

THE CORPORATION OF THE CITY OF MISSISSAUGA



MATERIEL MANAGEMENT

**Professional Services Agreement
(NON-IT)**

2010

April 6, 2010

"The following agreement is strictly for reference only and is subject to change by the City of Mississauga without notice. Without limiting the foregoing, the following agreement should not be relied upon, unless such intention to do so, is expressly and in writing provided by the City of Mississauga. Please always refer to the bid request for the applicable agreement(s) that pertains to each procurement."

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made as of _____, 200_.

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(hereinafter called the "City")

- and -

[INSERT LEGAL NAME OF CONSULTANT]

(hereinafter called the "Consultant")

Recitals:

WHEREAS the City wishes to _____ (the "Project"); **[INSERT BACKGROUND – DESCRIBE PROJECT BRIEFLY]**

AND WHEREAS _____; **[INSERT OTHER RELEVANT BACKGROUND – e.g. if RFP was issued, briefly state background]**

AND WHEREAS the City wishes to enter into an agreement with the Consultant for professional consulting services to carry out the Project;

NOW THEREFORE, in consideration of the foregoing background, the covenants in this Agreement, and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged), the Parties agree as follows:

ARTICLE I: INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall have the following meanings:

"Additional Fees" means additional Consultant fees for additional work to be conducted by the Consultant as a result of a City approved Change Order;

“Agreement” means this Agreement and all schedules attached hereto;

“Change Order” means a document issued by the City requesting the Consultant to amend, add, or delete any Services as identified in the Schedule A;

“City Personnel” means the City, its Mayor and Councillors, officers, employees (including but not limited to the City’s Contract Manager), agents, contractors, consultants, invitees, and licensees;

“City’s Contract Manager” means the City’s _____, or his/her designate;

“City’s Manual” means the City’s Accessibility Standards for Customer Service guide known as “May I help you?: Understanding Accessible Customer Service”, as provided by the City to the Consultant and as may be amended from time to time; **[Insert this if the Consultant would deal with the public on behalf of the City or assists in developing policies and procedures governing provision of goods and services to the public.]**

“Component Fee” means the fee for the Services for each component of the Project as identified in Schedule A; **[Insert this if the services are payable by components]**

“Confidential Information” means:

- (i) confidential, secret or proprietary information, including data, technical information, financial information, security information and plans, business information (including business plans, strategies and practices) of the City which is disclosed to or obtained by the Consultant in connection with the fulfillment of the terms of this Agreement;
- (ii) all information related to the operations of the City upon which comes to the attention of the Consultant in the course of carrying out the Services; and
- (iii) all data, formulae, preliminary findings, and other material developed in pursuance of the Project

but excludes any such information, which:

- (a) are or become publicly available;
- (b) are already rightfully in the possession of the Consultant and not subject to any pre-existing obligation of confidentiality;
- (c) are independently developed by the Consultant outside the scope of this Agreement; or
- (d) are rightfully obtained by the Consultant from third parties;

“Consultant’s Contract Manager” means the individual appointed by the Consultant to serve as its primary representative under this Agreement;

“Consultant Personnel” means the Consultant, the Consultant’s Contract Manager, its officers, employees, agents, contractors, sub-contractors, permitted invitees, consultants, and any other persons that the Consultant involves in the provision of the Services;

“Project” has the meaning(s) specified in the Recitals;

“Recitals” means the part of this Agreement that sets out the background and appears at the beginning of this Agreement;

“RFP” means the Request for Proposal issued by the City on [insert date] which gives rise to this Agreement; **[Insert this definition if a RFP was issued.]**

“Services” means the tasks and activities as provided in section 2.2;

“Total Fee” means the total of all the fees for the performance of the Services as shown in Schedule B.

1.2 Sections & Headings

The division of this Agreement into Articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless inconsistent with the subject matter or context, references to Articles and sections are to Articles and sections of this Agreement.

1.3 Number, Gender, Person

Unless inconsistent with the subject matter or context, words importing the singular number shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders.

1.4 Currency

Except where expressly provided otherwise, all amounts in this Agreement are stated and shall be paid in Canadian currency.

1.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Subject to Article X, the parties submit to the exclusive jurisdiction of the courts of the Province of Ontario for the resolution of any and all disputes relating to this Agreement or any of its terms.

1.6 Schedules

The following are the Schedules which are attached to and form an integral part of this Agreement:

Schedule A: Scope of Services

Schedule B: Fee Schedule

ARTICLE II: RETAINER

2.1 Retainer

Subject to and in accordance with the terms of this Agreement, the City retains the Consultant and the Consultant accepts the retainer and agrees to provide the Services to the City.

2.2 The Services

The Consultant shall perform the following tasks and activities (collectively called the "Services"):

2.2.1 carry out the tasks and activities as identified in this Agreement, including but not limited to those identified in Schedule A;

(If no workplan is yet formulated by the time this agreement is entered into, add the following subsection and adjust the numbering for the rest of the subsections accordingly:

prepare and submit to the City's Contract Manager, within ____ (insert timeframe) of the effective date of this Agreement, a detailed workplan based on the Consultant's proposal satisfactory to the City's Contract Manager ("Workplan"), consisting of a detailed estimate of the time necessary to complete all the tasks, activities and deliverables for the Project. The Workplan shall be deemed to form part of Schedule A upon its approval by the City's Contract Manager.)

2.2.2 carry out and complete all the tasks and activities, and prepare and submit the deliverables for the Project, in accordance with the time frame as set out in Schedule A (*or Workplan as applicable*) or as otherwise agreed upon by the City in writing;

2.2.3 as may be required by the City's Contract Manager throughout the course of the Project, participate in meetings with, make presentations to, and respond to questions from such groups and individuals as identified by the City's Contract Manager respecting any aspect of the Project;

2.2.4 to the extent not already covered in this section 2.2, any research and development associated with the Project.

Insert the following subsection 2.2.5 if Consultant deals with the public on behalf of the City or assists in developing policies and procedures governing provision of goods and services to the public:

2.2.5 provide training on the City's accessible customer service standards to all Consultant Personnel delivering the Services by, at a minimum, providing a copy of the City's Manual to all such Consultant Personnel and requiring them to review the same before, or as soon as practicable after, they start any work under this Agreement. The Consultant agrees that new training may be required from time to time should the City's Manual be amended, and shall deliver such new training in accordance with the standard of training as provided in this subsection 2.2.5.

2.3 Performance of Services

The Consultant shall perform the Services in accordance with the terms and conditions as set out in this Agreement. Without limiting the generality of the foregoing, the Consultant shall perform the Services:

- 2.3.1 in a professional manner and with the highest industry standards reasonably applicable to the performance of such obligations;
- 2.3.2 to the reasonable satisfaction of the City's Contract Manager;
- 2.3.3 expeditiously to meet the timelines for the completion of each deliverable of the Services as approved by the City;
- 2.3.4 in such a manner as is in the best interests of the City; and
- 2.3.5 in compliance with all applicable laws, including applicable City by-laws and policies, including but not limited to the City's Respectful Workplace Statement of Commitment (which may be found on <http://www.mississauga.ca/portal/business/tendersandbids>).

2.4 Consultant Personnel

- 2.4.1 The Services to be performed by the Consultant under this Agreement shall be performed by the persons identified as the project team members in the Consultant's proposal.
- 2.4.2 The Consultant agrees that it will not change any of the Consultant Personnel and/or their respective roles as listed in the Consultant's proposal unless the City's Contract Manager approves such a change in writing or if the City's Contract Manager requests such a change in writing. If the City's Contract Manager requests such a change in writing then the Consultant shall make the changes as required within five (5) business days or in such other reasonable time frame as approved by the City's Contract Manager.

- 2.4.3 The Consultant shall be responsible for any impact on the Project sustained by the removal and/or changes to the Consultant Personnel, including all costs incurred, unless such changes are requested by the City and **not** as a result of a performance issue with the Consultant Personnel. In any event, no changes to the fees as indicated in Schedule B shall be permitted without the approval of the City's Contract Manager.
- 2.4.4 The Consultant's Contract Manager shall:
- a) have overall responsibility for managing and coordinating the performance of the Consultant in a prompt and professional manner;
 - b) be authorized to act for and on behalf of the Consultant;
 - c) meet with the City's Contract Manager at regular agreed-upon intervals to review progress and resolve any issues relating to the Services; and
 - d) attempt to resolve disputes in accordance with this Agreement.
- 2.4.5 The Consultant shall not employ, engage, retain or utilize any subcontractors to assist with the performance of the Services or any other obligations under this Agreement without the prior written approval of the City's Contract Manager or except as identified in the Consultant's proposal.
- 2.4.6 The Consultant shall be solely responsible for the payment of any subcontractors employed, engaged, retained or utilized by it.

ARTICLE III: FEES & PAYMENT

3.1 Fee for the Services

For the performance of the Services, the City shall pay the Consultant a maximum of _____, and in accordance with Schedule B. All fees shall be exclusive of PST and/or GST. All fees shall be inclusive of all disbursements and expenses, and all staff, equipment, accommodations and technical assistance necessary to perform the Services and all overhead expenses in connection therewith. The City shall only be responsible to pay the Consultant for Services satisfactorily performed.

- 3.1.1 The Vendor is required to be registered and in full compliance with legislative requirements for the Goods and Services Tax and the Ontario Retail Sales Tax and/or Harmonized Sales Tax (HST).
- 3.1.2 Once the HST is in effect, all payments made to the Vendor by the City shall be adjusted after taking into account the portion of the goods and/or services affected by the change, any input credits received by the Vendor, the transitional rules and all other relevant factors. Upon the City's request at any time and from time to time, the Vendor shall

provide necessary detailed documentation to the City to support adjustments to payments under the Contract due to implementation of the HST. In the event of any dispute between the parties concerning the adjustment, the matter will be finally resolved by an independent audit firm acceptable to both the City and the Vendor.

- 3.1.3 Invoices paid to addresses outside Canada shall be subject to applicable Withholding Taxes in accordance with the *Canadian Income Tax Act* and applicable treaties.

3.2 Fee for Change Orders

3.2.1 The City and the Consultant may agree in writing on the applicable Additional Fees for any additional Services required as a result of a Change Order.

3.2.2 If a Change Order results in a reduction of the Services to be performed by the Consultant, the total Component Fee or Total Fee, as applicable, payable by the City shall be adjusted accordingly.

3.3 Obligation to Perform

Even if a fee is based on a per diem or hourly or other time-based rate, or on an estimate of disbursements and expenses, the Consultant shall perform all the Services in accordance with the standards in section 2.3 notwithstanding the actual time spent by the Consultant, or the actual disbursements or expenses incurred in performing the Services may be greater than the Total Fee, Component Fee, or Additional Fee, as applicable. Neither such rate, expenses, or disbursements nor any provision of this Agreement shall relieve the Consultant from performing all the Services or performing to a lower standard than that stated in section 2.3, or reduce the Consultant's obligation to one of performing only some proportionate or other part of the Services.

3.4 Invoices

3.4.1 The Consultant may submit an invoice to the City for the Services performed and disbursements made in accordance with this Agreement _____. (*Insert frequency of submissions*) The Consultant shall submit any supporting documentation to substantiate the invoice if so requested by the City's Contract Manager.

3.4.2 Any invoice issued by the Consultant shall clearly identify, at a minimum:

- a) the name of the Project;
- b) the Services performed and applicable disbursements for which the invoice is issued;
- c) the amount invoiced showing separately any applicable Goods and Services Tax (**GST**) with the GST registration number; or the Harmonized Sales Tax (**HST**) as applicable and;

d) the Purchase Order number for the Project as provided by the City at the commencement of the Project.

3.4.3 The City may withhold the full or part of the payment on an invoice if the City is not satisfied with the details and information provided on the invoice and any supporting documentation.

3.5 Payment

The City shall pay the amount of any invoice submitted in accordance with section 3.4 within thirty (30) days of the date of receipt, provided that the Services as identified on the invoice have been performed to the reasonable satisfaction of the City's Contract Manager. The parties acknowledge that the City may, in its sole discretion, avail itself of any prompt payment discount offered by the Consultant.

ARTICLE IV: AUDIT

4.1 Keeping of Records

The Consultant shall keep, in accordance with generally accepted accounting principles, consistently applied, such proper accounts, receipts, vouchers and other documents as will record to the satisfaction of the City, the Services performed and any related expenses incurred, if any. *[Add in this statement if subsection 2.2.5 is inserted: The Consultant shall also maintain a record of all training provided to the Consultant Personnel on the City's accessible customer service standards as required under subsection 2.2.5, which shall include at a minimum the dates on which the training is provided and the number of individuals to whom the training is provided.]*

The Consultant shall retain all such accounts, records, receipts, vouchers and other documents during the term of this Agreement and at least seven (7) years following its termination or expiry.

4.2 Reviewing Records

4.2.1 If requested by the City, the Consultant shall make available to the City such time sheets, accounts, records, receipts, vouchers and other documents as the City's Contract Manager considers necessary for the purpose of substantiating the Consultant's invoices.

4.2.2 The City may, at any time and from time to time during the term of this Agreement and seven (7) years following its termination or expiry, audit and inspect the Consultant's accounts, records, receipts, vouchers, records of accessible customer service training (if applicable), and other similar documents relating to performance of the Services and this Agreement and shall have the right to make copies thereof and take extracts therefrom.

4.2.3 The Consultant shall make available to the City the materials referred to in this section 4.2 in order that the City may carry out audits and inspections as provided in this section 4.2 and shall furnish the City and its authorized representative with

all such information as the City or such representatives may from time to time require with reference to such materials. The Consultant shall furnish such materials to the City within such timeframe as reasonably required by the City. Without limiting the generality of the foregoing, the Consultant shall furnish any required records of accessible customer service training to the City within ten (10) business days of the City's request, unless otherwise agreed upon by the City.

ARTICLE V: CONFIDENTIALITY

5.1 Obligation to Keep Confidential

- 5.1.1 Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Freedom of Information and Protection of Privacy Act* (hereinafter referred to as the "Governing Privacy Legislation"), no Confidential Information shall be disclosed in any manner whatsoever without the approval in writing of the City's Contract Manager.
- 5.1.2 In greater particularity and subject to the Governing Privacy Legislation, both during and after the term of this Agreement, the Consultant agrees:
- a) During the term of the Agreement, it will be necessary for the City to disclose and make available to the Consultant City's Confidential Information. The Consultant acknowledges and agrees that any such Confidential Information is confidential and proprietary information of the City.
 - b) The Consultant agrees to use and reproduce any Confidential Information only as permitted under this Agreement or as needed to perform its duties hereunder.
 - c) Except as provided for in this Agreement, the Consultant agrees not to disclose the City's Confidential Information without the City's written consent, and agrees to take such care to protect the confidentiality of all Confidential Information as would be taken by a reasonable party to protect its own confidential information from disclosure.
 - d) The Consultant agrees that in the event that it receives a request for disclosure of, production of, or provision of access to City Confidential Information, it shall, prior to any such disclosure, production, or provision, notify the City immediately in writing of such request and shall not agree to such disclosure without the consent of the City in writing, which consent may only be provided should the disclosure be permitted under the Governing Privacy Legislation.
 - e) The Consultant shall indemnify and save the City and City Personnel harmless from any losses or damages directly or indirectly caused by the disclosure of Confidential Information by the Consultant or any of the Consultant Personnel, successors or permitted assigns regardless of

whether the Consultant was under subpoena, warrant, order, demand or other request from either a Canadian jurisdiction or from a foreign court, agency, or other jurisdiction to disclose such information.

- f) The Consultant acknowledges that use of the City's Confidential Information in a manner contrary to the provisions of this Agreement would cause the City irreparable harm for which money damages could not make whole and hereby consents to the full extent that it is able to do so to any injunctive relief entered by any court of competent jurisdiction prohibiting it from such violation of this Agreement.
- g) The Consultant agrees that the City may retain a third party compliance auditor, of its choice, from time to time as it sees fit, in order to ensure compliance by the Consultant of all confidentiality requirements hereunder. In the event of any non-compliance that the City determines to be material, the Consultant shall pay for any and all audit expenses, in addition to all other remedies available to the City.

5.2 Employees to be Bound

The Consultant represents and warrants in favour of the City that it shall cause all of the Consultant Personnel to comply with the obligations imposed upon the Consultant in section 5.1.

5.3 Publication

Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and subject to any court order issued by a court of competent jurisdiction, both during and after the term of this Agreement, and in addition to any rights and obligations under section 5.1, the Consultant shall not publish or issue any information regarding the Project without the prior written consent of the City's Contract Manager.

ARTICLE VI: INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of IP Rights

6.1.1 Subject to subsection 6.1.2, neither party will gain by virtue of this Agreement any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other.

6.1.2 The City shall retain exclusive ownership in all components and deliverables created under this Agreement and shall own all copyright, patent, and any other intellectual property rights, title and interest in any ideas, designs, concepts, know how, components and deliverables, documentation or techniques, or any other material developed pursuant to this Agreement.

6.2 Licence to use Pre-existing Information

In the event that any Consultant's specifications, designs, plans, drawings, software, data prototypes or other technical or business information that existed prior to the performance of the Services ("Pre-existing Information") is incorporated in any components or deliverables created pursuant to this Agreement, the Consultant grants to the City a non-exclusive, irrevocable, perpetual, royalty-free license to use such Pre-existing Information as part of the components and deliverables created under this Agreement, including the use of such components or deliverables for use by third parties authorized by the City.

6.3 Waiver of Moral Rights

The Consultant shall waive any and all moral rights arising under the *Copyright Act* or at common law in any designs, concepts, component, documentation or any other material developed pursuant to this Agreement as against the City and anyone claiming rights of such nature from or through the City.

ARTICLE VII: INSURANCE & INDEMNITY

7.1 Insurance

7.1.1 During the term of this Agreement, the Consultant shall procure and maintain the following insurances as a minimum:

- a) commercial general liability for all aspects of the Project and the operations of the Consultant in delivering the Services against claims for personal injury, bodily injury or property damage or loss, indemnifying and protecting the City, City Personnel, the Consultant, and the Consultant Personnel, to the inclusive limit of not less than _____ Dollars on a per occurrence basis. Such insurance shall specifically state by its wording or by endorsement that:
 - i) the City is included as an additional insured under the policy;
 - ii) the policy shall have provisions for cross liability and severability of interests as between the City and the Consultant; and

(Add any applicable stipulations)

- b) errors and omissions insurance of not less than _____, with a maximum deductible of _____.

7.1.2 The insurance as required under subsection 7.1.1 shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material is given by the insurers to the City at least sixty (60) clear days before the effective date thereof. Any revisions must be submitted to the City's Contract Manager for approval.

7.1.3 The Consultant shall provide the City with a certificate of insurance indicating compliance with this section 7.1 upon execution of this Agreement.

(insert additional clause for WSIB if required:

7.1.4 During the Term of this Agreement, the Consultant shall remain in good standing with the Workplace Safety and Insurance Board and shall provide the City with a valid letter of good standing issued by the Workplace Safety and Insurance Board upon execution of this Agreement and when requested to do so by the City's Contract Manager.

7.2 **General Indemnity**

The Consultant shall, both during and following the term of this Agreement, save harmless and fully indemnify the City and City Personnel from and against all costs, actions, suits, claims, and demands whatsoever which may be brought against or upon the City and/or any of the City Personnel as a result of, or that arise from or are in any way incidental to, the misconduct of the Contractor and/or Consultant Personnel, or the failure to perform, or the failure to exercise reasonable care, skill or diligence in the performance of this Agreement by the Consultant and/or the Consultant Personnel.

7.3 **Intellectual Property Indemnity**

7.3.1 The Consultant shall defend, at its expense, any action brought against the City and/or any City Personnel to the extent that the action is based on a claim that any of the Services or deliverables or any part thereof infringes any third-party's intellectual property rights including, without limiting the generality of the foregoing, copyright, trade secret, patent or industrial design rights and the Consultant shall indemnify and hold the City and City Personnel harmless with respect to all resulting court costs, damages or settlements awarded against the City and/or City Personnel provided that:

- a) the City promptly notifies the Consultant of any matter in respect of which the foregoing may apply and of which the City has knowledge;
- b) the Consultant has sole control over the defence, settlement or compromise of any such action as long as such defence, settlement or compromise does not place any liability or obligation on the City; and
- c) the action is not over any content or data provided to the Consultant by the City.

7.3.2 If any of the Services or deliverables or any part thereof becomes, or in the Consultant's opinion are likely to become, the subject of a claim based on an alleged infringement or breach as aforesaid, the Consultant may, at its expense and option, with prior written notice to the City do one of the following:

- a) modify the applicable part of the Services or deliverable so that there is no longer any infringement or breach, provided that such modification does not adversely affect the functional capabilities of the Services or deliverable as set out herein or Change Order;
- b) procure for the City the right to continue to use the applicable part of the Services or deliverables; or
- c) substitute for the applicable part of the Services or deliverables with other components having a capability equivalent to the replaced part of the

Services or deliverables which would satisfy the Consultant's obligations as set out herein.

ARTICLE VIII: TERM & TERMINATION

8.1 Term

- 8.1.1 This Agreement shall be effective _____ and shall continue to be effective until such time as all the Services required to be performed under this Agreement are completely performed by the Consultant, unless otherwise terminated in accordance with the terms of this Agreement or by mutual agreement of the City and the Consultant in writing.
- 8.1.2 When all the Services as required under this Agreement are satisfactorily and completely performed by the Consultant as determined by the City's Contract Manager, the City shall provide written notice to the Consultant of the completion of the Project and the termination of this Agreement. The termination date indicated on the City's written notice shall constitute the termination date of this Agreement. The City's written notice under this section may be issued by the City's Contract Manager.

8.2 Events of Default

- 8.2.1 Any of the following instances shall be considered to be an event of default of the Consultant:
- a) The Consultant is in material breach of the performance of, or compliance with any material term, condition, or obligation on its part under this Agreement, which shall include but not be limited to the timely completion of any of the phases and/or deliverables.
 - b) The Consultant becomes bankrupt, insolvent or goes into receivership.
 - c) The Consultant is wound up or dissolved or otherwise ceases to carry on business.
 - d) The Consultant has knowingly made materially false, misleading, or inaccurate representations to the City.
 - e) The Consultant or any of its subcontractors:
 - (i) is not in compliance with all applicable laws in respect of the operation of its respective business;
 - (ii) is involved in a claim against or by the City in respect of any other contract, procurement or business transaction;

- (iii) is convicted of a statutory offence relating to the City which has not been cured;
- (iv) acts or behaves in a way that brings the City's reputation into disrepute; or
- (v) is related to or controlled by another person to which (i), (ii), (iii), or (iv) immediately above applies.

8.2.2 If an event of default specified in subsection 8.2.1(a) occurs, the City shall give the Consultant written notice of such default. If the Consultant does not remedy the default within such period as the City may allow in the written notice, of receiving notice of such default by the City, or if an event of default as provided in subsection 8.2.1(e) occurs, the City may terminate this Agreement upon thirty (30) days written notice.

8.2.3 The City shall have the right to terminate this Agreement immediately if an event of default as provided in subsections 8.2.1 (b), (c), or (d) occurs.

8.2.4 Termination of this Agreement by the City pursuant to this section 8.2 shall be without prejudice to any other legal or equitable remedy otherwise available to the City upon such breach or failure.

8.2.5 The City shall only be obligated to make payment on satisfactory services provided up to the date of termination of this Agreement.

8.3 No Fault Termination

In addition to the termination rights under section 8.2, the City may terminate this Agreement at any time subject to thirty (30) days written notice to the Consultant. The City shall provide appropriate compensation to the Consultant proportionate to the Services satisfactorily performed by the Consultant prior to notice of termination.

8.4 Return of Materials

Upon termination of this Agreement, the Consultant shall forthwith deliver all designs, concepts, know how, components and deliverables, documentation or techniques, or any other material created or developed pursuant to this Agreement, as well as all Confidential Information and any other materials provided to the Consultant by the City during the Term of this Agreement, to the City at a location as determined by the City.

ARTICLE IX: REPRESENTATION & WARRANTIES

9.1 Consultant's Representation & Warranties

The Consultant represents and warrants to and in favour of the City and acknowledges that the City is relying thereon as follows:

9.1.1 The Consultant has full power and authority and has obtained all necessary approvals to execute, deliver and perform this Agreement.

9.1.2 The Consultant's execution, delivery and performance of this Agreement shall not constitute:

- a) a violation of any judgment, order or decree;
- b) a material default under any material contract by which it or any of its material assets are bound; or
- c) an event that would with notice or lapse of time, constitute such a default.

9.1.3 The obligations and Services of the Consultant hereunder will be performed in a professional manner consistent with the highest industry standards reasonably applicable to the performance of such obligations.

9.1.4 The Services, including any deliverables to be completed under this Agreement, may contain or be derived from portions of materials provided by third-party suppliers and service providers under license to the Consultant. The Consultant represents and warrants to the City that it has the full and unencumbered right to grant to the City such materials either through ownership or license, including updates, modifications of and/or enhancements thereto, and that the ownership, license to and use of such materials by the City in accordance with the terms of this Agreement will not violate the terms of its agreements with its third-party suppliers and service providers.

ARTICLE X: DISPUTE RESOLUTION

10.1 Dispute

Any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement that cannot be settled by the City's Contract Manager and the Consultant's Contract Manager (a "Dispute") shall be dealt with in accordance with this Article X.

10.2 Escalation Levels

10.2.1 First Level Escalation – In the event of any Dispute, the Dispute shall first be dealt with by the City’s Purchasing Agent or designate and the Consultant’s [Insert title] (“First Level”).

10.2.2 Second Level Escalation – Should the Dispute not be resolved within five (5) days of its referral to the First Level, the Dispute shall be escalated to the City’s Director of [Insert name of City’s client division] or designate and the Consultant’s [Insert title] (“Second Level”).

10.2.3 Third Level Escalation - Should the Dispute not be resolved within five (5) days of its referral to the Second Level, the Dispute shall be escalated to the City’s Commissioner of [Insert name of City’s client department] or designate and the Consultant’s [Insert title] (“Third Level”).

10.2.4 If No Resolution – Should the Dispute not be resolved within fifteen (15) business days of its referral to the Third Level, either party may exercise its rights available at law.

10.3 Admissibility

All negotiations and settlement discussions to resolve a Dispute shall be treated as compromise and settlement negotiations between the parties and shall not be subject to disclosure through discovery or any other process and shall not be admissible into evidence in any proceeding.

10.4 Continued Performance

Except where clearly prevented by the nature of the Dispute, the City and the Consultant agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this Article X.

ARTICLE XI: GENERAL

11.1 Notice

Where in this Agreement any notice is required to be given or made by either party to this Agreement, it shall be in writing and is effective if delivered in person, sent by ordinary or registered mail, or by facsimile transmission or email addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:

- a) if delivered personally, on the date of such delivery;
- b) if by ordinary mail, on the second business day following the date of mailing;
- c) if by registered mail, on the day the postal receipt is acknowledged by the other party;

- d) if by facsimile transmission or email, when transmitted (if received before 4:30pm local time at the recipient's office or failing which on the next business day).

Any notices intended for the City shall be delivered and addressed to:

City of Mississauga
[To be filled in]

Attention:
Tel: (905) 615-3200 ext.
Fax: (905)
Email:

Any notices intended for the Consultant shall be delivered and addressed to:

[CONSULTANT'S NAME & ADDRESS]

Attention:
Tel:
Fax:
Email:

The address of either party may be changed by notice in the manner set out in this section.

11.2 No amendment

This Agreement may only be changed or amended in writing duly executed by the duly authorized representatives of both parties.

11.3 Waiver of Breaches

In the event of a breach of any provision of this Agreement by one party to this Agreement, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any such breach, except as may be specifically agreed to in writing by the party that is not in breach.

11.4 Severability of Provisions

If any of the provisions of this Agreement shall be illegal or invalid, such illegality or invalidity shall not render the whole agreement illegal or invalid, but the Agreement shall be construed as if it did not contain the illegal or invalid provision(s), and the rights and obligations of the Parties shall be construed and enforced accordingly.

11.5 Entire Agreement

11.5.1 This Agreement, the RFP and any addendum issued, any Change Order and purchase order issued by the City, and the Consultant's proposal in response to the RFP (*Delete what's not applicable*) constitute the entire agreement between the parties with respect to the subject matter of the Agreement and supersede all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written, unless they are expressly incorporated by additional reference in the Agreement.

11.5.2 Should there be a conflict between the Agreement and any related documentation, including the RFP, the order of precedence shall be as follows:

(Add & delete as needed)

- a) The contents of this Agreement preceding the Schedules;
- b) City's Change Orders (including any purchase order issued for these Change Orders);
- c) the Schedules of this Agreement;
- d) the RFP and any Addendum issued;
- e) the Consultant's proposal in response to the RFP.

11.6 Survival

Articles 4, 5, 6, and sections 7.2 and 7.3 shall survive upon termination of this Agreement.

11.7 Time

Time shall be of the essence in all respects of this Agreement.

11.8 Further Assurances

Each of the parties hereby covenants and agrees to execute and deliver such further and other agreements, assurances, undertakings, acknowledgements or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

11.9 No Partnership

Nothing in this Agreement shall be construed as creating any agency, employment relationship, partnership, principal-agent or other form of joint venture between the parties. The Consultant shall have no authority to bind the City.

11.10 Assignment

The Consultant may not assign all or any portion of its rights and obligations under this Agreement without the City’s written consent, which may be arbitrarily and unreasonably withheld.

11.11 Successors

Subject to section 11.10, this Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.

11.12 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement.

Date: _____

**THE CORPORATION OF THE CITY OF
MISSISSAUGA**

Name:
Title:

Date: _____

[CONSULTANT’S NAME]

Name:
Title:

I have authority to bind the Corporation.

SCHEDULE A

THE SERVICES

[Outline the scope of the services, make any references to proposals/RFP etc. as required]

SCHEDULE B

FEE SCHEDULE

[To be inserted]