

MASTER ROSTER SUPPLIER AGREEMENT

INDEX

ARTICLE 1 - INTERPRETATION AND GENERAL PROVISIONS	3
1.1 Defined Terms.....	3
1.2 No Indemnities from City	6
1.3 Entire Agreement	6
1.4 Severability.....	6
1.5 Interpretive Value of Contract Documents	6
1.6 Interpretive Value of Headings	6
1.7 Force Majeure	7
1.8 Notices by Prescribed Means	7
1.9 Governing Law	7
1.10 Counterparts.....	7
ARTICLE 2 - NATURE OF RELATIONSHIP BETWEEN CITY AND SUPPLIER	7
2.1 Supplier's Power to Contract	7
2.2 Representatives May Bind the Parties	8
2.3 Supplier Not a Partner, Agent or Employee	8
2.4 Responsibility of Supplier	8
2.5 Subcontracting or Assignment	8
2.6 Occupational Health and Safety	8
2.7 Duty to Disclose Change of Control.....	9
2.8 Conflict of Interest	9
2.9 Accessibility for Ontarians with Disabilities Act.....	9
2.10 Contract Binding.....	9
ARTICLE 3 - PERFORMANCE BY SUPPLIER.....	9
3.1 Commencement of Performance.....	9
3.2 Supplier's Performance	9
3.3 Use and Access Restrictions	9
3.4 Assignments.....	10
3.5 Notification by Supplier to City.....	10
3.6 Condonation Not a Waiver.....	10
3.7 Changes By Written Amendment Only	10
3.8 Supplier to Comply With Reasonable Change Requests	10
3.9 Pricing for Requested Changes.....	10
3.10 Non-Exclusive Contract, Work Volumes	11
3.11 Performance by Specified Individuals Only.....	11
3.12 Performance Review	12
3.13 City Rights and Remedies and Supplier Obligations Not Limited to Contract.....	12
ARTICLE 4 - PAYMENT FOR PERFORMANCE AND AUDIT	12
4.1 Payment According to Contract Rates	12
4.2 Default Billing and Payment Process.....	12
4.3 Hold Back or Set Off.....	13
4.4 No Expenses or Additional Charges	13
4.5 Payment of Taxes and Duties.....	13
4.6 Legislative Holdback.....	13
4.7 Construction Liens.....	13
4.8 Withholding Tax.....	13
4.9 Document Retention and Audit.....	13
ARTICLE 5 - CONFIDENTIALITY AND MFIPPA	14
5.1 Confidentiality and Promotion Restrictions	14
5.2 Confidential Information.....	14

MASTER ROSTER SUPPLIER AGREEMENT

INDEX

5.3	Restrictions on Copying.....	14
5.4	Injunctive and Other Relief	14
5.5	Notice and Protective Order	14
5.6	MFIPPA Records and Compliance	15
5.7	Survival	15
ARTICLE 6 - INTELLECTUAL PROPERTY		15
6.1	City Intellectual Property.....	15
6.2	No Use of City Insignia	15
6.3	City May Prescribe Further Compliance	16
6.4	Survival	16
ARTICLE 7 - INDEMNITY, INSURANCE AND BONDS		16
7.1	Supplier Indemnity.....	16
7.2	Supplier's Insurance	16
7.3	Subcontractor Insurance	17
7.4	Proof of Insurance	18
7.5	Proof of W.S.I.B.....	18
7.6	Supplier Participation in Proceedings	18
7.7	Bonds.....	Error! Bookmark not defined.
ARTICLE 8 - TERMINATION, EXPIRY AND EXTENSION.....		19
8.1	Immediate Termination of Contract.....	19
8.2	Dispute Resolution by Rectification Notice	19
8.3	Termination on Notice	19
8.4	Supplier's Obligations on Termination	19
8.5	Supplier's Payment upon Termination	20
8.6	Termination in Addition to Other Rights	20
8.7	Expiry and Extension of Contract.....	20

MASTER ROSTER SUPPLIER AGREEMENT

THIS MASTER AGREEMENT (the “Agreement”) is effective as [Click here to enter a date.](#)

BETWEEN:

THE CORPORATION OF THE CITY OF RICHMOND HILL

(referred to as the “City”)

and

INSERT FULL LEGAL NAME OF SUPPLIER

(referred to as the “Supplier”)

WHEREAS:

- (a) The Supplier is engaged in the business of providing HVAC maintenance and repair services;
- (b) Pursuant to an evaluation process undertaken by the City pursuant to the Request for Roster Candidates No. 2510106, the City wishes to retain the Supplier in relation to City projects that will be undertaken from time to time during the term of this agreement;

In consideration of their respective agreements set out below, the parties covenant and agree as follows:

ARTICLE 1 - INTERPRETATION AND GENERAL PROVISIONS

1.1 Defined Terms

When used in the Agreement, the following words or expressions have the following meanings:

- (a) **“Assignment”** means the aggregate of the Deliverables that pertain to a specific mandate or project described in an RFS;
- (b) **“Business Day”** means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year’s Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; National Day for Truth and Reconciliation, Thanksgiving Day; Christmas Day; Boxing Day and any other day which the City has elected to be closed for business;
- (c) **“Confidential Information”** means all information of the City that is of a confidential nature, including all confidential information in the custody or control of the City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, Confidential Information shall include:
 - (i) all data, formulae, preliminary findings, and other material developed in pursuance of the Deliverables;
 - (ii) all new information derived at any time from any such information whether created by the City, the Supplier or any third-party;

- (iii) all information (including Personal Information) that the City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but shall not include information that:
- (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the City or to any third-party;
 - (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence;
 - (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or
 - (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;
- (d) **“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where:
- (i) in relation to the Request process, the bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (1) having or having access to information in the preparation of its Submission that is confidential to the City and not available to other bidders; (2) communicating with any person with a view to influencing preferred treatment in the Request process (including but not limited to the lobbying of decision makers involved in the Request process); or (3) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive Request process and render that process non-competitive and unfair; or
 - (ii) in relation to the performance of its contractual obligations in a City contract, the Supplier’s other commitments, relationships or financial interests (1) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (2) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;
- (e) **“Contract”** means the aggregate of the following documents: (i) this Master Agreement, including any schedule attached at the time of execution and referred to in Section 1.5; (ii) the Request, including any addenda; (iii) the Submission; (iv) RFS(s); and (v) any amendments to any of the foregoing documents executed in accordance with the terms of the Agreement;
- (f) **“Deliverables”** means everything developed for or provided to the City in the course of performing under the Contract or agreed to be provided to the City under the Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors more particularly described in the Request and/or any RFS, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;
- (g) **“Expiry Date”** means [Click here to enter a date.](#) or, if the original term is extended, the final date of the extended term;

- (h) **“Indemnified Parties”** means the City, and its Personnel;
- (i) **“Industry Standards”** include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Services of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices;
- (j) **“Intellectual Property”** means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;
- (k) **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56*, as amended;
- (l) **“Person”** if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;
- (m) **“Personal Information”** means recorded information about an identifiable individual or that may identify an individual;
- (n) **“Personnel”** refers to the respective party’s employees, contract personnel, officials, agents and volunteers and, in the case of the Supplier, directors, officers, affiliates, partners, subcontractors and third party consultants and, in the case of the City, its elected officials.
- (o) **“Proceeding”** means any action, claim, demand, lawsuit, or other proceeding;
- (p) **“Rates”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes, excluding Harmonized Sales Tax; (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law;
- (q) **“Record”**, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the City to the Supplier, or provided by the Supplier to the City, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract;
- (r) **“Requirements of Law”** mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;
- (s) **“Request”** means the Request for Roster Candidates for HVAC Maintenance and Repairs, reference number RFR-2510106, issued by the City for the Services and any addenda to it;
- (t) **“Request for Services” or “RFS”** means the document which is the means by which the City will specify the deliverables for which it seeks an estimate and, if accepted by the City, the means by which the price and timelines shall be rendered;

- (u) **“Submission”** means all the documentation submitted by the Supplier in response to the Request;
- (v) **“Supplier Address”** and **“Supplier Representative”** mean:
Address
Contact
- (w) **“Term”** means the period of time from the effective date first above written up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

1.2 No Indemnities from City

Notwithstanding anything else in the Contract, any express or implied reference to the City providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City, whether at the time of execution of the Agreement or at any time during the Term, shall be void and of no legal effect.

1.3 Entire Agreement

The Contract embodies the entire agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the date of execution of the Agreement.

1.4 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

1.5 Interpretive Value of Contract Documents

In the event of a conflict or inconsistency in any provisions in the Contract:

- (a) the main body of the Agreement shall govern over any schedules to the Agreement;
- (b) the Agreement (including its schedules) shall govern over the Request and the Submission;
- (c) the Request shall govern over the Submission and any RFS executed;
- (d) any addendum(s) to the Request shall govern over those documents that are to be amended by its/their contents.

The following are the schedules to the Agreement: **[insert names and titles or n/a]**.

1.6 Interpretive Value of Headings

The headings in the Contract are for convenience of reference only and in no manner modify, interpret or construe the Contract.

1.7 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

1.8 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, electronic mail or facsimile and shall be addressed to, respectively, the City Address to the attention of the City Representative and to the Supplier Address to the attention of the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, electronic mail or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery, electronic mail or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

1.9 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.10 Counterparts

This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a 'pdf' format data file, or is electronic (including, without limitation, a DocuSign signature), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf", or electronic signature page were an original thereof.

ARTICLE 2 - NATURE OF RELATIONSHIP BETWEEN CITY AND SUPPLIER

2.1 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the City under this Contract.

2.2 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

2.3 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The Supplier shall not hold itself out as an agent, partner or employee of the City. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the City and the Supplier or any of the Supplier's Personnel.

2.4 Responsibility of Supplier

The Supplier shall be liable for any damages, costs, expenses, losses, claims or actions arising from either a breach, violation or non-performance of the terms of the Contract or from any errors, omissions, negligent acts or wilful misconduct relating to any Deliverables by itself or by its Personnel. The Supplier shall advise its Personnel of their obligations under the Agreement and shall ensure their compliance with the applicable terms of the Agreement. This paragraph shall survive the termination or expiry of this Contract.

2.5 Subcontracting or Assignment

The Supplier may subcontract or assign the whole or any part of the Contract or an RFS or any monies due under it only with the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. Without limiting the generality of the conditions which the City may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. At the request of the City, prior to the issuance of any payment by the City, the Supplier shall provide a declaration from every subcontractor that it has been paid in full for all services and materials provided. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the City.

2.6 Occupational Health and Safety

With respect to its own workers and subcontractors, if any, the Supplier will be responsible for meeting all of the "employer" obligations under the Occupational Health and Safety Act (Ontario) (the "OHSA") and shall ensure that the Deliverables are provided in accordance with the OHSA and its regulations, as well as any City safety policies with which the Supplier has been provided. This includes, but is not limited to, the duties to: provide a safe workplace, provide information and educate workers on workplace hazards, appoint a competent supervisor, prepare and provide a health and safety policy, implement a comprehensive health and safety program to support such policy and take every reasonable precaution to protect the health and safety of its workers. Without limiting the generality of the foregoing, the Supplier shall provide all safety equipment necessary to protect its own workforce and all persons affected by a Supplier's work relating to any Assignment, shall ensure such equipment is at all times in good working order and shall ensure its staff who operate the equipment are fully trained and qualified to do so. The Supplier shall immediately notify the City of any Ministry of Labour orders or charges issued to the Supplier and provide the City with copies of such orders or charges.

2.7 Duty to Disclose Change of Control

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

2.8 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the Contract upon giving notice to the Supplier where: (a) the Supplier fails to disclose an actual or potential Conflict of Interest; (b) the Supplier fails to comply with any requirements prescribed by the City to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Contract.

2.9 Accessibility for Ontarians with Disabilities Act

In accordance with the City's obligations pursuant to O. Reg. 191/11, Integrated Accessibility Standards made under the Accessibility for Ontarians with Disabilities Act, 2005 ("AODA"), the Supplier must ensure that all employees, agents or others for whom it is responsible receive training in relation to the provision of any goods and services under this contract to persons with disabilities. The Supplier acknowledges and agrees to comply with the requirements of the AODA. Without limiting the foregoing, the Supplier shall ensure that all final reports or other documentation comprising the Deliverables are provided to the City in a format that conforms to the requirements set out in O. Reg. 191/11 for accessible websites and web content.

2.10 Contract Binding

The Contract shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 3 - PERFORMANCE BY SUPPLIER

3.1 Commencement of Performance

The Supplier shall commence performance upon receipt of written instructions from the City.

3.2 Supplier's Performance

The Supplier shall provide the Deliverables for any Assignment fully and diligently in a professional, timely and competent manner using persons qualified and skilled in their occupations. All Deliverables will be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the City in a rectification notice. It shall be the responsibility of the Supplier to ensure the appropriateness of proposed personnel for any Assignment. The Supplier shall further ensure that all equipment, machinery and tools required for the performance of any Assignment are in working order, maintained in good repair and operated only by personnel trained and qualified to do so.

3.3 Use and Access Restrictions

The Supplier acknowledges that unless it obtains specific written preauthorization from the City, any access to or use of City property, technology or information that is not necessary for the

performance of its contractual obligations with the City is strictly prohibited. The Supplier further acknowledges that the City may monitor the Supplier to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Supplier.

3.4 Assignments

The City may require the Supplier to provide any of the Deliverables by issuing an RFS in writing, setting out a brief description of the Deliverables, any bonding requirements, the timeframes, and any other requirements of the City for the Assignment. The City may request the Supplier to review a specified project for the purpose of the Supplier providing the City with the estimated number of hours and calendar days required for completion of the project, the applicable Rates, number and types of the skill sets and/or employees required, estimated material cost and percentage markup - and the estimated number of hours and calendar days required to achieve completion of the proposed Assignment within the time frame specified by the City. An estimate, if requested by the City, shall be prepared by the Supplier in the manner requested by the City and at no cost to the City.

The RFS for any given Assignment may be terminated by the City sending a written notice of the termination to the Supplier. The City shall be liable to the Supplier only for the value of the Deliverables performed to the effective date of the termination of such RFS.

3.5 Notification by Supplier to City

During the Term, the Supplier shall advise the City promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract or any RFS; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract or any RFS; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

3.6 Condonation Not a Waiver

Any failure by the City to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Contract shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

3.7 Changes By Written Amendment Only

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment.

3.8 Supplier to Comply With Reasonable Change Requests

The City may, in writing, request changes to any Assignment, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable City change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Supplier is unable to comply with the change request, it shall promptly notify the City and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

3.9 Pricing for Requested Changes

Where a City change request includes an increase in the scope of the previously contemplated Deliverables, the City shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:

- (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or
- (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the City and the Supplier within a reasonable period of time;

and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

3.10 Non-Exclusive Contract, Work Volumes

The Supplier acknowledges that it is providing the Deliverables to the City on a non-exclusive basis. The City makes no representation regarding the volume of goods and services required under the Contract. The City reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

3.11 Performance by Specified Individuals Only

The person identified in a response to any RFS shall supervise the Supplier's personnel assigned to provide the Deliverables and he/she shall have authority to fully represent the Supplier throughout the Assignment. The Supplier agrees that to the extent that other specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the City, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract and that the City reserves the right to verify such qualifications. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract.

The City may require the Supplier to replace a person assigned to provide the Deliverables with another person having equal or similarly appropriate qualifications if, after commencement of the Agreement, that person is judged by the City to be unacceptable, leaves the Assignment for any reason or is unavailable due to protracted illness in excess of one week. The replacement shall be made by the Supplier within a reasonable time and shall be subject to the approval of the City, which approval shall not be unreasonable withheld.

The City may refuse personnel proposed by the Supplier for an Assignment; or may require the Supplier to replace any personnel the Supplier has assigned to an Assignment that the City deems inappropriate for an Assignment. The Supplier shall propose a suitable replacement(s) for the personnel deemed inappropriate by the City, within two (2) business days of the City's request. The replacement personnel must possess similar or better qualifications than the personnel being substituted/replaced. In such occurrences, the Supplier may request an extended deadline (if one was defined by the City). The Supplier shall not charge the City an additional or higher rate, even if the replacement personnel is of a more senior position specification than the personnel being replaced. The Supplier must use best efforts to maintain continuity of any Assignment by retaining the same personnel for the duration of the Assignment. The Supplier shall not replace any assigned personnel without the City's express written consent.

The Supplier's continued failure to propose and deliver appropriate personnel for Assignments may result in the removal by the City of the Supplier from the list of qualified suppliers established by the Request.

3.12 Performance Review

Throughout the Term, in relation to each Assignment, the City will review the Supplier's compliance with the requirements of the Contract and the quality of the Deliverables provided. Without limiting the generality of any of its other rights in this Contract, including the City's right to terminate any Assignment or this Contract, if the City determines in its review that the Supplier's performance is unsatisfactory, the City may suspend the right of the Supplier to make any future submissions to requests for provision of services to the City and/or may withhold the award of future City contracts to the Supplier.

3.13 City Rights and Remedies and Supplier Obligations Not Limited to Contract

The express rights and remedies of the City and obligations of the Supplier set out in the Contract are in addition to and shall not limit any other rights and remedies available to the City or any other obligations of the Supplier at law or in equity.

ARTICLE 4 - PAYMENT FOR PERFORMANCE AND AUDIT

4.1 Payment According to Contract Rates

The City shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract in accordance with the terms of any RFS.

4.2 Default Billing and Payment Process

Non-Construction Services

The City may specify in the Request or the RFS that the Supplier be able to invoice the City only upon the Supplier's completion of the Assignment. Unless such alternative billing and payment process is specified in an RFS, the following process shall govern for non-construction services:

- (a) the Supplier shall provide the City with a monthly billing statement no later than ten (10) Business Days after the end of each month and that billing statement shall include: (i) the reference number assigned to the Contract by the City; (ii) a brief description of the Deliverables provided for the relevant month; and (iii) taxes, if payable by the City, identified as separate items;
- (b) the City shall approve or reject the billing statement within fifteen (15) Business Days of receipt of the statement and in the event that the City rejects the billing statement, it shall so advise the Supplier promptly in writing and the Supplier shall provide additional information as required by the City to substantiate the billing statement; and
- (c) each billing statement is subject to the approval of the City before any payment is released and payment shall be made within twenty-eight (28) Business Days of such approval;

and any subparagraph set out above that is not expressly replaced in an RFS with an alternative provision shall remain in full force and effect.

Construction Services

For construction services, the provisions of Part I.1 of the *Construction Act* shall apply, as well as any provisions in the Request or the RFS with respect to a proper invoice and the billing and payment process.

4.3 Hold Back or Set Off

The City may hold back payment or set off against payment if, in the opinion of the City acting reasonably, the Supplier has failed to comply with any requirements of the Contract.

4.4 No Expenses or Additional Charges

There shall be no other charges payable by the City under the Contract to the Supplier in excess of any amounts agreed to pursuant to an accepted RFS quotation based upon the unit Rates established under the Contract.

If a maximum (upset limit) amount is agreed upon for any quoted Assignment, the Supplier shall invoice the City on the basis of the actual number of time or task units used multiplied by the applicable unit Rate to the maximum agreed amount for the Assignment.

Should any upset limit Assignment be accomplished using fewer time or task units than quoted, the Supplier shall invoice the City based upon the actual units expended.

Should any upset limit Assignment require additional time or task units to complete which would bring the total Assignment cost to the City to be in excess of the particular maximum amount established by the RFS, the Supplier shall not invoice the City for a sum total greater than the established maximum upset limit amount.

4.5 Payment of Taxes and Duties

Unless otherwise stated, the Supplier shall pay all applicable taxes, including excise taxes incurred by or on the Supplier's behalf with respect to the Contract.

4.6 Legislative Holdback

All payments shall be made subject to and in accordance with any holdback requirements of the Ontario *Construction Act*.

4.7 Construction Liens

In the event that the City incurs any expenses involving construction lien actions or other actions respecting the provision of the Deliverables, such expenses shall be paid by the Supplier on demand and the City will be entitled, subject to any required notice of non-payment pursuant to the *Construction Act*, to set off any such expenses against any payment to be made by the City to the Supplier. In the event that a claim is made against the City under the *Construction Act* in respect of work done pursuant to this Contract, in addition to any other remedy the City may have, the City may, subject to any required notice of non-payment pursuant to the *Construction Act*, withhold from any payment of the City the amount of the claim plus security for costs as provided for in the *Construction Act*.

4.8 Withholding Tax

The City shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

4.9 Document Retention and Audit

For two (2) years after the Expiry Date or any date of termination of the Contract, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for two (2) years after the Term, the Supplier shall permit and assist the City in conducting audits of the operations of the Supplier to verify (a) and

(b) above. The City shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Contract.

ARTICLE 5 - CONFIDENTIALITY AND MFIPPA

5.1 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of the City. The City may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the City without the prior written consent of the City. Without limiting the generality of this paragraph, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the City.

5.2 Confidential Information

During and following the Term, the Supplier shall: (a) keep all Confidential Information confidential and secure; (b) limit the disclosure of Confidential Information to only those of its Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the City and (ii) in respect of any Confidential Information about any third-party, the written consent of such third-party; (d) provide Confidential Information to the City on demand; and (e) return all Confidential Information to the City before the end of the Term, with no copy or portion kept by the Supplier.

5.3 Restrictions on Copying

The Supplier shall not copy any Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

5.4 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the City or to any third-party to whom the City owes a duty of confidence, and that the injury to the City or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the City is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

5.5 Notice and Protective Order

If the Supplier or any of its of its Personnel become legally compelled to disclose any Confidential Information, the Supplier will provide the City with prompt notice to that effect in order to allow the City to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the City and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the City) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those

contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

5.6 MFIPPA Records and Compliance

The Supplier and the City acknowledge and agree that MFIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- (a) to keep Records secure;
- (b) to provide Records to the City within seven (7) calendar days of being directed to do so by the City for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the City determines, in its sole discretion, that access is permitted under MFIPPA and is necessary in order to provide the Deliverables ;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the City;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to Personal Information to those of its Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the City Representative to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of the City would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to the City may be disclosed by the City where it is obligated to do so under MFIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

5.7 Survival

The provisions of this Article shall survive any termination or expiry of the Contract.

ARTICLE 6 - INTELLECTUAL PROPERTY

6.1 City Intellectual Property

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the City to the Supplier shall remain the sole property of the City at all times.

6.2 No Use of City Insignia

The Supplier shall not use any insignia or logo of the City except where required to provide the Deliverables , and only if it has received the prior written permission of the City to do so.

6.3 City May Prescribe Further Compliance

The City reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article.

6.4 Survival

The obligations contained in this Article shall survive the termination or expiry of the Contract.

ARTICLE 7 - INDEMNITY AND INSURANCE

7.1 Supplier Indemnity

The Supplier hereby agrees to indemnify, defend and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage arising out of or attributable to (a) any breach, violation or non-performance of the Contract by the Supplier or its Personnel; or (b) any errors, omissions, negligent acts or wilful misconduct by the Supplier or its Personnel in relation to and in performance of the Deliverables (collectively, "Claims").

7.2 Supplier's Insurance

Without restricting the Indemnification provisions of this Agreement, the Supplier or the Supplier's subcontractor(s), shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this Agreement, insurance satisfactory to the City with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. The Supplier shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required by this Agreement shall be primary and shall not call into contribution any insurance available to the City and any indemnified parties. The Insurance shall include but be not limited to:

- (a) **Commercial General Liability insurance** in respect of the Deliverables and all operations of the Supplier as outlined in this Agreement, against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting Supplier, their respective employees, servants, agents, contractors, subcontractors, invitees or licensees, to the inclusive limit of not less than five million (\$5,000,000) Canadian dollars per occurrence, or such amount as the City may in its discretion determine from time to time. **The required limits of insurance may be achieved by combining the Commercial General Liability limit of coverage with the Umbrella or Excess Liability limit of coverage.**

Such insurance shall specifically state by its wording or by endorsement that:

- (i) The City and any indemnified parties are included as additional insureds with respect to the operations and obligations of the Supplier and their performance of the Deliverables as outlined in this Contract;
- (ii) products and completed operations coverage;
- (iii) blanket contractual liability coverage;
- (iv) cross-liability and severability of interests clause;
- (v) employers and contingent employers liability coverage;

- (vi) tenants legal liability coverage (if applicable);
 - (vii) 30 day written notice of cancellation, termination or material change;
 - (viii) non-owned automobile coverage with blanket contractual coverage for hired automobiles; and
 - (ix) a waiver of subrogation rights which the insurers may have against the City and any indemnified parties and against those for whom the City is in law responsible.
 - (x) **No “XCU” coverage exclusion** - provides coverage for property damage and injury related to construction works such as excavation, pile driving, blasting, vibration, shoring, underpinning, raising or demolition of any building or structure, collapse of any structure or subsidence of any structure or land from any cause, explosion due to mechanical equipment, and underground works;
 - (xi) **Hoist, crane, lift and hook liability** coverage when the Supplier will be using this form of lift equipment to deliver the services required under this Contract, and equivalent to value of the equipment being lifted at any one time during the performance of the Deliverables and not less than two million (\$2,000,000) Canadian dollars per occurrence;
 - (xii) **Sudden and Accidental Pollution Liability** coverage;
 - (xiii) Includes coverage for work that contemplates the handling of **Asbestos**;
 - (xiv) **Contractor’s Equipment** coverage in an amount equivalent to the full replacement value of all contractors’ property and equipment used in the delivery of the required services.
- (b) **Automobile Liability insurance** with limits of not less than two or five million (\$2,000,000) Canadian dollars per occurrence. The policy must provide coverage for bodily injury or property damage arising out of the ownership, use or operation of all owned and/leased automobiles of the Supplier. **NOTE: It is the responsibility of the Supplier to obtain evidence of Automobile Insurance as stated above for any and all automobiles owned, and/leased by contractors or subcontractors and used in the performance of the Deliverables as outlined in this Agreement.**

All policies of insurance required by this Agreement:

- (i) Shall not be terminated, cancelled or materially altered unless written notice of change is given by the insurers to the City at least thirty (30) business days before the effective date thereof.; and
- (ii) May be subject to a deductible or self-insured retention, which shall not exceed \$250,000 per claim or per loss.

7.3 Subcontractor Insurance

The Supplier shall require each contractor or subcontractor to obtain and maintain all the necessary and appropriate insurance that a prudent person in the business of the contractor or subcontractor would maintain and shall ensure that the Supplier and Indemnified Parties are named as additional insureds on the Supplier or subcontractor’s commercial general liability policies with respect to any liability arising in the course of performance of the Supplier or

subcontractor's operations and obligations of their deliverables. Suppliers and subcontractors will be required to maintain the same coverage as required in Clause 7 of this Agreement.

7.4 Proof of Insurance

Prior to the award of this Contract, and upon each insurance policy renewal date throughout the term or extended term of this Agreement, the Supplier shall deliver to the City a City of Richmond Hill Certificate of Insurance evidencing insurance required under this Contract. A PDF version of the City Certificates can be obtained at: www.richmondhill.ca/certificatesofinsurance, completed by an authorized representative of the insurer, and signed by the insuring company.

Upon the request of the City, a copy of each insurance policy shall be made available to it. The Supplier shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

7.5 Proof of W.S.I.B.

The Supplier is responsible for all costs associated with workplace accidents and all premiums or assessments owing to the Workplace Safety and Insurance Board (the "Board"), or applicable insurance company as related to the Deliverables. Upon execution of this Agreement and from time to time at the request of the City, the Supplier shall furnish evidence of coverage for the Supplier and its subcontractors, and their respective employees under the Workplace Safety and Insurance Act or the applicable insurance policy, as related to the Deliverables. Alternatively, if applicable, the Supplier may provide a letter from the Board confirming that the Supplier or the Supplier's subcontractors are not required to be registered with the Board. The City may deduct from any monies payable or returnable to the Supplier under the Contract, such sums of money sufficient to cover any of the Supplier's default to the Board or the insurance company for assessments or premiums and any costs for income replacement, medical aid or rehabilitation, arising from an accident.

7.6 Supplier Participation in Proceedings

Without limiting the generality of 7.1 above, upon receiving written or verbal notice of any Claim, the Supplier shall promptly respond to the claimant and advise the City of the particulars of such Claim. If notice of any Claim is received directly by the City, the City will forward such notice to the Supplier. Within thirty (30) days after receiving notice of a Claim, either from the claimant or the City, the Supplier shall conduct an investigation and attempt to resolve the Claim. The Supplier shall keep the City informed of the status of any Claim received on a reasonable basis.

The Supplier shall, at its expense, to the extent requested by the City acting reasonably, conduct the defence of any Claim against any Indemnified Parties referred to in this Article and any negotiations for their settlement. The City may elect to participate in or conduct the defence of any such Claim by notifying the Supplier in writing of such election without prejudice to any other rights or remedies of the City under the Contract, Agreement, at law or in equity. Each Party participating in the defence shall do so by actively participating with the other's counsel. The Supplier shall forthwith advise the City of any settlement of any Claim and the particulars of the amount of the payment of any sums of money in connection with such settlement.

This paragraph shall survive any termination or expiry of the Contract.

ARTICLE 8 - TERMINATION, EXPIRY AND EXTENSION

8.1 Immediate Termination of Contract

The City may immediately terminate the Contract upon giving notice to the Supplier where:

- (a) the Supplier knowingly provided false information in its Submission;
- (b) if any representation or warranty made by the Supplier shall prove to have been incorrect in any material respect during the Term, and such incorrect representation or warranty is incapable of being remedied;
- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) the Supplier breaches any provision in Article 5 (Confidentiality and MFIPPA) of the Agreement;
- (c) the Supplier breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship Between City and Supplier) of the Agreement;
- (d) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City;
- (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract;
- (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the City; or
- (g) the Supplier's acts or omissions constitute a substantial failure of performance, including a failure to provide the Deliverables in accordance with the terms of the Contract and any RFS;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

8.2 Dispute Resolution by Rectification Notice

Without limiting the City's right to provide notice of immediate termination in the event of a substantial failure of performance pursuant to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the City may issue a rectification notice to the Supplier setting out the manner and time-frame for rectification. Within three (3) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the City. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the City may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow the City to immediately terminate the Contract.

8.3 Termination on Notice

The City reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Supplier.

8.4 Supplier's Obligations on Termination

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law:

- (a) at the request of the City, provide the City with any completed or partially completed Deliverables;
- (b) provide the City with a report detailing: (i) the current state of the provision of Services by the Supplier at the date of termination; and (ii) any other information requested by the City pertaining to the provision of the Services and performance of the Contract;
- (c) execute such documentation as may be required by the City to give effect to the termination of the Contract; and
- (d) comply with any other instructions provided by the City, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

This paragraph shall survive any termination of the Contract.

8.5 Supplier’s Payment upon Termination

On termination of the Contract, the City shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Services performed or money paid. In addition to its other rights of hold back or set off, the City may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

8.6 Termination in Addition to Other Rights

The express rights of termination in the Agreement are in addition to and shall in no way limit any rights or remedies of the City under the Contract, at law or in equity.

8.7 Expiry and Extension of Contract

The Contract shall expire on the original Expiry Date.

IN WITNESS WHEREOF the parties hereto have executed the Agreement effective as of the date first above written.

SIGNED, SEALED & DELIVERED
in the presence of:

INSERT FULL LEGAL NAME OF SUPPLIER

Witness Name:

Name:

Title: _____ c/s

Witness Name:

Name:

Title: _____

I/We have authority to bind the Supplier.

Recommended by:

Insert Name
Insert Title

**THE CORPORATION OF THE CITY OF
RICHMOND HILL**

Executed in accordance with the Commitment Authority delegated to me pursuant to section 6.7 of the Financial By-law 114-16, as amended by By-law 141-20.

Insert Name
Insert Title

I verify that the acquisition was made in accordance with the requirements for Competitive Procurement set out in the Procurement Policy, pursuant to section 6.8(d) of the Financial By-law 114-16, as amended by By-law 141-20.

Mary-Ann Kotylak
Manager Procurement Services

We have the authority to bind the Corporation.

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