

**ENGINEERING SERVICES AGREEMENT**

**FOR**

**NAME OF PROJECT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of **MONTH, YEAR:**

**BETWEEN:**

**THE CORPORATION OF TOWN OF THE BLUE MOUNTAINS**

hereinafter called the "Town"

- and -

**(consulting firm's name)**

hereinafter called the "Consultant"

**WHEREAS**, the Town intends to engage the services of the Consultant in connection with the Project as hereinafter described as the "Project":

The Project is described as the provision of engineering services for **INSERT DESCRIPTION** as outlined in Schedule "A".

**AND WHEREAS** the Town desires to have the Consultant perform professional services in connection with the Project;

**NOW THEREFORE WITNESSETH** that in consideration of the covenants herein, the Town and the Consultant mutually agree as follows:

**1. Retainer**

The Town hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the professional services described in Schedule "A" (the "Services") for the Project under the general direction and control of the Town.

**2. Compensation**

- a. The Town shall pay the Consultant for the Services at the established rate(s) identified in Schedule "B" (the "Fees and Disbursements"). The Consultant shall submit an invoice to the Town for all Services completed in the immediately preceding month. The Town shall pay the Consultant within (30) days of receipt of the invoice.
- b. When requested by the Town, the Consultant shall provide, for approval by the Town:
  - i. An estimate of the total fees and disbursements to be paid for the Services;
  - ii. A schedule of progress showing an estimate of the portion of the Services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month;
  - iii. A Staff list showing the number, classifications and salary ranges of Staff and/or hourly rate ranges for Principals and Executives, for which the Consultant will seek payment pursuant to the terms, as agreed. The Consultant shall relate such information to the particular type of work that such Staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's Staff who is to be the liaison person between the Consultant and the Town.

- c. The Consultant shall not receive any payment of fees and disbursements until approval, in writing, is issued by the Town for the above estimate of fees and disbursements and schedules of progress and Staff list.
- d. The Consultant will require prior approval, in writing, by the Town for or any of the following changes:
  - i. Any increase in the estimated fees and disbursements beyond those approved under Schedule “B”;
  - ii. Any change in the schedule of progress which results in a longer period than approved in Schedule “B”;
- e. The Consultant will require prior approval, in writing, by the Town for any of the following changes:
  - i. Any increase in the estimated fees and disbursements beyond those approved under Section 2(b)(i);
  - ii. Any change in the schedule of progress which results in a longer period than approved in Section 2 (b)(ii);
  - iii. Any change in the number, classifications and salary ranges of the Staff provided in Section 2 (b)(iii);
- f. The Consultant shall provide a monthly report to the Town (descriptive and fee value) showing:
  - i. the portion of the Services completed in the preceding month;
  - ii. Services completed to date;
  - iii. remaining Services to be completed.

**3. Staff, Methods and Applicable Laws**

- a. Unless otherwise agreed, the Consultant shall use current state of the art principles and shall skillfully and competently perform the Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant’s staff previously approved by the Town.
- b. The Consultant shall inform himself of applicable procedures and standards established by the Town and shall comply with such procedures and standards in the performance of the Services.
- c. The Consultant shall obtain the prior agreement of the Town before making any changes to the staff list after commencement of the Project.
- d. The Consultant shall in the course of providing the Services comply with applicable statutes, laws, by-laws, regulations, ordinances, orders and requirements of all governmental authorities having jurisdiction over any aspect of the Project and/or the Services. In the event of a conflict between laws, codes, etc. of various government entities having jurisdiction over this project, the Consultant shall notify the Town of the nature and impact of such conflict. The Town agrees to cooperate and work with the Consultant to resolve this conflict.

**4. Ownership and Use of Documents**

- a. Drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis.

- b. Where the parties have not otherwise agreed, all drawings, plans, information, mathematical or computer models, statistical data and reports compiled or prepared by the Consultant pursuant to this Agreement shall be the exclusive property of the Town whether the Project be executed or not. The Town shall own all rights of copyright therein and they are not to be used by anyone without the permission of the Town.
- c. In the event that the said documents and models are used by the Town for purposes other than in connection with the Project, or if the said documents and models have been amended, altered or revised in any manner whatsoever without notice to the Consultant and without receiving its prior written consent, the Consultant does not warrant the fitness of same for the Town's use, and the Town agrees to indemnify and hold harmless and defend the Consultant from and against all claims, demands, losses or damages, liability and costs associated with such use by the Town.

## **5. Patents and Trademarks**

- a. All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in performance of its Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant unless the concepts, products or processes were conceived by, or jointly conceived with, the Town.
- b. The Town shall have permanent non-exclusive royalty-free license to use the concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from Services rendered by the Consultant in connection with the Project.

## **6. Changes and Alterations and Additions Services**

With the consent of the Consultant, the Town may in writing at any time after the execution of the Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the subject of the Agreement, and if such action by the Town necessitates additional staff or services, the Consultant shall be paid at the established rate(s).

## **7. Suspension or Termination**

- a. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:
  - i. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party.
  - ii. Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.
  - iii. Suspension of the Project or the consultant's services by the Town for more than ninety (90) calendar days, consecutive or in the aggregate.
- b. Notwithstanding clause a) above, the Town may at any time, by notice in writing to the Consultant, suspend or terminate this Agreement or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out its Services. In such an event, the Consultant shall be entitled to payment at the established rate(s) for the work reasonably necessary to close out its Services only.
- c. If the Consultant is practicing as an individual and dies or becomes incapacitated before the Services have been completed, this Agreement shall terminate as of the date of

death, or incapacity, as applicable, and the Town shall pay for the Services rendered by the Consultant to the date of such termination.

## **8. Indemnification**

- a. The Consultant shall indemnify and save harmless the Town, from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Town, his employees, officers or agents may suffer, to the extent the Consultant, is legally liable as a result of the negligent acts of the Consultant, his employees, officers or agents in the performance of this Agreement.
- b. The Town agrees to hold harmless, indemnify and defend the Consultant from and against any and all claims, actions, actions, losses, expenses, costs or damages of every nature including liability and costs of defence arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligent acts of the Consultant in the performance of consulting services to the Town within the project.
- c. Without limiting the generality of the foregoing, the Consultant shall also indemnify and save harmless the Town from and against all actions, claims and demands whatsoever which may be brought against or made upon the Town for the infringement of or use of any intellectual property rights including any copyright or patent arising out of the reproduction or use in any manner of information of any kind whatsoever furnished by the Consultant in the performance of this Agreement.

## **9. Insurance**

- a. The Consultant shall ensure that all insurance coverage including all provisions relating to insurance coverage set out in this section are in place prior to the commencement of services pursuant to this Agreement.
- b. During the Term of this Agreement, and any renewal or extension thereof, the Consultant will, at its expense (including the cost of deductibles) maintain in effect, with an insurer licensed in Ontario:
  - i. a contract of general liability insurance for its operations, with limits of not less than Two Million (\$2,000,000) Dollars, exclusive of interest or costs per occurrence, including coverages for defense and claimants' costs, and coverages for:
    - personal injury including death;
    - property damage or loss (direct or indirect and including loss of use thereof);
    - broad form property damage;
    - contractual liability;
    - non-owned automobile liability;
    - products – completed operations;
    - contingent employers liability;
    - cross liability;
    - severability of interest; and
    - blanket contractual liability

The policy of insurance shall name the Town of The Blue Mountains as an additional insured with respect to its interest in the operations of the Consultant; shall provide that the policy shall be non-contributing with, and apply only as primary and not as excess to any other insurance available to the Town; and shall also provide that neither the Consultant nor the insurer shall cancel, materially change or allow the policy to lapse without first giving the Town thirty days prior written notice.

- ii. a policy of professional liability insurance or other errors and omissions insurance covering claims and expenses for liability for loss or damage arising from negligence in the provision of the Services, of standard wording, with coverage of no less than Two Million (\$2,000,000) Dollars exclusive of interest or costs per occurrence; and
- c. Every policy of insurance shall contain either no deductible amount or a deductible amount which is reasonable considering the financial circumstances of the Consultant. The Consultant shall be responsible to pay all deductible amounts.
- d. No policy shall contain any provision which would contravene the obligations of the Consultant hereunder or otherwise be to the detriment of the Town.
- e. The Consultant shall provide or cause to be provided to the Town, within seven (7) days of award of Contract, a certificate from its insurer, in the Town's standard form, which shows that the policy or policies placed and maintained by it complies with the requirements of this agreement. No review or approval of any such insurance certificate by the Town shall derogate from or diminish the Town's rights or the Consultant's obligation contained in this Agreement.
- f. If at any time the Town requests to have the amount of coverage increased from that required under this Agreement, or requests other special insurance for this Project, the Town shall forthwith advise the Consultant of the reasons thereof and the Consultant shall endeavour forthwith to obtain such additional or special insurance, if available, satisfactory to the Town at the expense of the Town.
- g. The taking out of insurance shall not relieve the Consultant of any of its obligations under this agreement or limit its liability hereunder.
- h. All policies of insurance shall be:
  - i. written with an insurer licensed to do business in Ontario;
  - ii. in form and content acceptable to the Town acting reasonably;
  - iii. be non-contributing with, and will apply only as primary and not excess to any other insurance available to the Town; and
  - iv. contain an undertaking by the insurers to notify the Town in writing not less than thirty (30) days before any material change, cancellation, lapse or termination of the policies.
- i. Failure to provide the aforementioned insurance will result in the withholding of payments or at the sole option of the Town, forfeiture of the Contract.

**10. Contracting for Construction**

Neither the Consultant nor any person, firm or corporation associated or affiliated with nor subsidiary to the Consultant shall tender for the construction of the Project, or have an interest either directly or indirectly in the construction of the Project.

**11. Non-Assignment**

The parties shall not assign this Agreement or any part thereof, without obtaining the prior written approval of the other party, which approval may be withheld by the party in its sole discretion, or given subject to such terms and conditions as the party may impose.

**12. Approval by Other Authorities**

Unless otherwise provided in this Agreement, where the work of the Consultant is subject to the approval or review of an authority, department of government, or agency other than the Town, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the Town and unless

authorized by the Town in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of government or agency. Costs for all application fees shall be borne by the Town unless otherwise required to do so by the Consultant in this Agreement.

**13. Specialized Services and Sub-consultants**

The Consultant may engage others for specialized services provided that prior approval is obtained, in writing, from the Town and may add a mark up of not more than 5% of the cost of such services to cover office administrative costs when claiming reimbursement from the Town.

**14. Inspection**

The Town, or persons authorized by the Town, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

**15. Publication**

The Consultant shall obtain the consent in writing of the Town before publishing or issuing any detailed information regarding the Project.

**16. Confidential Information**

The Consultant shall not divulge any confidential information communicated to or acquired by him, or disclosed by the Town in the course of carrying out the Services provided for herein. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the Consultant by a third party without obligation of confidentiality, which is independently developed by the Consultant without access to the Town's information, or which is required to be disclosed by law or court order. No such information shall be used by the Consultant on any other project without the approval in writing of the Town, as required by law.

The Consultant must execute the Information Technology, Confidentiality, Non-Disclosure and Data Security Agreement provided as Schedule C.

**17. Dispute Resolution**

1. Negotiation

- a. In the event a matter of difference between the Consultant and the Town in relation to the Contract the grieved party shall send a notice in writing of dispute to the other party which contains the particulars of the matter in dispute and the relevant provisions of the Contract Documents. The responding party shall send a reply in writing to the dispute within ten (10) business days after receipt of the notice of dispute setting out particulars of this response and any relevant provisions of the Contract Documents.
- b. The Consultant and the Town shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of any and all relevant facts, information, and documents to facilitate these negotiations.
- c. In the event of failure by the Consultant and the Town to reach agreement within ten (10) business days of receipt of the responding party's reply, or if either party concludes that further negotiation is unlikely to result in agreement, the matter shall be referred to mediation as provided in Section 2 herein.

## 2. Mediation

- a. The Consultant and the Town shall jointly select an impartial Mediator who shall be, preferably, properly qualified in the area of work as contemplated by this Contract. In the event that the parties, acting reasonably, cannot agree on a mediator, the candidates selected by the parties shall, acting reasonably, choose a third party to act as the Mediator.
- b. The Mediator shall meet with the parties within ten (10) business days after the selection of the Mediator selection to attempt to mediate and resolve the dispute. The Consultant and the Town shall observe such reasonable procedures for conducting the mediation as the Mediator may reasonably request.
- c. If no agreement is reached within twenty (20) business days of the selection of the Mediator or if either party concludes that further mediation is unlikely to result in agreement, then either the Consultant or the Town may request the Mediator to recommend (and only recommend) a basis, or bases, for resolution of the dispute. The Mediator shall, after consideration of the parties' positions and written submissions (if so requested), issue a written recommendation in this regard. Any recommended basis for resolution shall have absolutely no binding effect upon either party unless both parties agree to accept it and shall be without prejudice to the parties' positions in any further proceeding.
- d. If no agreement is reached either party may refer such matter as is arbitrable to arbitration as provided in Section 3 herein or exercise any legal rights it may have.
- e. All meetings and proceedings shall be held in Town of The Blue Mountains or a reasonable alternate at a time and location as determined by the parties.
- f. The costs and expenses of the Mediator shall be shared equally by the Consultant and the Town.

## 3. Arbitration

- a. In the event that the parties are unable to settle any dispute between them which is under mediation, either party may refer such matter to arbitration as provided herein:
  - i. The Town and the Consultant shall select an arbitrator within ten (10) business days of the submission of a dispute to arbitration under this Section. If the parties are unable to agree on a neutral arbitrator, each party shall appoint an arbitrator within ten (10) business days, and the two (2) arbitrators so chosen shall select a third arbitrator acceptable to both of them within a further ten (10) business days.
  - ii. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991, S.O. 1991, C.17*, unless the parties otherwise agree. If the issue in dispute is particularly time sensitive, the parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process. In any event, all disputes shall be submitted to the arbitrator within thirty (30) calendar days of the selection of the arbitrator. All arbitration meetings and proceedings shall be held in Town of The Blue Mountains or a reasonable alternate, at a time and location determined by the parties, but in any event no later than thirty (30) calendar days following the submission of the dispute to the arbitrator.
  - iii. In addition to the examination of the parties by each other, the arbitration panel may examine, in the ordinary course, the parties or either of them and

the witnesses in the matter referred to the arbitration panel, and the parties and witnesses, if examined, shall be examined on oath or affirmation.

- iv. The arbitration panel shall, after full consideration of the issues in dispute, the relevant facts and applicable law, render a decision within thirty (30) calendar days after argument of the issue to the arbitrator, which decision shall be final and binding on the parties and not subject to appeal or challenge, except such limited relief provided under Subsection 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the *Arbitration Act, 1991*.
- v. Each party shall bear its own costs and expenses incurred in the arbitration, and the parties shall share equally in the costs and expenses of the neutral arbitrator.
- vi. Any award of the arbitration panel may, at the instance of either of the parties to this Agreement and without notice to the other of them, be made an Order of the Superior Court of Ontario, pursuant to the *Arbitration Act, 1991* and the *Courts of Justice Act, R.S.O. 1990, c.C-43*.

**18. Time**

- a. The Consultant shall perform the Services expeditiously to meet the requirements of the Town and shall complete any portion or portions of the Services in such order as the Town may require and the Town shall have the right to take possession of and use any completed or partially completed portions of the work notwithstanding any provisions expressed or implied to the contrary.
- b. The Consultant shall perform all the Services required under this Agreement by the date or dates set out in this Agreement, or as otherwise approved, in writing, by the Town. Requests for extensions of the completion date shall be submitted, in writing, by the Consultant no later than twenty (20) days prior to the completion date.
- c. The Town shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, and shall make any decisions which he is required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

**19. Workplace Safety and Insurance Board Coverage**

- a. The Consultant clearly understands and agrees that it is not, nor is anyone hired by it, covered by the Town under the *Workplace Safety and Insurance Act S.O. 1997, c.16, Sch A*, as amended and the Consultant shall be responsible for and shall pay all dues and assessments payable under the *Workplace Safety and Insurance Act, the Employment Insurance Act, S.C. 1996, c.23* or any Act, whether Provincial or Federal, in respect of itself, its employees and operations, and shall furnish the Town, if requested, with such satisfactory evidence that it has complied with the provisions of any such Acts. If the Consultant fails to do so, the Town shall have the right to withhold payment of such sum or sums of money due to it that would be sufficient to cover its default and the Town shall have the right to pay same. The Town is not the employer of the Consultant or its personnel under any circumstances whatsoever.
- b. The Consultant shall, both prior to commencing work under this Agreement and within sixty (60) days of the expiration of this Agreement date, submit a letter of good standing from the Workplace Safety and Insurance Board to the Town that all assessments or compensation have been paid, and the Town may, at any time during the performance, request a further declaration that all such assessments of compensation have been paid.



- c. The Consultant must have valid Workplace and Safety Insurance Board Coverage and will be required to submit a current Clearance Certificate within seven (7) days of award of the contact for the provision of the Services.

**20. Occupational Health and Safety**

- a. The Consultant acknowledges that they have read and understood the Occupational Health and Safety Act. The Consultant covenants and agrees to observe strictly and faithfully the provisions of the said Occupational Health and Safety Act and all regulations and rules promulgated there under. The Consultant agrees to indemnify and save the Town harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act by the Consultant in the course of providing the Services.
- b. The Consultant agrees to assume full responsibility for the Consultant's compliance with the said Occupational Health and Safety Act in the course of providing the Services.
- c. The Consultant further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act whether by the Consultant or any of its sub-consultants in the course of providing the Services may result in the immediate termination of this Contract.

**21. Complete Agreement**

- a. The contents of any invitation by the Town for proposals, any proposal by the Consultant to provide the Services that is accepted by the Town, and any schedules attached hereto shall be deemed to be part of this Agreement.
- b. In the event of any inconsistency or conflict in the provisions of this Agreement, such provisions shall take precedence and govern in the following order:
  - i. this signed Agreement between the Consultant and the Town;
  - ii. any schedule(s), other than the accepted proposal and the invitation for proposals, attached hereto;
  - iii. the invitation for proposals made by the Town;
  - iv. Consultant's proposal that has been accepted by the Town.
- c. This Agreement constitutes the sole and entire agreement between the Town and the Consultant relating to the Project, and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether express or implied, shall form a part thereof.
- d. If one or more of the phrases, sentences, clauses, paragraphs, sections or subsections contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court of competent jurisdiction, this Agreement shall be construed as if such phrase(s), sentence(s), clause(s), paragraph(s), section(s) or subsection(s), had not been inserted.
- e. This Agreement may be amended only by written instrument signed by both the Town and the Consultant, or by a court order pursuant to subsection (d) hereof.

**22. Gender and Number**

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.

**23. Headings**

Section headings contained herein are included solely for convenience, and are not intended to be full or accurate descriptions of the content hereof and shall not be considered part of this Agreement.

**IN WITNESS THEREOF** the parties hereto have caused to be executed those presents by their officers properly authorized in that behalf on the day and year first above written.

**THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS**

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Name:

Title:

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Name:

Title:

**(consulting firm's name)**

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Name:

Title:

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Name:

Title:

I/We have authority to bind the Corporation

## **SCHEDULE "A"**

### **Core Services To Be Provided By The Consultant**

The Project shall be undertaken in order of precedence in accordance with the following:

- 1.

## SCHEDULE "B"

### Fees and Disbursements Compensation

- a. The Consultant shall be paid a fee, calculated on a time basis, for the Services.
- b. In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 5% for all reasonable expenses properly incurred by them in connection with the Services, including but not limited to: vehicle use charges, traveling and living expenses, long distance telephone charges, report production costs, photography, special delivery charges, supplies and equipment, field equipment costs, laboratory costs. Computer and office charges are considered part of overhead and shall not be invoiced as disbursements.
- c. Notwithstanding Subsections (a) and (b) of this Section, the total fees and disbursements paid by the Town to the Consultant for the Services shall not exceed the total upset amount of \$XXX plus applicable taxes made up as follows:
  - i. \$XXX plus applicable taxes for Core Services as described in Schedule A; and,
  - ii. \$XXX plus applicable taxes as a Contingency Allowance for Additional Services that may be required but are not included in Schedule A.
- d. Notwithstanding Subsections (a) and (b) of this Section, the Town, at its sole discretion, may limit the fees and disbursements paid by the Town to the percentage equivalent to the project complete in the opinion of the Town.
- e. The Consultant must request and receive the written approval of the Town before any Additional Services are carried out that are not included in Schedule A. The Consultant shall not be entitled to any payment from the Contingency Allowance unless the Consultant has satisfied this condition. When approving Additional Services that are not included in Schedule A, the Town, at its sole discretion, may, in writing, set a limit on the monies from the Contingency Allowance that may be permitted for the requested Additional Services.
- f. The Town will impose a 10% holdback on engineering fees until the final acceptance of all deliverables by the Town.

SCHEDULE "C"



The Corporation of the Town of The Blue Mountains

**Information Technology, Confidentiality, Non-Disclosure and Data Security Agreement**

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**This Agreement** entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2017, between The Corporation of the Town of The Blue Mountains (Town) and \_\_\_\_\_(Provider) hereinafter collectively referred to as the "Parties" or singularly referred to as the "Party".

**Whereas** the Town and the Provider enter into the provision of services by the Town for \_\_\_\_\_.

**And Whereas** the Town is willing to disclose to the Provider, upon terms and conditions hereinafter set forth, Confidential Information in order that meaningful discussions and collaborations may take place with regard to the matter for which the Provider has been engaged by the Town and so that the Provider can carry out the work required by the Town in its engagement of the Provider;

**Now, therefore,** in consideration of the foregoing premises that are incorporated as part of this Agreement and the mutual covenants hereinafter set forth, the Provider agrees as follows:

**1. Definition of Confidential Information**

- 1.1. All information disclosed by the Town in oral, written, graphic, photographic, recorded, prototype, sample or in any other form that is related to the Information Technology, Geographic Information Systems (GIS) and Supervisory Control and Data Acquisition (SCADA) systems for Town of The Blue Mountains or any information written, graphic, photographic, recorded, prototype, sample or in any other form that is generated by the Provider for the purpose of doing business with The Town shall be considered Confidential Information. Any information considered Private Information by the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), any personal health information as defined by the *Personal Health Information Protection Act* (PHIPA), and by the *Personal Information Protection and Electronic Documents Act* (PIPEDA) is also considered Confidential Information.

**2. Disclosure of Confidential Information**

- 2.1. The Town may disclose to the Provider Confidential Information enabling the two Parties to engage in meaningful discussion and/or collaboration. The Provider agrees to accept and hold such Confidential Information in accordance with the provisions of this Agreement.
- 2.2. The Provider shall communicate the Town's Confidential Information only to such of its officers, employees and representatives as have a clear need to know in order to accomplish the purposes for which such Confidential Information has been disclosed to the Provider and shall obtain written assurances from such officers, employees and representatives to maintain the confidentiality thereof.

**3. Disclosure to Third Parties**

- 3.1. From and after the date of this Agreement, the Provider agrees neither to disclose to any third party nor permit any third party to have access to any or all of the Confidential Information disclosed by the Town, without the prior written consent of the Town, nor to use any of the Confidential Information for any purpose other than as consented to in writing by the Town. However, the aforesaid obligations shall not

apply to information which the Provider can clearly demonstrate falls within any one of the following categories:

- a) Information that is now generally known to the public through no fault of the Provider;
- b) Information obtained after the date of this Agreement hereof from a third party lawfully in possession of and with no limitation upon disclosure of that information, and having the right to disclose the same; or
- c) Information that is required to be divulged pursuant to process of any judicial or governmental body of competent jurisdiction, provided notice of receipt of such notice is provided to the other party.

#### **4. Protection of Confidential Information**

- 4.1. The Provider will agree to use their best efforts to prevent disclosure of Confidential Information to any third party for an indefinite period of time from the date of this Agreement. The Provider is to use best practice security measures at all times to prevent information from being compromised. All policies and procedures relating to data and information security are to be readily available to the Town from the Provider.
- 4.2. The Provider shall protect the Town's Confidential Information in accordance with applicable privacy legislation.
- 4.3. The Provider acknowledges that disclosure of the Confidential Information would be highly detrimental to the interests and obligations of the Town and that in the event of a breach by the Provider of its obligations to the Town as regarding the Confidential Information, the damages suffered by the Town may be difficult or impossible to determine and that the remedies of the Town at law may be inadequate. Accordingly, in addition to any monetary damages, the Town shall be entitled to specific performance of the breaching party's obligations hereunder regarding the Confidential Information, and to seek an injunction to prevent any reasonably apprehended breach or continuing breach of such obligations.
- 4.4. The Provider shall employ at all times administrative and technical security measures to the Town's standards on access and password procedures for Provider's personnel, encryption of Town Confidential Information while in transit and at rest, continuous monitoring of the security posture of the Information, maintenance of auditable logs including: user access logs, physical outage logs, and application logs, encryption, isolation of the Town's Confidential Information, business continuity procedures, and provision of an encrypted method of remote authentication and authorization.
- 4.5. The Provider shall immediately notify the Town of any security breach (including any internal unauthorized use or disclosure), investigate the security breach, and take measures to remediate such breach at the Vendors cost as directed by the Town.

#### **5. Right to Audit**

- 5.1. The Town retains the right to audit the Provider to ensure that proper measures are being applied to protect any and all confidential information. Auditing may be performed by Town IT Staff or by a Third Party, as chosen by the Town in its sole discretion.
- 5.2. A Privacy Impact Assessment ("PIA") shall be required if the Provider will have access to personal information as defined by MFIPPA and personal health information as defined by PHIPA, the Town shall have right to terminate the engagement of the Provider without any liability or penalty if the Provider fails the PIA, and the failure

cannot be mitigated, within a time specified by the Town, by measures acceptable to the Town.

## **6. Return of Confidential Information**

- 6.1. The Town may, at any time, request the return of all Confidential Information (including notes generated by the Provider on Confidential Information given orally) and all copies thereof, received from or on behalf of the Town, and the Provider agrees to promptly comply with such requests. The Provider agrees that, subsequent to a request for return of Confidential Information or notification of termination of business discussions and/or collaboration, Confidential Information provided orally will continue to be kept confidential by the Provider and the provisions of this Agreement shall continue with respect to all Confidential Information until any of items 3.1 a), b) and c) become applicable. If the information is unable to be returned then information must be destroyed and a certificate of destruction must be issued.

## **7. Use of Confidential Information**

- 7.1. The Provider shall not use the Confidential Information provided by the Town for any purpose except for carrying out the work for which the Town has engaged the Provider.
- 7.2. The Provider shall not disclose or otherwise duplicate the Town's Confidential Information without the Town's written approval or knowingly allow anyone else to copy or otherwise duplicate any of the Town's Confidential Information under its control.

## **8. Ownership of Information**

- 8.1. The Town shall at all time retain sole ownership, right and title in the Town's Confidential Information

## **9. Product of this Agreement**

- 9.1. Any new information or knowledge generated from the discussions to be carried out as a result of this Agreement may not be divulged to others in verbal or written or any other form without the express written consent of the Town.

## **10. Governing Laws**

- 10.1. This Agreement shall be governed and construed in accordance with all applicable laws and by-laws of the Town, Province of Ontario and any applicable Canadian federal laws.

## **11. Length of Agreement**

- 11.1. This agreement shall be in full force upon its execution by the Parties and shall be and effect indefinitely. For greater clarity and certainty, the obligations herein with respect to Confidential Information continue indefinitely and beyond the time limit of the specific engagement for which the Town engaged the Provider.

## **12. Limitation of Agreement**

- 12.1. This Agreement shall in no way be construed as the granting or conferring of a license or otherwise to either Party by the other directly or indirectly under any patent or patent application previously owned by the disclosing Party. Furthermore, nothing in this Agreement shall be interpreted so as to oblige either Party to enter into any further agreements.

**13. Amendments**

13.1. This Agreement cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties hereto.

**14. Assignment**

14.1. This assignment shall not be assigned by either party and any purported assignment not permitted under this agreement shall be void.

**15. Entire Agreement**

15.1. This Agreement constitutes the entire agreement between the parties with respect to the non-disclosure of Confidential Information, save and except for any provisions with respect to non-disclosure of Confidential Information that may be contained in any agreement related to the engagement of the Provider by the Town and shall not be altered, modified or amended except by a written agreement executed by the Town.

\_\_\_\_\_  
Provider Corporation Name

\_\_\_\_\_  
Signature (I have authority to bind the Corporation)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**The Corporation of The Town of The Blue Mountains**

\_\_\_\_\_  
Ruth Prince, Director of Finance and IT Services

\_\_\_\_\_  
Date