the Services. In the event of a discontinuance of Services, termination shall become effective on such date as shall be stated in the City's notice.
- (7) The rights and remedies provided in this section given to the City are distinct, separate and cumulative, may be exercised at any time and from time to time independently or in combination, are in addition to all other legal, equitable or statutory rights, privileges and remedies to which the City is otherwise entitled, as well as any other rights and remedies stipulated in this Agreement, and the exercising or taking of any one right or remedy shall not preclude the exercising or taking of any other rights or remedies.

10. NON-WAIVER

No condoning, excusing or overlooking by the City or any of its representatives of any Default by the Consultant at any time or times in respect of any provision contained in this Agreement shall operate as a waiver of the City's rights under this Agreement in respect of any continuing or subsequent Default or so as to defeat or affect in any way the rights of the City under this Agreement in respect of any such continuing or subsequent Default. No waiver shall be inferred from or implied by anything done or omitted by the City or any of its representatives and no waiver of any rights of the City shall be effective unless expressly provided in writing by an authorized representative of the City.

11. SET-OFF

In addition to any other remedies the City may have under this Agreement, the City shall have the right to set-off, withhold, retain or deduct from amounts due or owing by the City to the Consultant under the Project an amount sufficient to cover any monetary Claims or other amount due or owing from time to time, or portions thereof, by the Consultant to the City, including any amount owing to the City pursuant to the Consultant's indemnification of the City under this Agreement.

12. OCCUPATIONAL HEALTH & SAFETY

- (1) The Consultant shall comply with all federal, provincial or municipal occupational health and safety legislative requirements, including, and without limitation, the *Occupational Health and Safety Act*, R.S.O., 1990 c.0.1 and all regulations thereunder, as amended from time to time (collectively the "OHSA").
- (2) Nothing in this section shall be construed as making the City the "employer" (as defined in the OHSA) of any workers employed or engaged by the Consultant for the Services, either instead of or jointly with the Consultant.

- (3) The Consultant agrees that it will ensure that all subcontractors engaged by it are qualified to perform the Services and that the employees of subcontractors are trained in the health and safety hazards expected to be encountered in the Services.
- (4) The Consultant acknowledges and represents that:
- (a) The workers employed to carry out the Services have been provided with training in the hazards of the Services to be performed and possess the knowledge and skills to allow them to work safely;
 - (b) The Consultant has provided, and will provide during the course of this agreement, all necessary personal protective equipment for the protection of workers;
 - (c) The Consultant's supervisory employees are competent, as defined in the OHSA, and will carry out their duties in a diligent and responsible manner with due consideration for the health and safety of workers;
 - (d) The Consultant has in place an occupational health and safety policy in accordance with the OHSA; and
 - (e) The Consultant has a process in place to ensure that health and safety issues are identified and addressed and a process in place for reporting work-related injuries and illnesses.
- (5) The Consultant shall provide, at the request of the Division Head or his designate, the following as proof of the representations made in subsections 4(a) and 4(d) of this section:
- (a) documentation regarding the training programs provided or to be provided during the Services (i.e. types of training, frequency of training and re-training); and
 - (b) the occupational health and safety policy.
- (6) The Consultant shall immediately advise the Division Head or his designate in the event of any of the following:
- (a) A critical injury that arises out of Services that is the subject of this agreement;
 - (b) An order(s) is issued to the Consultant by the Ministry of Labour arising out of the Services that is the subject of this agreement;
 - (c) A charge is laid or a conviction is entered arising out of the Services that is the subject of this agreement, including but not limited to a charge or conviction under the OHSA, the *Criminal Code*, R.S.C 1985, c. C-46, as amended and the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A, as amended.
- (7) The Consultant shall be responsible for any delay in the progress of the Services as a result of any violation or alleged violation of any federal, provincial or municipal health and safety requirement by the Consultant, it being understood that no such delay shall be a force majeure or uncontrollable circumstance for the purposes of extending the time for performance of the Services or entitling the Consultant to additional compensation, and the Consultant shall take all necessary steps to avoid delay in the final completion of the Services without additional cost to the City.
- (8) The parties acknowledge and agree that employees of the City, including senior officers, have no authority to direct, and will not direct, how employees, workers or other persons employed or engaged by the Consultant do work or perform a task that is the subject of this agreement.

13. SCHEDULES

The following Schedules attached to this Agreement shall constitute an integral part of this Agreement and all expressions defined in this Agreement shall have the same meanings in such Schedules, unless expressly provided otherwise in such Schedules:

Schedule "A":	Professional Consulting Services
Schedule "B":	Fees and Expenses
Schedule "SD-FINAL":	Statutory Declaration
Schedule "C":	Consultant's Proposal

The RFP, the Addenda (where applicable) and the Consultant's Proposal are incorporated by reference into this Agreement as if they were set out in this Agreement in their entirety and form part of this Agreement, even if said documents are not physically attached hereto. The Consultant acknowledges receipt of such documents.

14. SUCCESSORS AND ASSIGNS

- (1) This Agreement and all terms, covenants, conditions and provisions herein shall be binding upon and shall enure to the benefit of the City and the Consultant and their respective permitted assigns, successors and legal representatives.
- (2) Except as expressly permitted in this Agreement, the Consultant shall not:
 - (a) assign, transfer or encumber in any manner or part this Agreement without the prior written consent of the City; or
 - (b) subcontract any Services under this Agreement or any part thereof to a third party or change any approved subcontractor without the prior written consent of the Division Head.
- (3) No assignment or subcontracting shall, in any circumstances, relieve the Consultant of its responsibilities, obligations and liabilities under this Agreement.

15. AGREEMENT IN WRITING

No verbal arrangement or agreement relating to the Services will be of any force or effect unless it is in writing and signed by duly authorized representative(s) of the City. The City shall not be bound by any oral communication or representation whatsoever, including but not limited to any instruction, amendment or clarification of this Agreement or any of the documents comprising this Agreement, or any representation, information, advice, inference or suggestion, from any person (including but not limited to an elected official, employee, agent, independent consultant or any other person acting on the behalf of or at the direction of the City or other representative of the City) concerning this Agreement, any of the documents comprising this Agreement, or any other matter concerning this Agreement. Where in this Agreement a reference is made to the express written agreement, approval or consent of the City or the Division Head, it shall be understood that the City or Division Head shall not be deemed or construed to have agreed to any stipulation, specification, exclusion, limitation or other term or condition that deviates from a provision set out in this Agreement, unless that deviation is expressly confirmed in a written and express amendment to this Agreement.

No officer, employee, representative or agent of the City is authorized to orally alter any portion of this Agreement. The City shall not be bound by any written representation whatsoever concerning this Agreement unless executed by the person designated and authorized in accordance with this Agreement or in accordance with a direction or authorization of City Council. The Consultant releases and waives all claims whatsoever in negligence, in equity or otherwise with respect to any oral or unauthorized representations or communications.

16. ENTIRE AGREEMENT

The documents comprising this Agreement are complementary and what is required by any part thereof shall be considered as being required by the whole. This Agreement, as may be amended from time to

time by the written agreement of the parties in accordance with the terms herein, contains the entire agreement between the parties hereto with respect to the subject matters hereof. It is agreed that there is no representation, warranty, collateral contract or condition affecting this Agreement except as expressed in it. No amendment, modification or supplement to this Agreement shall be valid or binding unless set out in writing and executed by the parties hereto.

17. GOVERNING LAW

This Agreement shall be governed by, subject to and construed in accordance with the laws of the Province of Ontario and the laws of Canada, as applicable to the matters herein. Any action or other legal proceeding arising under or with respect to this Agreement (including any motion or other interlocutory proceeding) shall be brought in a Court or a tribunal, whichever may be applicable, sitting in Toronto, Ontario. In the event that there is no applicable Court or tribunal sitting in Toronto, the proceeding shall be brought in the court (or other forum) of competent jurisdiction nearest to the City of Toronto within the Province of Ontario. The Consultant and the City each irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario in accordance with the foregoing.

18. SURVIVAL

In addition to any obligations set forth in this Agreement that by their nature survive the completion of the Services or termination of this Agreement, those obligations set out in ss. 2(1)(g) and 2(6) [liability for and payment of Consultant's Personnel], ss. 3(3) [retention of records], s. 5 [Rights of Ownership/Confidential Information], s. 6 [Insurance], ss. 7(2) [Workers' Compensation Claims], s. 8 [Indemnities], s. 9 [Default/Termination], s. 11 [Set-Off], ss. 12(7) [OHSIA indemnity], s. 14 [Successors and Assigns], s. 15 [Agreement in Writing] and s. 17 [Governing Law] or otherwise expressly intended to survive shall continue to bind the Consultant notwithstanding the completion of all or part of the Services and payment therefore in accordance with this Agreement or the termination of this Agreement.

19. SEVERANCE WHERE PROVISION ILLEGAL, ETC.

If any provision of this Agreement or the application thereof to any person or circumstances is found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such provision shall be deemed severable and all other provisions of this Agreement shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found invalid, void or unenforceable. The remaining provisions of this Agreement and its application to any person or circumstances shall not be affected thereby, but this severance provision shall apply only insofar as the effect of that severance is not to change the fundamental nature of the obligations assumed respectively by the City and Consultant.

20. FURTHER ASSURANCES

The Consultant agrees that it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and the execution of all such further documents (including waivers of moral rights) as are within its power to cause the doing or execution of, as the City may from time to time reasonably request, in writing, and as may be necessary or desirable to give full effect to this Agreement.

21. NOTICES

Any demand or notice to be given pursuant to this Agreement shall be duly and properly made and given if made in writing and delivered to the party for whom it is intended at the address as set out below, either personally, by facsimile or by means of prepaid registered mail addressed to such party as follows:

(1) in the case of the City:

City of Toronto
Facilities Management
Corporate Services
Metro Hall
55 John Street, 2nd Floor
Toronto, Ontario M5V 3C6

Attention: Patrick Matozzo, Interim General Manager

(2) in the case of the Consultant:

Consulting Firm

Address

Attention: Contact Name

or to such other addresses as one party may from time to time notify the other party in writing, and any demand or notice so made or given shall be deemed to have been duly and properly given and received on the day on which it was personally delivered or, if delivered by facsimile, shall be deemed to be delivered as of the next Business Day following the date of transmission (provided a confirmation of transmission receipt is issued) or, if mailed, then, in the absence of any interruption in postal service in the City of Toronto affecting the delivery or handling thereof, on the day following three (3) full Business Days following the date of mailing.

IN WITNESS WHEREOF the City and the Consultant have hereunto affixed their respective corporate seals attested to by the hands of their proper officers in that behalf duly authorized.

SIGNED, SEALED AND DELIVERED
in the presence of:

Approved As To Form
<hr/>
Name Title Facilities Management
Awarded on (date) by Bid Award Panel, BAxx.xx

CITY OF TORONTO

Patrick Matozzo, Interim General Manager
Facilities Management, Corporate Services

Marilyn Toft, Manager
City Clerk's Division

CONSULTING/ARCHITECTURAL FIRM

Name: **Contact**
Title: **Title**

(c/s)

Name:
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"

PROFESSIONAL CONSULTING SERVICES

Subject to the provisions of this Agreement, the Consultant shall provide the Services more particularly described in this Schedule for the Project, ensuring that the project approach, staffing, organization, methodology and schedule are in accordance with the RFP and the Consultant's Proposal.

SCOPE OF WORK:

As stipulated and outlined in RFP xxxx-xx-xxxx which forms part of this agreement.

The RFP, the Addenda (where applicable) and the Consultant's Technical Proposal, Cost of Service submission, and presentation material are incorporated by reference into this Agreement as if they were set out in this Agreement in their entirety and form part of this Agreement, even if said documents are not physically attached hereto. The Consultant acknowledges receipt of such documents.

SCHEDULE "B"**FEES AND EXPENSES**

1. Notwithstanding anything to the contrary in this Agreement, the total fees and disbursements (including overhead and all taxes) for all Services to be provided by the Consultant under this Agreement, including any authorized Provisional Items and Additional Services, shall not exceed a maximum price of **\$xxxxxxx.00**(the "Maximum Agreement Price").
2. The Consultant's fees and disbursements are set out in its Cost of Services Proposal attached as Schedule "C", as modified by any Clarification Letter(s).

The Consultant's fees and disbursements are comprised of the following:

Service Deliverables	Cost
A. BASE SERVICE DELIVERABLES INCLUDING DISBURSEMENTS:	
Scope of Work/Deliverables	\$xxxxxx.x
Base Deliverables Sub-Total:	\$xxxxxxx.00
B. CONTINGENCY FOR ADDITIONAL SERVICES: (WHERE APPLICABLE AND AUTHORIZED)	\$xxxxx.00
C. CASH ALLOWANCE FOR TESTING AND FEES (WHERE APPLICABLE AND AUTHORIZED)	\$xxxxx.00
Maximum Agreement Price for Services (exclusive of HST)	\$xxxxxxx.00
HST @ 13%	\$xxxxx.00
Maximum Agreement Price for Services (inclusive of HST)	\$xxxxxxxx.00

3. An amount of **\$xxxxxx.00** (inclusive of all fees, disbursements and taxes) is reserved as a Contingency for Additional Services (Item B) which may arise during the course of the Project, where authorized by the Division Head.
4. The initial estimated cost of Service deliverables or tasks may be adjusted during the Agreement by mutual agreement between the City and the Consultant, provided that the total cost of Services under this Agreement is not greater than the Maximum Agreement Price.
5. Provisional Items and Additional Services shall only be provided on an "as and when requested" basis. The City shall not be responsible for the payment of any Provisional Item or Additional Services unless those services have been authorized and assigned to the Consultant by prior written approval of the Division Head. If and upon being authorized, the Consultant shall proceed forthwith to supply the Provisional Item(s) or Additional Service(s), as the case may be, in accordance with: (i) the provisions of this Agreement; (ii) the terms of such authorization; and (iii) in the case of Provisional Items, the price set out in the Consultant's Proposal; or in the case of Additional Services, the applicable unit rates or prices or lump sum amount set out in the Consultant's Proposal or otherwise agreed to in writing by the Consultant and the Division Head, as the case may be.
6. If any Services under this Agreement are included by the Consultant in a progress claim as partially or fully completed, but are not completed in accordance with this Agreement, the City may withhold from payment the total amount payable, or a part thereof, for those Services until they are completed

or corrected to the full satisfaction of the Division Head, and the Division Head shall notify the Consultant in writing of its action and the reason for same.

7. The City shall pay the Consultant on a monthly basis, within forty-five (45) days of the City's receipt of the Consultant's invoice properly prepared to show details of the portion of the Services accomplished and the hours expended by the Consultant's Personnel to carry out the Services covered by the said invoice.
8. All or part of the aforementioned amounts are to be paid by the Consultant on a timely basis to any other firm and/or personnel which assists the Consultant in performing part or all of the Services, and the Consultant shall advise the Division Head when such payments by the Consultant have all occurred. It is agreed and understood that the City will not pay any firm and/or personnel other than the Consultant for the Services and that it is the Consultant's responsibility to pay all the other firms and personnel.
9. The Consultant's fees and disbursements shall be in accordance with the Consultant's Cost of Services Proposal and shall not exceed the specified Maximum Agreement Price with respect to the Services under this Agreement.

(a)	Time of Principals, Senior Officers, Specialists	For time-based services, Personnel specifically identified in the Consultant's Proposal attached hereto shall be billed at the all-inclusive hourly or per diem flat rates indicated therein or this Schedule "B", as the case may be; otherwise billing rates for this class of personnel shall be submitted for review and shall be subject to prior approval of the Division Head.
(b)	Time of other Staff	For time-based services, staff or personnel classifications specifically identified in the Proposal attached hereto shall be billed at the hourly or per diem flat rates indicated therein. Billing rates for staff or classifications other than those identified in the Proposal shall be submitted for review and shall be subject to prior approval of the Division Head.

SCHEDULE "SD-FINAL"

**STATUTORY DECLARATION BY THE CONSULTANT
RE: FINAL PAYMENT**

PROVINCE OF ONTARIO) IN THE MATTER OF
) the consulting agreement entered into
) between the **City of Toronto**
) and **Consultant**
) dated _____ (the "Agreement")
) and an Invoice dated _____ (the "Invoice")

To Wit:

I, _____ of the _____
(Name) (City, Town, etc.)

in the _____
(Regional Municipality, City, etc.)

do solemnly declare that:

- 1. I am a senior Official of **xxxxxxx** (the "Consultant"). I have personal knowledge of the facts herein set forth and, as a duly authorized representative of the Consultant, have the authority to certify as follows.
- 2. Attached hereto and marked as Exhibit A to this my declaration are true copies of statements of the Consultant as part of the Invoice addressed to the City of Toronto setting forth in detail the services performed by the Consultant during the period from the **xxxxxxx to the xxxxxx (start date to substantial completion date)** and for which payment is requested. I do hereby certify that such services were performed by the Consultant pursuant to and in accordance with the provisions of the Agreement.
- 3. The Consultant has completed all Services (as defined in the Agreement) to be performed by the Consultant.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED before me at the _____)
)
 _____ of _____,)
)
 in the Province of Ontario,)
)
 this day of **_____**, 20____.) _____
)
)
)
)

A Commissioner, etc.

SCHEDULE "C"

To the Agreement dated **Month/Date/Year** between

CITY OF TORONTO

- And -

CONSULTANT

CONSULTANT'S PROPOSAL

Technical Submission, Month/Date/Year, (### pages)
Cost of Services Price Submission, Month/Date/Year (## pages)
Proposal, Month/Date/Year (# pages)

RFP No. **xxxx-xx-xxxx**
{RFP (###) pages + Addenda (##) pages}