



**CONSULTING SERVICES  
MASTER AGREEMENT  
CONTRACT #Doc5572034849**

for

**Corporate Real Estate Management  
Professional Architectural and Engineering Services for  
Small Capital Projects and Emergency Capital Projects**

**NOTICE RE: CONSTRUCTION ACT**

\* All claims for lien (Form 12) must be completed and submitted through the City of Toronto's website at [www.toronto.ca/liens](http://www.toronto.ca/liens), pursuant to section 34(3.1) of the Construction Act and section 11.1 of O. Reg 304/18.

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## MASTER AGREEMENT BETWEEN OWNER AND CONSULTANT

This Master Agreement entered into on the **[Note to Finalization before Execution: Insert Date of Execution]** ("Effective Date")

BETWEEN:

**CITY OF TORONTO**  
(the "Owner", the "City")

- and -

- **[Note to Finalization before Execution: Insert Legal Name of Consultant]**  
(the "Consultant")

**WHEREAS** the Owner issued Request for Supplier Qualifications No. **Doc5572034849** 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]** respectively, (collectively the "RFSQ") and in response to the RFSQ, the Consultant submitted a response dated **[Note to Finalization before Execution: insert RFSQ Proposal date]** ("RFSQ Response"); and

**WHEREAS** the Consultant was appointed to the Roster List and is eligible to be awarded Work Assignments under this RFSQ;

**WHEREAS** ● **[Note to Finalization before Execution: Complete recitals];** |

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

### 1. APPOINTMENT TO ROSTER LIST

- 1.1. The Owner appoints the Consultant as a Prequalified Vendor to the following Roster List(s) such that the Consultant is eligible to be considered for the award of Work Assignment Agreements by the Owner during the Term:
  - 1.1.1. **Consulting Services Agreement Contract Doc5572034849**
- 1.2. As a Prequalified Vendor, the Consultant agrees to the Second Stage Process terms set out in this Agreement, including Schedules B1 and B2.
- 1.3. Should the Owner award any Work Assignments to the Consultant under this Master Agreement, the Consultant shall enter into a Work Assignment Agreement with the Owner, which shall be in the form set out in Schedule E, and shall complete the Work Assignment in accordance with all the applicable provisions of the Work Assignment Agreement and this Master Agreement. For greater clarity, the Consultant acknowledges that by entering into this Master Agreement, it agrees to be bound by the provisions of all Schedules of this Master Agreement for each Work Assignment Agreement.
- 1.4. The Consultant acknowledges that there is no obligation whatsoever for the Owner to award any Work Assignments to the Consultant during the Term.

- 1.5. The Consultant shall not commence any Work, and the Owner shall not be liable for any payment under a Work Assignment or this Master Agreement until the parties have executed a Work Assignment Agreement for that Work Assignment. The Consultant agrees that a binding Work Assignment Agreement shall only be created following the provision of any documents required by the Owner in relation to that Work Assignment Agreement and the acceptance and execution by the Consultant and Owner of the Work Assignment Agreement issued under the terms of this Master Agreement.
- 1.6. Any Work Assignment Agreement executed by the parties shall be deemed to include all of the terms of this Master Agreement, and all terms and conditions of this Master Agreement will continue to apply to the Work Assignment Agreement with necessary modification.
- 1.7. The Owner has a non-exclusive arrangement with the Consultant and the Owner may have the same or other arrangements with other consultants or entities.
- 1.8. The Owner and the Consultant acknowledge and agree that each Work Assignment Agreement constitutes a separate, distinct and independent agreement with respect to the provision of Work.

## **2. TERM**

- 2.1 This Master Agreement shall be for the term commencing on the date on which the parties enter into this Master Agreement and ending after a period of three (3) years (the "Term").
- 2.2 Any Work Assignment Agreement in effect at the time of termination of this Master Agreement shall continue to be in effect on the same terms and conditions of this Master Agreement until and unless such Work Assignment Agreement is terminated or expires.

## **3. SECOND STAGE PROCESS**

- 3.1 Work Assignments shall be assigned by the Owner to a Prequalified Vendor following the Second Stage Process among eligible Prequalified Vendors. The Owner shall have the right, in its sole and absolute discretion, to use whichever Second Stage Process it considers most appropriate for the Work Assignment.
- 3.2 Where a Work Assignment has a cost not exceeding \$100,000 (excluding HST), the Owner may elect to assign the Work Assignment in accordance with the rotational process set out in Schedule B1.
- 3.3 Where a Work Assignment has a cost not exceeding \$500,000 (excluding HST), the Owner may elect to issue a RFQ process in accordance with the RFQ process set out in Schedule B2.
- 3.4 The Owner does not guarantee the number of Work Assignments or the amount of value of Work Assignments awarded to any Prequalified Vendors. Work Assignments will be issued on an "as required basis", as determined by the Owner. The Owner makes no representations as to the volume of Work Assignments available to which Prequalified Vendors may submit a Work Assignment Response.

**4. ADDING AND REMOVING PREQUALIFIED VENDORS FROM ROSTER LIST**

4.1 In the event that the Roster List, at any time, has fewer than the maximum number of Prequalified Vendors indicated in **RFSQ Doc5572034849 Part 5 (RFSQ Particulars), Section 1.1.2**, the Owner may, but is not obliged to, augment the Roster List by:

- 4.1.1 adding a consultant or consultants who passed the specified minimum threshold requirements for the RFSQ, but were not among the highest scoring consultants added to the Roster List pursuant to the RFSQ; or
- 4.1.2 issuing an RFSQ to augment the Roster List up to the maximum number of Prequalified Vendors indicated in **RFSQ Doc5572034849 Part 5 (RFSQ Particulars), Section 1.1.2**.

The Owner reserves the right to issue a solicitation at any time during the term of this Master Agreement to augment the Roster List beyond the maximum number of Prequalified Vendors indicated in **RFSQ Doc5572034849 Part 5 (RFSQ Particulars), Section 1.1.2**.

4.2 Without otherwise limiting any other rights of the Owner, including as set out in the RFSQ, this Master Agreement, or a Work Assignment Agreement, the Owner reserves the right to remove from the Roster List any Prequalified Vendor that:

- 4.2.1 fails to submit a Work Assignment Response or a "No Response" form to a total of five (5) consecutive Work Assignment Forms within any consecutive twelve (12) month period;
- 4.2.2 fails to comply with the Owner's Policies, Procedures and By-Laws;
- 4.2.3 has been noted in default under this Master Agreement or a Work Assignment Agreement and the default has not been cured within the time prescribed under the relevant Agreement;
- 4.2.4 has its Work Assignment Response accepted by the Owner and fails or refuses to commence or complete the performance of the Services as required in the Work Assignment Agreement;
- 4.2.5 is adjudged bankrupt or becomes insolvent, or a petition in bankruptcy is filed against the Consultant, or where the Consultant makes an assignment for the general benefit of creditors or applies for relief under the Companies Creditors Arrangement Act, or where proceedings of any type are instituted in any jurisdiction in respect of the alleged insolvency or bankruptcy of the Consultant;
- 4.2.6 is involved in any formal or informal proceeding for the dissolution of, liquidation of, or winding up of, the affairs of the Consultant, either instituted by or against the Consultant, or where a resolution is passed or any other act undertaken for the winding up of the Consultant;
- 4.2.7 ceases or threatens to cease to carry on its business, or where the Prequalified Vendor makes or agrees to make a bulk sale of its assets;

- 4.2.8 is appointed a receiver, manager or trustee in respect of the business or assets of the Prequalified Vendor, or any part of thereof, by a court of competent jurisdiction, or under an agreement;
  - 4.2.9 defaults in payment of any indebtedness or liability to a Bank or other lending institution, whether secured or not;
  - 4.2.10 has made any material misrepresentation in its Work Assignment Response or otherwise in respect to the RFSQ or Agreement;
  - 4.2.11 violates any law material to the performance of the Services or which otherwise would be grounds for a reasonable person protecting its commercial best interests to remove the Prequalified Vendor from the Roster List.
  - 4.2.12 fails to meet approved schedule timelines on two (2) Work Assignments in a twelve (12) month period. This would not include changes to the schedule extensions that have been approved by the Owner nor schedule timeline delays due to delays by the Owner; or
  - 4.2.13 receives a minimum of three (3) unsatisfactory performance evaluation reports, pursuant to section 4.4.
- 4.3 Any change in the structure or formation of a Prequalified Vendor, including Personnel, after being selected to the Roster List, shall be subject to a written approval of the Owner prior to the deadline for submission of a Work Assignment Response, failing which the Prequalified Vendor shall be disqualified from suspended from the Roster List until such approval is obtained (if at all). Such approval shall be denied by the Owner if, as a consequence of the change, the Prequalified Vendor no longer substantially meets the qualification criteria set forth in the RFSQ for the category to which it has been selected, as determined by the Owner. In the event that such change is made by the Prequalified Vendor without the approval of the Owner, the Owner may remove the Prequalified Vendor from the Roster List.
- 4.4 Supplier performance will be evaluated in accordance with the Owner's Supplier Performance Evaluation Procedure. For any Professional Services Performance Evaluation (PSPE) score below 2.5, a warning letter is issued to the Prequalified Vendor, indicating risk of suspension. If a Prequalified Vendor receives two or more warning letters or shows no improvement in performance, the Owner may initiate suspension of the Prequalified Vendor for a period of one year or removal from the Roster List. If suspended, the Prequalified Vendor will not be allowed to bid on future work assignments within the Roster List for a period of one year.
- 5. CONSULTING ROLE RATES**
- 5.1 In all Second Stage Processes, the pricing of the Work Assignment will be based on the Consulting Role Rates submitted by the Consultant in response to the RFSQ and attached to this Master Agreement as Schedule H (as may be adjusted in accordance with this Master Agreement) and the terms of the applicable Second Stage Process. The Consultant may submit alternative rates where permitted by the terms of the applicable Second Stage Process but shall not exceed the Consulting Role Rates. Any response to

a Second Stage Process using rates higher than the Consulting Role Rates will result in a disqualification.

## **6. DOCUMENTS COMPRISING THE AGREEMENT**

6.1 The following documents whether attached hereto or referred to herein form an integral part of the Master Agreement and any Work Assignment Agreement executed under this Agreement:

- Schedule A – Insurance
- Schedule B1 – Second Stage Process Terms – Rotational
- Schedule B2 – Second Stage Process Terms – RFQ
- Schedule C – Definitions
- Schedule D – General Conditions
- Schedule E – Form of Work Assignment Agreement
- Schedule F – Forms
  - Form 1 – Statutory Declaration
  - Form 2 – Statutory Declaration Re: Annual Release of Holdback
- Schedule G – Part 5 of RFSQ Particulars
- Schedule H – Consulting Role Rates
- any other document identified elsewhere in the Agreement as a document forming part of the Agreement.

## **7. NOTICE**

10.1 Subject to section 27(c) of Schedule D (General Conditions), the parties agree that any demand or notice to be given pursuant to this Master Agreement or a Work Assignment Agreement shall be given in writing to:

(a) in the case of the Owner:

City of Toronto

- **[Note to Finalization before Execution: Insert Division]**
- **[Note to Finalization before Execution: Insert Name of Owner Representative]**
- **[Note to Finalization before Execution: Insert Address]**
- Attention: ● **[Note to Finalization before Execution: Insert Name]**
- Email: ● **[Note to Finalization before Execution: Insert email]**
- Alternate contact: **[Note to Finalization before Execution: Insert if applicable]**



(b) in the case of the Consultant:

● [Note to Finalization before Execution: Insert Consultant Name]

● [Note to Finalization before Execution: Insert Address]

Attention: ● [Note to Finalization before Execution: Insert Name]

Email: ● [Note to Finalization before Execution: Insert email]

Alternate contact: [Note to Finalization before Execution: Insert if applicable]

## 8. COUNTERPART AND ELECTRONIC SIGNATURE

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

The parties hereto have executed this Master Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

### CITY OF TORONTO

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

● [Note to Finalization before Execution:  
Insert Legal Name of Consultant]

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

## **SCHEDULE A – INSURANCE**

The Consultant agrees to purchase and maintain in force, at its own expense and for the duration of the Agreement and any Work Assignment Agreement, the following policies of insurance, which policies will be in a form and with an insurer acceptable to the Owner. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer must be delivered to the Owner prior to the commencement of the Consultant's Services:

- 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 Owner as an additional insured;
  - (iii) includes non-owned Automobile Liability, Employer's Liability and/or Contingent Employer's Liability, Contractual Liability, Products-Completed Operations for a period of at least 2 years, Cross Liability and Severability of Interest and any other provision relevant to the Services;
- 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) includes professional services pollution liability insurance, if the Consultant is an environmental specialist;
  - (iii) will extend to infringement of copyright and other intellectual property, including misuse of trade secrets, if appropriate.
  - (iv) shall be maintained for a period ending no sooner than twenty-four (24) months following the date of the earlier of the date of termination of this Agreement or the completion of the Project.
- c. Automobile Liability insurance with a minimum limit of Two Million Dollars (\$2,000,000) for all owned or leased licensed motorized vehicles used in the performance of Services.

**SCHEDULE B1 – SECOND STAGE PROCESS TERMS – ROTATIONAL**

**1. Work Assignment Process for Work Assignments Not Exceeding \$100,000**

- 1.1 Where the Owner elects to use a rotational process, the Prequalified Vendors will be issued Work Assignment Forms on a rotational basis in accordance with this Schedule B1. This rotational process shall only be used for Work Assignments not exceeding **\$100,000**.
- 1.2 For the purposes of this rotational process, Prequalified Vendors will initially be listed in order based on each Prequalified Vendor's **RFSQ Doc5572034849** evaluation score, calculated as described in **RFSQ Doc5572034849** from the Prequalified Vendor with the highest score, to the Prequalified Vendor with the lowest score.
- 1.3 As and when Services are required by the Owner, the Owner will meet with the next eligible Prequalified Vendor beginning with the highest-ranked Prequalified Vendor, in order to review the Work Assignment, and the Owner will issue a Work Assignment Form and request a Work Assignment Response using rates that are equal to or lower than the Consulting Role Rates set out in this Agreement.
- 1.4 The Owner reserves the right to inquire into the Prequalified Vendor's proposed resources or estimated hours before awarding the Work Assignment.
- 1.5 The Prequalified Vendor will be required to submit a Work Assignment Response or a "No Response Form" in the prescribed form to the Owner within the prescribed number of days of receipt of the Work Assignment Form.
- 1.6 Award of a Work Assignment is subject to Owner approval of a Work Assignment Response.
- 1.7 The Owner reserves the right to reject a Work Assignment Response if it does not meet the Owner's requirements. Without limiting the foregoing right to reject a Work Assignment Response, the Owner may not approve a Work Assignment Response in such cases where:
  - (a) the work plan the Prequalified Vendor is proposing in the Work Assignment Response is not in full completeness and understanding of the Work Assignment;
  - (b) the timeline the Prequalified Vendor is proposing in the Work Assignment Response differs significantly from the Owner's projected timeframe;
  - (c) the estimated number of hours the Prequalified Vendor is proposing in the Work Assignment Response is inconsistent with the Owner's estimated hours;
  - (d) the estimated cost the Prequalified Vendor is proposing in the Work Assignment Response is inconsistent with the Owner's estimated cost; and/or

- (e) the Personnel the Prequalified Vendor is proposing in the Work Assignment Response have qualifications that are inconsistent with the qualifications needed for that Work Assignment.

1.8 If the Owner rejects a Work Assignment Response, then the Owner will issue the Work Assignment Form to the next Prequalified Vendor on the Roster List.

## **2. Rotation and Distribution of Work Assignments**

2.1. The Owner will endeavor to administer the Roster List to ensure Work Assignments are awarded to the Prequalified Vendors on a rotational basis in terms of both number of Work Assignments and the cumulative value of Work Assignments.

2.2. Rotation order established may need to be adjusted and maintained as dynamic as reasonable during the Term in order to distribute Work Assignments evenly among the Prequalified Vendors.

2.3. Instances when Work Assignments will not be issued to the next eligible Prequalified Vendor include, but are not limited to the following:

- (a) when it is determined by the Owner that there is a potential conflict of interest on the part of the Prequalified Vendor;
- (b) the number of Work Assignments already awarded to the Prequalified Vendor is too high relative to the other Prequalified Vendors;
- (c) the cumulative value of Work Assignments already awarded to the Prequalified Vendor is too high relative to the other Prequalified Vendors;
- (d) the Prequalified Vendor has been demonstrating poor performance/delay in other Work Assignments;
- (e) there are specific Work Assignment requirements that may not be fulfilled by the Prequalified Vendor; and/or;
- (f) upon clarification if required of the submitted Work Assignment Response if an agreement cannot be reached.

## **3. Work Assignment Budget**

3.1. Services for individual Work Assignments issued through this Rotational Process shall not exceed a total cost of \$100,000, including provisional and/or contingency allowance (where applicable), but excluding HST.

3.2. Where the Owner does not include an estimated budget for a particular Work Assignment, this shall not be interpreted as an indication that the budget for that Work Assignment is \$100,000. Rather, in these instances, the Owner will be looking to the Consultant to provide pricing that represents the best value for the Owner relative to the scope of the Work Assignment.

**SCHEDULE B2 – SECOND STAGE PROCESS TERMS – RFQ**

**1. Work Assignment Process for Work Assignments Not Exceeding \$500,000**

- 1.1 Where the Owner elects to use a Request for Quotation (RFQ) to assign a Work Assignment having a cost not exceeding \$500,000 (excluding HST), the Owner will issue the RFQ to all Prequalified Vendors on the Roster List.
- 1.2 The requirements of the Work Assignment, including scope of work and additional terms and conditions, and evaluation criteria will be set out in the RFQ issued to Prequalified Vendors.
- 1.3 The Prequalified Vendor shall review the Work Assignment requirements contained in the RFQ and advise the Owner if there is a need for more information, clarification and/or direction in accordance with the terms of the RFQ.
- 1.4 Interested Prequalified Vendors shall complete a Work Assignment Response and submit to the Owner within the time defined in the RFQ. Prequalified Vendors who decline to participate in the RFQ shall complete and submit the "No Response Form" prescribed by the Owner.
- 1.5 In submitting a Work Assignment Response to an RFQ, Prequalified Vendors must quote the cost of the Work Assignment using rates that are equal to or lower than the Consulting Role Rates set out in this Master Agreement.
- 1.6 The evaluation criteria used to award the Work Assignment will be as set out in the RFQ, without regard to the past number or value of Work Assignments awarded to a Prequalified Vendor.
- 1.7 The RFQ process shall be subject to any other provisions of the Owner's Procurement By-law and the Procurement Processes Policy.
- 1.8 The Prequalified Vendor awarded the Work Assignment shall execute a Work Assignment Agreement incorporating the terms of the RFQ, the Work Assignment Response, and the Master Agreement within the prescribed number of days of notification of award from the Owner, failing which the Owner shall have the right to revoke the Work Assignment award and award to a different Prequalified Vendor.

**SCHEDULE C – DEFINITIONS**

The following terms shall apply to the Master Agreement and any Work Assignment Agreements, and they have the meanings as specified in this Schedule unless the context otherwise specifies or requires:

1. **“Adjudication”** means a construction dispute interim adjudication under Part II.1 of the Construction Act.
2. **“Adjudicator”** means an individual who is qualified by the Authority as an adjudicator.
3. **“Agreement”** means the Master Agreement and/or the Work Assignment Agreement between Owner and Consultant and the respective Schedules attached thereto, as the same may be amended, supplemented, restated or replaced from time to time in writing upon the mutual agreement of the parties or as may be otherwise provided for in the Agreement.
4. **“Anniversary Date”** means the [●] day of [●] **[Note to Finalization before Execution: Insert the same day and month as the Effective Date. Do not enter the year].**
5. **“Annual Period”** means the twelve (12) month period commencing on the Effective Date or on each Anniversary Date thereafter, until completion or termination of the Agreement.
6. **“Calendar Day”** means any specific day in the calendar year.
7. **“Claims”** or **“Claim”** means any and all actual, threatened or potential claims, demands, proceedings, complaints, grievances, actions, adjudications, litigation, applications, suits, causes of action, orders, charges, arbitrations or other similar process, of whatsoever kind or nature (whether civil, administrative, regulatory, arbitral or otherwise), and Losses in respect of the foregoing matters.
8. **“Claim Notice”** means a notice in writing to the Owner from the Consultant of any claim for additional compensation, extension of the Contract Schedule or other changes to the Services or amendments to this Agreement together with any supporting or substantiating documents.
9. **“Confidential Information”** means any and all (as the context requires) information of the Owner (including information in respect of or in connection with the Project or the performance of the Services) that is confidential to the Owner, or would reasonably be considered confidential, and that is disclosed orally or in writing by or on behalf of the Owner, to the Consultant pursuant to this Agreement, including during the performance of the Services, regardless of whether the information is specifically identified or marked as “Confidential”, “Restricted” or “Secret”. Confidential Information includes the following:
  - (i) Personal Information;
  - (ii) any software code and associated documentation owned or licensed by the Owner; and
  - (iii) any administrative, commercial, financial, proprietary, technical, commercial labour relations, statistical or regulatory information of the Owner, or of any third

party which may be contained in records of the Owner and was supplied in confidence to the Consultant.

10. **“Conflict of Interest”** means any situation or circumstance where in relation to the performance of its obligations under this Agreement, the Consultant’s other commitments, relationships or financial interests:
  - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
  - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under this Agreement.
11. **“Construction Act”** means the *Construction Act*, R.S.O. 1990, c. C.30, as amended from time to time.
12. **“Construction Trade News Website”** has the meaning set out in the regulations to the Construction Act.
13. **“Consulting Role Rates”** means the hourly rates submitted by the Consultant in their RFSQ Response and attached as Schedule H, which shall be the maximum permissible hourly rates the Consultant may submit in response to any Second Stage Process.
14. **“Contract Schedule”** means the schedule submitted by the Consultant as approved by the Owner that is in compliance with section 5(d) of the General Conditions (Schedule D).
15. **“Default”** means any one or more acts or events of default set out in section 15(a).
16. **“Default Notice”** means the notice in writing provided by the Owner Representative to the Consultant requiring remedy of a Default per section 15(b) of the General Conditions (Schedule D).
17. **“Deliverables”** means any item, including tangible and intangible property, created, prepared or purchased by the Consultant or any Personnel as a part of the Services, including all original written materials, programs, card decks, tapes, disks, listings, books, reports, drawings, specifications maps, designs, plans and all other documents, items, materials, information and deliverables.
18. **“Disbursements”** means the expenditures reasonably and necessarily incurred by the Consultant and approved by the Owner in the performance of the Services as set out in section 14 of Schedule A of the Work Assignment Agreement.
19. **“Disputes”** means all disputes between the parties arising out of or in connection with this Agreement including as to:
  - (i) the interpretation, application or administration of this Agreement;
  - (ii) findings or determinations under this Agreement; or
  - (iii) the performance of the Services.

**Master Consulting Agreement Doc5572034849**  
**Schedule C – Definitions**

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20. **“Effective Date”** has the meaning set out at the top of the Master Agreement or Work Assignment Agreement respectively.
21. **“Fees”** means the total fees and disbursements (including overhead, and all taxes other than Value Added Taxes) for all Services to be provided by the Consultant under this Agreement, including for clarity any authorized Provisional Items and additional work.
22. **“Governmental Authority”** means any federal, provincial or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, each having jurisdiction in the relevant circumstances, including, for clarity, any person acting under the authority of any Governmental Authority and, with respect to taxes, whether domestic or foreign.
23. **“Indemnitees”** means, collectively, the Owner, the mayor of the City of Toronto and each of the City of Toronto’s agencies, boards and commissions, and, as applicable, all of their respective officers, directors, employees, representatives, elected officials, servants, volunteers, agents, invitees and advisers (including the Owner Representative), and their respective successors and assigns.
24. **“Invoice Period”** means the one-month long period which commences on the Effective Date and ends on the day prior to the same date as the Effective Date in the next successive calendar month and each subsequent one-month long period thereafter.
25. **“Laws”** means:
- (i) laws, orders-in-council, by-laws, codes, rules, regulations and statutes of any Governmental Authority;
  - (ii) orders, decisions, judgments, injunctions, decrees, awards, directives, rulings and writs of any court, tribunal, arbitrator, Governmental Authority or other person having jurisdiction;
  - (iii) legally enforceable consents, approvals, policies and guidelines of any Governmental Authority; and
  - (iv) any requirements under or prescribed by applicable common law,
- which are applicable to the Owner, Consultant, the Project, Project site, Services or obligations under this Agreement.
26. **“Lien Holdback”** means the 10% holdback stipulated to be retained pursuant to Part IV of the Construction Act.
27. **“Losses”** means any and all losses, debts, expenses, liabilities, damages, obligations, payments, fines, penalties and costs.
28. **“Master Agreement”** means the Master Consulting Agreement between Owner and Consultant setting out the terms and conditions of the Roster List.
29. **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.



**Master Consulting Agreement Doc5572034849**  
**Schedule C – Definitions**

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30. **"OHSA"** means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.
31. **"Owner"** means the City of Toronto or its agency, board or commission as more particularly set out on the cover page of this Agreement and where an authority or discretion is conferred upon the Owner under the Agreement, means the appropriate official or representative of the Owner as designated or appointed under its governing by-laws, resolutions or policies from time to time or under the Agreement.
32. **"Owner Representative"** means ● **[Note to Finalization before Execution: Insert Name of Owner Representative]**, the person or entity designated by the Owner to have the authority to bind the Owner for the purposes of this Agreement or such other person or entity as may be designated by the Owner, from time to time.
33. **"Personal Information"** means all information captured by the definition of "personal information" contained in MFIPPA, regardless of whether MFIPPA is applicable to such information.
34. **"Personnel"** means the Consultant's personnel and includes:
- (i) the Subconsultants and Sub-subconsultants;
  - (ii) the officers, directors, partners, employees and agents of the Consultant, Subconsultants and Sub-subconsultants;
  - (iii) any person employed or engaged by or under the control of the Consultant, the Subconsultants or the Sub-subconsultants to perform or supply any part of the Services including Deliverables related thereto; and
  - (iv) any other person for whom the Consultant is responsible at law.
35. **"Prequalified Vendor"** means a consultant selected by the Owner to be on a Roster List established by the RFSQ.
36. **"Pricing Form"** means Schedule A of the Work Assignment Agreement.
37. **"Project"** means the project for consulting services outlined in a Work Assignment Form issued by the Owner.
38. **"Proper Invoice"** means an invoice from the Consultant to the Owner on account of Fees and Value Added Taxes payable for the performance of the Services that is in compliance with section 6(h) of the General Conditions (Schedule D).
39. **"Provisional Item"** means a Service identified in the Work Assignment Agreement which shall only be undertaken by the Consultant at the request and upon the prior written authorization of the Owner Representative.
40. **"Records"** means records and accounts related to any costs payable by the Owner under this Agreement including books, payrolls, accounts, invoices, purchase orders, timesheets, correspondence, receipts and memoranda pertaining to the Services.

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**Schedule C – Definitions**

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41. **"RFQ"** means a Request for Quotation issued by the Owner to Prequalified Vendors for a Work Assignment and includes the terms and conditions of the Master Agreement and any documents expressly incorporated by reference.
42. **"RFSQ"** means the Request for Supplier Qualifications No. **Doc5572034849** issued by the Owner on ●**[Note to Finalization before Execution: insert date]**, in connection with the Services for the Project. Each reference to the RFSQ in this Agreement shall be taken as a reference to the RFSQ as modified by the Addenda if any.
43. **"RFSQ Response"** means the Consultant's submission in response to the RFSQ.
44. **"Roster List"** means the register of Prequalified Vendors who, pursuant to this RFSQ, have been prequalified by the Owner and may submit a Work Assignment Response in response to Work Assignment Form.
45. **"Rules"** means the Rules of Civil Procedure, RRO 1990, Reg 194.
46. **"Second Stage Process"** means the process used by the Owner to award a Work Assignment to the Consultant in accordance with this Master Agreement.
47. **"Services"** means those services, Deliverables and goods related thereto, and obligations detailed in or required by this Agreement to be provided and undertaken by the Consultant for the Owner.
48. **"Standard of Care"** has the meaning set out in section 5(a)(iv) of the General Conditions (Schedule D).
49. **"Statutory Notice of Annual Release of Holdback"** means the notice of annual release of holdback in the form prescribed by the Construction Act and published by the Owner in respect of such Lien Holdback that is subject to the annual release of holdback described in the Construction Act.
50. **"Subconsultant"** shall mean the individual, firm, partnership, corporation or other entity having a direct contract with the Consultant to perform a part or parts of the Services.
51. **"Sub-subconsultant"** means the individual, firm, partnership, corporation or other entity having a direct contract with a Subconsultant or any other subconsultant at any tier, to perform a part or parts of the Services. For greater certainty, Sub-subconsultants do not include the Subconsultants.
52. **"Subject Matter of Indemnity"** has the meaning set out in section 14(a) of the General Conditions (Schedule D).
53. **"Technical Proposal"** means the Consultant's Technical Proposal submitted as a part of the Work Assignment Response, including all appendices, exhibits and attachments thereto.
54. **"Value Added Taxes"** means such sum as shall be levied upon the Fees by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Fees and includes the Goods and Services Tax, the Harmonized Sales Tax, and any similar tax, the collection of which have been imposed on the Consultant by the tax legislation.

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**Schedule C – Definitions**

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55. **“Work Assignment”** means a specific Project for which a Work Assignment Form is issued pursuant to this Agreement and to which a Prequalified Vendor submits Work Assignment Response.
56. **“Work Assignment Agreement”** means the agreement between the Consultant and Owner for the Services under a Work Assignment executed pursuant to the Agreement, and for which the form is set out in Schedule E.
57. **“Work Assignment Form”** means the invitation from the Owner to a Prequalified Vendor to submit a Work Assignment Response to a Second Stage Process for a Work Assignment for which details are included. Where the Owner elects to use a Request for Quotations (RFQ) for a Second Stage Process, the term “Work Assignment Form” shall mean the RFQ issued by the Owner.
58. **“Work Assignment Response”** means the Consultant's response to a Work Assignment Form, including any Technical Proposal and pricing.
59. **“Working Day”** means a Calendar Day other than:
- (i) a Saturday, Sunday or statutory holiday that is observed by the construction industry in the area of the Project; or
  - (ii) a Calendar Day identified by the City of Toronto as a designated or statutory holiday.
60. **“WSIB”** means the Workplace Safety & Insurance Board.

**SCHEDULE D – GENERAL CONDITIONS**

**1. APPLICATION**

- (a) The General Conditions shall apply to the Master Agreement and each Work Assignment Agreement. The term "Agreement" will be deemed to mean "Master Agreement" and/or "Work Assignment Agreement" wherever it appears in the General Conditions in this Schedule D as applicable and necessary for the Master Agreement and/or each Work Assignment Agreement.

**2. INTERPRETATION**

- (a) The phrase "includes" "include" or "including" means "includes, without limitation" or "including" or "include, without limitation,"
- (b) Without restricting or limiting the rights and privileges of the Owner to any broader interpretation, any breach or default of or in respect of a term, covenant, warranty, condition or provision of this Agreement, or a liability caused, by any of the Consultant's Personnel shall constitute a breach or default or liability caused by the Consultant.
- (c) Except as otherwise expressly provided for in this Agreement, any reference in this 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 to a statute shall be a reference to the statute and its underlying regulations.
- (d) Subject to section 14(c), 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.
- (e) Any services, goods or incidentals not explicitly specified in this Agreement but which are necessary to conform to the Standard of Care or Laws 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.
- (f) 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.
- (g) 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.
- (h) The Owner may issue to the Consultant one or more purchase orders in respect of the Services and/or this Agreement. Any such purchase order shall be solely for the convenience of the Owner in administering its internal procedures, and notwithstanding any of the provisions set out in such purchase order, shall not create any binding obligations of either party or in any way be deemed to amend,

restate, supplement or replace any of this Agreement or otherwise be considered to form a part of this Agreement.

**3. DOCUMENTS COMPRISING THE AGREEMENT**

- (a) The following documents whether attached hereto or referred to herein form an integral part of the Agreement and all expressions defined in this Agreement shall have the same meanings in the Schedules, unless expressly provided otherwise in such Schedules:
  - (i) the Master Agreement and its Schedules;
  - (ii) the Work Assignment Agreement and its Schedules; and
  - (iii) any other document identified elsewhere in the Agreement as a document forming part of the Agreement.

**4. PRIORITY OF DOCUMENTS**

- (a) 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:
  - (i) a written amendment to the Work Assignment Agreement in accordance with the terms hereof, the amendment bearing the later date having priority (if any);
  - (ii) the Work Assignment Agreement including Schedule A – Pricing Form but excluding Schedule B – Work Assignment Form and Schedule C – Work Assignment Response;
  - (iii) the Master Agreement including its Schedules;
  - (iv) the Schedule B – Work Assignment Form to the Work Assignment Agreement;
  - (v) the Schedule C – Work Assignment Response to the Work Assignment Agreement;
  - (vi) the RFSQ, including any addenda, with the addendum bearing the later date having priority (if any);
  - (vii) Statutory Declaration by Consultant; and
  - (viii) the RFSQ Response.
- (b) 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.

5. PERFORMANCE

- (a) The Consultant agrees and covenants, and represents and warrants, to the Owner and acknowledges that the Owner is relying on such representations, warranties and covenants in entering into this Agreement, as follows:
- (i) to provide and perform the Services and undertake, perform and complete its undertakings and obligations provided for in this Agreement, in accordance with all the terms and conditions of this Agreement;
  - (ii) to only provide and perform any Provisional Items or any additional work at the request and upon the prior written authorization of the Owner Representative;
  - (iii) to supply and provide, at its sole cost, except as otherwise expressly provided in this Agreement as forming a part of the Disbursements, 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;
  - (iv) to supply, perform and provide the Services in a careful, professional, skilful, diligent, timely and worker like manner according to the industry standards of practice, care, skill and diligence to be expected of professionals and consultants in the performance of services similar to those called for under this Agreement (“**Standard of Care**”) including the use of materials and methods as are properly suited to the function and performance intended;
  - (v) to make available and employ for the purposes of this Agreement only such Personnel 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;
  - (vi) to ensure that the Personnel, when using or attending, as applicable, any buildings, premises, equipment, hardware or software owned, leased or licensed by the Owner shall comply with all policies, regulations or directives relating to those buildings, premises, equipment, hardware or software of which the Consultant has received oral or written notice;
  - (vii) to use, in the performance of the Services, those Personnel and Subconsultants specifically named in the Proposal and to not add to or substitute any such Personnel or engage any other Subconsultant without the prior written approval of the Owner Representative. The Owner reserves the right to require the Consultant to immediately replace any of the Personnel supplying or performing the Services, upon written notice by the Owner Representative, where such person in the reasonable opinion of the Owner Representative has performed unsatisfactorily or breached an obligation of the Consultant under this Agreement or has otherwise acted improperly. The Owner 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;

- (viii) to be solely responsible for the payment of all the Personnel employed or engaged for the purpose of assisting in or undertaking any of its obligations under this Agreement; and
  - (ix) to comply with all Laws and Owner policies (including Owner policies referenced in the RFSQ) applicable to the Services to be provided by, and the undertakings and obligations of, the Consultant under this Agreement.
- (b) The Services and Deliverables (and all components thereof) shall be accurate and complete and the Consultant shall be solely responsible for the accuracy, validity and content of the Services and Deliverables. The Consultant acknowledges and agrees that the Owner is relying upon the Consultant for the adequacy, completeness and accuracy of the Services and the Deliverables, and the Services and the Deliverables may be relied upon by the Owner and any third parties with whom the Owner contracts.
- (c) The Consultant shall promptly notify the Owner if:
- (i) it discovers any errors, omissions, discrepancies or defects in the Services or the Deliverables; or
  - (ii) if any instructions or directions given by the Owner's Representative to the Consultant are in conflict with any provision of this Agreement.

The Consultant shall promptly correct at its sole cost and expense errors, omissions, discrepancies or defects in the Deliverables and the Services.

- (d) The Services shall proceed and be completed in accordance with the milestones and other applicable dates set out in the Owner's Project schedule (and any amendments thereto approved in writing by the Owner Representative). The Consultant shall prepare and deliver to the Owner for its review and acceptance a schedule for the performance of the Services within five (5) Working Days of such request. Such schedule shall conform to the requirements of such Owner's Project schedule and the Consultant shall perform the Services in compliance with such schedule as approved by the Owner.
- (e) The Consultant agrees and covenants, and represents and warrants that the Personnel hold all requisite permits, 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 Owner Representative.
- (f) The Consultant shall ensure that all 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.

- (g) The Consultant shall co-ordinate the services of all Personnel in a manner acceptable to the Owner Representative. The Consultant shall ensure that all Personnel at all times work in a professional, co-operative and collegial manner with Owner staff and the Owner's other consultants. It shall be the Consultant's responsibility to control and check the Services and to ascertain that all Services are performed in accordance with this Agreement.
- (h) The Consultant, in providing the Services, shall and is deemed to be an independent contractor and not the agent or employee of the Owner.
- (i) Except as expressly permitted in this Agreement or in the RFSQ, the Consultant shall not subcontract any Services or this Agreement or any part thereof to a third party or change any Owner approved Subconsultant without the prior written consent of the Owner Representative. 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 Personnel or Subconsultant by the Owner, the Consultant shall be fully responsible for every such Personnel's and Subconsultant'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 Owner for all its Losses arising from errors or omissions or non-compliance with this Agreement of or by the Subconsultants and Sub-subconsultants and the Personnel or any of them.
- (j) The Consultant shall incorporate, or cause to be incorporated, into all subcontracts with Subconsultants the terms and conditions of this Agreement. For clarity, the Consultant shall include a requirement that the Subconsultant include a similar provision in all its subcontracts with Sub-subconsultants and all such Sub-subconsultants to include a similar provision in all their subcontracts with their sub- subconsultants and so on within every tier of the pyramid.
- (k) The Consultant's responsibility and liability as set out in this Agreement shall survive the termination or expiry of this Agreement.
- (l) No acceptance, approval, review or inspection of the Services or Deliverables by the Owner, whether expressed or implied, shall relieve the Consultant of professional, technical or other responsibility for the Services. Any such acceptance, approval, review or inspection shall not constitute any waiver by the Owner of its rights, interests or remedies in connection with the Services or Deliverables or diminish or limit the Consultant's responsibilities or liabilities under this Agreement.

## **6. PAYMENT**

- (a) The Owner 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 the Pricing Form.
- (b) The Consultant shall, even if the rate of payment set forth in the Pricing Form 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 Pricing Form, on the basis



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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

- (c) The Owner shall not be responsible for the payment of any work other than the Services unless the performance of such work has been pre-authorized in writing by the Owner Representative.
- (d) The Consultant agrees to keep and maintain accurate and complete Records. All Records shall be available for inspection by any authorized employee or agent of the Owner at all reasonable times for the purpose of auditing the Consultant's costs and the Consultant shall provide every reasonable assistance for that purpose. Records shall be kept and maintained, and made available for such inspection, by the Consultant during the term of this Agreement and for a period of 12 months after completion of all of the Services or termination of this Agreement, whichever occurs last.
- (e) At the request of the Owner Representative, when invoicing for Disbursements the Consultant shall submit to the Owner, as applicable to such Disbursements, detailed expense sheets, copies of receipts, and/or per diem documentation, invoices, vehicle travel records and all such documents and materials in respect of such expenses.
- (f) The Consultant shall give a single Proper Invoice to the Owner on account of the Fees and Value Added Taxes for each Invoice Period as the Services progress. Proper Invoices shall be given to the Owner in accordance with Article 27.
- (g) The amount applied for in each Proper Invoice shall be:
  - (i) for Services performed on an hourly basis, the Fees for such Services performed during the Invoice Period to which the Proper Invoice relates as calculated in accordance with the Pricing Form; and
  - (ii) for Services performed on a fixed fee basis, the value, proportionate to the fixed fee, of such Services performed to the last Calendar Day of the Invoice Period to which the invoice relates less the value of such Services certified as performed in respect of all prior invoices; and
  - (iii) the value of the Disbursements incurred by the Consultant during the Invoice Period to which the Proper Invoice relates as calculated in accordance with the Pricing Form.
- (h) The Proper Invoice shall to the extent applicable:
  - (i) include the following information:
    - A. the Consultant's name, telephone number and mailing address and contact information of the Consultant's project manager;
    - B. remittance payment information;
    - C. Proper Invoice number;

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**Schedule D – General Conditions**

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- D. the date of the Proper Invoice and the Invoice Period during which the Services were performed;
- E. the Contract number;
- F. the purchase order number;
- G. contact information of the Owner's Representative;
- H. a description of the Project;
- I. for Services performed on an hourly basis:
  - (1) Personnel names and billing rates; and
  - (2) hours worked related to Services (supported by actual time sheets, if requested by the Owner);
- J. for Services performed on a fixed fee basis:
  - (1) an itemized list of the percentage of the applicable Services, completed to the end of the Invoice Period; and
  - (2) evidence that progress of the Services has been achieved;
- K. in respect of Disbursements, detailed expense sheets, copies of receipts, and/or per diem documentation, invoices, vehicle travel records, as applicable;
- L. the total amount of the Fees to date and the amount of the total Fees previously paid; and
- M. the total Fees payable for the Services during the Invoice Period;
- (ii) for the purposes of invoicing for the annual release of the Lien Holdback pursuant to the Construction Act and section 6(u), such Proper Invoice shall only include the amount published by the Owner in the applicable Statutory Notice of Annual Release of Holdback, together with such Value Added Taxes as may be applicable to such payment.
- (iii) list the Lien Holdback and any other holdbacks provided for under this Agreement each as a separate line item;
- (iv) include such other information and documents as required under the Construction Act, or the regulations thereto;
- (v) include the Consultant's registration number for Value Added Taxes and list the total amount of Value Added Taxes separate from the total Fees; and;
- (vi) include such other information and documents identified elsewhere in this Agreement.

- (i) The Consultant shall submit a draft invoice to the Owner:
  - (i) at the invoice meeting held on or before the 7<sup>th</sup> Calendar Day after the end of the Invoice Period (or the next Working Day following such date if such date is not a Working Day) to which the Proper Invoice relates; or
  - (ii) on or before the 7<sup>th</sup> Calendar Day after the end of the Invoice Period (or the next Working Day following such date if such date is not a Working Day) to which the Proper Invoice relates, in such form of written or electronic communication as agreed to by the parties.

If the Consultant submits the draft invoice in accordance with section 6(i)(i), then the Owner and the Consultant shall review such draft invoice at such meeting or, if the Consultant submits the draft invoice in accordance with section 6(i)(ii), then the Owner shall review such draft invoice and, prior to the 14<sup>th</sup> Calendar Day after the end of such Invoice Period, the Owner may provide the Consultant with suggested revisions to the draft invoice based upon the progress of the Services and other relevant considerations. The draft invoice shall be submitted in the same format (and with the same content) as the Proper Invoice.

- (j) On the 14<sup>th</sup> Calendar Day after the end of the Invoice Period to which the Proper Invoice relates, the Consultant shall give a Proper Invoice to the Owner. In preparing the Proper Invoice, the Consultant should take into consideration revisions proposed by the Owner from the draft invoice process. Incorporating such revisions will reduce the likelihood of the Owner issuing a notice of non-payment pursuant to section 6(n) but is without prejudice to any rights or remedies of the Owner under this Agreement or otherwise. For clarity:
  - (i) a Proper Invoice shall not be rendered incompliant with the requirements of this Agreement solely by reason of a failure to incorporate any such proposed revisions; and
  - (ii) the Consultant may only give to the Owner a Proper Invoice on the 14<sup>th</sup> Calendar Day after the end of the Invoice Period to which the Proper Invoice relates, and the Consultant shall not give to the Owner a Proper Invoice on any other Calendar Day. Any Proper Invoice received by the Owner on any Calendar Day:
    - A. earlier than the 14<sup>th</sup> Calendar Day after the end of such Invoice Period shall be deemed to have been received by the Owner on the 14<sup>th</sup> Calendar Day after the end of such Invoice Period; or
    - B. later than the 14<sup>th</sup> Calendar Day after the end of such Invoice Period shall be deemed to have been received by the Owner on the Calendar Day of such delivery.

If the date on which the Proper Invoice is received under section 6(j), or is deemed to have been received under 6(j)(ii)(A) or (B), is not a Working Day, then it shall be deemed to be received on the next Working Day.

- (k) For clarity, the amount applied for in each Proper Invoice shall not include any amounts included in any Claim Notice unless and until the Owner as the case may

be, has issued a determination to the Consultant regarding the validity of such Claim Notice pursuant to section 7(c) of this Agreement.

- (l) A Proper Invoice may be revised by the Consultant after it has submitted the Proper Invoice to the Owner, if:
  - (i) the Owner agrees in advance to the revision;
  - (ii) the date of the Proper Invoice is not changed; and
  - (iii) the Proper Invoice continues to be in compliance with the requirements of section 6(h).
- (m) The Owner shall advise the Consultant if an invoice does not meet the requirements of a Proper Invoice no later than seven (7) Calendar Days after receipt by the Owner of the Invoice. If the Owner fails to provide such notice within seven (7) Calendar Days after receipt of the invoice, such invoice shall be deemed to be a Proper Invoice as required by the Construction Act and for the purposes of this Agreement.
- (n) After receipt by the Owner of a Proper Invoice, if the Owner disputes all or any portion of the amount applied for in such Proper Invoice, the Owner shall promptly, but no later than fourteen (14) Calendar Days after the Owner's receipt of the Proper Invoice from the Consultant, provide the Consultant a notice of non-payment in the form and manner prescribed by the Construction Act specifying the amount that is not being paid and detailing all of the reasons for such non-payment.
- (o) The Owner shall, no later than twenty-eight (28) Calendar Days after the receipt of the Proper Invoice, make payment to the Consultant of the amount set out in the Proper Invoice less the amount disputed by the Owner that is set out in the notice of non-payment issued pursuant to section 6(n). The Owner shall retain the Lien Holdback and any other holdbacks provided for under this Agreement each as a separate line item from such payment and may retain any other amount pursuant to Article 18 of this Agreement.
- (p) For clarity, if the Consultant fails to submit a Proper Invoice to the Owner which is in compliance with the requirements of section 6(h), the Owner shall not be required to make payment to the Consultant within the twenty-eight (28) Calendar Day period set out in section 6(o). Such twenty-eight (28) Calendar Day period shall not commence until such time as the Owner has received from the Consultant a Proper Invoice in compliance with the requirements of section 6(h).
- (q) The Lien Holdback shall be released by the Owner in accordance with the Construction Act after the date on which all liens that may be claimed against the Lien Holdback have expired or been satisfied, discharged or otherwise provided for under the Construction Act.
- (r) With each Proper Invoice submitted by the Consultant pursuant to this Article 6, the Consultant shall include a statutory declaration in the form attached as Form 1 of Schedule F, completed by a senior professional engineer (or, where professional engineering services are not performed, a senior professional regulated by a professional body in respect to the Services performed), who is a

fully authorized representative of the Consultant. The details of the Services, or part thereof, to be contained in the statutory declaration shall be satisfactory to the Owner Representative.

- (s) At the time of giving of the final Proper Invoice of the Consultant to the Owner or within a reasonable time thereafter, the Consultant shall submit to the Owner Representative, unless stipulated otherwise elsewhere in the Agreement:
  - (i) the certificate of an auditor duly licensed under the Public Accounting Act, 2004, S.O. 2004 c.8 to the effect that in his/her opinion all Fees (exclusive of Fees for any Services to be paid on a fixed fee basis) charged to the Owner by the Consultant in connection with this Agreement (including in such final Proper Invoice) are properly chargeable under this Agreement; and
  - (ii) an audit report which confirms such certificate. Audit reports must be in the format prescribed by The Canadian Institute of Chartered Accountants (CICA). Audit reports which are not in accordance with current CICA guidelines will not be accepted.

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 from the Effective Date, certificates of an auditor and audit reports (in respect of Fees charged to the date of the applicable audit report) satisfactory to the Owner Representative shall, unless stipulated otherwise elsewhere in the Agreement, be required at the end of the second year of Services and on the last Calendar Day in each subsequent year in which Services are performed; provided, however, that in the final year of Services, the audit report shall, unless stipulated otherwise elsewhere in the Agreement, be provided within sixty (60) Calendar Days of the last day of performance of the Services.

- (t) The Owner reserves the right to conduct an audit of the Records of the Consultant at the option of the Owner Representative and if such audits reveals that the Owner has paid the Consultant more than what it is owed under this Agreement, the Owner may set-off such amount in accordance with Article 18.
- (u) In compliance with the Construction Act for the purposes of the statutory annual release of Lien Holdback, the Owner shall pay the Consultant the accrued Lien Holdback, with Value Added Taxes as may be applicable to the payment, for each Annual Period during this Agreement. For any annual release of the Lien Holdback, the following and not sections 6(i) to 6(t) shall apply:
  - (i) Within fourteen (14) Calendar Days following the Anniversary Date of the applicable Annual Period, the Owner shall publish a Statutory Notice of Annual Release of Holdback on a Construction Trade News Website specifying the amount of Lien Holdback the Owner intends to pay for that Annual Period.
  - (ii) Within fifteen (15) Calendar Days after the publication of the Statutory Notice of Annual Release of Holdback by the Owner, the Consultant shall submit a Proper Invoice to the Owner in the amount set out in the Statutory Notice of Annual Release of Holdback.

- (iii) Unless the Consultant is aware of liens that have been preserved or perfected in respect of the Project, and the lien(s) have not been satisfied, discharged, expired, or vacated, or otherwise provided for under the Construction Act, the Consultant shall, within three (3) Working Days of the expiry of the lien period for each Annual Period, submit an executed Statutory Declaration Re: Annual Release of Lien Holdback in the form attached to this Agreement as Form 2 of Schedule F – Forms.
- (iv) Subject to the Construction Act, the amount set out in such Proper Invoice is due and payable by the Owner no later than seventy-four (74) Calendar Days following the date on which the Statutory Notice of Annual Release of Holdback is published under section 6(u)(i).

## **7. CLAIMS**

- (a) The Consultant shall provide a Claim Notice to the Owner in accordance with this Article 7 of any Claim for additional compensation, extension of the Contract Schedule or other changes to the Services or amendments to this Agreement. Any Claims by the Consultant shall be irrevocably barred, and waived and released by the Consultant unless the Consultant has provided a Claim Notice within ten (10) Working Days after the Consultant knows, or should have known, of the event or circumstance giving rise to such Claim.
- (b) The Claim Notice shall:
  - (i) identify the item or items in respect of which the Claim Notice arises;
  - (ii) include the date the Consultant first became aware of the event or circumstance giving rise to the Claim Notice;
  - (iii) state the grounds, contractual or otherwise, upon which the Claim Notice is made; and
  - (iv) provide sufficient and detailed information and documentation to allow the Owner to properly consider the Claim Notice of the Consultant.

The Consultant shall submit further updates on the Claim Notice to the Owner as they become available, but in no event shall the Consultant submit any further updates within the thirty (30) Calendar Days prior to the deadline for the Owner to issue its determination pursuant to section 7(c).

- (c) Within ninety (90) Calendar Days of initial receipt of the Claim Notice, or such longer period of time required by Owner, the Owner shall prepare and issue a determination to the Consultant regarding the validity of the Claim Notice. The Consultant shall be conclusively deemed to have accepted such determination of the Owner and to have expressly waived and released the Owner from all Claims in respect of the Claim Notice including the particular matter dealt with in that determination unless, within fifteen (15) Working Days after receipt of that determination, the Consultant disputes that determination in accordance with Article 8.

- (d) Unless this Agreement has been terminated or completed, the Consultant shall in every case, notwithstanding any Claim Notice or the occurrence of a Dispute, continue to proceed with the Services with due diligence and expedition. Such continuance shall not jeopardize the Consultant's entitlement in respect of such Claim Notice or Dispute, provided the Consultant has complied with all other requirements of this Agreement.
- (e) The Owner may, from time to time, request the Consultant to submit any further and other particulars as the Owner considers necessary to assess the Claim Notice. The Consultant shall submit the requested information within thirty (30) Calendar Days of receipt of such request or such shorter time as required by the Owner.

## **8. DISPUTE RESOLUTION**

- (a) The parties shall make all reasonable efforts to resolve any Dispute by amicable negotiations and the parties agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate such negotiations.
- (b) Subject to section 8.1(n)(i) of this Agreement, the parties, by mutual written agreement, may submit any Dispute to mediation.
- (c) The mediator chosen under section 8(b) shall be mutually agreed upon by the Owner and Consultant.
- (d) Subject to section 8.1(n)(i) of this Agreement, each party is responsible for its own costs related to the mediation submitted under section 8(b). The costs of the mediator shall be equally shared by the Owner and Consultant.
- (e) The parties, by mutual written agreement, may submit any Dispute to be finally determined by arbitration before a sole arbitrator, who shall also be agreed to as a part of such mutual agreement. The provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17 shall apply to such arbitration, including the provisions for appeal therein and such arbitration shall be subject to such other terms and conditions agreed to by the parties.
- (f) Unless otherwise agreed to in the written agreement to arbitrate as under section 8(e), each party is responsible for its own costs related to the arbitration and the arbitrator shall not have the discretion to award costs related to the arbitration. The costs of the arbitrator and any other persons appointed to assist the arbitrator (including independent experts) shall be equally shared by the Owner and Consultant.

### **8.1 ADJUDICATION**

- (a) The following definitions shall apply to this Article 8.1:
  - (i) **"Adjudicable Dispute"** means a dispute respecting an Adjudicable Matter and that complies with section 8.1(c).
  - (ii) **"Adjudicable Matter"** means any matter:

- A. referred to in s. 13.5(1) of the Construction Act;
  - B. that is prescribed under the Construction Act as referable to adjudication; or
  - C. agreed to by the parties pursuant to section 8.1(d)(ii) of this Agreement.
- (iii) **“Adjudication”** means a construction dispute interim adjudication under Part II.1 of the Construction Act.
- (iv) **“Adjudicator”** means an individual who is qualified by the Authority as an adjudicator.
- (v) **“Authority”** means the Authorized Nominating Authority designated under the Construction Act.
- (vi) **“Notice of Adjudication”** means a written notice of Adjudication compliant with Section 13.7(1) of the Construction Act;
- (b) The provisions of Article 8.1 shall apply if Part II.1 of the Construction Act applies to this Agreement.
- (c) The parties acknowledge and agree that, for the purposes of Part II.1 of the Construction Act, there shall be no dispute with respect to an Adjudicable Matter that is also the subject matter of a Claim Notice, unless and until a Claim Notice in accordance with section 7(a) has been received by the Owner and the Owner has issued a determination to the Consultant regarding the validity of the Claim Notice pursuant to section 7(c).
- (d) The parties acknowledge and agree that, for the purposes of s. 13.5(1) of the Construction Act:
  - (i) neither the Agreement nor, for clarity, any Schedule that forms part of this Agreement sets out “any matter” that the parties agree may be referred to an Adjudication; and
  - (ii) the parties may agree after the commencement of the Agreement to “any matter” that may be referred to an Adjudication provided such agreement is in writing and explicitly identifies and refers to the matter to be adjudicated.
- (e) All Adjudications shall proceed in accordance with the provisions of the Construction Act and the additional procedures set out in this Article 8.1, subject to the exercise of the powers provided to the Adjudicator under section 13.12 of the Construction Act.
- (f) All Notices of Adjudication shall be submitted in accordance with the process provided by the Authority.
- (g) If the party issuing the Notice of Adjudication is the:
  - (i) Consultant, the Notice of Adjudication shall include the following:



- A. the contract number as found in the front of this Agreement;
  - B. the name of the Owner's project manager;
  - C. the division of the Owner responsible for the Project;
  - D. the company name of the Owner as:
    - City of Toronto
    - Construction Adjudication Team
    - C/O City Solicitor's Office
  - E. the Owner's email as:
    - CAT@toronto.ca.
- (ii) Owner, the Notice of Adjudication shall include the information of the Consultant as set out in section 27(a)(ii) of this Agreement.
- (h) The seat of the Adjudication shall be in Toronto, Ontario.
- (i) The Adjudicator nominated by the party issuing the Notice of Adjudication shall:
- (i) have relevant qualifications and experience with respect to the Project or projects of a similar nature and magnitude to the Project;
  - (ii) be independent of and at arm's length to Consultant, Owner and any other person having an interest in the Project or any of the documents comprising this Agreement; and
  - (iii) have no conflict of interest relating to the parties or the Dispute.
- (j) The Consultant and Owner hereby acknowledge and agree that:
- (i) they shall, immediately after the appointment of the Adjudicator, either through the agreement of the parties or by the Authority, deliver a written agreement requesting that the Adjudicator provide the party that received the Notice of Adjudication no less than fourteen (14) Calendar Days from the date of receipt of the documents pursuant to section 13.11 of the Construction Act to respond;
  - (ii) if the documents delivered pursuant to section 13.11 of the Construction Act:
    - A. exceed 100 documents or 1000 pages in the aggregate, excluding the Agreement and all Schedules; or
    - B. seek monetary relief in excess of one million dollars (\$1,000,000) exclusive of Value Added Taxes,they shall, immediately after the receipt of such documents, deliver to the Adjudicator a written agreement requesting that the Adjudicator provide

- the party that received the Notice of Adjudication no less than sixty (60) Calendar Days from the date of receipt of such documents to respond and extend the deadline for the Adjudicator to make its determination to no less than thirty (30) Calendar Days after the deadline for the delivery of the response by such party; and
- (iii) if the documents delivered pursuant to section 13.11 of the Construction Act are delivered at any time between the Friday prior to December 25<sup>th</sup> in a given year and the first Monday of January of the following year they shall, immediately after the receipt of such documents, deliver to the Adjudicator a written agreement requesting that the Adjudicator exclude the period between the date of delivery of such documents and that first Monday of January from the counting of Calendar Days for the purposes of the Adjudication and, as necessary to give effect to such exclusion, extend the deadline for the party that received the Notice of Adjudication to respond and the deadline for the Adjudicator to make its determination.
  - (k) The Adjudicator shall be entitled to grant any remedy or relief which is consistent with the intentions of the parties expressed under this Agreement but shall not be entitled to exercise the power of prerogative writs.
  - (l) Other than in accordance with the Construction Act, any determination and reasons of an Adjudicator on the Project shall not be relied on by third parties and shall not be relied on by either party on any other projects. The determinations of any adjudicators on any other projects shall not be relied on by the parties in any Adjudication on the Project.
  - (m) If an Adjudicable Dispute is referred to Adjudication and such Adjudicable Dispute is already the subject of a mediation pursuant to section 8(b) of this Agreement, an arbitration pursuant to section 8(e) of this Agreement or a court proceeding, which has not been finally determined, the party responding to the Notice of Adjudication shall be entitled, in its sole and absolute discretion, to choose to:
    - (i) terminate, suspend or proceed with such mediation or arbitration, as applicable, and if the responding party elects to terminate such mediation or arbitration, as applicable, the party referring the Adjudicable Dispute to Adjudication shall be responsible for all costs of the mediator or arbitrator, as applicable, up to the date of receipt of the Notice of Adjudication or incurred as a result of the suspension or termination of the mediation or arbitration; or
    - (ii) stay or proceed with such court proceeding, and if the responding party elects to stay such court proceeding, the party referring the Adjudicable Dispute to Adjudication shall execute all further documents and do all other lawful things necessary to give full effect to such stay, and after the Adjudicator makes its determination, either party may move to lift such stay, which the other party shall consent to.

**9. CONSTRUCTION ACT**

- (a) For the purposes of this Article 9, “supply of services” and “improvement” shall have the same meaning, respectively, as defined by the Construction Act.
- (b) Where any part of the Services constitutes a supply of services to an improvement, the Owner shall retain a Lien Holdback as required by the Construction Act from each sum otherwise payable to the Consultant under this Agreement. The Lien Holdback shall be retained, held and released by the Owner in accordance with the Construction Act and the terms of the Work Assignment Agreement. Unless otherwise specified in a Work Assignment Agreement, no letter of credit or demand-worded holdback repayment bond will be accepted by the Owner for the purposes of the Construction Act.

**10. RIGHT OF OWNERSHIP**

- (a) Upon payment therefor or upon delivery to the Owner of any Deliverable, whichever first occurs, title to such Deliverable shall pass to the Owner and such Deliverable is and shall be deemed and shall remain the sole and absolute property of the Owner, including all intellectual property rights therein and any and all rights of use and reproduction, without the payment of any additional compensation by the Owner to the Consultant free and clear of all liens, charges and encumbrances (subject to any rights or remedies provided by the Construction Act, if applicable).
- (b) Any Deliverables shall be delivered to the Owner Representative upon completion of the Services or other termination of this Agreement, whichever occurs first, or as otherwise directed by the Owner Representative or as required by the Contract Schedule.
- (c) 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 any Personnel, or by the Consultant or any Personnel and the Owner and its personnel jointly, during the course of this Agreement relating to the Services shall be the sole and absolute property of the Owner and shall be treated as trade secrets and the Confidential Information of the Owner.
- (d) To the extent ownership of any Deliverable does not automatically vest in the Owner the Consultant hereby assigns, and agrees to cause to be assigned, all right, title and interest, including all intellectual property rights, in and to such Deliverable. The Consultant shall obtain all necessary assignments of copyright and waivers of moral rights in all Services and Deliverables and shall provide satisfactory proof thereof to the Owner Representative upon request.
- (e) The Consultant or the Subconsultants, as applicable, shall solely and absolutely own all rights, title and interest in, and to, all intellectual property rights of the background technology, information, materials, drawings, documents, methods, and other property that was not created, prepared or purchased by the Consultant or the Subconsultants as a part of the Services, and all such property shall remain the sole, absolute and exclusive property of the Consultant or the Subconsultants, as applicable. The Consultant hereby grants to, or agrees to obtain for, the Owner an irrevocable, perpetual, royalty free and cost free license

to use such intellectual property rights in the use of the Deliverables pursuant to section 10(a) and 10(b).

- (f) The Consultant acknowledges that any Deliverable or other matter which is the property of the Owner, or in which the Owner has proprietary rights, pursuant to sections 10(a), 10(b), 10(c) and 10(e) and the information contained therein are the property and Confidential Information of the Owner having been developed for its own and sole use.
- (g) The Consultant shall deliver to the Owner Representative, upon completion of the Services, any computer data or software used by the Consultant in performing the Services and paid for by the Owner, subject to any third party proprietary rights with respect to any computer data or software 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 Owner, at the Owner's option.

## **11. CONFIDENTIAL INFORMATION**

- (a) The Consultant acknowledges the importance of maintaining the confidentiality and privacy of Confidential Information. Except as authorized hereunder, the Consultant shall, with respect to Confidential Information at all times:
  - (i) hold such Confidential Information in strict confidence, under and in accordance with all applicable requirements of this Agreement;
  - (ii) implement and use, appropriate technical, organizational and physical security measures to protect and secure such Confidential Information, whether in storage or in use, with no less than the same degree of care as the Consultant uses to protect its own Confidential Information against loss, theft, accidental and unauthorized access, disclosure, copying, use, modification, publication or dissemination, disposal and destruction, but in no case with less than a reasonable degree of care. Further, the Consultant shall comply, if requested by the Owner, with a document control and security protocol approved by the Owner, which protocol shall prescribe limitations on the use, disclosure and storage of such Confidential Information;
  - (iii) comply with all applicable requirements of Laws, including MFIPPA, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, and any other Laws now in force or that may in the future come into force governing the collection, use, disclosure and protection of Personal Information applicable to the Consultant;
  - (iv) not disclose to a third party and not permit any third party any manner of access to, whether directly or indirectly, such Confidential Information without the prior written approval of the Owner in each instance, except as provided for in this Article 11;
  - (v) not to use Confidential Information for any purpose whatsoever, except as provided for in this Article 11.

- (b) The parties agree that the Consultant may disclose Confidential Information:
- (i) to its employees if and when such employees have a need to know such Confidential Information so that the Consultant may exercise its rights and/or meet its obligations under this Agreement or comply with Laws, provided that such employees are advised of the confidential nature of the Confidential Information and, by virtue of the terms of their employment, are bound in writing to confidentiality obligations in favour of both the Owner and Consultant substantially no less restrictive than those imposed on the Consultant pursuant to this Agreement;
  - (ii) to its professional advisors and Subconsultants, to the extent necessary, to enable that party to perform, to cause to be performed the Services, or to enforce its rights or obligations under this Agreement, provided that such parties are advised of the confidential nature of the Confidential Information and, by virtue of the terms of their engagement or retainer or as a result of an agreement in writing, are bound in writing to confidentiality obligations in favour of both the Owner and Consultant substantially no less restrictive than those imposed on Consultant pursuant to this Agreement;
  - (iii) to the extent such disclosure is required pursuant to Laws or any Governmental Authority, provided that, where circumstances permit, prior to such disclosure the Consultant shall to the extent it is legally permitted to do so give the Owner a notice of the potential disclosure and allow the Owner the opportunity to contest the requirement for disclosure or seek a protective order or ruling in connection with such potential disclosure; and
  - (iv) as necessary in connection with any dispute resolution commenced pursuant to this Agreement.

Any disclosure of Confidential Information allowed pursuant to this section 11(b) shall be limited to that which is necessary to satisfy the need for such disclosure.

- (c) The Consultant shall immediately provide notice in writing to the Owner in the event that it becomes aware of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification, publication or dissemination, disposal or destruction of Confidential Information by the Consultant or any party to which the Consultant has disclosed any Confidential Information.
- (d) The Consultant shall allow the Owner on reasonable notice in writing to inspect any Confidential Information in the custody or possession of the Consultant or a Subconsultant and to audit compliance with this Article 11 including the measures used to protect Confidential Information, and otherwise properly respond to all reasonable inquiries of the Owner with respect to handling of Confidential Information within five (5) Working Days.
- (e) Subject to any applicable requirement of Laws, the Consultant shall on the earliest of the date of the completion of the Services, termination or expiry of this Agreement or upon the written request of the Owner, immediately cease all use of and return to the Owner or, at the direction of the Owner, dispose of, destroy,

or render permanently anonymous, all Confidential Information, using appropriate technical, organizational and physical security measures to protect Confidential Information against loss, theft and unauthorized access, disclosure, copying, use or modification.

- (f) Any Deliverables or other documentation delivered to the Owner may be subject to disclosure under the terms of MFIPPA. The parties acknowledge and agree that MFIPPA applies to the Owner, the Deliverables and such other documentation and that the Owner is required to fully comply with MFIPPA. The Consultant shall retain and preserve the Deliverables and such other documentation in a secure and accessible manner to enable the Owner to fulfill its obligations under MFIPPA and the Owner policies referenced in this Agreement. While the Owner is not responsible for the interpretation of any of the provisions of MFIPPA, if the Consultant believes that any part of such other documentation delivered to the Owner 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 Owner 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.
- (g) The Consultant shall provide, and shall cause each of its professional advisors, and Subconsultants to provide, in a timely manner, all necessary and reasonable information and co-operation to the Owner and to any Governmental Authorities with jurisdiction or oversight over Laws governing the collection, use, disclosure and protection of Personal Information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (h) The confidentiality obligations of the Consultant pursuant to this Article 11 shall not apply in respect of information (except for Personal Information), if such information:
  - (i) was lawfully acquired by the Consultant prior to the Effective Date without any restrictions as to use or disclosure or any obligation of confidentiality;
  - (ii) is lawfully, and without any restrictions as to use or disclosure or any obligation of confidentiality, provided to the Consultant by a third party, except where the third party is known to be or should reasonably have been suspected of being, subject to an obligation to the Owner to maintain such information in confidence;
  - (iii) is independently created, developed or acquired by or for the Consultant without reference to the Confidential Information or through third parties to whom the Confidential Information had not been disclosed; or
  - (iv) is released from the confidentiality provisions of this Agreement by the written authorization of the Owner.
- (i) To the extent of any conflict or inconsistency between this Article and any other provision of this Agreement, this Article shall prevail.

**12. INSURANCE**

- (a) Without restricting the generality of Article 14 or any other provision of this Agreement, the Consultant agrees to purchase and maintain in force, at its own expense the policies of insurance and coverages set out in Schedule A of the Master Agreement for the duration of this Agreement, or as set out in Schedule A. Such insurance shall be in accordance with the requirements of this Agreement and Schedule A to the Master Agreement and be provided by an insurer licensed to carry on the business of an insurer in Ontario and satisfactory to the Owner in its sole and absolute discretion.
- (b) Five (5) Working Days prior to the execution of this Agreement, and twenty (20) Working Days prior to the expiration, amendment or extension of any then current insurance or any part thereof, the Consultant shall provide the Owner with:
  - (i) certificates of insurance as proof of such coverage, in a form acceptable to the Owner in accordance with this Agreement, signed by the insurer or its authorized agent, without notice or request by the Owner; and
  - (ii) proof of professional liability insurance maintained by any Subconsultant engaged by the Consultant in relation to the Services, where such Subconsultant is under a legal or professional obligation to maintain the same, in a form and with an insurer acceptable to the Owner.
- (c) The Consultant shall, at its cost, maintain such other forms of insurance as the Owner, acting reasonably, may require from time to time, in amounts and for risks against which a prudent Consultant would insure.
- (d) The Consultant agrees that the insurance requested shall be primary and shall not call into contribution any insurance available to the Owner, and the insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the Consultant.
- (e) 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 Consultant in the performance of Services.
- (f) The Consultant 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 Consultant shall have no claim against the Owner or the Owner's insurers for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the Owner.
- (g) Each policy (except for the policy of automobile liability insurance) shall require the insurer(s) to notify the Owner in writing, by registered mail, 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 Consultant's insurance.

**13. WORKPLACE SAFETY AND INSURANCE ACT**

- (a) The Consultant shall be in good standing with the WSIB throughout the term of this Agreement. If requested by the Owner Representative, the Consultant shall submit to the Owner a current WSIB clearance certificate. 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.

**14. INDEMNIFICATION**

- (a) The Consultant shall indemnify, defend and hold harmless the Indemnitees from and against all Claims brought against, or Losses suffered, sustained, or incurred by, the Indemnitees which may be directly or indirectly attributable to, or arising or alleged to arise out of:
  - (i) the negligent acts, errors or omissions by or on behalf of the Consultant;
  - (ii) any deliberate act of wrongdoing or wilful misconduct or fraud of the Consultant and its Personnel including intentional misrepresentation; or
  - (iii) the performance of or the failure to perform any of the Consultant's obligations under this Agreement,

(collectively, the "**Subject Matter of Indemnity**"). The Subject Matter of Indemnity includes:

- (iv) all Losses that any of the Indemnitees may suffer, sustain or incur arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property (including all or any part of the Project site or any other tangible property related thereto); and
  - (v) all Claims arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property.
- (b) Without limiting the generality of any other provision in this Agreement, the Consultant shall indemnify, defend and hold harmless the Indemnitees from and against all Claims brought against, or Losses suffered, sustained, or incurred by the Indemnitees which may be directly or indirectly attributable to, or arising or alleged to arise out of:
  - (i) any inaccuracy in or breach of any of the representations or warranties of the Consultant contained in this Agreement;
  - (ii) any acts performed by or on behalf of the Consultant beyond the authority of the Consultant hereby conferred, whether negligent or otherwise;
  - (iii) 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 Owner or performed by the Consultant, or anyone else for whom at law it is responsible;



- (iv) the Consultant failing to or delaying in promptly complying with Article 12;
  - (v) a lien or subsequent lawsuit brought in connection with any lien by a Subconsultant;
  - (vi) the Consultant's failure to comply with the requirements of sections 5(j); or
  - (vii) a Subconsultant or Sub-subconsultant's failure to comply with the requirements of section 5(j), if applicable.
- (c) The Consultant shall pay to the Indemnitees, or any of them, on demand the amount of all Losses and Claims for which the Consultant is obligated to indemnify the Indemnitees and any moneys paid or payable by the Indemnitees in settlement or in discharge or on account thereof. If the Consultant fails to make such payments within ten (10) Working Days after such demand, the Owner may set-off such payments, including reasonable legal costs, in accordance with Article 18.
- (d) The Consultant acknowledges that the Owner holds the benefit of any covenant, release or indemnity in this Agreement, including the covenants of the Consultants in sections 14(a), 14(b) and 14(c), that is expressly intended to extend to include the Indemnitees (other than the Owner) as third party beneficiaries as trustee and agent for such Indemnitees. The Owner shall be entitled to enforce the rights of such Indemnitees as third party beneficiaries under such covenant and indemnities.

## **15. DEFAULT AND TERMINATION**

- (a) The following shall constitute, without limitation, acts or events of default by the Consultant:
- (i) where the Consultant fails or neglects to commence the Services within ten (10) Working Days of a formal direction by the Owner Representative to commence;
  - (ii) 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 Owner Representative, will ensure entire completion of the Services within the time provided for in this Agreement or by a milestone or other date in the Project schedule or Contract Schedule or where the Owner reasonably determines that the Consultant has abandoned its duties with respect to this Agreement;
  - (iii) where the Consultant fails or neglects to complete the Services within the time limit(s) under this Agreement;
  - (iv) where the Consultant has made any material misrepresentation in respect to this Agreement or any part thereof;
  - (v) 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 Owner Representative, jeopardizes or may jeopardize these policies, securities, certificates, permits, licences or approvals;
- (vi) where the Consultant fails or refuses to correct, rectify or remedy any unsatisfactory or defective Services, when so ordered by the Owner in writing, or fails to prosecute the Services in accordance with the Standard of Care;
  - (vii) where the Consultant fails to comply with any Law applicable to the Services;
  - (viii) where, without the prior written consent of the Owner, the Consultant subcontracts the whole or any part of this Agreement or the Services to a third party not approved by the Owner or makes an assignment of this Agreement or the Services thereunder or any part thereof;
  - (ix) where the Consultant fails or refuses to vacate or discharge a claim for lien or certificate of action, or cause the withdrawal of a written notice of a lien, within the time period required by section 16(a);
  - (x) 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;
  - (xi) 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
  - (xii) 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 this Agreement.
- (b) In the event that the Consultant has committed a Default or a Default has occurred, the Owner Representative may provide a Default Notice to the Consultant to the effect that if the Consultant does not completely remedy the

Default to the satisfaction of the Owner Representative within five (5) Working Days of delivery of the Default Notice or such other period of time as otherwise expressly granted in writing by the Owner Representative in his or her absolute discretion, then the Owner Representative may, in his/her sole discretion, on the behalf of the Owner exercise one or more of the following rights and remedies:

- (i) suspend the performance of this 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;
  - (ii) terminate this Agreement and/or the Services of the Consultant immediately by giving notice to that effect to the Consultant;
  - (iii) 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 Owner Representative up to the time of such termination and that have not yet been paid by the Owner (the Consultant shall have no Claim of any kind otherwise against the Owner), subject to any rights or remedies the Owner may have against the Consultant;
  - (iv) 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 Owner from recovering any further Losses incurred by the Owner as a result of the Default by the Consultant;
  - (v) engage another consultant to complete the Services or may itself complete the Services, without further liability to the Consultant; and
  - (vi) where the Owner performs or engages another consultant to perform the Services, either on a temporary basis or otherwise, the Owner may employ such means as the Owner Representative may deem necessary or advisable to complete the Services to his/her satisfaction with such changes therein as in the Owner Representative's opinion are necessary or advisable by reason of the Consultant's Default.
- (c) If the Consultant is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Consultant's insolvency, or if a receiver is appointed because of the Consultant's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, immediately terminate the Agreement, and/or the Services of the Consultant by giving the Consultant or receiver or trustee in bankruptcy notice in writing to that effect specifying the date upon which such termination becomes effective.
- (d) Notwithstanding section 15(b) and section 15(c) and without prejudice to or foregoing any other right or remedy of the Owner, 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 Owner and all reasonable Losses incurred by the Owner 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 Owner, with particulars of the emergency and services necessitated thereby, and the Owner shall have no

liability to the Consultant for any Losses whatsoever resulting from such action by the Owner.

- (e) In addition to the rights and remedies in section 15(b), section 15(c) and section 15(d) if the Owner terminates this Agreement or terminates the Consultant's Services in whole or part, as a result of a Default by the Consultant, the Owner may but is not obliged to exercise one or more of the following rights and remedies:
  - (i) 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;
  - (ii) 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 Owner Representative;
  - (iii) charge the Consultant the additional cost over the Consultant's price for completing the Services or portion thereof withdrawn from the Consultant;
  - (iv) charge the Consultant a reasonable allowance, as determined by the Owner Representative, to cover correction to the Services performed by the Consultant that may be required;
  - (v) charge the Consultant for any Losses the Owner may have sustained as a result of the Default; and
  - (vi) charge the Consultant the amount by which the cost of corrections to the Services exceeds the allowance provided for such corrections.
- (f) 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.
- (g) In addition to the foregoing rights and remedies of the Owner, the Owner Representative 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 Losses, against the Owner except for payment for such of the Services as have been satisfactorily performed by the Consultant to the satisfaction of the Owner Representative to the date of notice of the suspension or discontinuance of Services, subject to any rights or remedies the Owner 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 Owner's notice. If the Services are suspended, the Services shall not be resumed until the Owner so directs in writing.

- (h) The rights and remedies provided in this Article given to the Owner 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 Owner 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.

## **16. LIENS**

- (a) Upon the receipt of written notice of lien, claim for lien or a certificate of action under the Construction Act, arising from the performance of the Services by any Subconsultant:
  - (i) the Consultant at its sole cost, shall take whatever steps are necessary to discharge, release or vacate such claim for lien or certificate of action, or withdraw the written notice of a lien within ten (10) Calendar Days of it coming to the notice of the Consultant. If the claim for lien or certificate of action is merely vacated, the Consultant shall, if requested, undertake the Owner's defence of any subsequent lawsuit commenced in respect of the claim for lien or certificate of action at the Consultant's sole cost; and
  - (ii) the Owner may retain an amount sufficient to satisfy such claim for lien, certificate of action or written notice of a lien, including an amount sufficient to cover potential costs, in accordance with Article 18.
- (b) If the Consultant fails or refuses to vacate or discharge the claim for lien or certificate of action, or cause the withdrawal of the written notice of a lien, within the time period required by section 16(a), the Owner shall at its option, be entitled (but not obliged) to take whatever steps are necessary to vacate and/or discharge the claim for lien or certificate of action, or cause the withdrawal of the written notice of a lien and all Losses incurred by the Owner in so doing (including all legal fees and disbursements) may be set-off by the Owner in accordance with Article 18.
- (c) After the Consultant or the Owner, as the case may be, has vacated and/or discharged the claim for lien or certificate of action, or caused the withdrawal of the written notice of a lien, then any amount retained by the Owner pursuant to section 16(a)(ii) in respect of such claim for lien, certificate of action or written notice of a lien shall be eligible to be included in the next Proper Invoice submitted by the Consultant.
- (d) The Consultant acknowledges that all claims for lien shall be given to the Clerk of the City of Toronto through its web portal at [www.toronto.ca/liens](http://www.toronto.ca/liens).
- (e) Sections 16(a), 16(b) and 16(c) do not apply to any claim for lien or certificate of action to the extent arising from a payment default of the Owner under this Agreement.

**17. NON-WAIVER**

No act or failure to act by the Owner, the Owner Representative or Consultant shall, except as may be specifically agreed in writing by the Owner and the Consultant:

- (a) constitute a waiver of any right or remedy afforded any of them under this Agreement;
- (b) constitute an approval of or acquiescence in any breach, default or non-observance thereunder; or
- (c) operate as a waiver of any such right or remedy of the Owner in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way such right or remedy in respect of any such continuing or subsequent default, breach or non-observance.

**18. SET-OFF**

In addition to and without limiting any other rights or remedies the Owner may have under this Agreement and at law or otherwise, the Owner may set-off and deduct from any amount owing to the Consultant under this Agreement:

- (a) any outstanding or disputed liabilities or obligations of the Consultant to the Owner, or to the Indemnitees pursuant to Article 14;
- (b) any Losses or amounts for which the Owner is expressly entitled in this Agreement to set-off or retain;
- (c) any assessment due to the WSIB relating to the Services;
- (d) any other amounts owed by the Consultant to the Owner under this Agreement; and
- (e) if the Consultant becomes insolvent, all outstanding Claims and Losses of the Owner whether or not related to this Agreement.

If there is an insufficient amount owing by the Owner to the Consultant to satisfy such amounts, then the Consultant shall, within ten (10) Calendar Days of request from the Owner, pay the amount of the shortfall to the Owner.

**19. OCCUPATIONAL HEALTH & SAFETY**

- (a) The Consultant shall comply with all health and safety Laws, including OHSA.
- (b) Nothing in this Article shall be construed as making the Owner the “employer” (as defined in the OHSA) of any Personnel of the Consultant, either instead of or jointly with the Consultant. The parties acknowledge and agree that employees of the Owner, 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.

- (c) The Consultant shall ensure that all Personnel are trained in the health and safety hazards expected to be encountered in the Services.
- (d) The Consultant agrees and covenants, and represents and warrants that:
  - (i) all Personnel possess the knowledge and skills to allow them to work safely;
  - (ii) the Consultant has provided, and will provide during the course of this agreement, all necessary personal protective equipment for the protection of workers;
  - (iii) 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;
  - (iv) the Consultant has in place an occupational health and safety policy and program in accordance with the OHSA; and
  - (v) 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.
- (e) The Consultant shall provide, at the request of the Owner Representative the following as proof of the representations made in sections 19(d)(i) and 19(d)(iv):
  - (i) 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
  - (ii) the occupational health and safety policy and program.
- (f) The Consultant shall report to the Owner all health and safety incidents that arises from the performance of the Services, including the Consultant's response. Without limiting the foregoing, the Consultant shall report any such incident occurring on or off the Project site that relates to its Services immediately, and shall, in addition, in no event later than forty-eight (48) hours after such occurrence, give written notice of such incident.
- (g) During the course of the Services, the Consultant shall furnish forthwith to the Owner a copy of all correspondence, reports, orders, charges and convictions respecting health and safety, including under OHSA, the *Technical Standards and Safety Act, 2000*, the *Highway Traffic Act*, the *Environmental Protection Act*, the *Workplace Safety and Insurance Act, 1997*, the *Employment Standards Act, 2000* and the *Criminal Code*, which are received by, or which come to the notice of, the Consultant that apply or are relevant to any of the Services or activities conducted under the terms of this Agreement. The Consultant shall immediately take all corrective measures necessary to address the issues identified or arising out of any such correspondence, report, order, charge or conviction.
- (h) 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 health and safety Laws by

the Consultant, the Subconsultants and the Sub-subconsultants, 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 Owner.

- (i) The Consultant:
  - (i) must, immediately upon the execution of this Agreement and prior to commencement of the Services, forward to the Owner Representative a copy of the Safety Data Sheets (SDS) for each hazardous material (as defined in the OHSA) to be used in the performance of the Services;
  - (ii) shall not bring onto the work site any hazardous material, as defined in the OHSA, without first obtaining the prior written authorization of the Owner Representative and maintaining at the Project site a copy of the relevant SDS readily accessible to all workers and Personnel;
  - (iii) shall not remove or interfere with any “designated substance” as defined by the OHSA, except in full compliance with the OHSA and after notifying the Owner Representative; and
  - (iv) shall, following discovery that any designated substance has been removed or interfered with other than in compliance with section 19(i)(iii), forthwith report same to the Owner Representative and ensure that no further non-compliant removal or interference occurs.

## **20. SUCCESSORS AND ASSIGNS**

- (a) This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.
- (b) The Consultant shall not assign this Agreement, either in whole or in part, without the prior written consent of the Owner, which consent may be withheld or given subject to such terms and conditions as the Owner deems appropriate.
- (c) Notwithstanding the foregoing, the Consultant acknowledges and agrees that the Owner may assign this Agreement, or any portion thereof, without the consent of the Consultant.
- (d) No assignment or subcontracting shall, in any circumstances, relieve the Consultant of its responsibilities, obligations and liabilities under this Agreement.

## **21. AGREEMENT IN WRITING**

- (a) Unless expressly provided otherwise in this Agreement:
  - (i) no verbal arrangement or agreement, relating to the Services, this Agreement or any other matter concerning this Agreement or Services,



will be of any force or effect unless it is in writing and signed by duly authorized representative of the Owner; and

- (ii) the Owner and the Owner Representative shall not be bound by any verbal communication or representation or conduct whatsoever, including any instruction, amendment or clarification of this Agreement, or any representation, information, advice, inference or suggestion, from any person (including but not limited to an elected official, personnel, independent contractor or any other person acting on the behalf of or at the direction of the Owner or Owner Representative or other representative of the Owner) concerning this Agreement, or any other matter concerning this Agreement or Services. Where in this Agreement a reference is made to the express written agreement, approval or consent of the Owner or the Owner Representative, it shall be understood that the Owner or the Owner Representative, as applicable, shall not be deemed or construed to have agreed to any stipulation, specification, exclusion, limitation or other term or condition that deviates from or amends a provision set out in this Agreement, unless that deviation or amendment is expressly confirmed in the executed Agreement or in a written and express amendment to this Agreement by a duly authorized representative of the Owner.

The Consultant releases and waives all claims whatsoever in negligence, in equity or otherwise with respect to any oral or unauthorized representations or communications.

## **22. ENTIRE AGREEMENT AND AMENDMENTS**

- (a) This Agreement embodies and constitutes the sole and entire agreement between the parties in respect of the subject matter hereto. There are no terms, obligations, covenants or conditions between the parties in respect of the subject matter hereto, other than as contained herein. This Agreement is complementary and what is required by any:
  - (i) part thereof shall be considered as being required by the whole; and
  - (ii) one document forming a part of this Agreement shall be as binding as if required by all.

This Agreement supersedes all prior negotiations, representations or agreements, either written or verbal, relating in any manner to the Services, including the documents from the procurement process for the improvement that is the subject of this Agreement.

- (b) This Agreement may be amended only as provided in this Agreement. No amendment of this Agreement shall be valid unless executed by an instrument in writing by the parties, except as provided for in this Agreement. Neither this Agreement, nor any term hereof, can be amended in whole or in part, except by such instrument in writing, except as provided for in this Agreement, and no subsequent verbal agreement shall have any validity whatsoever.

**23. GOVERNING LAW**

The laws of the Province of Ontario and the federal laws of Canada applicable therein shall govern the interpretation of this Agreement. 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 Owner each irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario in accordance with the foregoing.

**24. 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 sections 5(a)(viii), 5(i), 6(d), 13(a), 19(h) and Articles 10,11, 12, 14, 15, 18, 20, 21, 23 and 28 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.

**25. SEVERABILITY**

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 Owner and Consultant.

**26. 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 Owner may from time to time reasonably request, in writing, and as may be necessary or desirable to give full effect to this Agreement.

**27. NOTICES**

- (a) Subject to section 27(c) and section 8.1(f) to (g) of this Agreement, the parties agree that any demand or notice to be given pursuant to this Agreement shall be given in writing to the party representatives named in section 7 of the Master Agreement only by one of the following methods:
  - (i) e-mail, including the name and telephone number of the alternate contact at the sender to contact in the event of a transmission problem;
  - (ii) delivery by hand;

- (iii) registered mail; or
  - (iv) courier.
- (b) For purposes of this Agreement:
  - (i) a demand or notice sent by e-mail which is transmitted prior to 5:00 p.m. on a Working Day, shall be deemed to have been received by the recipient on that Calendar Day, or on the next Working Day, if delivered after 5:00 p.m. or on a Calendar Day which is not a Working Day; provided that during the transmission of which no indication of failure of receipt is communicated to the sender;
  - (ii) a demand or notice delivered by hand or courier prior to 5:00 p.m. on a Working Day, shall be deemed to have been received by the recipient on such Calendar Day of delivery, or on the next Working Day, if delivered after 5:00 p.m. or on a Calendar Day which is not a Working Day; or
  - (iii) a demand or notice which is sent by registered mail is deemed to be received by the party to whom the notice in writing is addressed on the fifth (5th) Working Day after the date of mailing, where the date appearing on the postal registration receipt shall be deemed conclusively to be the date of mailing.
- (c) Notwithstanding section 27(a), the parties agree that documents and notices required to be given or that may be given under the Construction Act shall be given in writing by a means or method permitted for under the Construction Act unless such means or methods are stipulated elsewhere in this Agreement.

## **28. CONFLICT OF INTEREST**

- (a) The Consultant shall:
  - (i) avoid any Conflict of Interest in the performance of its contractual obligations;
  - (ii) disclose to the Owner without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
  - (iii) comply with any requirements prescribed by the Owner to resolve any Conflict of Interest.

In addition to all other contractual rights or rights available at law or in equity, the Owner may immediately terminate this Agreement upon giving notice to the Consultant where:

- A. the Consultant fails to disclose an actual or potential Conflict of Interest;
- B. the Consultant fails to comply with any requirements prescribed by the Owner to resolve a Conflict of Interest; or

- C. the Consultant's Conflict of Interest cannot be resolved.
- (b) The Owner shall have the right to decide whether an event or circumstance constitutes a Conflict of Interest such that the Owner shall have the right to terminate this Agreement.
- (c) The absence of any disclosure of interest under this provision shall be treated as a representation and warranty by the Consultant that no such potential Conflict of Interest exists.
- (d) The Consultant shall not hire any current or former officer or employee of the Owner to perform any services covered by this Agreement, unless approved by the Owner.

## SCHEDULE E – FORM OF WORK ASSIGNMENT AGREEMENT

This Work Assignment Agreement entered into on the **[Note to Finalization before Execution: Insert Date of Execution]** ("Effective Date")

between

**CITY OF TORONTO**

(“Owner”)

and

● **[Note to Finalization before Execution: Insert Legal Name of Consultant]**

(“Consultant”)

**WHEREAS** the Owner and Consultant entered into a Master Agreement dated **[Note to Finalization before Execution: insert Master Agreement date]** pursuant to Request for Supplier Qualifications No. **RFSQ Doc5572034849**; and

**WHEREAS** the Owner issued a **[Note to Finalization before Execution: insert Second Stage Process (Work Assignment Form, RFQ #)]** and the Consultant was awarded this Work Assignment Agreement to complete the Work Assignment in accordance with all the terms and conditions of the Master Agreement, **[Note to Finalization before Execution: insert Second Stage Process (Work Assignment Form, RFQ #)]** and this Work Assignment Agreement at a total cost not to exceed \$**[Note to Finalization before Execution: insert amount]** exclusive of applicable taxes.

**WHEREAS** ● **[Note to Finalization before Execution: Complete recitals];**

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

### 1. THE WORK

The Consultant shall:

- 1.1. perform the Services required by this Work Assignment Agreement as set out in the Work Assignment Form and Work Assignment Response;
- 1.2. without limiting the foregoing, perform those related professional services and responsibilities otherwise detailed in the RFSQ in the nature of a general or specific responsibility of the Consultant related to the Work Assignment;
- 1.3. provide any Provisional Items set out in the Work Assignment Form and Work Assignment Response, if and when required by the Owner;
- 1.4. work collaboratively with the Owner's staff and ensure that sufficient time and resources are allocated to allow for Owner's input into decision-making processes, that the Owner's concerns are adequately addressed, and that all Services are coordinated with other active associated projects as required;

- 1.5. provide any additional work, if and as may be required by the Owner, upon the prior written authorization to proceed with such additional work from the Owner Representative. Once authorized, the additional work shall form part of the Services;
- 1.6. do and fulfill everything indicated by this Work Assignment Agreement; and
- 1.7. apply the provisions, including in all schedules, of the Master Agreement to the Services performed under this Work Assignment Agreement.

## **2. CONTRACT PRICE**

- 2.1. The Owner shall pay the Consultant in accordance with the pricing set out in the Consultant's RFSQ Response and Work Assignment Form, as detailed on Schedule A to this Work Assignment Agreement.

## **3. DOCUMENTS COMPRISING THE AGREEMENT**

- 3.1. The following documents whether attached hereto or referred to herein form an integral part of the Work Assignment Agreement:

- Master Agreement, including its Schedules
- Schedule A to the Work Assignment Agreement – Pricing Form
- Schedule B to the Work Assignment Agreement – Work Assignment Form
- Schedule C to the Work Assignment Agreement – Work Assignment Response

any other document identified elsewhere in the Work Assignment Agreement as a document forming part of the Work Assignment Agreement.

## **4. COUNTERPART AND ELECTRONIC SIGNATURE**

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

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE TO FOLLOW.**

**Master Consulting Agreement Doc5572034849**  
**Schedule E – Form of Work Assignment Agreement**

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The parties hereto have executed this Work Assignment Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

**CITY OF TORONTO**

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

● **[Note to Finalization before Execution:  
Insert Legal Name of Consultant]**

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

By:

\_\_\_\_\_  
Name: ●

Title: ●

I have authority to bind the corporation

## SCHEDULE A TO WORK ASSIGNMENT AGREEMENT

### Pricing Form

1. Notwithstanding anything to the contrary in this Work Assignment Agreement, the total of the Fees and Value Added Taxes shall not exceed a maximum price of **\$000,000.00** inclusive of HST **[Note to Finalization before Execution: Insert Maximum Agreement Price]** (the “Maximum Agreement Price”).
2. The Consultant's Fees are set out in Schedule H of the Master Agreement and Work Assignment Response. The Consultant's Fees shall be based on those submitted in the Work Assignment Response unless they exceed those set out in Schedule H, in which case, the Schedule H rates shall apply.
3. The initial estimated cost of Services may be adjusted during the Agreement by mutual agreement between the Owner and the Consultant, provided that the total cost of Services under this Agreement is not greater than the Maximum Agreement Price.
4. Provisional Items and additional work shall only be provided on an “as and when requested” basis. The Owner shall not be responsible for the payment of any Provisional Item or additional work unless those services have been authorized and assigned to the Consultant by prior written approval of the Owner's Representative. If and upon being authorized, the Consultant shall proceed forthwith to supply the Provisional Item(s) or additional work as the case may be, in accordance with:
  - (a) the provisions of this Work Assignment Agreement;
  - (b) the terms of such authorization; and
  - (c) in the case of Provisional Items, the Consultant's Fees; or in the case of additional work, the applicable unit rates or prices or lump sum amount set out in the Work Assignment Form or otherwise agreed to in writing by the Consultant and the Owner Representative, as the case may be.
5. If any Services under this Agreement are included by the Consultant in a Proper Invoice as partially or fully completed, but are not completed in accordance with this Work Assignment Agreement, the Owner may withhold from payment, in accordance with section 6(m) of the General Conditions, the total amount payable, or a part thereof, for those Services until they are completed or corrected to the full satisfaction of the Owner Representative.
6. Subject to the RFSQ, the payment for Services and authorized additional work shall be paid in accordance with the following:

(a)	Time of Principals, Senior Officers, Specialists	For time-based services, Personnel specifically identified in the RFSQ Response and Work Assignment Form shall be billed at the all-inclusive hourly or per diem flat rates indicated therein or this Schedule A, 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 Owner Representative.
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**Master Consulting Agreement Doc5572034849**  
**Schedule E – Form of Work Assignment Agreement**

(b)	Time of other Staff	<p>For time-based services, staff or personnel classifications specifically identified in the RFSQ Response and Work Assignment Form shall be billed at the hourly or per diem flat rates indicated therein.</p> <p>Billing rates for staff or classifications other than those identified in the RFSQ Response and Work Assignment Form shall be submitted for review and shall be subject to prior approval of the Owner Representative.</p>
(c)	Disbursements	<p>A lump sum limit for Disbursements permitted under section 14 of this Schedule A required in connection with any part of the Services shall be provided as identified in the Work Assignment Agreement.</p> <p>Payments for disbursements will be pro-rated based on the value of the Services performed during a billable period.</p>

10. The Fees will be paid by the Owner without any direct or indirect mark-up being added by the Consultant other than as expressly provided for in this Schedule A.
11. Except as expressly set out in this Schedule A, there will be no other fees or other amounts payable by the Owner to the Consultant in respect of the Services. The Consultant is solely responsible and liable for, and all Fees include, all costs, charges and expenses whatsoever relating to the performance of the Consultant's covenants, agreements and obligations hereunder, including the provision of all Services.
12. All Fees shall be inclusive of all taxes and duties other than Value Added Taxes. The Owner shall pay the Consultant Value Added Taxes on all Fees payable under this Work Assignment Agreement.
13. The Consultant shall not be entitled to payment for any Services performed negligently or that are otherwise not in compliance with this Agreement. Payment or other acceptance of the Services do not limit the Owner's rights under this Work Assignment Agreement.
14. The Owner shall pay the following expenditures reasonably and necessarily incurred by the Consultant and approved by the Owner in the performance of the Services (the "**Disbursements**"):
  - (a) **[Note to Finalization before Execution: insert the eligible Disbursements or a reference to where the list of eligible Disbursements, including the lump sum limit, is located in the RFSQ]; and**
  - (b) such other expenses not expressly included above as pre-approved in writing by the Owner.

For clarity, all expenses and costs not contemplated by section 14(a) and section 14(b) of this Schedule A shall not form part of the Disbursements and are deemed to be included in the Fees.

15. 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 Owner Representative when such payments by

**Master Consulting Agreement Doc5572034849**  
**Schedule E – Form of Work Assignment Agreement**

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the Consultant have all occurred. It is agreed and understood that the Owner will not pay any Subconsultant and/or Personnel other than the Consultant for the Services and that it is the Consultant's responsibility to pay all the other Subconsultants and Personnel.

**SCHEDULE B TO WORK ASSIGNMENT AGREEMENT**

**Work Assignment Form**

The parties agree that this document is hereby incorporated by reference.

**SCHEDULE C TO WORK ASSIGNMENT AGREEMENT**

**Consultant's Work Assignment Response**

The parties agree that this document is hereby incorporated by reference.

**SCHEDULE F – FORMS**

**FORM 1: STATUTORY DECLARATION**

**STATUTORY DECLARATION**

PROVINCE OF ONTARIO ) IN THE MATTER OF  
) the Work Assignment Agreement entered into  
) between **[Note to Finalization: Insert name of Owner]** (the "Owner")  
) and \_\_\_\_\_  
) dated \_\_\_\_\_ (the "Agreement")  
) and a Proper Invoice dated \_\_\_\_\_  
)

To Wit:

I, \_\_\_\_\_ of the \_\_\_\_\_  
(Name) (Owner, Town, etc.)  
in the \_\_\_\_\_  
(Regional Municipality, Owner, etc.)

**do solemnly declare that:**

**[Note to Finalization before Execution: Modify to appropriate professional type, where no engineering services are being provided under agreement]**

1. I am a senior professional engineer employed by \_\_\_\_\_  
(Consultant's full legal name) (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 Owner setting forth in detail the Services performed and the Disbursements incurred by the Consultant during the period from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and for which payment is requested. I do hereby certify that such services were performed and such Disbursements were properly incurred by the Consultant pursuant to and in accordance with the provisions of this Agreement.
3. The Consultant has completed all Services (as defined in the Agreement) to be performed by the Consultant.
4. Capitalized terms not defined in this declaration shall have the meanings set out in the Agreement

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. )

**FORM 2: STATUTORY DECLARATION RE ANNUAL RELEASE OF HOLDBACK**  
**STATUTORY DECLARATION BY CONSULTANT RE: ANNUAL RELEASE OF LIEN HOLDBACK**

PROVINCE OF ONTARIO ) IN THE MATTER OF  
 ) the agreement entered into  
 ) between the **City of Toronto**  
 ) and **[NAME OF CONSULTANT]** dated [DATE]  
 ) (the "Agreement")

I, \_\_\_\_\_ of the \_\_\_\_\_  
(Name) (City, Town, etc.)

in the \_\_\_\_\_  
(Regional Municipality, City, etc.)

**do solemnly declare as follows:**

1. I am employed by \_\_\_\_\_ **[NAME OF CONSULTANT]** (the "Consultant") and 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. The Consultant has paid all assessment or compensation payable to the Workplace Safety and Insurance Board.
3. All accounts for services, materials, labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Consultant in the performance of the Agreement as of the date of this Statutory Declaration (as defined in the Agreement) and for which the City might in any way be held responsible have been paid in full, except holdback monies properly retained.
4. I have no knowledge of any preserved or perfected liens in respect of the Project that have not been satisfied, discharged or otherwise provided for under the *Construction Act*, and I am not aware of any grounds supporting any claims for lien against the Project.
5. I have no knowledge of any written notice of lien arising in relation to the Project has been received by the Consultant that has not been withdrawn by the lien claimant.
6. All Claim Notices of the Consultant for Claims relating to Services completed up to the date of this Statutory Declaration have been submitted in accordance with the terms of the Agreement, and the only Adjudications in respect of disputes as described in Article 8 and Article 8.1 of the Agreement are Adjudications which the Consultant has provided a Claim Notice to the City in accordance with Article 7 of the Agreement.

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__.	)
	) _____
	) Signature
	)
	) Print Name: _____
_____	)
A Commissioner, etc.	) Title: _____

**Master Consulting Agreement Doc5572034849**  
**Schedule G – Part 5 of RFSQ**

**SCHEDULE G – PART 5 OF RFSQ**

The parties agree that Part 5 of the RFSQ is incorporated here by reference.

**SCHEDULE H – CONSULTING ROLE RATES**

**[Note to Finalization before Execution: Insert Consulting Role Rates from RFSQ]**