



**Request for Supplier Qualifications – Doc5421410915**  
**Part 4 – Form of Agreement**

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THIS AGREEMENT made effective the [Note to Finalization before Execution: insert Date] ("Effective Date")

BETWEEN:

**CITY OF TORONTO**

Hereinafter called the "City"

OF THE FIRST PART

and

**[INSERT LEGAL NAME OF SUPPLIER]**

Hereinafter called the "Supplier"

OF THE SECOND PART

**RECITALS:**

**WHEREAS** the City issued Request for Supplier Qualifications No. [Note to Finalization before Execution: insert RFSQ No.] dated [Note to Finalization before Execution: insert RFSQ date], including Addendum No. [Note to Finalization before Execution: insert any addenda numbers and their respective issuance dates] (collectively, the "RFSQ") to establish a multi-use list of prequalified suppliers to be used on an as needed basis in respect of peer reviews of technical studies for air quality and odour study, noise, vibration, compatibility/mitigation and rail safety and risk mitigation related to development applications (the "Project"); and

**WHEREAS** in response to the RFSQ, the Supplier submitted a response dated [Note to Finalization before Execution: insert RFSQ Response date] (the "RFSQ Response"); and

**WHEREAS** the Supplier was selected pursuant to the provisions of Municipal Code Chapter 195 to be on the Multi-Use List; and

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the City and the Supplier agree as follows:

**1. INTERPRETATION**

- 1.1 The words "include" and "including" mean "include, without limitation" or "including, without limitation".

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- 1.2 Except as otherwise expressly provided for in the Agreement, any reference in the Agreement to any act, bylaw, rule, policy or regulation or to a provision thereof shall be deemed to include a reference to such act, bylaw, rule, policy or regulation or provision as amended, supplemented, re-enacted or replaced from time to time. Any reference in the Agreement to a statute shall be a reference to the statute and its underlying regulations.
- 1.3 Any services, deliverables, goods or incidentals not explicitly specified herein but which are necessary to conform to the standard of care or all Requirements of Law governing the Deliverables, or which may be fairly implied as “included”, shall be done or supplied by the Supplier as if such services, deliverables, goods or incidentals had been explicitly specified.
- 1.4 Any words and abbreviations, which have well-known professional, technical or trade meanings, are used in the Agreement in accordance with such recognized meanings, unless expressly provided otherwise.
- 1.5 All expressions defined in the body of the Agreement shall have the same meanings in the schedules.
- 1.6 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 of Toronto.
- 1.7 The terms “Supplier”, “Peer Reviewer” and “Consultant” shall have the same meaning and may be used interchangeably.

**2. DEFINITIONS**

- 2.1 The following terms shall have the meanings as specified in this Article unless the context otherwise specifies or requires:

**"Agreement"** has the meaning set out in Section 3.1.

**"City Confidential Information"** means all information of the City that is of a confidential nature, including all confidential information in the custody or control of the City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, the City Confidential Information shall include: (i) all new information derived at any time from any City Confidential Information whether created by the City, the Supplier, or any third-party; and (ii) all information (including Personal Information) that the City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law. City Confidential Information shall not include information that (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the City or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of

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confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions shall in no way limit the meaning of Personal Information or the obligations attaching to Personal Information under the Agreement or at law.

**"Conflict of Interest"** has the meaning set out in Section 15.3.

**"Deliverables"** means everything developed for or provided to the City, including all services, in the course of performing any obligation under the Agreement or agreed to be provided to the City under the Agreement by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by the Agreement Documents, including but not limited to any and all goods, services, Intellectual Property, concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided. The Deliverables shall include, without limitation, all Records, data, plans, specifications, reports, estimates, summaries, photographs, and all other documentation prepared by the Supplier in connection with the provision of the Deliverables under the Agreement, whether they be in draft or final format.

**"Effective Date"** has the meaning ascribed to above.

**"Indemnitees"** means City of Toronto, and its Mayor, members of Council, officers, employees, agents, representatives, successors and assigns.

**"Industry Standards"** include, but are not limited to: (i) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Agreement or customarily furnished by persons providing Deliverables of the type provided under this Agreement in similar situations in Ontario; (ii) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts, hospitality, inducements of greater than nominal value to any person acting on behalf of or employed by the City; and (iii) any breach of ethical business practices.

**"Initial Term"** has the meaning set out in Section 6.1.

**"Intellectual Property"** means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity.

**"MFIPPA"** means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

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**"Multi-Use List" or "Roster List"** means the list of Prequalified Suppliers established through the RFSQ and that the City may use more than once to obtain professional and/or consulting services in connection with the Project.

**"Personal Information"** means all information captured by the definition of "personal information" contained in MFIPPA, regardless of whether MFIPPA is applicable to such information.

**"Personnel"** means the Supplier's personnel and includes: (i) any of the Supplier's subcontractors; (ii) the officers, directors, partners, suppliers, employees, independent contractors and agents of the Supplier and its subcontractors; (iii) any person employed or engaged by or under the control of the Supplier and its subcontractors to perform or supply any part of the Deliverables related thereto; and (iv) any other person employed or engaged to perform or supply any part of the Deliverables and for whom the Supplier is responsible at law.

**"Pre-existing Material"** means any of the Supplier's pre-existing tools, methodologies, questionnaires, responses, and proprietary research and data, as well as computer software, code or codes and technology, used by the Supplier in connection with the provision of any Deliverables under the Agreement.

**"Prequalified Supplier"** means a supplier selected by the City to be on the Multi-use List. For greater clarity, the Supplier is a Prequalified Supplier.

**"Project"** has the meaning set out in the Recitals.

**"Project Lead"** has the meaning set out in Section 5.1.

**"Records"** means any recorded information, including any City Confidential Information, in any form: (i) provided by the City to the Supplier, or provided by the Supplier to the City, for the purposes of the Agreement; or (ii) created by the Supplier in the performance of the Agreement.

**"Renewal Term"** has the meaning set out in Section 6.1.

**"Requirements of Law"** means all applicable laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, policies, official plans, permits, licences, regulatory approvals, authorizations, directions, agreements, and other requirements of all authorities, including City of Toronto's By-laws and policies, that now or at any time may be applicable to either the Agreement or the Deliverables or any part of them, as amended, supplemented, re-enacted or replaced from time to time.

**"RFSQ"** has the meaning set out in the Recitals.

**"RFSQ Response"** has the meaning set out in the Recitals.

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**"Term"** has the meaning set out in Section 6.1.

**"Work Assignment"** means each assignment to be undertaken by the Supplier, at the City's request, under this Agreement.

**"WSIA"** means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A.

**"WSIB"** means the Ontario Workplace Safety and Insurance Board.

**3. AGREEMENT DOCUMENTS**

- 3.1 The body of this agreement and the schedules, as amended, shall be deemed to constitute the whole agreement between the parties and shall supersede any previous agreements, discussions or negotiations (the "Agreement"). No verbal arrangement or agreement relating to the Agreement will be of any force or effect unless it is in writing and signed by duly authorized representative(s) of the City.
- 3.2 In the event of any conflict or disagreement between the various documents making up the Agreement, the documents shall govern in the following order of precedence:
- (a) The body of the Agreement.
  - (b) Schedule "A" – SCOPE OF WORK
  - (c) Schedule "C" – RATES
  - (d) Schedule "B" – RFSQ Response

**4. APPOINTMENT ON THE MULTI-USE LIST**

- 4.1 The City appoints the Supplier on the Multi-Use List such that the Supplier is eligible to receive potential Work Assignments during the Term.
- 4.2 The Supplier agrees to the Process Terms set out in Schedule "D".
- 4.3 Work Assignments will be requested on an as needed basis, at the sole discretion of the City.
- 4.4 A Work Assignment shall only be performed after issuance by the City of a Work Assignment request, the form of which is appended in Schedule "E". The Supplier acknowledges that the City may make any changes to the Work Assignment form that the City may deem necessary. In the event of any conflict between the terms of a Work

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Assignment form and the terms of this Agreement, the terms of this Agreement will control and prevail.

- 4.5 The Supplier acknowledges that there is no obligation whatsoever for the City to use the Multi-Use List and to request any Work Assignment to the Supplier during the Term.

**5. THE DELIVERABLES**

- 5.1 The Supplier shall supply, provide and perform the Deliverables, with all due and reasonable diligence, professional skill and competence, to the satisfaction of the City's Executive Director, Development Review, the designated City representative for the Project (the "Project Lead"), all in accordance with the terms and conditions of this Agreement.
- 5.2 The Supplier hereby represents and warrants that the Deliverables will be: (a) provided fully and diligently in a professional, careful and competent manner by persons qualified and skilled in their occupations; (b) free from defects or encumbrances and suitable for the purposes intended, in compliance with all applicable requirements and specifications; and (c) provided in accordance with the Agreement, Industry Standards, and Requirements of Law.
- 5.3 If any of the Deliverables, in the opinion of the City, are inadequately provided, defective, deficient, faulty, or otherwise do not conform to the requirements of the Agreement, the Supplier shall make the necessary corrections without delay and at its own expense as specified by the City.
- 5.4 During the Term, the Supplier shall advise the City promptly of: (a) any contradictions, discrepancies or errors found or noted in the Agreement; (b) supplementary details, instructions or directions that do not correspond with those contained in the Agreement; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Agreement and any additional Requirements of Law.
- 5.5 The Supplier shall provide all of the Deliverables notwithstanding that the value of the time spent by the Supplier in performance thereof exceeds its maximum estimate based on an hourly, daily or other time-based rate. In particular, neither such rate nor any provision of this Agreement shall relieve the Supplier from providing all the Deliverables or reduce its obligation to one of performing only some proportionate or other part of the Deliverables unless approved by the Project Lead.

**6. TERM**

- 6.1 This Agreement will be for a period of [Note to Finalization before Execution: Insert number of years] year commencing on the Effective Date ("Initial Term"). The City shall have the option to renew this Agreement, on the same terms and conditions, for [Note to Finalization before Execution: Insert number of periods] additional separate [Note to Finalization

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before Execution: Insert duration of periods]-year periods (each a "Renewal Term"). Collectively, the Initial Term and any Renewal Terms are the "Term".

**7. NON-EXCLUSIVITY**

- 7.1 The Agreement with the Supplier shall not be a guarantee of exclusivity. The City makes no representation regarding the volume of Deliverables required under the Agreement. The City reserves the right to contract with other parties for the same or similar Deliverables or to obtain similar Deliverables internally.

**8. INDEPENDENT CONTRACTOR**

- 8.1 The relationship of the City and the Supplier is one of owner and independent contractor and not one of employer-employee. There is no intention to create a partnership, joint venture or joint enterprise between the Supplier and the City, nor shall the Supplier hold itself out as an agent, partner or employee of the City. The Supplier shall have no power or authority to bind the City or to create any obligation, express or implied, on behalf of the City.

**9. PERSONNEL AND PERFORMANCE**

- 9.1 The Supplier shall commence any Work Assignment upon receipt of written instructions from the Project Lead.
- 9.2 The Supplier shall only provide and perform any additional deliverables and services at the request and upon the prior written authorization of the Project Lead.
- 9.3 The Supplier shall make available and employ, at its sole cost and expense, for the purposes of the Agreement only such Personnel as are professionally qualified, careful, skilled and experienced in the duties required of them to provide the Deliverables properly and in a competent and professional manner and ensure that every such person is properly and thoroughly trained and instructed.
- 9.4 The Supplier must be able to provide the necessary materials, tools, machinery and supplies required in providing the Deliverables.
- 9.5 The Supplier shall designate an individual to act as the Supplier's manager for the Project and main point of contact with respect to the obligations of the Supplier under this Agreement, and to coordinate the work of the Supplier and its subcontractors.
- 9.6 The Supplier shall be responsible for the resources of its Personnel.
- 9.7 The Supplier represents and warrants that its Personnel hold all requisite permits, licences, rights and other authorizations required by all Requirements of Law to perform or supply the Deliverables.

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- 9.8 The Supplier shall ensure that its Personnel, when using any City buildings, premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.
- 9.9 Personnel assigned by the Supplier to perform or supply the Deliverables may, in the sole discretion of the City, be required to sign non-disclosure and conflict of interest agreement(s) and provide other assurances satisfactory to the City before being permitted to perform the Deliverables under the Agreement.
- 9.10 The Supplier agrees that to the extent that specific individuals are named in this Agreement as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Agreement. The Supplier shall not replace or substitute any of the named individuals without the prior written approval of the City. Should the Supplier require the substitution or replacement of any named individuals, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the named individual. The Supplier shall not claim fees for any replacement individual greater than those established under this Agreement.
- 9.11 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 Supplier's Personnel shall constitute a breach or default or liability caused by the Supplier.

**10. NO SUBCONTRACTING**

- 10.1 The Supplier shall not subcontract the whole or any part of the Agreement without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City.
- 10.2 Without limiting the generality of the terms and conditions which the City may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the provisions of the Agreement as far as applicable to those parts of the Deliverables provided by the subcontractor.
- 10.3 Nothing contained in the Agreement shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates, or volunteers and the City.
- 10.4 The Supplier shall be solely responsible for the payment of any and all subcontractors employed, engaged or retained by the Supplier for the purpose of assisting it in the discharge of its obligations under this Agreement.
- 10.5 The Supplier shall co-ordinate the services of all subcontractors employed, engaged or retained by the Supplier pursuant to this Agreement and the Supplier shall be liable to the City for costs or damages arising from acts, omissions, negligence or wilful misconduct of such subcontractors or any of them.



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- 10.6 No subcontracting will, in any circumstances, relieve the Supplier of its liabilities and obligations under the Agreement.

**11. PAYMENT FOR THE DELIVERABLES**

- 11.1 The City shall, subject to the Supplier's compliance with the Agreement, pay the Supplier for the Deliverables provided, at the rates and in the manner established under Schedule "C". Such rates represent the full amounts chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes, except HST; (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law. There shall be no other charges payable by the City.
- 11.2 Unless otherwise stated, the Supplier shall pay all applicable taxes and duties, including excise taxes, incurred by or on behalf of the Supplier. The Supplier shall invoice and collect HST from the City in accordance with the Requirements of Law. The City shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws.
- 11.3 The City will also pay to the Supplier for such of the items, deliverables and services provided by it and incurred in the provision of the Deliverables in accordance with the Agreement, which, in the opinion of the Project Lead are necessary in connection with the Deliverables.
- 11.4 No fees or reimbursable expenses shall become payable to the Supplier pursuant to the Agreement other than pursuant to Schedule "C".
- 11.5 The Supplier shall submit invoices in such detail as may be required by the City, and the City reserves the right to require further proof or documentation from the Supplier in respect of any Deliverables provided or expenses incurred by the Supplier and the Supplier shall provide, without delay, such further proof or documentation.
- 11.6 If the City does not approve of the Deliverables which are the subject of the invoice, the City shall advise the Supplier in writing of the reasons for non-approval and the Supplier shall remedy the problem at no additional cost to the City before the City shall be obliged to pay the invoice or any part of it, as the case may be.
- 11.7 The Supplier shall be solely responsible for the payment of all costs associated to its Personnel including statutory and otherwise made available by it and used for the provision of any of the Deliverables.

**12. INTELLECTUAL PROPERTY**

- 12.1 The Supplier agrees that the Deliverables shall be the exclusive property of the City.

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- 12.2 The Supplier hereby transfers and assigns unconditionally and irrevocably any and all Intellectual Property rights that the Supplier may have now or in the future in the Deliverables, with the exception of any Pre-existing Material contained within the Deliverables.
- 12.3 The Supplier grants to the City a perpetual, worldwide, non-exclusive, irrevocable, royalty-free, transferrable and assignable license to use, reproduce, publish, distribute, modify, adapt, translate, convert, and develop derivative works based on, any Pre-existing Material contained within the Deliverables, in any form or media whatsoever, which license shall survive the termination or expiry of the Agreement.
- 12.4 The presumption governing the Agreement shall be that the City shall be the sole owner of any Intellectual Property in any form contained in any of the Deliverables. If any Pre-existing Material forms any part of the Deliverables, the Supplier shall notify the City as such prior to the delivery of the particular Deliverables containing any such Pre-existing Material. In the absence of any such notice the presumption shall remain that the City is the sole owner of any Intellectual Property contained in the Deliverables.
- 12.5 The Supplier hereby unconditionally and irrevocably waives in favour of the City, in whole and in part, any and all moral rights the Supplier may have in the Deliverables, including any Pre-existing Material contained therein, and shall obtain the same waiver in favour of the City from all authors of the Deliverables.
- 12.6 The Supplier represents and warrants that; (a) the Deliverables and the City's use thereof shall not infringe or induce the infringement of any third-party Intellectual Property rights; (b) the Supplier has obtained all assignments and licenses of Intellectual Property rights necessary to grant the licenses, rights and interests granted herein; and (c) the Supplier has obtained all necessary waivers of moral rights in all the Deliverables. The Supplier shall provide satisfactory proof of (a), (b) and (c) to the City upon request.
- 12.7 The Supplier shall not incorporate into any Deliverables anything that would restrict the right of the City to modify, further develop or otherwise use the Deliverables in any way that the City deems necessary, or that would prevent the City from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.
- 12.8 All Deliverables shall be delivered to the City upon the request of the City or upon completion of a Work Assignment.
- 12.9 The obligations contained in this Article shall survive the termination or expiry of the Agreement.

**13. THIRD PARTY SOFTWARE**

- 13.1 Where the City is in possession of software containing or constituting confidential proprietary information belonging to third parties, the Supplier shall not, except in the usual

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incidental manner genuinely necessary for the intended use of such software on the equipment of the City,

- a. analyze, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or
- b. divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.

13.2 The Supplier shall fully defend, save harmless and indemnify the City from and against any loss or damages suffered by the City as a result of any failure by the Supplier, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.

13.3 Should the Supplier include third party components within any Deliverables, the Supplier must secure the rights to use and repackage third party components and pass on those licensing rights to the City without additional charges.

**14. CONFIDENTIALITY, PRIVACY, SECURITY AND ACCESS TO INFORMATION**

14.1 In providing the Deliverables for the City, the Supplier shall comply with all privacy laws, including the MFIPPA.

14.2 During and following the expiry or termination of the Agreement, the Supplier shall:

- a. treat as strictly confidential and proprietary to the City all City Confidential Information;
- b. limit the disclosure of the City Confidential Information to only those of its Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure;
- c. not directly or indirectly disclose, destroy, exploit or use any City Confidential Information except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal (subject to Section 14.6), without first obtaining:
  - (i) the written consent of the City and
  - (ii) in respect of any the City Confidential Information about any third-party, the written consent of such third-party.
- d. provide the City Confidential Information to the City on demand; and

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- e. return all the City Confidential Information to the City on or before the end of the Term or upon termination of the Agreement, with no copy or portion kept by the Supplier.
- 14.3 The City provides City Confidential Information to the Supplier as is. The City makes no warranty, express or implied, regarding the accuracy or completeness of the City Confidential Information nor shall the City be liable to the Supplier for any damages arising from the use of any information provided to the Supplier, whether from errors or omissions or otherwise.
- 14.4 The Supplier shall not copy any City Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.
- 14.5 The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the City or to any third-party to whom the City owes a duty of confidence, and that the injury to the City or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the City is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.
- 14.6 If the Supplier or any of its Personnel become legally compelled to disclose any City Confidential Information, the Supplier will provide the City with prompt notice to that effect in order to allow the City to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the City and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of the City Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the City ) that the City Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such City Confidential Information subject to those terms and conditions.
- 14.7 The Supplier and the City acknowledge and agree that the MFIPPA applies to and governs all Records under the Agreement and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:
  - a. to keep Records secure;
  - b. to provide Records to the City within seven (7) calendar days of being directed to do so by the City for any reason including an access request or privacy issue;

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- c. not to access any Personal Information unless the City determines, in its sole discretion, that access is permitted under MFIPPA and is necessary in order to provide the Deliverables or as set out in the Agreement;
  - d. not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the City;
  - e. to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
  - f. to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the City to have such access for the purpose of providing the Deliverables;
  - g. to implement other specific security measures that in the reasonable opinion of the City would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information, City Confidential Information and Records generally; and
  - h. that any confidential information supplied to the City may be disclosed by the City where it is obligated to do so under MFIPPA by an order of a court or tribunal.
- 14.8 The obligations contained in this Article shall survive the termination or expiry of the Agreement.
- 15. CONFLICT OF INTEREST**
- 15.1 The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the Agreement upon giving notice to the Supplier where: (a) the Supplier fails to disclose an actual or potential Conflict of Interest; (b) the Supplier fails to comply with any requirements prescribed by the City to resolve or manage a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved to the City's reasonable satisfaction.
- 15.2 The City's Executive Director, Development Review or designate shall have the right to decide in consultation with the City Solicitor whether such interest constitutes a Conflict of Interest such that the City shall have the right to terminate the Agreement.
- 15.3 A "Conflict of Interest" for this purpose means in relation to the performance of its

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obligations under the Agreement, the Supplier's other commitments, relationships or financial interests (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Agreement.

15.4 The absence of any disclosure of any Conflict of Interest under this provision shall be treated as a representation and warranty by the Supplier that no such potential Conflict of Interest exists.

15.5 The Supplier shall not hire any current or former officer or employee of the City to provide any Deliverables covered by the Agreement, unless approved by the City.

**16. TERMINATION**

16.1 Upon giving the Supplier not less than thirty (30) days' prior written notice, the City may, at any time and without cause, terminate this Agreement, in whole or in part.

16.2 The City may immediately terminate the Agreement upon giving notice in writing to the Supplier where:

- a. the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency.
- b. the Supplier breaches any provision in Article 14 (Confidentiality, Privacy, Security and Access to Information) of the Agreement.
- c. the Supplier breaches the Conflict of Interest provisions in Article 15 (Conflict of Interest) of the Agreement.
- d. the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City.
- e. the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Agreement.
- f. the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Agreement without first obtaining the written approval of the City.
- g. the Supplier's acts or omissions constitute a failure of performance.
- h. the Supplier has failed to respond to the City's Work Assignment requests on three (3) occasions.

16.3 The City reserves the right to terminate a Work Assignment at any time and without cause,

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upon giving written notice to the Supplier.

- 16.4 Upon termination of this Agreement or any Work Assignment as per this Article 16, the City shall not incur any liability to the Supplier apart from the payment for the goods, material, articles, equipment, work, deliverables or services that have been satisfactorily delivered or performed by the Supplier at the time of the termination.
- 16.5 All rights and remedies of the City for any breach of the Supplier's obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the City under the Agreement or otherwise at law.
- 16.6 On termination of this Agreement or a Work Assignment, the Supplier shall, in addition to its other obligations under the Agreement and at law, provide the City with any completed or partially completed Deliverables.

**17. INSURANCE**

- 17.1 Without restricting the generality of any provision of this Agreement, the Supplier agrees to purchase and maintain in force, at its own expense the policies of insurance and coverages set out for the duration of this Agreement unless specified otherwise. Such insurance shall be provided by an insurer licensed to carry on the business of an insurer in Ontario or satisfactory to the City in its sole and absolute discretion. The Supplier agrees to purchase and maintain in force:

(A) Commercial General Liability provided that the policy:

- (i) is in the amount of not less than Two Million Dollars (\$2,000,000.00), per occurrence;
- (ii) adds the City of Toronto as an additional insured;
- (iii) includes, non-owned automobile liability, employer's Liability and/or contingent employer's liability, Cross Liability and severability of interest, and any other provision relevant to the Deliverables;
- (iv) shall require the insurer(s) to notify the City in writing, at least thirty (30) calendar days (fifteen (15) calendar days if cancellation is due to non-payment of premium), prior to any cancellation of the Supplier's insurance

(B) 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) per claim;
- (ii) will extend to infringement of copyright and other intellectual property,

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including misuse of trade secrets, if applicable; and

- (iii) shall be maintained for a period ending no sooner than twenty-four (24) months following the date of the earlier of the termination or expiry of this Agreement as the case may be.

- 17.2 Prior to providing any Deliverables, and ten (10) days prior to the expiration, amendment or extension of the required insurance policies, the Supplier shall provide the City with certificates of insurance as proof of such coverage, in a form acceptable to the City, signed by the insurer or its authorized agent, without notice or request by the City.
- 17.3 The City reserves the right to require the Supplier to purchase additional insurance coverage or alter existing insurance coverage as the City may reasonably require.
- 17.4 The Supplier agrees that the insurance requested shall be primary and shall not call into contribution any insurance available to the City, and the insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the Supplier.
- 17.5 It is understood and agreed that the coverage and limits of liability set out in this Article are not to be construed as the limit of liability of the Supplier in the provision of the Deliverables.
- 17.6 The Supplier 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 Supplier 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.

**18. INDEMNIFICATION**

- 18.1 The Supplier shall indemnify, save harmless and defend the Indemnitees from and against any and all actions, claims and demands whatsoever which may be brought against or made upon the Indemnitees, or any of them, of, from and against any and all losses, liens, charges, claims, demands, suits, recoveries, judgments (including legal fees and costs) and other proceedings, resulting from:
  - a. any breach, violation or non-performance by or on behalf of the Supplier of any obligation or responsibility of the Supplier contained in the Agreement, including any express or implied warranty;
  - b. any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Supplier relating to the Deliverables to be provided or supplied under the Agreement or otherwise in connection with the Agreement;
  - c. any acts performed by or on behalf of the Supplier beyond the authority of the



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Supplier conferred by the Agreement, whether negligent or otherwise;

- d. any inaccuracy in or breach of any of the representations or warranties of the Supplier contained in the Agreement or the Deliverables;
  - e. any infringement by the Supplier 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 of the Deliverables or any matter provided to the City or performed by the Supplier, or anyone else for whom at law it is responsible;
  - f. any privacy, confidentiality or security breaches or violations by the Supplier relating to the Deliverables to be provided under the Agreement or otherwise in connection with the Agreement.
- 18.2 Upon assuming the defence of any action covered under this section the Supplier shall keep the City reasonably informed of the status of the matter, and the Supplier shall make no admission of liability or fault on the City's part without the City's written permission.
- 18.3 Nothing under the Agreement shall render the Indemnitees responsible for any employment, benefit or termination liability (including those under or in connection with the WSIA), whether statutorily required, at common law or otherwise, resulting from Deliverables supplied under the Agreement by persons employed or otherwise engaged by the Supplier. In the event that employment related costs, or other related responsibility falls to the Indemnitees for any reason whatsoever, the Supplier agrees to indemnify the City for such costs.
- 18.4 The obligations contained in this Article shall survive the termination or expiry of the Agreement.
- 19. COMPLIANCE WITH ALL REQUIREMENTS OF LAW**
- 19.1 The Supplier shall comply, at its sole expense, with all Requirements of Law in relation to the provision of any Deliverables and the performance of the Agreement, including the obtaining of all necessary permits and licenses, and shall submit proof of such compliance to the City, upon request, and the Supplier shall indemnify and save the City harmless from any liability or cost suffered by it as a result of the Supplier's failure to comply with this provision.
- 20. OCCUPATIONAL HEALTH AND SAFETY ACT**
- 20.1 The Supplier 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").

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- 20.2 Nothing in this Article shall be construed as making the City the "employer" (as defined in the OHSA) of any workers employed or engaged by the Supplier for the Deliverables, either instead of or jointly with the Supplier.
- 20.3 The Supplier agrees that it will ensure that all subcontractors engaged by it are qualified to perform the Deliverables and that the employees of subcontractors are trained in the health and safety hazards expected to be encountered in the provision of the Deliverables.
- 20.4 The Supplier acknowledges and represents that:
- a. The workers employed to provide the Deliverables have been provided with training in the hazards of the Deliverables to be performed and possess the knowledge and skills to allow them to work safely;
  - b. The Supplier has provided, and will provide during the course of the agreement, all necessary personal protective equipment for the protection of workers;
  - c. The Supplier'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 Supplier has in place an occupational health and safety, workplace violence and workplace harassment policies in accordance with the OHSA;
  - e. The Supplier 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.
- 20.5 The Supplier shall provide, at the request of the City's Executive Director, Development Review or their designate, the following as proof of the representations made above:
- a. documentation regarding the training programs provided or to be provided during the term of the Agreement (i.e. types of training, frequency of training and re-training); and
  - b. the occupational health and safety policy.
- 20.6 The Supplier shall immediately advise the City's Executive Director, Development Review or their designate in the event of any of the following:
- a. A critical injury that arises out of the performance of the Agreement;
  - b. An order(s) is issued to the Supplier by the Ministry of Labour arising out of the performance of the Agreement;
  - c. A charge is laid or a conviction is entered arising out of the performance of the

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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.

- 20.7 The Supplier shall be responsible for any delay in the Deliverables as a result of any violation or alleged violation of any federal, provincial or municipal health and safety requirement by the Supplier, 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 Deliverables or entitling the Supplier to additional compensation, and the Supplier shall take all necessary steps to avoid delay in the final provision of the Deliverables without additional cost to the City.
- 20.8 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 Supplier do work or perform a task that is the subject of this Agreement.

**21. WORKPLACE SAFETY AND INSURANCE ACT**

- 21.1 The Supplier shall secure, maintain and pay all costs for Workplace Safety and Insurance Board workers' compensation coverage for its employees providing Deliverables under this Agreement, whether required statutorily or not under the Workplace Safety and Insurance Act, 1997.
- 21.2 The Supplier represents and warrants that it shall be in good standing with the WSIB throughout the term of this agreement. Prior to providing the Deliverables and prior to receiving payment, the Supplier shall produce a Clearance Certificate issued by the WSIB confirming that the Supplier has paid its assessment based on a true statement of the amount of its current payroll in respect of the Deliverables and that the City is relieved of financial liability. Thereafter, throughout the period of Deliverables being provided, a new Clearance Certificate will be obtained from the WSIB by the Supplier and provided to the City every 90 days or upon expiry of the Certificate's validity period whichever comes first.
- 21.3 The Supplier shall ensure that any and all persons, including but not limited to volunteers, students, subcontractors and independent contractors, providing any Deliverables under this Agreement, have secured WSIB coverage, whether required statutorily or not, for the term of this Agreement.

**22. ACCESSIBILITY**

- 22.1 The Supplier shall ensure that all Deliverables, as appropriate for each Deliverable, conform with the requirements of the HRC, the Ontarians with Disabilities Act, 2001, the Accessibility for Ontarians with Disabilities Act, 2005, and their respective regulations as they apply to the City. The Supplier shall comply with the City's accessibility standards, policies, practices, and procedures, which may be in effect during the term of the Agreement and apply to the Deliverables to be provided by the Supplier. The accessible

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customer service training requirements applicable to the City's suppliers may be reviewed at: <https://www.ontario.ca/laws/regulation/110191>.

- 22.2 The Supplier shall require all applicable Personnel to fulfill the training requirements set out in the City's policy on Accessible Customer Service Training Requirements for Contractors, Consultants and other Services Providers. The City of Toronto requirements may be reviewed at <https://www.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/purchasing-policies-legislation/accessible-customer-service-training-requirements/>.

**23. NO ASSIGNMENT**

- 23.1 The Agreement shall not be assigned by the Supplier without the prior written consent of the City, which consent shall not be unreasonably withheld. Such consent shall not under any circumstances relieve the Supplier of its liabilities and obligations under the Agreement.
- 23.2 The Agreement and everything herein contained shall respectively ensure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns, respectively.

**24. CHANGE OF CONTROL**

- 24.1 If the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to the City and shall comply with any terms and conditions subsequently prescribed by the City resulting from the disclosure.

**25. AUDIT**

- 25.1 The City may audit all financial and related records associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Supplier. The Supplier shall at all times during the term of the Agreement, and for a period of 2 years following completion of the Agreement, keep and maintain records of the work performed pursuant to this Agreement. This shall include proper records of invoices, vouchers, timesheets, and other documents that support actions taken by the Supplier. The Supplier shall at their own expense make such records available for inspection and audit by the City at all reasonable times.

**26. FURTHER ASSURANCES**

- 26.1 The Supplier 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 the Agreement.

**27. NO WAIVER**

- 27.1 No delay, omission or condoning by the City in exercising any right or remedy shall operate as a waiver of them or any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Without limiting the foregoing, no excusing or overlooking by the City or any of its representatives of any default by the Supplier at any time or times in respect of any provision contained in the Agreement shall operate as a waiver of the City's rights under the 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 the Agreement in respect of any such continuing or subsequent default.

**28. SET OFF**

- 28.1 In addition to any other remedies the City may have under the Agreement, the City shall have the right to set-off, withhold, retain or deduct from amounts due or owing by the City to the Supplier under the Agreement an amount sufficient to cover any monetary claims or other amount due or owing from time to time, or portions thereof, by the Supplier to the City, including any amount owing to the City pursuant to the Supplier's indemnification of the City under the Agreement or claims pursuant to any other contract or cause of action between the Supplier and the City which have not been settled between the City and the Supplier.
- 28.2 If the Supplier at any time fails to supply any Deliverables to the City as specified within the Agreement, or fails to replace Deliverables rejected by the City, then the City shall be permitted to procure such Deliverables elsewhere and charge any additional costs incurred by the City to the Supplier, unless otherwise specified, and deduct such amounts from payments due to the Supplier or to otherwise collect such costs from the Supplier by any other method permitted by law.

**29. GOVERNING LAW**

- 29.1 This Agreement shall be governed by and construed in accordance with all Requirements of Law. 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 Supplier and the City each irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario in relation to this Agreement.

**30. SURVIVAL**

- 30.1 The termination or expiry of the Agreement shall not affect the survival and enforceability of any provision which is expressly or implicitly intended to remain in full force and effect indefinitely or to the extent necessary to give effect to those provisions.

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**31. NOTICE**

31.1 Any demand or notice to be given pursuant to the Agreement shall be duly and properly made and given if made in writing and either delivered to the party for whom it is intended to the address as set out below or sent by prepaid registered mail or electronic mail addressed to such party as follows:

a. In the case of the City:

CITY OF TORONTO

100 Queen St W, 12<sup>th</sup> Fl. East Tower,  
Toronto, ON  
M5H 2N2

Attention: [Note to Finalization before Execution: Insert]

Email: [Note to Finalization before Execution: Insert]

b. In the case of the Supplier:

[Note to Finalization before Execution: INSERT LEGAL NAME OF SUPPLIER]

[Note to Finalization before Execution: Insert Address]

Attention: [Note to Finalization before Execution: Insert]

Email: [Note to Finalization before Execution: Insert]

or to such other addresses as the parties may from time to time notify in writing, and any demand or notice so made or given shall be deemed to have been duly and properly made or given and received on the day on which it shall have been so delivered 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) clear business days following the date of mailing.



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**32. COUNTERPARTS**

- 32.1 This Agreement may be executed in counterpart and may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

IN WITNESS WHEREOF the parties have executed this Agreement.

**CITY OF TORONTO**

\_\_\_\_\_  
Name: [Note to Finalization before Execution: Insert]  
Title: [Note to Finalization before Execution: Insert]  
Date:

[Note to Finalization before Execution:  
**INSERT LEGALNAME OF SUPPLIER**]

\_\_\_\_\_  
Name:  
Title:  
Date:

I/We have the authority to bind the Supplier



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**SCHEDULE “A”**

**RFSQ DOCUMENT NUMBER [Note to Finalization before Execution: insert Number]**  
**SCOPE OF WORK AS DESCRIBED IN [Note to Finalization before Execution: Insert sections/parts of RFSQ]**





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**SCHEDULE “B”**

**RFSQ RESPONSE SUBMITTED ON [Note to Finalization before Execution: insert Date]**

## **SCHEDULE “C” – RATES**

### **RATES**

The total fee for all Deliverables to be provided by the Supplier under this Agreement shall not exceed \$ **[Insert amount]** plus HST, without written permission of the City.

### **[Insert Rates as submitted in the RFSQ Response]**

Unit rates will be subject to a one-time increase equal to the year-over-year percentage increase in the most recently published Consumer Price Index, effective on the first day of the Renewal Term.

The City shall not be responsible for any additional costs, unless for additional work requested and pre-approved in writing by the City at the hourly rates set out in this Agreement or as otherwise approved by the City.

### **SUBMISSION OF INVOICES**

Unless otherwise agreed by the Project Lead, invoices must be submitted on a monthly basis, no later than ten (10) business days after the end of each month, in a format acceptable to the City.

The Supplier shall follow all instructions provided by the City regarding ordering and invoicing of Deliverables as outlined on the City of Toronto's Accounts Payable Requirements website, which may be updated from time to time without notice to the Supplier: <https://www.toronto.ca/business-economy/doing-business-with-the-city/follow-up-on-city-contracts/accounts-payable-requirements/>.

The City shall approve or reject the invoice and if the City rejects the invoice, it shall so advise the Supplier promptly in writing and the Supplier shall provide additional information as required by the City to substantiate the invoice.

Each invoice is subject to the approval of the City before any payment is released and payment shall be made within 30 calendar days of such approval.

The City may make payments under the Agreement by way of procurement card and the Supplier shall accept and process any such payments in accordance with the City's procurement card protocols.

**SCHEDULE “D” – PROCESS TERMS**

1. The City will request Work Assignments on an as needed basis using the form attached in Schedule “E”.
2. Except as otherwise indicated herein, the City will allocate Work Assignments on a rotational basis, in descending order, starting from the Prequalified Supplier that is ranked first on the Multi-Use List.
3. The City may, at its sole discretion, allocate a Work Assignment outside the rotational sequence in circumstances that may include, without limitation, the following:
  - a. a potential conflict of interest exists, as determined by the City;
  - b. the Supplier’s failure to perform any previous Work Assignment in accordance with the Agreement;
  - c. Specific Work Assignment requirements.
4. For each Work Assignment, the City will provide any specifics or requirements not already contemplated in Schedule “A”, including specifics regarding the scope of work, timelines and any other requirements or information necessary. The Prequalified Supplier shall provide a written response within the timeline indicated by the City, including all information requested by the City. The City may proceed with the Work Assignment, reassign it to another Prequalified Supplier if the response is deemed inadequate, or cancel it, all at its sole discretion.
5. Work Assignments shall be completed within the timeline specified by the City and in accordance with the terms of the Agreement.
6. In the event that the Multi-Use List has, at any time, less than three (3) Prequalified Suppliers, the City may prequalify additional suppliers to augment the number of Prequalified Suppliers to a maximum of five (5), at any time, in any manner it finds appropriate, including by adding suppliers who had passed the specified minimum threshold requirements for the RFSQ or by issuing a new request for supplier qualifications.
7. Termination or expiry of the Agreement will result in the Prequalified Supplier being removed from the Multi-Use List.



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**SCHEDULE “E” – WORK ASSIGNMENT FORM**

**WORK ASSIGNMENT FORM**

WORK ASSIGNMENT NUMBER: \_\_\_\_\_

Date: [Month day, year] \_\_\_\_\_

**Application Information**

Address:	
Application Type:	
IBMS File #:	
Planner:	

**Timing**

Expected start date:	
Target completion date:	

**Peer Review Studies/Reports Required:**

1.	
2.	
3.	
4.	

**Work Assignment Request**

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**Basis of Study and Peer Review**

**Additional Comments|**