

## CONSULTING SERVICES AGREEMENT

This consulting services agreement is between:

THE CORPORATION OF THE CITY OF GUELPH,

an Ontario municipality

("City")

- and -

,

an Ontario

("Consultant").

The parties agree as follows:

### 1. Retainer

- (1) The City hereby retains the Consultant to provide the consulting services set out herein (the "**Services**"), and the Consultant shall provide those Services to the City under the general direction and control of the City and subject to the provisions of this agreement.

### 2. Services

- (1) The Services include the following:
  - (2) With the consent of the Consultant, the City may, in writing, delete, add to, vary or otherwise alter the Services.
  - (3) The Consultant shall, in consultation with the City, promptly prepare a work plan for the provision of the Services, which work plan includes the following:

- i. A staffing schedule, indicating the estimated times to be spent or portions of the Services to be provided, by the respective partners, associates and other employees of the Consultant (“**Personnel**”);
  - ii. An estimated time line for the provision of each phase of the Services, which time line shall reflect timely, diligent provision of the Services with the utmost dispatch; and
  - iii. An estimated budget for the provision of each phase of the Services.
- (4) The Consultant shall provide the Services skilfully, competently, efficiently, effectively and economically, complete in every particular, in a good and workerlike manner, consistent with industry standards and current state of the art principles, law and practice, to the satisfaction of the City, and, unless approved by the City otherwise, in accordance with the staffing schedule and within the estimated time lines and estimated budgets.
- (5) The Consultant shall, upon request of the City, provide reports to the City on the Services, including opinions regarding the progress and resolution of the Services, and including any variances from the time lines and budgets in the work plan and explanations for such variances.

### **3. Personnel**

- (1) The Consultant shall provide the Services through Personnel approved in writing by the City.
- (2) The Consultant shall ensure that it has sufficient Personnel to provide the Services in accordance with this agreement.
- (3) The Consultant shall ensure that its Personnel have the requisite competence, knowledge, skill, ability, experience, expertise and qualifications to provide the Services.

### **4. Subconsultants and Assignment**

- (1) The Consultant may, with the prior written approval of the City, engage subconsultants to assist with provision of the Services. The Consultant shall coordinate the activities of any subconsultants, shall be liable to the City for any losses and liabilities related to any subconsultants and shall pay the costs of any subconsultants.
- (2) The Consultant shall not assign this agreement or any of the rights, benefits or obligations under this agreement.

## 5. Work Product

- (1) All information in any form, prepared by or for the Consultant as part of the Services (the "**Work Product**") shall be, unless approved by the City in writing to the contrary, the sole property of the City and the City shall own the copyright to all such information. If the Consultant owns any Work Product, or the copyright in any Work Product, it shall promptly transfer and assign such ownership or copyright to the City.
- (2) The Consultant shall promptly sign all documents and take all actions that may be necessary to ensure that the City owns the Work Product and the copyright in the Work Product.
- (3) The Consultant waives any and all moral rights arising under the *Copyright Act*, R.S.C. 1985, c. C-42 (the "**Moral Rights**") in the Work Product as against the City. The Consultant shall ensure that anyone other than the Consultant, who has any Moral Rights in the Work Product, shall waive all such Moral Rights as against the Consultant and the City.

## 6. Use of Confidential Information

- (1) In this agreement the following terms have the corresponding meanings:
  - (a) "**Confidential Information**" means any information, whether oral, written, visual, electronic, or in any other form, which is identified as confidential or that would reasonably be considered as being confidential;
  - (b) "**Disclosing Party**" means the party disclosing Confidential Information;
  - (c) "**Insider**" means, in respect of a party, every director, officer, partner, associate, employee, subconsultant, contractor or agent of the party; and
  - (d) "**Receiving Party**" means the party receiving Confidential Information, and includes all Insiders.
- (2) The Receiving Party shall use Confidential Information relating to the Services only for the purposes of this agreement.
- (3) Except as provided in this agreement, the Receiving Party shall keep confidential all Confidential Information disclosed to it by the Disclosing Party.
- (4) The Receiving Party shall not copy or transcribe into another form, any Confidential Information received from the Disclosing Party except as reasonably necessary.
- (5) The Receiving Party shall protect the Confidential Information disclosed to it by the Disclosing Party, in the same manner and to the same extent that it protects its own Confidential Information.

- (6) Upon the termination of this agreement, or earlier upon the request of the Disclosing Party, the Receiving Party shall promptly destroy or return (as directed by the Disclosing Party) all copies of the Confidential Information disclosed to the Receiving Party.
- (7) The Receiving Party may disclose Confidential Information if:
  - (a) The Disclosing Party consents;
  - (b) The Receiving Party is required by law to disclose it; or
  - (c) The Confidential Information is generally and publicly available.
- (8) If the Receiving Party is required by law to disclose Confidential Information, it shall promptly notify the Disclosing Party so that the Disclosing Party may intervene to prevent the disclosure.
- (9) The Receiving Party shall ensure that all Insiders of the Receiving Party comply with all the foregoing provisions regarding the use of Confidential Information and the Receiving Party shall be responsible for any failure by any Insider to do so.
- (10) All the foregoing provisions regarding the use of Confidential Information shall remain in effect for five years after the termination of this agreement.
- (11) The harm that would be suffered by a party in the event of a breach of any of the foregoing provisions regarding the use of Confidential Information by the other party would not be compensable by monetary damages alone. Therefore a party shall be entitled, in addition to any other remedies, to seek an injunction against a breach or threatened breach of any such provision.

## 7. **Contacts and Communication**

- (1) The Consultant shall treat \_\_\_\_\_ as the City's principal contact and source of instructions in respect of all aspects of this agreement, unless otherwise directed or permitted in writing by the City.
- (2) The City shall treat \_\_\_\_\_ as the Consultant's principal contact and source of reporting in respect of all aspects of this agreement, unless otherwise directed or permitted in writing by the City.
- (3) The Consultant shall not communicate with the media about the Services except with the prior written approval of the City.

## 8. Chargeable Amounts

(1) The Consultant shall, at its own sole cost, and at no cost to the City, except as specifically provided in this agreement or agreed to by the City in writing, obtain and supply all work, labour, Personnel, subconsultants, travel, plant, accommodations, equipment, materials, supplies and administrative, technical or other support necessary to provide the Services, including insurance, local or long distance telephone, facsimile, postage, courier or other transportation or communication costs, and photocopying, printing or other reproduction costs. For greater certainty, the Consultant shall not, unless specifically agreed to by the City in writing, charge any of such costs to the City as disbursements.

(2) The Consultant may charge the City, for the provision of the Services, amounts based on the following fee rates:

\$ per hour

\$ per hour

or such other amounts, including block fees, which are agreed to in writing by the parties for specific portions of the Services. The Consultant shall not increase any fee rate or block fee unless the City has provided its prior written consent.

(3) The Consultant may charge the City for the costs of such disbursements as the City has agreed in writing to pay.

(4) The Consultant may charge the City for any Harmonized Sales Tax payable on the fees and disbursements charged to the City by the Consultant.

(5) Notwithstanding anything to the contrary contained in this agreement, the City is not required to pay, for the total of all fees, disbursements and Harmonized Sales Tax charged pursuant to this agreement, any amount greater than \$

(6) Unless the City has provided its prior written consent to the contrary, the Consultant shall not charge the City in respect of more than a single member of its Personnel participating in any:

- (a) Internal Consultant meetings, discussions or communications;
- (b) External meetings or court or tribunal appearances; or
- (c) Reviews of correspondence, transcripts or other documents.

(7) The Consultant shall not charge the City for value-added or premium billing.

- (8) Notwithstanding anything to the contrary contained in this agreement, if the City decides at any time, for any reason, to discontinue a particular portion of the Services, the Consultant shall not charge the City for any amount over and above payment, including payment on a pro-rated basis if applicable, for the chargeable fees and disbursements incurred in respect of such discontinued portion of the Services up to the date that the City gives to the Consultant written notice of such decision to discontinue that portion of the Services, or a later date if work, already commenced by the Consultant, cannot reasonably be discontinued until such later date.
- (9) Notwithstanding anything to the contrary contained in this agreement, if this agreement is terminated prior to completion of the provision of the Services, the Consultant shall not charge the City for any amount over and above payment, including payment on a pro-rated basis if applicable, for the chargeable fees and disbursements incurred up to the effective date of such termination, or a later date if work, already commenced by the Consultant, cannot reasonably be discontinued until such later date.

## 9. Accounts

- (1) The Consultant shall provide detailed monthly accounts of amounts charged for its provision of the Services, including the following particulars:
  - (a) the number of hours worked and hourly rate, for each of its Personnel;
  - (b) the portions of the Services subject to block fees which have been completed;
  - (c) the amount of approved disbursements for which the Consultant is requesting reimbursement; and
  - (d) The amount of Harmonized Sales Tax payable on its fees and disbursements.
- (2) If requested by the City, the Consultant shall make available to the City full accounts, records, receipts, vouchers and documents for the purpose of substantiating its charges.

## 10. Payment

- (1) The City shall pay the Consultant the properly charged amounts incurred by the Consultant in providing the Services.
- (2) Despite any other provision in this agreement, the City may obtain a review of any account rendered by the Consultant, and is not required to pay such account until the review has been completed. The City is not required to pay any interest on any account in respect of any time during which such account is under review.

## 11. Indemnification and Insurance

- (1) The Consultant shall indemnify the City and the City's members of council, officers, employees, contractors and agents, against all losses and liabilities related to acts or omissions, in connection with this agreement, of the Consultant or any person for whom the Consultant is in law responsible. The Consultant shall, at the City's election, either assume the City's defence of any proceeding brought in respect of such loss or liability, or cooperate with the City in the defence, including providing the City with prompt notice of any possible loss or liability and providing the City with all information and material relevant to the possible loss or liability. This section will survive the termination of this agreement.
- (2) The Consultant shall not be liable for costs or damages arising from errors or omissions in any of the information which is supplied to the Consultant by the City.
- (3) Without restricting the generality of the provisions in this agreement related to indemnification, the Consultant shall obtain, and for as long as this agreement is in effect, maintain, pay for and, upon request by the City from time to time, provide evidence, satisfactory to the City, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario and satisfactory to the City's Procurement and Risk Manager:
  - (a) Commercial General Liability Insurance:
    - i. Including "The Corporation of the City of Guelph" as an additional insured;
    - ii. To a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence;
    - iii. Including bodily injury, personal injury, death and damage to property, including loss of use thereof;
    - iv. In a form satisfactory to the City's Procurement and risk Manager; and
    - v. Endorsed to provide "The Corporation of the City of Guelph" with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage;
  - (b) Automobile Liability Insurance:
    - i. In respect of licensed vehicles;
    - ii. To a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence;
    - iii. Including bodily injury, death and damage to property;
    - iv. Endorsed to provide "The Corporation of the City of Guelph" with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage; and
    - v. In the following forms: standard owner's form automobile policy providing third party liability and accident benefits insurance and covering

licensed vehicles owned or operated by or on behalf of the Consultant, and standard non-owned automobile form policy including standard contractual liability endorsement; and

(c) Professional Liability Insurance:

- i. To a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence; and
- ii. Subject to an annual aggregate of two million dollars (\$2,000,000).

## 12. Compliance with Law and Policies

- (1) The Consultant shall comply with all applicable federal, provincial and local laws, regulations and rules.
- (2) If the Services include testimony by any Personnel, as an expert witness, before any court or tribunal, the Consultant shall ensure that such Personnel sign such forms and follow such procedures as may be required of expert witnesses before such court or tribunal.
- (3) The Consultant shall comply with the City's Occupational Health and Safety policies, Workplace Safety and Insurance requirements and Human Rights policies.
- (4) If the Services involve the design of City facilities, the Consultant shall comply with the City's Facility Accessibility Design Manual.
- (5) The Consultant shall comply with the provisions, to the extent that they are applicable, of the *Accessibility for Ontarians with Disabilities Act, 2005* and regulations thereunder, in respect of all goods or services provided by the Consultant on behalf of the City. Without limiting the generality of the foregoing, the Consultant shall ensure that all of its Personnel, subcontractors and others for whom it is at law responsible, receive training about the provision of the goods and services contemplated herein to persons with disabilities, in accordance with section 6 of *Ontario Regulation 429/07, Accessibility Standards for Customer Service*, made under the *Accessibility for Ontarians with Disabilities Act, 2005*. This training includes, but is not limited to, training relating to, and ensuring compliance with, the policies, practices and procedures of the City respecting the provision of goods and services to persons with disabilities.
- (6) Any reference in this agreement to legislation, policies or rules is to such legislation, policies or rules as amended, extended, re-enacted or replaced.

## 13. Relationship between Parties



- (1) The Consultant is an independent contractor of the City. The Consultant shall not, except as the City may specifically authorize in writing, enter into any contracts or commitments in the name of or on behalf of the City, or bind the City in any respect whatsoever. The Consultant is not a partner, joint venturer, agent or employee of the City.
- (2) This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior commitment, representation, warranty, arrangement, understanding or agreement, written or oral, collateral or other, with respect to the subject matter hereof, existing between the parties at the date of execution of this agreement.
- (3) Until five years after the termination of this agreement, the Consultant shall not, except with the prior written approval of the City, enter into any relationship with any person, other than the City, in respect of consulting services which touch on any of the matters or issues which form the subject matter of the Services.

#### 14. City Responsibilities

- (1) The City shall provide instructions, guidance and assistance to the Consultant relating to the provision of the Services.
- (2) The City shall use reasonable efforts to make available any relevant municipal reports, background information, data, drawings, plans, surveys and any other materials relevant to the Services, which are in its possession, for use by the Consultant, and shall make available, at reasonable times, City employees for the purpose of any necessary consultation.

#### 14. Notices

- (1) A party required or permitted under this agreement to give any notification or communication ("**Notice**") shall give it in writing and shall deliver it by personal delivery, email, facsimile, courier or prepaid regular mail to an address of the other party provided for herein.
- (2) Either party may from time to time change any of its addresses by Notice given in accordance with this section.
- (3) A Notice sent by personal delivery is deemed to be delivered on the date it is personally delivered. A Notice sent by email is deemed to be delivered upon the sender receiving from the recipient a written acknowledgment of receipt. A Notice sent by facsimile is deemed to be delivered one day after the date it is

sent. A Notice sent by courier is deemed to be delivered two days after the date it is sent. A Notice sent by prepaid regular mail is deemed to be delivered three days after the date it is sent, provided that if a postal interruption occurs, the Notice is deemed to be delivered three days after the resumption of postal service.

- (4) The initial addresses for the City are as follows:

City of Guelph  
1 Carden Street  
Guelph, ON., N1H 3A1  
Tel: 519-822-1260 ext.  
Fax: 519-822-  
[@guelph.ca](mailto:info@guelph.ca)

- (5) The initial addresses for the Consultant are as follows:

## 15. Force Majeure

- (1) Whenever and to the extent a party is unable to fulfil, or is delayed or restricted in fulfilling, any of the obligations under this agreement by reason of any cause beyond the party's reasonable control, then the time for fulfilling such obligation is to be extended for such reasonable time as may be required by the party to fulfil such obligation, provided that any such inability, delay or restriction does not relate to any extent to any act or omission by such party or any of its employees, agents or others for whom it is at law responsible, and further provided that the party seeking such extension submits promptly to the other party a written Notice of extension of time and the specific reason and expected duration of such extension.

## 16. Waiver

- (1) A party may waive any of its rights, powers or remedies hereunder. No waiver is effective unless made in writing.

- (2) The failure of either party to exercise any of its rights, powers or remedies hereunder or its delay in doing so, does not constitute a waiver of any rights, powers or remedies. A single or partial exercise of a right, power or remedy does not prevent its subsequent exercise or the subsequent exercise of any other right, power or remedy.

#### **17. Termination**

- (1) The City may, with or without cause, terminate this agreement upon at least five days' written notice.
- (2) The Consultant may, with or without cause, terminate this agreement upon at least thirty days' written notice.

#### **18. Interpretation**

- (1) This agreement is to be construed with all changes in number and gender as may be required by the context.
- (2) The division of this agreement into sections, subsections and clauses is for convenience of reference only and does not affect the interpretation.
- (3) The obligations of the parties contained herein have, where applicable, the status of representations, warranties and covenants by the respective obligated party.
- (4) This agreement is to be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (5) Time is to be of the essence of this agreement, including if any extension is permitted.

#### **19. Signing**

- (1) The parties may sign this agreement in counterparts with the same effect as if the parties had executed the same document. Any counterparts are to be construed together and shall constitute one and the same original document. The parties shall deliver any executed counterparts of this agreement in accordance with the provisions set out in this agreement for delivery of Notices.
- (2) This agreement will become effective when both parties have signed it. The date this agreement is signed by the last party to sign it (as indicated by the date

associated with that party's signature) will be deemed the date of this agreement.

**20. Miscellaneous**

- (1) All provisions of this agreement are severable, and if any provision is declared invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this agreement remain in full force and effect.
- (2) This agreement is to enure to the benefit of and bind the parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (3) No change or modification of this agreement is valid unless it is in writing and signed by each party.

*[SIGNATURE PAGE FOLLOWS]*

DRAFT

Each party is signing this agreement on the date stated opposite that party's signature.

THE CORPORATION OF THE CITY OF GUELPH

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Consultant.

