

Build Toronto
Request for Proposal

RFP 2017-021

Brand Strategy Services

Branding Program Phase 1
Toronto Realty Agency

August 29, 2017

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1. Request For Proposals (“RFP”) Instructions

1.1 Response Timetable

Please review this RFP document for Brand Strategy Services (“**Services**”) to Build Toronto, on behalf of Toronto Realty Agency and please follow the required activity timeline below.

Dates	Activity
August 29, 2017	RFP distributed publically.
September 5, 2017	<p>Final Date to Submit Questions regarding the RFP. Please email all questions to alwang@buildtoronto.ca and reference the section and question number by 12:00pm EST.</p> <p>Final Date to notify Build Toronto if your firm decide not to submit the proposal back.</p>
September 13, 2017	Completed RFPs delivered at Closing Time (“Closing Time”) by 12:00 pm EST.

Three (3) hard copies and one (1) electronic version of the Response are to be submitted in a sealed envelope. The entire content of the Response (“**Response**”) must be contained within the documents contained within the sealed envelope. The envelope used to submit your Response must be clearly marked with the following information:

COMPANY NAME:

COMPANY ADDRESS:

RFP No. 2017 – 021

DATE AND TIME:

DELIVER DIRECTLY TO: Albert Wang
 Manager, Procurement and Strategic Sourcing
 Build Toronto
 200 King Street West, 2nd Floor
 Toronto, Ontario M5H 3T4

Responses **will NOT** be considered unless they are:

- Complete when submitted;
- Received by the date and time specified above; and
- Received at the address specified above.

1.2 Questions and Communications

All questions and communications regarding this RFP shall be directed to:

Albert Wang
Manager, Procurement and Strategic Sourcing
alwang@buildtoronto.ca

Build Toronto will provide both the questions and the answers to all participants by email.

It is the Respondent's ("**Respondent**") responsibility to seek clarification from Build Toronto on any matter Respondent considers to be unclear.

Build Toronto reserves the right to amend, in its sole discretion, this RFP at any time prior to the Closing Time through the issuance of addenda and Respondents are cautioned to ensure they have received and reviewed all addenda (if any) prior to submitting a Response.

Response documents must be completed in accordance with the requirements of this RFP and any subsequent addenda thereto issued by Build Toronto. Respondents may amend or withdraw their Responses at any time and for any reason prior to the Closing Time, but no amendments or changes to Responses will be accepted after the Closing Time. Any amendments must clearly indicate what part of the Response is to be amended. Amendments or withdrawals of Responses must be received at the address listed above on or before the Closing Time. Build Toronto will not return any withdrawn Responses.

2. Background on Build Toronto and Its Procurement Policies

Build Toronto Inc. is an independent and self-funding real estate and development corporation focused on maximizing the value of underutilized real estate previously owned by the City. Established by the City of Toronto, its sole shareholder, and reporting to a professional Board of Directors, Build Toronto's mandate is to unlock value in a responsible, innovative and integrated manner. This is done within the framework of delivering a financial dividend to the City and achieving City-Building, which over time: enhances employment opportunities; focuses on quality, urban design and environmental sustainability; and acts as a catalyst for responsible neighborhood regeneration. Build Toronto officially launched and started full operations in May 2010.

Build Toronto's portfolio of properties contains prime locations to support balanced development opportunities whether they be single-use, integrated-use or mixed-use. These properties include key retail and commercial hubs with proximity to prominent transit intersections, industrial properties with close access to commercial markets and high value residential sites. At the end of fiscal 2014 the land inventory had an approximate as is value of \$300 Million.

In order for Build Toronto to meet its objectives, it has implemented a procurement strategy and policy to acquire goods and services quickly, efficiently and effectively while building a high quality network of advisors, suppliers and partners. This strategy adheres to the highest standards of ethical behaviour and transparency. Build Toronto seeks to work with suppliers and partners that employ fair employment practices and have a commitment to health and safety, the environment

and corporate social responsibility. Build Toronto will seek competitive bids from all qualified providers regardless of their union affiliation.

3. Purpose of This Document

Build Toronto, on behalf of the new Toronto Realty Agency, is inviting submissions from qualified firms and teams of firms with the proven skills, resources and relevant experience to provide the Toronto Realty Agency with **Brand Strategy Services**, to develop a new brand for the agency. The scope of work as part of this RFP is considered Phase 1 of the fulsome Branding Program, and will be followed by a future phase or phases.

Build Toronto shall not be obligated in any manner to any Respondent (“**Respondent**”) unless and until a written agreement has been duly executed between Build Toronto and such Respondent relating to an approved project or the Properties.

Please note that the final contract may be entered into by a wholly-owned subsidiary of Build Toronto depending on the actual ownership of the subject property. Purchase orders will be issued in the name of this subsidiary, and invoices are to be directed to this subsidiary.

3.1 Project Information

The Toronto Realty Agency was established in May 2017 to centralize real estate activities in the City of Toronto, including real estate strategy and portfolio planning, major City-building projects, developments, real estate transactions and facilities management. The new city-wide real estate model will launch and begin business in January 2018. The centralized agency will begin by consolidating the operations of Build Toronto and the Toronto Port Lands Company.

The name "Toronto Realty Agency" is being used as a placeholder for the purposes of establishing the new agency. However, prior to its launch in January 2018, and as part of the scope of work for Brand Strategy Services, a formal exercise will need to be completed to develop a new name and narrative that will reflect the agency's newly expanded city-wide mission and its mandate focused on City-building.

The new agency will be the public face of the city-wide real estate model and the main channel for internal and external clients and stakeholders to engage with the City on real estate matters. As a result, it is essential for the new agency to develop a brand that helps demonstrate its value proposition on behalf of the City, differentiate itself from previous real estate entities (while reassuring business continuity of key files and services) and highlight its key benefits to all stakeholders.

The successful firm or team of firms will report to the City-Wide Real Estate Program team at the City of Toronto and will work closely with the agency's newly elected leadership team and a number of key stakeholders involved in the transition.

Background

This is a transformational shift for the City. The model will take a whole of government approach and apply a city-wide lens not only to ensure effective use of real estate assets but also to pursue strategic City-building opportunities.

The development of the new real estate model, including the agency, is currently in its transition phase and the agency will launch in January, 2018. The City-Wide Real Estate Program team is currently working directly with involved agencies, corporations and divisions in Q3 and Q4 of 2017 to support transition, change management and set-up activities. As more information becomes available, it will be shared with the successful firm or team of firms.

RFP Timelines

RFP Release	August 29, 2017
RFP Questions Deadline	September 5, 2017
RFP Deadline	September 13, 2017
Interview Holds for Selected Respondents	September 18, 2017 September 19, 2017 September 20, 2017
Proponent Selected	September 22, 2017
Kick-off Meeting	September 26, 2017

The Respondents selected for interviews will be notified by September 15, 2017. The project team requests that all Respondents accommodate the current interview and kick-off meeting dates scheduled above.

3.2 Scope of Work

As part of this RFP, the City-Wide Real Estate Program team is looking for formal responses from firms and teams of firms to assist in the development of a new brand for the City's real estate agency, currently known as the Toronto Realty Agency. The scope of work outlined within this RFP is considered Phase 1 and is scheduled for completion by the agency's launch in January 2018.

Phase 1 – Brand Strategy Services (September 2017 – December 2017)

Phase 1 of the Branding Program includes the development of a brand strategy, a creative brief and a new name for the agency that exemplifies the new mandate, considers its benefits and risks in the marketplace, demonstrates the centralized model for real estate service delivery and aids its communications to ensure long-term success of the agency.

Outcomes: Brand Strategy, Creative Brief and Agency Name

Following the selection of the successful proponent, a kick-off meeting is anticipated to take place on September 26, 2017. Following the kick-off meeting, all final work must be completed by Friday, November 24, 2017 to allow for the necessary Toronto Realty Agency and City of Toronto approvals and roll-out.

The team anticipates small modifications and/or follow up to the work in December 2017 to prepare for the roll-out in January 2018.

All activities and deliverables must comply with *the Accessibility for Ontarians with Disabilities Act (AODA)*.

The selected proponent will be expected to deliver the following during this first phase:

1. **Brand Strategy** that:

- Is based on research to understand the current market and broader public sector environment to better understand emerging themes and opportunities.
- Incorporates the input and decisions from key stakeholders as well as their review.
- Identifies strengths and challenges of a consolidated organization that optimizes development strategies for the City.
- Identifies key decision makers/stakeholders who will serve to accelerate the mandate.
- Defines and refines the business positioning through identification of external markets and landscape assessment of business forces.
- Defines the agency's promise, vision, mandate and values.
- Develops a clearly articulated value proposition and narrative.

- This narrative must differentiate the new agency from previous City of Toronto corporations, and help introduce and promote the new agency to key clients, stakeholders and the marketplace.
- Identifies the brand essence, including personality, tone and manner.
- Is delivered via a brand strategy report and a corresponding brand strategy presentation.

2. Creative Brief that:

- Synthesises the brand strategy into a creative direction for the visual branding exercise to take place as part of future phase of the Branding Program.
- Is delivered via a report and a corresponding presentation.

3. Name for the Agency that:

- Includes a minimum of three different options for review.
- Reflects the approved brand strategy and creative brief.
- Supports the mandate of the agency with a city-wide lens.
- Is tested in various applications such as: registered trademarks, availability of online domains, not similar with competing companies or those that operate in the same geographical or business space, etc.

4. Work Plan that:

- Ensures that all elements of the scope of work are completed on schedule, including time for approvals by the City-Wide Real Estate Program team.

5. Presentations and Consultations as required that:

- Engage and consult with key stakeholders identified by the City-wide Real Estate Program team regarding their input into the brand, brand strategy and corporate name. These meetings will take place in-person, where possible, and should be used in the development of the deliverables (brand strategy, creative brief, and agency name).
- The consultant will be expected to assist in the presentation of the draft strategy and creative brief, as well as naming options to stakeholders to help obtain support and buy in.
- Support communications to, but is not limited to:

- The Mayor and key members of Council
 - The Agency's Board
 - City Manager & Deputy City Managers
 - Strategic Communications
 - Chief Corporate Officer & the Agency's Transition Lead
 - Identified agency leadership team
 - Identified clients and stakeholders
- Includes up to 15 meetings or workshops that can be coordinated through the City-wide Real Estate Program team.
 - An interview questionnaire must be reviewed by the City-wide Real Estate Program team to be used for conducting interviews with identified stakeholders and collecting information for the brand strategy.

Working with City-wide Real Estate Program

The consultant will be required to work closely with the City-wide Real Estate Program, on behalf of the interim Board of Directors and the Agency Transition Lead, on the deliverables as outlined above. All deliverables will need to be approved by the City-wide Real Estate Program team.

Once the successful proponent is selected, the City-Wide Real Estate Program team will provide:

- All background information on the creation of the Toronto Realty Agency, including the existing mandate and strategy materials developed up until this point.
- All background information on the various business focus areas of the agency.
- The names/contact information of and introduction to all stakeholders necessary for interviews, approvals, support and buy-in.

The Board of Directors and the Agency Transition Lead retains authority to approve the brand strategy, creative brief, and agency name.

Target Pricing

The City's budget for this project is approximately \$40,000 to \$50,000. Please note that this amount is only an approximation and does not reflect the total amount that will be paid to any consultant. This amount is for information only and should not form the basis of any submission.

Qualification Requirements

The project team is looking for Respondents who demonstrate a track record of developing strong and successful brand strategies that stand the test of time and take into effect complex mandates, a number of internal and external stakeholders, a fast pace and challenging business environment and competing objectives.

The successful Respondent will have a proven ability to:

1. Extract the necessary information from senior executives, including asking the right questions, being efficient with time and summarizing what was heard.
2. Efficiently identify the success factors and challenges ahead of the agency.
3. Clearly summarize, define and articulate the narrative for the new agency to highlight its benefits and minimize its future challenges.
4. Work with, interview and keep track of the input of a number of key stakeholders.
5. Understand how to work within and navigate both business and political landscapes.
6. Understand how to position a brand considering the various findings.

3.3 Future Phases of Work

For the Consultant selected as a result of this RFP, this is the first phase of work for the Branding Program. Being selected as the firm to provide these services does not guarantee being selected for future phases of professional Services work for the property.

In order to properly manage the potential subsequent phasing, Build Toronto would like your firm to provide a per diem rate(s) for any incremental work required.

Build Toronto reserves the right to add additional properties and to select more than one firm to conduct the scope of work, if required.

Following the launch of the agency in January 2018, there will be additional phases to complete the Branding Program and develop an integrated corporate identity, including all brand assets (style guides, corporate colours, patterns, templates), as well as the development and launch of a website and social media accounts. Preliminary information about the future phases is outlined below.

- **Visual Identity Phase 2 (Projecting January 2018 – April 2018):**
Phase 2 of the Branding Program includes implementing the creative brief from Phase 1 into an integrated visual identity program which will include the production of a logo, expanded logo visuals, taglines, colour palette, style guide, stationery templates, business cards signage, etc.
Outcome: Creation of all key brand assets
- **Online Assets Phase 3 (Projecting April 2018 – June 2018):**
Phase 3 of the Branding Program includes applying the creative brief and the visual

identity program from Phase 1 and 2 into the design and launch of all online assets such as a website and all social media.

Outcome: Integrated and launched website and social media accounts

4. Response Submission Requirements

4.1 General Overview and Minimum Requirements

Build Toronto has formulated the procedures set out in this RFP to ensure that it receives Responses to this RFP through a competitive process, and that Respondents receive fair and equitable treatment in the evaluation of their Responses. Responses must, at a minimum, address the RFP content requirements as outlined below, however, Respondents may provide any additional information that they would like to be considered.

The documentation for each Response:

- i. must be submitted in a sealed envelope or container (Responses made by fax, telephone, electronic message or telegram will not be accepted) displaying the full and correct address of the Respondent; and
- ii. must be limited to 12 pages or less (excluding necessary attachments), single sided in 11 point font for the responses to the questions required in Section 4.2 below.

4.2 Response Content

The Response must contain, at minimum, the following items and should be numbered accordingly:

- a) **Executive Summary and Single Point of Contact** – Provide a summary of the key features of the Proposal and the Respondent's expertise in this specific type of services. Please provide the primary contact person, who will be the single point of contact (including **name, title, phone, e-mail, office address**) for all future communications on this RFP between Build Toronto and the Respondent and a secondary contact (including **name, title, phone, e-mail, office address**) in the event the primary contact is unavailable.

Please be advised that proponent is required to provide clear and complete contact information for the primary and secondary contact, including: name, title, phone, e-mail and office address, in the Executive Summary section. This is an important part of the RFP proposal.

- b) Please provide a one paragraph summary of the work or a list of the relevant projects completed including information on the type, size, scope, year and duration of the projects. If you cannot provide an example within the GTA, please provide another example.

For clarity purposes, the proponent may want to add company background, including company's history, total number of employees, number of engineers, capabilities, financial background, etc. to support the RFP proposal.

- c) **RFP Scope of Work, Timeline and Respondent Fee Proposal** – Provide a description and overview of the proposed scope of work, deliverables, client meeting assumptions and timeline for the work as described Section 3. It is important that the project is started and completed in an efficient and effective manner. The proponent is to provide:
- A detailed work plan indicating the project method, schedule, Gantt chart, tasks, and deliverables.
 - Provide an estimated overall timeline of the project, including an indication of the date the Respondent could commence work.
 - Key dates for major deliverables must be clearly defined in the Proponent's detailed work plan.
 - For each deliverable provide sufficient detail for the reviewers to evaluate the value of the effort expended.
 - Provide an all-inclusive fixed price (including cost break down) that includes all expenses incurred in providing the services, including overhead, profit, courier services, telephone costs, travel, accommodations, etc.
- d) **Proposed Staff Team and Resources** - Respondents should identify persons or teams who demonstrate specific knowledge of, and experience in performing similar work for projects of comparable nature, size and scope that will be utilized on this project for Build Toronto. In particular, the Respondent should provide a list of key staff that the Respondent would propose to use for this work together with their professional qualification, related project experience and an indication of their duties, responsibilities and years of experience.
- e) **RFP Terms and Conditions** – Please confirm that you have read and agree with the additional RFP terms and conditions in Appendix A of this RFP.
- f) **Contract Terms and Conditions** - Please provide comments on the Contract Agreement Terms and Conditions in Appendix B – Agreement Terms and Conditions and provide comments and proposed changes to these terms and conditions, if any. Such comments will be taken into account by Build Toronto in its evaluation of the Respondent's Response.
- Please note that the final contract may be entered into by a wholly-owned subsidiary of Build Toronto depending on the actual ownership of the subject property. Purchase orders will be issued in the name of this subsidiary, and invoices are to be directed to this subsidiary.***
- g) Proponents may propose additional/alternate scope of work, but the costing included in the proposal should reflect the proposed scope of work outlined above. Clear and detailed rationale must be provided for the additional/alternate scope of work proposed.
- h) The all-inclusive fixed prices are to include all expenses incurred in providing the above services, including overhead, profit, courier services, telephone costs, travel, accommodations, etc., but excluding HST. Please provide a list of staff who will work on the project, and hourly rates to be charged in respect of any extra work which may be requested.

If applicable, please breakdown the percentage of the staff hours for each staff which will be charged for potential extra work. Below is a random example:

Hours of Project Manager – contains 20% of the total hours

Hours of Engineer -- contains 50% of the total hours

Hours of technician --- contains 20% of the total hours

Hours of Assistant --- contains 10% of the total hours

5. Evaluation

All Responses will be evaluated through a review and analysis by Build Toronto, in order to select a firm that, in its sole discretion, meet its requirements under this RFP and provides the best overall value. However, the firm selected may not necessarily be the Respondents offering the lowest overall fee proposal and/or billing rates. Build Toronto reserves the right to request an interview with key team members at their place of business to verify information provided by the Respondent.

The evaluation of this RFP shall be based on the following criteria including, but not limited to;

- i. the compatibility of the Respondent's experience and the proposed services requested
- ii. the experience, skill set, qualifications of the proposed staff resources and team at the Respondent firm
- iii. cost competitiveness, timeliness and value proposition of the Respondent firm's proposal

The above criteria will be decided within the sole discretion of Build Toronto.

Evaluation Matrix:

Criteria	Weighting	Sub-Criteria	Sections For Reference	
WRITTEN SUBMISSION				
Firm Profile / History	5	Company capabilities, Reputation	Section 4.2 (a) and (b)	
Respondent Experience, Proposed Staff Team & Resources	10	Respondent and Sub-Consultants Experience, including Experience and Expertise Relevant to this Project; Proposed Staff Team, Primary and Secondary Contacts, Knowledge and Resources (including subcontractors, if any)	Section 4.2 (a), (b) and (d)	
Proposal & Scope of Work	20	Proposal, including Scope of Work, Work Plan (incl. milestones, deliverables, milestones, & timelines), Proposed Process, Ability to meet timeframe.	Section 4.2 (c)	
Lump Sum Price / RFP Process and Contract Terms & Conditions	25	Proposed Fees/Costs and Structure, including Disbursements Fees for Potential Future Phases/assignments (Hourly Rates) Agreement on RFP and Contract Terms and Conditions	Section 4.2 (c), (e), (f)	
INTERVIEW & PRESENTATION				
Understanding of the Assignment	15	Demonstrated understanding of the City's real estate transformation, City building vision, focus on strategy, & proactive engagement (programs, stakeholders, etc.)		
Quality of vision / potential ideas	20	High-level thoughts on vision, ideas, & narrative for this project		
Approach to engage stakeholders	5	Approach to engage key stakeholders involved in this process		
Sub-Total	100			

Respondents are cautioned that Responses will be solely evaluated upon the evaluation criteria disclosed in this RFP and no linkage of offers to donations, sponsorships or similar arrangements will be considered.

6. Reliance

The Consultant shall, at its own expense, provide written confirmation to any third party identified by Build Toronto that such third party may rely on any reports, documents and materials generated by the successful Consultant during this project.

APPENDIX A - RFP Process Terms and Conditions

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1. Governing Law

The laws of the Province of Ontario and the laws of Canada applicable therein shall apply to this RFP and any potential contract that may be formed as a result of this RFP. The Courts of the Province of Ontario shall have exclusive jurisdiction over any matters arising under this RFP and any potential contract that may be formed as a result of this RFP.

2. Incurred Costs

Build Toronto will not be liable for, nor reimburse, any potential Respondent or Respondent, as the case may be, for costs incurred in the preparation, submission or presentation of any Response, for interviews or any other activity that may be requested as part of the evaluation process or the process for the negotiation or execution of an Agreement with Build Toronto, as the case may be.

The rejection or non-acceptance of any or all Responses shall not render Build Toronto liable for any costs or damages to any Respondent firm.

3. No Collusion or Conflict of Interest

No Respondent may discuss or communicate about, directly or indirectly, the preparation or content of its Response with any other Respondent or the agent or representative of any other Respondent or prospective Respondent, except in the circumstances where, and only to the extent necessary, a Respondent is submitting its Response as a partnership, joint venture, consortium, syndicate, other business combination or on its own behalf with subcontractors. If Build Toronto discovers there has been a breach of this provision at any time, Build Toronto reserves the right to disqualify the Response or terminate any ensuing agreement.

Responses must be signed by an authorized representative or agent of the Respondent.

If, in the sole and unfettered discretion of Build Toronto, the Respondent is found to be in an actual or potential Conflict of Interest (defined below), then Build Toronto may disqualify such Respondent's Response or terminate any potential contract that Build Toronto and the Respondent may later enter into.

If, in the sole and unfettered discretion of Build Toronto, the Respondent is found to be in an actual or potential Conflict of Interest (defined below), then Build Toronto may disqualify such Respondent's Response or terminate any potential contract that Build Toronto and the Respondent may later enter into.

"Conflict of Interest" means any situation or circumstance in which:

in relation to the RFP process, the Respondent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:

- i. having or having access to information in the preparation of its Response that is confidential to Build Toronto and is not available to other Respondents;
- ii. communicating with any person with a view to influencing preferred treatment in the RFP process; or

- iii. engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or in relation to the performance of contractual obligations in any potential contract with Build Toronto, the Respondent's other commitments, relationships or financial interests:
 - a. could or could be seen to exercise and improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - b. could or could be seen to compromise, impair or be incompatible with the effective performance of any such contractual obligations.

4. Language

Responses must be entirely in English.

5. Ownership and Confidentiality of Build Toronto-Provided Data

All information provided in this RFP is provided "as is" without warranty of any kind. Build Toronto makes no express or implied representation or warranty concerning the nature or the quality of such information, or its completeness, accuracy, currency, reliability, or authenticity.

All correspondence, documentation and information provided by Build Toronto staff to any Respondent or prospective Respondent in connection with, or arising out of this RFP, any services or the acceptance of any Response:

- i. is and shall remain the property of Build Toronto;
- ii. must be treated by Respondents and prospective Respondents as confidential; and
- iii. must not be used for any purpose other than for replying to this RFP, and for fulfillment of any related subsequent agreement.

6. Ownership and Disclosure of Response Documentation

The documentation comprising any Response submitted in response to this RFP, along with all correspondence, documentation and information provided to Build Toronto by any Respondent in connection with, or arising out of this RFP, once received by Build Toronto shall become the property of Build Toronto. Responses will not be returned. Should the Respondent be chosen to enter into an agreement with Build Toronto for the purchase of goods and/or services, the Respondent's Response may be appended to and form part of such agreement with the successful Respondent and/or any purchase order that Build Toronto may issue to such Respondent.

The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter M.56, as amended, ("**MFIPPA**") applies to information provided to Build Toronto by each Respondent to this RFP. The Respondent should identify any information in its Response or any accompanying documentation that is supplied in confidence and that would meet the test for third party information to be protected from disclosure pursuant to access requests, as described in Section 10(1) of MFIPPA (the "**Protected Information**"). If no information in the Response is identified as Protected Information, Build Toronto will assume that the Response does not contain Protected Information. The confidentiality of Protected Information will be maintained by Build Toronto, except as otherwise required by law or by order of a court or tribunal. Respondents are advised that their Responses will, as necessary, be disclosed on a confidential basis, to Build

Toronto's advisers retained for the purpose of evaluating or participating in the evaluation of their Responses.

It is the responsibility of the Respondent to ensure that all personal information provided to Build Toronto on Respondent's personnel and their experience is supplied with the informed consent of such individuals. By submitting any personal information, Respondent represents and warrants that it has obtained the informed consent of the individuals who are the subject of such information to its collection, use and disclosure for the purposes of the Response and that such individuals are agreeing to the use of such information as part of the evaluation process, for any audit of the procurement process and for contract management and performance purposes.

By submitting a Response, each Respondent grants its consent for Build Toronto to check all references submitted and to conduct background financial, credit and other due diligence investigations on the Respondent as Build Toronto may deem advisable.

Build Toronto may make public the names of any or all Respondents. Respondents may not directly or indirectly communicate with the media regarding this RFP or any potential contract that may be awarded without Build Toronto's prior written consent.

7. Intellectual Property Rights

By submitting a Response, each Respondent represents and warrants that the information contained in its Response does not infringe any patent, trade secret, copyright, trade-mark, or other intellectual property right of any third party and agrees to indemnify Build Toronto, its directors, officers, shareholders, staff and its consultants against any and all liabilities, damages, costs, expenses, penalties, fines, losses and deficiencies (including all amounts paid in settlement, all interest and penalties, and all reasonable legal and other professional fees and disbursements, including those incurred in defending any claim) that may be incurred by Build Toronto or any of them as a result of any claim, action, application, suit, or proceeding brought by any third person or entity in respect of the infringement or alleged infringement of any patent, trade secret, copyright, trademark, or other intellectual property right of such person or entity by the Respondent's Response or any information contained therein.

8. Reservation of Rights

Build Toronto may qualify more than one Respondent as an ASP (Approved Service Provider) through this RFP process. For clarity purposes, this is a RFP process, and is NOT a tender process. Build Toronto may, in its sole and unfettered discretion, amend the list of ASP(s) by adding new or additional ASP(s) at any time and by any means, including by issuing a further public RFPs from time to time.

Build Toronto reserves the following rights, to be exercised in its sole, absolute and unfettered discretion, without any liability whatsoever to any potential Respondents:

- to delay or extend the Closing Time, even if the Closing Time has passed, and to alter the RFP schedule, process, procedures or objectives;
- to delete, revise, modify or amend any part of this RFP;
- to cancel, terminate or suspend this RFP at any time and for any reason;

- to reissue this RFP at any time and for any reason;
- to amend the Roster by adding new or additional ASP(s) at any time and by any means, including by issuing a further public RFP from time to time;
- to issue a subsequent RFP for vendors to be qualified as ASP(s) to provide the same or substantially similar products or services;
- to seek clarification of the contents of any Response, or to require a Respondent to submit further documentation or new or additional information regarding its Response;
- to verify any information contained in the Response, including references, with third parties and receive additional information regarding the Respondent, its directors, officers, shareholders or owners, and any other party associated with the Respondent's Response, as Build Toronto may require;
- to consider and apply any other evaluative criteria as Build Toronto may see fit;
- to meet with some or all of the Respondents to discuss aspects of their respective Responses, however Build Toronto is not obliged to seek clarification of any aspect of a Response;
- to waive strict compliance with the terms of the RFP documentation and process and to waive irregularities in any Response;
- if only one Response is received, to accept or reject it;
- to not accept or to disqualify any Response, including, without limitation if the Response is late or contains false, inaccurate or misleading information;
- to accept or to qualify all Responses
- to accept or to qualify any non-compliant Response;
- to qualify any Respondent as an ASP whose Response is not the highest ranked or lowest priced Response;
- to not qualify any Respondent as an ASP whose Response is the highest ranked or lowest priced Response;
- to qualify more than one Respondent as an ASP;
- if this RFP stipulates that a certain number of Respondents will be qualified as ASPs based on the rankings of their respective Responses as a result of Build Toronto's evaluation process (the "**Qualified Responses**"), to qualify any Respondent as an ASP whose Response is not a Qualified Response;
- to withhold the names of Respondents and the content of their Responses from the other Respondents;
- to reverse any qualification of a Respondent as an ASP for any reason;
- to enter into a contract for the required services with any vendor who is not an ASP or who has not participated in this RFP; and
- to enter into negotiations with one or more Respondents selected as ASPs for the provision of the required services.

9. Limitation of Liability

Build Toronto's total liability to any Respondent participating in this RFP and the aggregate amount of damages recoverable against Build Toronto for any matter relating to or arising from any act or omission of Build Toronto, this RFP, or the RFP process whether based on an action or claim in contract, warranty, equity, tort or otherwise, including any action or claim arising from the acts or omissions of Build Toronto, shall in no event exceed \$1,000 in Canadian funds. By making a Response, the Respondent hereby irrevocably waives any rights that it may have to injunctive or administrative relief in respect of any act or omission of Build Toronto, this RFP, or the RFP process.

10. Other Process Details and Conditions

Build Toronto has set out the following process conditions:

- The time on the clock located on the 2nd Floor of Build Toronto's offices at 200 King Street will be the official clock used to determine the Closing Time and the time of receipt of all Responses.
- Build Toronto does not accept responsibility for Responses directed to any person or location other than the individual at the office address listed above or for any Responses received after the Closing Time. **The onus remains solely on Respondents making Responses to instruct courier/delivery personnel to deliver Responses to the EXACT PERSON AND LOCATION listed above.**
- Build Toronto disclaims any responsibility for any misunderstanding on the party of the Respondent concerning this RFP or its process.
- No other representative of Build Toronto is to be contacted regarding this RFP. Build Toronto accepts no responsibility for, and the Respondent agrees not to rely upon, any verbal or written statements or representations from any other person, whether or not employed by Build Toronto, concerning this RFP.
- In the event the Respondent cannot comply with any term, condition, or requirement of this RFP, such non-compliance must be clearly noted on the Respondent's letterhead and submitted with the Response. Respondents are cautioned that such non-compliance may result in disqualification of the Respondent's Response, in the sole discretion of Build Toronto. No allowance will be made for un-noted non-compliance of any kind by the Respondent.
- This RFP does not commit Build Toronto in any way to create a Roster, to qualify or select any Respondent, to proceed to negotiations for a contract for the supply of goods or services, or to award any contract.
- Any potential agreement that may be entered into between Build Toronto and a Respondent will not be an exclusive contract for the provision of goods or services.
- By responding to this RFP, Respondents will be deemed to have agreed that the decision of Build Toronto will be final and binding and in particular to confirm its agreement with the provisions of this RFP, including Appendix A.
- Build Toronto will evaluate the Respondents on the information provided, and in its sole discretion based on information provided by references. The evaluation may include an interview process by a selection team as determined by Build Toronto
- All successful Respondents will be notified by Build Toronto in writing

APPENDIX B - AGREEMENT TERMS AND CONDITIONS

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Note to Appendix:

The terms and conditions set out in this Appendix are representative of standard terms and conditions that Build Toronto will require in any contract for the supply of goods and services that it may enter into with a Respondent. Build Toronto may amend, delete and/or add to these terms and conditions at any time. Respondents are requested in the RFP to provide comments on these terms and conditions and such comments will be taken into account by Build Toronto in its evaluation of the Respondent's Response.

1. Definitions

In this Agreement, the following definitions will apply:

- (a) **"Confidential Information"** shall mean
 - (i) information disclosed to or obtained by the Consultant in connection with the fulfilment of the terms of this Agreement and which has been identified by Build Toronto as information which should be treated as confidential;
 - (ii) all data, preliminary findings, and other material developed in pursuance of the Project; and
 - (iii) as more particularly described in section 16 hereto.
- (b) **"Consultant"** shall mean and include the Consultant, its agents, contractors, officials, employees and sub-consultants;
- (c) **"Contract"** means all of the following documents:
 - (a) this Agreement;
 - (b) Proposal; and
 - (c) the RFP.

and if there is a conflict or ambiguity, this Contract shall be governed by these listed documents in descending order of precedence.

- (d) **"Deliverables"** shall mean the work, product and services, including all data, design, related documentations and interim and final reports, developed or delivered by the Consultant to Build Toronto in the course of providing the Services, as set forth in the RFP document and the Consultant's Proposal.
- (e) **"Key Personnel"** shall mean employee(s) or personnel assigned by the Consultant to deliver the services
- (f) **"Personnel"** shall mean the employee(s) or personnel hired by the Consultant;
- (g) **"Proposal"** shall mean the proposal submission appended hereto and forming part of this Agreement as Appendix "A";
- (h) **"RFP"** shall mean Build Toronto's Request for Proposal No. 2017-0XX dated XX, 2017;
- (i) **"Services"** shall mean the professional services involved in providing a [xxxx] Services to assist Build Toronto in developing the properties at [address] (details are described in Section 3 of RFP 2017-0XX and Appendix A (the Consultant's Proposal).

(j) **“Service Levels”** shall mean the performance standards set by Build Toronto and the Consultant for the Services, as required in RFP document and illustrated in Consultant’s Proposal.

2. Services of the Consultant

The Consultant agrees to furnish and perform the Services set out below:

- (a) all Deliverables and Services described in the RFP; and
- (b) all Deliverables and Services described in the Proposal in accordance with the Timeline and in accordance with the person-days, per diem rates described in the Proposal.

3. Time Schedule

The Consultant shall carry out the Services with the utmost dispatch and, subject only to delays beyond its control, complete the Services as set out in the Proposal or as mutually agreed by the parties, as time is of the essence of this Agreement.

4. Service Levels

The Consultant agrees to supply at its sole cost and expense all staff, equipment, accommodations and technical assistance necessary to perform the Services to be furnished by it under this Contract and assume all overhead expenses in connection therewith to the satisfaction of Build Toronto whose decision shall be final.

The Consultant must provide copies of all accompanying invoices for disbursements claimed. Disbursements for which invoices are not attached will not be reimbursed.

In the event the Consultant fails to meet the Service Levels described in the Consultant’s Proposal and RFP document under Scope of Work Section, the Consultant will take the following actions:

- a) promptly report the failure to Build Toronto;
- b) promptly initiate an investigation to identify the root cause of the failure, and work on resolution of the issue;
- c) notify Build Toronto of the plan to resolve the problem within ten (10) days, unless otherwise agreed upon in the applicable agreement;
- d) correct the problem or provide capability to work around the problem depending on the severity of the problem;
- e) advise Build Toronto of status of corrective efforts being undertaken with respect to solving the problem; and
- f) begin meeting the committed Service Levels within thirty (30) days of the occurrence of the failure, unless otherwise agreed to by Build Toronto.

5. Delivery of Services; Acceptance Procedures

- (a) Each of Build Toronto's Request for Proposal and the Consultant's Proposal will contain a project plan outlining the list of Deliverables, Services or other performance obligations of the Consultant (each a "**Milestone**") and the Consultant will deliver all Milestones on or before the Milestone Deadlines in accordance with the project plan.
- (b) For clarity, after the business is awarded by Build Toronto to the Consultant, any changes or modifications of Milestones and/or Milestones Deadlines will be discussed by both parties, approved and confirmed by both parties in writing before making any changes.
- (c) The activities and Deliverables associated with individual Milestones will not be deemed complete or accepted until Build Toronto's express acceptance of such activities, Deliverables and Services, such express acceptance will not be unreasonably withheld or delayed. If the Consultant fails to complete any Milestones on or prior to the applicable Milestone Deadline, then Build Toronto will be entitled to all applicable remedies set out in this contract, including the applicable RFP document.

6. Build Toronto's Responsibilities

- (a) The Consultant shall receive day to day guidance and assistance from representatives of Build Toronto or Build Toronto's assigned lead consultants.
- (b) Build Toronto will make available any relevant municipal reports, all background information, data and any other materials relevant to the Services, which are in its possession for use by the Consultant, and will make available, at reasonable times, staff members for the purpose of any necessary consultation. The Consultant shall independently verify the information provided by Build Toronto prior to proceeding with the Services.
- (c) The Consultant shall not be responsible for costs or damages arising from errors or omissions in any of the information which is supplied by Build Toronto provided that the Consultant has acted reasonably in carrying out the Services.

7. Consultant's Responsibilities -- Indemnity

The Consultant shall indemnify and save harmless Build Toronto, its members of the board of directors, shareholder, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgments (including legal fees and costs) arising from or related to:

- (a) the Consultant's negligent performance or non-performance of its obligations under the Contract, including payment obligations to its approved subcontractors and suppliers and others, and including breach of any confidentiality obligations under this Contract; and
- (b) any infringement, actual or alleged, by the Consultant, its use or misuse, or by any of the Deliverables developed or provided or supplied under or used in connection with the Services (including the provision of the Services themselves), of any copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

Upon assuming the defence of any action covered under this section, the Consultant shall keep Build Toronto reasonably informed of the status of the matter, and the Consultant shall make no admission of liability or fault on Build Toronto's part without Build Toronto's written permission.

8. Insurance

The Consultant at its own expense (including the payment of all deductibles) and for the duration of this Contract, plus six years post completion of the Services, shall maintain the policies of insurance set forth below, which policies shall be in a form and with an insurer or insurers acceptable to the Build Toronto. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer must be delivered to Build Toronto prior to the commencement of the Consultant's services.

(a) **Professional Liability Insurance** (errors and omissions coverage) for the performance of Services by the Consultant provided that the policy is:

(i) In the following amounts:

Mandatory Indemnification

Fees: \$0 to \$100,000	\$2,000,000 each claim with \$2,000,000 per project and \$2,000,000 aggregate
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Fees: \$100,000 and over	\$5,000,000 each claim with \$5,000,000 per project \$5,000,000 aggregate
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(ii) not to be construed as a limit of the liability of the Consultant in the performance of the Services under this Contract; and

(iii) notwithstanding anything to the contrary contained in this Contract, kept in full force and effect for a period of time ending six years after the termination or expiry of the work, which also is not to be construed as a limit of the liability of the Consultant under this Contract.

(b) **Commercial Liability** provided that the policy:

(i) is in the amount of not less than Five Million Dollars (\$5,000,000.00), per occurrence;

(ii) adds Build Toronto as additional insured;

(iii) has provisions for cross-liability and severability of interest, broad form contractual liability, broad form property damage, contingent employer's liability, employers liability, products and completed operations, non owned automobile liability and personal injury liability;

- (iv) provides for thirty (30) days' prior written notice of cancellation or material change.
 - (v) This requirement may be amended to require the consultant to provide the cover *Only with respect to Its "Off-site" Activities*, if Build Toronto elects to purchase a wrap-up liability policy for the project which would include the consultant as an insured entity. Prior notification of that intent shall be given as soon as practicable.
- (c) **Automobile Liability Insurance** for all owned automobiles used in connection with this agreement, in an amount of not less than \$2,000,000.
- (d) **Environmental Liability Insurance** Including mould (if the Consultant is providing environmental services) in an amount of not less than \$5,000,000 any one event, and for all others their commercial general liability shall include sudden and accidental pollution events.
- (e) Prior to the expiry date of the policy, the Consultant shall provide original signed certificates from its insurer evidencing renewals or replacements to Build Toronto prior to the expiration date of the original policies, without notice or request by the Build Toronto.
- (f) Each policy shall contain an endorsement requiring the insurer to notify Build Toronto in writing, by electronic or registered mail, at least thirty (30) days, fifteen (15) days if cancellation is due to non-payment of premium, prior to any cancellation or material to the Consultant's insurance.

9. Sub-Consultants

The Consultant shall be solely responsible for the payment of the sub-consultants employed, engaged or retained by it for the purpose of assisting it in the discharge of its obligations under this Agreement. The employment, engagement or retaining of any sub-consultants must have received prior approval in writing by Build Toronto's representative. The Consultant shall coordinate the Services of all sub-consultants so employed, engaged or retained by it, and the Consultant shall be liable to Build Toronto for costs or damages arising from acts, errors, omissions, negligence or wilful misconduct of the sub-consultants, or any of them.

10. Fees

Build Toronto shall pay to the Consultant in full payment and compensation including all necessary disbursements made by it in carrying out its Services, as described in the Proposal. The total amount of all payments shall not exceed the total cost as set out in the Proposal, except with Build Toronto's written authorization.

11. Right to Audit

- (a) Build Toronto may audit all financial and related records associated with the terms of this Contract including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Consultant. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other

accounting documents pertaining in whole or in part to this Contract and shall be clearly identified and readily accessible.

- (b) The Consultant shall at all times during the term of this Contract, and for a period of two years following completion of this Contract, keep and maintain records of the Project performed pursuant to this Contract. This shall include proper records of invoices, vouchers, timesheets, and other documents that support actions taken by the Consultant. The Consultant shall at its own expense make such records available for inspection and audit by Build Toronto at all reasonable times.

12. Additional Services

Build Toronto shall pay to the Consultant an additional amount for any additional services pursuant to written approval of Build Toronto to perform such supplementary Project. The rate of payment for any such additional services shall be those specifically set out in the Proposal. In addition, the Consultant shall also present to Build Toronto a fee proposal to perform any additional services which are required at that time.

13. Termination Provision – Build Toronto

- (a) Upon giving the Consultant not less than 30 days' prior written notice, Build Toronto may, at any time and without cause, cancel this Contract, in whole or in part. In the event of such cancellation, Build Toronto shall not incur any liability to the Consultant apart from the payment for the goods, material, articles, equipment, Project or Services that have been satisfactorily delivered or performed by the Consultant at the time of cancellation.
- (b) Failure of the Consultant to perform its obligations under this Contract shall entitle Build Toronto to terminate this Contract upon ten (10) days' written notice to the Consultant if a breach which is remediable is not rectified in that time. In the event of such termination, Build Toronto shall not incur any liability to the Consultant apart from the payment for the goods, material, articles, equipment, for the Project or Services that have been satisfactorily delivered or performed by the Consultant at the time of termination.
- (c) All rights and remedies of Build Toronto for any breach of the Consultant's obligations under this Contract shall be cumulative and not exclusive or mutually exclusive alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to Build Toronto under the Consultant or otherwise at law.
- (d) No delay or omission by Build Toronto in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.
- (e) Upon termination, all originals and copies of data, plans, specifications, reports, estimates, summaries, photographs, and other documents that have been accumulated and/or prepared by the Consultant in performance of this Contract shall be delivered to Build Toronto in a clean and readable format.

14. Termination - Consultant

It is agreed between the parties hereto that the Consultant shall have the right to terminate this Contract on fourteen (14) days' prior written notice should Build Toronto fail substantially to perform in accordance with the terms of this Contract through no fault of the Consultant. The Consultant will accept payment for Services performed to the date of such termination, on a pro-rated basis in accordance with the provisions of this Contract, in full satisfaction of any and all claims under this Contract.

15. Employees of the Consultant

- (a) For the purposes of this Contract, the Services shall be provided by the persons whose names are set out in the Proposal attached hereto and at the rates shown beside their names.
- (b) The Consultant therefore agrees not to remove Key Personnel or substitute other Personnel performing the Services without the consent from Build Toronto in writing, unless the Consultant is terminating the Key Personnel in question for cause; and the Consultant further agrees that, in all events, the Consultant will only substitute other Personnel who have necessary technical skills, qualifications, experience and training to perform and complete the Services in accordance with the RFP document and the Consultant's Proposal.
- (c) Build Toronto may, at its option and discretion, request the Consultant to remove any Key Personnel who, in Build Toronto's sole reasonable opinion, are not satisfactory. At Build Toronto's request, the Consultant agrees to replace such Key Personnel with Personnel as mutually agreed to by the parties.
- (d) The Consultant agrees to ensure that the Personnel will produce all work, programs, documentation, reports and records required in accordance with the RFP document as part of the Services.
- (e) The Consultant must make available appropriately skilled workers, consultants or subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to carry out the project.
- (f) The Consultant shall be responsible for its own staff resources and for the staff resources of any subcontractors and third-party service providers.
- (g) The Consultant will ensure that its personnel (including those of approved subcontractors), when in or upon any Build Toronto buildings or using any Build Toronto premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.
- (h) Key Personnel assigned by the Consultant to perform or produce the Services or any part of it, (including those of approved subcontractors) may, in the sole discretion of Build Toronto, be required to sign a non-disclosure agreement(s) satisfactory to Build Toronto before being permitted to perform such Services.

16. Confidential Information

- (a) The Consultant shall treat as confidential all information of any kind which comes to the attention of the Consultant in the course of carrying out the Services and shall not disseminate such information for any reason without the express written permission of Build Toronto. The Consultant may be required to enter into a detailed confidentiality agreement in a form satisfactory to Build Toronto.
- (b) Upon termination or expiry of this Contract, the Consultant shall return to Build Toronto all written or descriptive matter, including but not limited to papers, documents or any other material which contains any Confidential Information. No Confidential Information shall be disclosed in any manner whatsoever, and
 - (i) the Consultant shall hold all Confidential Information obtained in trust and confidence for Build Toronto and shall not disclose any such Confidential Information, by publication or other means, to any person, company or other government agency nor use same for any other project other than for the benefit of Build Toronto as may be authorized by the Chief Executive Officer of Build Toronto in writing;
 - (ii) any request for such approval by the Chief Executive Officer of Build Toronto shall specifically state the benefit to Build Toronto of disclosure of Confidential Information;
 - (iii) any use of the Confidential Information shall be limited to the express purposes as set out in the approval of the Chief Executive Officer of Build Toronto; and
 - (iv) the Consultant shall not, at any time during or after the term of this Contract, use any Confidential Information for the benefit of anyone other than Build Toronto.

17. Right of Ownership and Use

- (a) From the date of termination pursuant to sections 13 and 14 of this Contract and settlement of accounts, or upon completion of the Consultant's Services under this Contract, all information, negatives from original photography, computer software, data, material, sketches, plans, designs, notes, documents, memoranda, specifications or other paper writing gathered, assembled or prepared by the Consultant, its employees, officials, sub-consultants or agents, for the purpose of such Agreement (**the "Material"**), whether they are in draft or in final format shall thereupon become the sole property of Build Toronto including copyright with respect to all such Material.
- (b) The Consultant represents and warrants to Build Toronto that the Consultant owns and/or shall own all copyright in the Material and no other person shall own any copyright therein. The Consultant does hereby transfer and assign and does hereby agree to transfer and assign and to sign all documents to give effect to such transfer and assignment to Build Toronto of all right, title and interest of the Consultant, including without limitation, all copyright in all the Material. The Consultant, its employees, officials, sub-consultants and agents shall forthwith deliver to Build Toronto any or all of the aforesaid subject matter and Build Toronto may use any such Material for the purposes of the Services.

- (c) The Consultant waives in whole and in part any and all moral rights arising under the *Copyright Act* in the Material as against Build Toronto and anyone claiming rights of any such nature from or through the chief executive officer of Build Toronto. Further, the Consultant represents and warrants that its employees, officials, sub-consultants and agents have waived or shall waive in whole and in part any and all moral rights arising under the *Copyright Act* in the Material as against all parties including the Consultant and the chief executive officer of Build Toronto and anyone claiming rights of any such nature from or through the chief executive officer of Build Toronto.

18. Conflict of Interest

- (a) The Consultant hereby certifies that there is no conflict of interest or potential conflict of interest between the Consultant, including its employees, officers, directors, sub-consultants or agents, or any of its friends, family or business associates with respect to this Contract or Build Toronto. If during the Contract, the Consultant is retained by another client giving rise to a potential conflict of interest, then the Consultant will so inform Build Toronto. If Build Toronto requests, then the Consultant will refuse the new assignment or will take such steps as are necessary to the complete satisfaction of Build Toronto to remove the conflict of interest concerned. If such conflict of interest does exist, Build Toronto may, at its discretion, terminate the Contract and will pay to the Consultant any amounts due for Services performed to the date of such termination.
- (b) The Consultant shall ensure that no current or former public office holder or public servant employed by or retained by it, who is not in compliance with the Federal Government's Conflict of Interest and Post-Employment Code for Public Office Holders or the Federal Government's Values and Ethics Code for the Public Services, or the equivalent thereof applicable in the City of Toronto shall derive a direct benefit from this Agreement.

19. Official Notification

- (a) Any notice herein required or permitted to be given under this Contract shall be delivered personally to:

in the case of Build Toronto to:

Build Toronto Inc.
200 King St. W., Ste. 200,
Toronto, ON
M5H 3T4
Attention: General Counsel
Phone: (416)981-3889
Fax: (416) 981-3800
E-mail: strumper@buildtoronto.ca

in the case of the Consultant to:

[supplier name]
[supplier address]

Attention: _____

Phone: _____
Fax: _____
E-mail: _____

(b) Any notice given in accordance with subsection (1) hereof shall be deemed to have been given on the day of delivery of the notice if hand delivered or on the date and time of the facsimile or electronic transmission is sent if notice is sent by facsimile or electronic transmission.

(c) Either party hereto may at any time give notice under this section to the other of a change of address and thereafter such changed address shall be substituted for the previous address set out in subsection (1) hereof.

20. Independent Contractor

The Consultant is an independent contractor and shall not be regarded as a partner, employee or agent of Build Toronto for any purpose.

21. Compliance with Laws

The Consultant is required to comply with all federal, provincial and municipal laws and regulations in performing any Services including, without limitation, the *Occupational Health and Safety Act* and the *Project Place Safety and Insurance Act, 1997*, or any successor legislation, as applicable, and to provide to Build Toronto, upon request, periodic reports confirming such compliance. The Consultant acknowledges that this Contract is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and the Consultant agrees to co-operate with Build Toronto in connection with any request to disclose the terms of this Contract under that Act.

22. Non-Exclusivity

The awarding of an Agreement to a Consultant shall not be a guarantee of exclusivity.

23. Warranties and Covenants

The Consultant represents, warrants and covenants to Build Toronto (and acknowledges that Build Toronto is relying thereon) that any Deliverable resulting from or to be supplied or developed under the Agreement will be prepared in accordance with Build Toronto's functional and technical requirements as set out in this Contract, and in any event, consistent with that level of care and skill ordinarily exercised by other professionals currently practicing under similar conditions in the same locality.

24. Third Party Software

(a) Where Build Toronto is in possession of, or makes available, software containing or constituting confidential proprietary information belonging to third parties, the Consultant shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of Build Toronto, analyze, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.

- (b) The Consultant shall fully defend, save harmless and indemnify Build Toronto from and against any loss or damages suffered by Build Toronto as a result of any failure by the Consultant, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.
- (c) Should the Consultant include third party components within any software delivered for the project, the Consultant must secure the rights to use and repackage third party components and pass on those rights to Build Toronto without additional charges.
- (d) Build Toronto will own all intellectual property rights, including (without limitation) copyright, in and to all Deliverables provided by the Consultant and its subcontractors.

25. Payment Schedule

- (a) A payment schedule satisfactory to Build Toronto shall form part of the Agreement.
- (b) The Consultant shall submit invoices in such detail as may be required by Build Toronto, and Build Toronto reserves the right to require further proof or documentation from the Consultant in respect of Services performed or expenses incurred by the Consultant and the Consultant shall provide, without delay, such further proof or documentation.
- (c) If Build Toronto does not approve of the Services which are the subject of the invoice, Build Toronto shall advise the Consultant in writing of the reasons for non-approval and the Consultant shall remedy the problem at no additional cost to Build Toronto before Build Toronto shall be obliged to pay the invoice or any part of it, as the case may be.
- (d) The Consultant shall be solely responsible for the payment of all personnel costs, statutory and otherwise (including without limitation, subcontractors and suppliers and their respective personnel) made available by it and used for performance of any of the Services.

26. Governing Law and Venue

The laws of the Province of Ontario and the laws of Canada applicable therein shall apply to this Agreement and the Courts of the Province of Ontario shall have exclusive jurisdiction over any matters arising under this Agreement.

27. Interpretation

- (a) Words importing the masculine gender shall include the feminine and neuter, and the singular shall include the plural where the meaning or context so requires.
- (b) This Contract shall be interpreted in accordance with the laws of the Province of Ontario.

28. Complete Contract

- (a) This Contract constitutes the complete and exclusive statement of the Agreement between the parties, which supersedes all proposals, oral or written, and all other communications between the parties, relating to the subject matter of this Contract.
- (b) If one or more of the phrases, sentences, clauses, paragraphs, sections or subsections contained in this Contract shall be declared invalid by the final and non-appealable order, decree or judgment of any court of competent jurisdiction, this Contract shall be construed as if such phrase(s), sentence(s), clause(s), paragraph(s), section(s) or subsection(s), had not been inserted.
- (c) This Contract may be changed only by a written amendment signed and sealed by authorized representatives of both parties, or by a court order pursuant to subsection (2) hereof.

29. Successors & Assigns

- (a) This Contract shall jointly and severally enure to the benefit of and be binding upon the Consultant hereto, its heirs, executors, administrators, successors and permitted assigns.
- (b) Provided, however, that the Consultant shall not assign this Contract or any interest herein without the prior written consent of Build Toronto, which consent shall not be unreasonably withheld or delayed. However, such written consent shall not under any circumstances relieve the Consultant of its liabilities and obligations under this RFP and the Agreement. Assignment shall include any transfer in the majority ownership or controlling interest in the Consultant, whether through the sale of shares, direct acquisition of assets or otherwise.
- (c) This Agreement shall enure to the benefit of and be binding upon Build Toronto, its successors and assigns.