

## PROCUREMENT SERVICES

### STANDARD TERMS AND CONDITIONS OF CONTRACT FOR LOW VALUE ACQUISITIONS (LVA)

1. **Scope, Definitions and Interpretation.** These Standard Terms and Conditions will form part of the Contract to be awarded to the successful bidder (“Supplier”) pursuant to the subject procurement process when The Corporation of the City of Mississauga (the “City”) issues an award letter to the Supplier and the City receives written acceptance of the Standard Terms and Conditions and any additional terms and conditions, if applicable, from the Supplier or deemed acceptance of such terms and conditions by the Supplier’s commencement of the Work, and are deemed to be understood, agreed upon and binding on both the Supplier and the City (collectively referred to as the “Parties”).

“Work” means everything to be done, supplied or provided by the Supplier under this Contract as applicable.

The Supplier agrees to perform the Work in accordance with the Statement of Work, if any, and terms, provisions, and conditions of the Contract. The Supplier shall perform the Work (a) in a professional manner and in accordance with industry standards reasonably applicable to the performance of such obligations; (b) to the reasonable satisfaction of the City’s Contract Manager; (c) expeditiously to meet the timelines for the completion of the Work; and (d) shall correct all deficiencies in the Work at its own cost.

2. **Term of Contract.** The Contract will commence on the date as notified by the City’s Contract Manager and shall continue to be effective until such time as the Work is completely performed by the Supplier, unless otherwise terminated as provided in this Contract or by mutual agreement of the City and the Supplier in writing.
3. **Price, Invoices and Payment.** The City shall only pay for the Work that the City’s Contract Manager has agreed to. The Supplier shall submit invoices to the City for Work performed, in arrears and not in advance. The Supplier shall submit any supporting documentation to substantiate the invoice if so requested by the City’s Contract Manager. Invoicing shall be made in accordance with: <https://www.mississauga.ca/services-and-programs/business/doing-business-with-the-city/invoices-and-payments/>. The City may withhold the full or part of the payment on an invoice if the City is not satisfied with the details and information provided on the invoice and any supporting documentation. The City’s standard payment terms are net 30 days after all the following conditions are met: (a) the invoice complies with the invoicing requirements above; (b) the Supplier has performed the Work to the reasonable satisfaction of the City’s Contract Manager; and (c) the City’s Contract Manager has approved the invoice.
4. **Quantities and Estimates.** Unless otherwise expressly stated in this Contract: (a) where specified, quantities are estimated. The City reserves the right to increase or decrease purchase quantities by any amount at its sole discretion, however, all prices shall remain firm for the duration of the Contract or until all items have been received, or works completed and payment has been processed; and (b) the City does not guarantee, represent or warrant a minimum amount of Work.
5. **Representations and Warranties of Supplier.** The Supplier shall: (a) perform the Work as set out in this Contract; (b) undertake, perform and complete all of the duties, obligations and responsibilities identified in this Contract in a good professional manner according to the best standards of practice of the industry or trade in which the Supplier carries on business with all due diligence, skill and competence; and (c) perform the Contract with utmost expeditiousness, using qualified and experienced workers and to only alter the Work performed at the request of the City. The Supplier shall warrant that all Work has been supplied and installed in accordance with this Contract and is free from defects. The Supplier shall be responsible for any deficiency in the Work for a period of twelve (12) months from the date of completion of the Work, as required by and in the City’s sole discretion.

6. **Damages and Defects.** All goods provided by the Supplier shall be new upon delivery and installation, in good operating condition and free of defects in work and material. The Supplier shall repair or replace any damaged items caused through the handling or installation by the Supplier or otherwise caused in transit.
7. **FOB/Freight.** All goods and services shall be FOB destination and freight prepaid, by the Supplier.
8. **No Lemon Policy.** Any equipment purchased by the City shall be subject to a “No Lemon Policy” whereby after three attempts to repair a recurring malfunction, the City, at its sole discretion can direct the Supplier to replace the equipment on a “like-for-like” basis at no additional cost to the City.
9. **Packaging and Disposal.** The Supplier shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging from delivered and installed items.
10. **Termination.** In the event that the Supplier, in the opinion of the City, acting reasonably, fails to satisfactorily perform the Work or is in breach of the terms of this Contract, the City reserves the right to immediately terminate this Contract. The City may terminate this Contract for any reason on seven (7) days’ written notice to the Supplier. The City shall provide appropriate compensation to the Supplier for Work satisfactorily completed prior to the effective date of termination.
11. **Return of Materials.** Upon expiry or earlier termination of this Contract, the Supplier shall immediately deliver to the City, as directed by the City’s Contract Manager, all material created or developed pursuant to this Contract, as well as all confidential information and any other materials provided to the Supplier by the City during the term of the Contract.
12. **Insurance.** The Supplier shall carry the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain and as identified in the Contract, to cover the potential liabilities of the Supplier arising in connection with this Contract, in particular, the liabilities under Section 13 (Indemnity) and Section 17 (Intellectual Property). The Supplier acknowledges and agrees that no protection will be afforded to the Supplier by the City for any claims arising in connection with this Contract or the Supplier’s operation of the business. The City reserves the right to request proof of insurance for the Contract at any time. Failure to provide proof of insurance upon request will be deemed a breach of the Contract.
13. **Indemnity.** The Supplier shall hold harmless, indemnify and defend the City and its elected officials, officers, employees, agents, affiliates, contractors, successors and assigns (collectively the “Indemnified Party”) from and against all claims, demands, damages, liens, losses, expenses, costs (including legal fees), actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner, arising out of, resulting from or attributable to the Supplier’s omissions, or failure to exercise reasonable care, skill or diligence in the performance or rendering of any Work required to be performed by the Supplier, its agents and employees. This indemnification includes any legal costs incurred by the City on a complete indemnity basis, including those incurred to defend any criminal or quasi-criminal prosecutions against the City resulting from the actions or inactions of the Supplier. The provisions of this Section will survive the termination or expiry of the Contract.
14. **Conflict of Interest.** The Supplier agrees to act diligently, honestly and in good faith and in the best interests of the City in discharging its obligations under this Contract, and in so doing shall notify and fully disclose to the City in writing any potential or actual conflict of interest that exists or may arise during its performance of any obligations under this Contract. If the City determines that a conflict of interest exists, the City may, at its sole discretion, suspend or defer the Work until the conflict is

removed to the satisfaction of the City or terminate this Contract, in which case, the Supplier shall be responsible and indemnify the City for all of the City's costs, expenses, losses and damages whatsoever which may be incurred or arise as a result of the Supplier's breach of this obligation including but not limited to all costs incurred to replace the Work of the Supplier, all delay costs, legal and other professional service costs, and lost revenue and opportunities.

15. **Confidentiality.** The Supplier shall maintain the confidentiality of any confidential City information disclosed during a procurement process or in the performance of this Contract and shall not, except as required in order to perform the Work, at any time during or following the term of this Contract, use, disclose, release, or permit the disclosure or release of any information disclosed by the City or any information communicated to or acquired by the Supplier during the course of performing the Work, without obtaining the prior written consent of the City. The Supplier agrees it is providing a service to and acting on behalf of the City and therefore, for the purposes of this Contract, the Supplier is subject to the obligations in the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"). The Supplier shall (i) use or reproduce personal information only to the extent necessary to fulfill its obligations under this Contract and in compliance with MFIPPA and other applicable laws, and (ii) provide all information, records, or documents required by the City to fulfil its MFIPPA obligations.
16. **Publicity.** The Supplier shall obtain the written consent of the City before publishing or issuing any information regarding the City or this Contract.
17. **Intellectual Property.** The City shall retain exclusive ownership of, and the Supplier hereby irrevocably assigns and agrees to assign to the City all right, title and interest in all materials and/or work product developed pursuant to this Contract and all Intellectual Property Rights in all materials and/or work product. The Supplier shall waive, and ensure all third parties waive, all moral rights associated with the materials. For greater clarity, the Supplier may not use or disclose the materials and/or work product for any purposes unless agreed upon by the City in writing.
18. **Compliance with Laws and City Policies.** The Supplier shall perform its Work in compliance with all applicable laws, by-laws and City policies. City policies may be found at:  
<http://www.mississauga.ca/portal/business/tendersandbids>
19. **Assignment and Supplier Name Changes.** The Supplier shall not assign or transfer this Contract or any part thereof, without the prior written approval of the City. The Supplier shall be responsible for all costs of the City related to Supplier Name Change Fees in accordance with:  
<https://www.mississauga.ca/publication/add-or-change-a-supplier/>
20. **Subcontracting.** The Supplier shall not enter into a contract with any subcontractor without the prior written approval of the City, which may be granted with conditions.
21. **Force Majeure.** Neither the City nor the Supplier will be held liable for any losses resulting from the failure or delay in providing the Work under this Contract as a result of acts of war (whether war has been declared or not), acts of public enemies, strikes, fires, floods, acts of God, or for any other cause not preventable by or not within the control of the City or the Supplier, and which by the exercise of reasonable diligence, neither the Supplier nor the City is able to prevent. The Supplier agrees that financial difficulties experienced by the Supplier and shortage of labour will not constitute force majeure. If the Work is delayed or prevented as a result of force majeure, the party claiming force majeure shall give immediate written notice and explanation of the course and probable duration of any such delay to the other party. The City and the Supplier shall each use their reasonable efforts to minimize delays caused by any events of force majeure.

22. **Notice.** All notices and other communications under this Contract shall be in writing and service of notice is effective on the next business day following the date of personal delivery, electronic delivery or fax, or in the case of a registered letter, on the third business day following the date of mailing, addressed as follows:

**To the Supplier at:** The address or email address and to the attention of the individual provided to the Contract Manager by the Supplier.

**To the City at:** The Corporation of the City of Mississauga, 300 City Centre Drive, Mississauga, ON, L5B 3C1, Attention: Contract Manager. The Supplier shall insert the name of the City's Contract Manager.

23. **Waiver.** The failure by either party to enforce its rights hereunder shall not constitute a waiver of such rights or any other rights set out in this Contract or at law.

24. **Invalidity.** Any provision of this Contract held to be invalid, void, illegal or unenforceable is ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality or enforceability of the remaining provisions of this Contract.

25. **Governing Law/Attornment.** This Contract is governed by the laws of the Province of Ontario and the applicable laws of Canada. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario with respect to all matters relating to or arising out of this Contract.

26. **Survival.** All obligations of the Parties shall expressly, or by their nature, survive termination or expiry of this Contract until, and unless, they are fulfilled, or by their nature expire or until the Parties mutually agree to a release of the obligation.

27. **No Exclusivity.** Unless otherwise expressly provided in this Contract, no contract shall be deemed or construed to confer upon the Supplier an exclusive right to supply the Work to the City.

28. **Relationship Between Parties.** This Contract shall not be construed to constitute an agency, partnership or joint venture between the Supplier and the City.

29. **Enurement.** This Contract shall be binding upon and shall enure to the benefit of the City and the Supplier and their respective heirs, executors, administrators and permitted assigns and successors.