

FORM OF AGREEMENT

BETWEEN:

The Town of Caledon

(referred to as the "Town")

AND:

[*INSERT FULL LEGAL NAME OF VENDOR*]

(referred to as the "Vendor")

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

1. Contract Documents

The contract between the parties in respect of:

[Insert Name of Project or Brief Description of Deliverables – should match the description used as the title of the RFX document]

is comprised of the following documents, which are collectively referred to as the "Contract":

- (a) this Agreement;
- (b) the Schedule of Deliverables, Rates and Specific Provisions, attached hereto as Schedule 1;
- (c) the Supplementary General Conditions, attached hereto as Schedule 2;
- (d) the OPSS Muni General Conditions of Contract, attached hereto as Schedule 3;
- (e) the **[*Insert RFX Document Name and #*]**, including any addenda, (the "Solicitation Document"); and
- (f) all the documentation submitted by the Vendor in response to the Solicitation Document (the "Vendor's Submission").

2. Interpretive Value of Contract Documents

Any ambiguity, conflict or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document.

3. Execution

This Agreement may be executed in counterparts each of which may be (i) delivered by facsimile transmission or (ii) scanned and delivered by email, and when so executed and delivered, will be deemed an original, of full force and effect, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below.

The Town of Caledon

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date of Signature: _____ Date of Signature: _____

I have authority to bind the Town.

I have authority to bind the Town.

Authorization By-Law No. 2019-24; Passed by the Town of Caledon Council; On the 30th day of April 2019

[Insert Vendor's Full Legal Name**]**

Signature: _____

Name: _____

Title: _____

Date of Signature: _____

I have the authority to bind the Vendor.

Schedule 1 – Schedule of Deliverables, Rates and Specific Provisions

A. Description of Deliverables

[*Describe the Deliverables. Reference can be made to the Solicitation Document and/or Vendor Submission, as appropriate*]

B. Rates and Disbursements

B.1 Maximum Fee

Notwithstanding anything else in the Contract, save and except for an adjustment to the maximum fee in accordance with the change request provisions set out in Article 4.07 and Article 4.08, the total amount payable by the Town to the Vendor under the Contract shall not exceed [*insert maximum contract amount*] (\$xxx).

B.2 Personnel and Rates

The following individuals are responsible for the provision of the Deliverables. The Rates for these individuals are set out below and shall remain fixed during the Term of this Contract:

[*insert personnel and rate information or replace this section with other applicable form of rate breakdown*]

C. Payment Terms

The payment terms for the Contract are as follows: [*insert payment terms (i.e. monthly invoices, full payment upon acceptance, progress payments, etc.)*]

D. Town and Vendor Representatives

The Town Representative and contact information for the Contract is:

[*insert name and title of the Town's representative in charge of the contract and contact details, including mailing address and email address*]

The Vendor Representative and contact information for the Contract is:

[*insert name and title of Vendor representative in charge of the contact and contact details, including mailing address and email address*]

E. Term of Contract

[NTD: OPTION A if term agreement] The Contract shall take effect on the [*insert date*] (the “Effective Date”) and shall be in effect for a period of [*insert # of years or months] from the Effective Date, expiring therefore at 5:00 p.m. (EST) on the ____ day of ____, 20 ____ (the “Expiry Date”), with an

option in favour of the Town to extend the term for an additional period of [*insert extension period, if applicable, or revise this language as necessary*], unless it is terminated earlier in accordance with the terms of the Contract or otherwise by operation of law.

[NTD: Option B if a timeline for completion will be implemented]. The Vendor shall commence the performance of the Deliverables by no later than [*insert the date for commencement of the work] and, subject to adjustment as permitted by the Contract, attain Completion of the Deliverables by [*insert the date for completion of the work].

F. Specific Provisions

F.1 Insurance

Throughout the term of the Contract (including any renewal thereof), the Vendor shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance, underwritten by an insurer (insurers) licensed to conduct business in the Province of Ontario.

Commercial General Liability Insurance, including but not limited to bodily injury and personal injury liability, property damage, products and completed operations liability, cross-liability and severability of interest, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation and contingent employer's liability coverage, having an inclusive limit of not less than \$5,000,000 per occurrence.

The Commercial General Liability Insurance Policy shall include the Corporation of the Town of Caledon as an additional insured and provide 30 days' notice of cancellation

Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the Vendor that are used or operated on its behalf for the provision of services under the Contract.

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Vendor for the provision of services.

Contractor's Equipment Floater Insurance on all equipment used during the term of this Contract. Coverage shall be provided, on a broad form basis, for construction machinery, equipment, tools and stock that will be used by the Vendor in the performance of the work. The coverage shall also include rental expenses.

Contractor's Pollution Liability for a limit of not less than \$2,000,000 per claim (occurrence). Coverage shall include bodily injury, property damage, clean-up and remediation costs.

To achieve the desired limits, umbrella or excess liability insurance may be used.

The Vendor's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Corporation of the Town of Caledon.

The Vendor shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to Contract commencement and any renewal thereof.

F.2 Failure to Enforce Not a Waiver

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

F.3 Evaluation of Performance

The Vendor will be subject to a performance evaluation during the course of, and/or at the conclusion of the assignment.

In the event that the Vendor fails to perform its obligations under the Contract, the Town may, in addition to any and all legal and equitable remedies available to it, place the Vendor on probation or suspend the Vendor from participating in future procurement opportunities.

F.4 Document Retention and Audit

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Vendor 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 seven (7) years after the expiry or termination of the Contract, the Vendor shall permit and assist the Town in conducting audits of the operations of the Vendor to verify (a) and (b) above. The Town shall provide the Vendor with at least ten (10) Business Days prior notice of its requirement for such audit. The Vendor's obligations under this paragraph shall survive any termination or expiry of the Contract.

F.5 Notification by Vendor of Discrepancies

During the Term, the Vendor shall advise the Town within 48 hours of discovering: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; 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.

F.6 Quantities

Quantities provided are estimates only and should not be interpreted as indicating a minimum or maximum order quantity. The quantities shall be used as a basis for comparison upon which the award will be made. These quantities are not guaranteed to be accurate and are furnished without any liability to the Town whether increased or decreased.

F.7 Guaranteed Maintenance

The Contractor guarantees that with ordinary wear and tear excepted, the said Work shall, for a period of 24 months from the date of Completion of the Work or such longer period as may be specified for certain materials of the Work, remain in such condition as will meet the approval of the Contract Administrator, and that the Contractor will, upon being required by the Contract Administrator, make good in a permanent manner any imperfections therein due to materials or workmanship used in the construction thereof.

Within 48 hours of notification by the Contract Administrator, the Contractor shall commence repair of any imperfection. If the repair is not commenced within a 48-hour period, the Owner will undertake the repair and deduct any costs incurred for this Work from any monies that may be due or payable to the Contractor.

F.8 Maintenance Security

Notwithstanding the requirements of the *Construction Act* or the provisions of Section GC 8.02 of the General Conditions of Contract, a maintenance security in the amount of two percent (2%) will be retained by the Owner in addition to the Lien Holdback. At the end of the maintenance period, the security will be released, reduced or retained depending on the status of the repair of the deficiencies. This maintenance security will be in addition to any other holdbacks retained. No interest on monies held back by the Owner will be paid to the Contractor.

F.9 Period of Guaranteed Maintenance

During the 24-month maintenance period, the Contractor shall be responsible for correcting any deficiencies which occur due to defective material or faulty workmanship.

The Contractor shall also maintain the required Performance Bond in full force and effect. A holdback, in the amount of two percent (2%) in the form of cash or an irrevocable Letter of Credit will be held for the maintenance period.

F.10 Liquidated Damages

Time shall be of the essence of this Contract.

If the time limit is not sufficient to permit completion of the Work by the Vendor working a normal number of hours each day or week on a single shift basis, it is expected that additional shifts will be required throughout the life of the contract to the extent deemed necessary by the Vendor to insure the Work will be completed within the time limit specified. Any additional costs occasioned by compliance with these provisions will be considered to be included in the prices bid for the various items of Work and no additional compensation will be allowed therefore.

Working time shall be charged until the date of acceptance of the Work by the Town, at which time all Work required in the Contract, including all final clean-up and trimming shall be completed.

It is agreed by the parties to the Contract that in case all the work called for under the Contract is not completed within the completion date as set forth in this Contract, damage will be sustained by the Town and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Town will sustain in the event of and by any reason of such delay and the parties hereto

agree that the Vendor will pay to the Town the sum of One Thousand Five Hundred Dollars (**\$1,500.00**) for the liquidated damages for each and every calendar day delay in finishing the Work by the completion dates specified. The completion date or working days stipulated in the Contract includes any time required for the correction of deficient work and Liquidated Damages may therefor apply to the correction of deficient work. To clarify, the completion date is as follows:

Contract Completion: **July 17, 2020**

The Town may deduct any amount due from any moneys that may be due or payable to the Vendor on any account whatsoever. The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy, action or other alternative that may be available to the Town.

Extension of contract time may be considered by the Towns Representative in accordance with the provisions of Section GC 3.07 of the OPS General Conditions of Contract. No Sunday Work shall be permitted except in the case of an emergency and then only with written permission of the and to such extent as the Towns Representative may judge to be necessary.

F.11 No Branding

The Vendor shall not place any sign at the site, public meetings, any public or private property or along curbside prior, during or after the Work without prior written permission of the Contract Manager. The Vendor shall not engage in any kind of loitering or soliciting while performing the Work.

F.12 Site Inspection

The Town reserves the right to show or inspect the site at any time and also to cancel any order or stop any work that is not performed in strict accordance with the specifications.

F.13 Operations Meeting(s)

The Vendor must attend a mandatory orientation meeting prior to the commencement of the contract. These meetings will be scheduled by the Town's Project Manager or designate. Failure of the Bidder to attend the meeting may result in cancellation of the contract and in so doing the Town will be under no obligation to the Vendor.

The Vendor will also be required to attend progress meetings as required by the Town to review the Project schedule and status.

F.14 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.

F.15 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. Where the cause of a delay event is within the Vendor's reasonable control and the Vendor is unsuccessful in either mitigating or negating the effects of the delay, the Vendor shall indemnify the Town for all reasonable costs, expenses, and damages arising from such delay, but in no event shall the Vendor be liable for any consequential, special, or indirect damages, costs and expenses incurred by the Town. 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 the 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.

- F.16** Notwithstanding any other provision of this Contract, throughout the Term, and in the course of the performance of its obligations under the Contract, the Vendor shall be fully responsible to comply with all applicable federal, provincial and municipal legislation, public health orders, directives, guidelines, policies and recommendations, as may be enacted or otherwise put into effect or issued, from time to time, by the government of Canada, the Province of Ontario, and Region of Peel Public Health, in connection with the management of the COVID-19 pandemic.

The Vendor shall provide their employees and subcontractors with all required personal protective equipment, supplies and health & safety training pursuant to all recommended health measures by all levels of government and the Region of Peel Public Health at no additional cost to the Town.

The Town reserves the right to halt all work or terminate the contract without penalty should the Vendor fail to comply with the measures noted above at the sole and absolute discretion of the Town. The Vendor shall provide the Town with evidence of the Vendor's compliance with this section upon request by the Town.

F.17 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.