

COMMUNICATIONS SYSTEMS AGREEMENT

This agreement is between:

THE CORPORATION OF THE CITY OF GUELPH,

an Ontario municipality

("City")

- and -

,

an Ontario corporation

("Contractor").

The parties agree as follows:

1. Definitions

- (1) "**Confidential Information**" means any information, whether oral, written, visual, electronic, or in any other form, relating in any way to this agreement, which is identified as confidential or that would reasonably be considered as being confidential;
- (2) "**Disclosing Party**" means the party disclosing Confidential Information;
- (3) "**Insider**" of a party includes every partner, associate, officer, director, employee, consultant, subconsultant, contractor, member of council and agent of the party;
- (4) "**Moral Rights**" means any and all moral rights in the Work Product arising under the *Copyright Act*, R.S.C. 1985, c. C-42;
- (5) "**Notice**" means any notification or communication required or permitted to be given by one party to the other party under this agreement;

- (6) **“Receiving Party”** means the party receiving Confidential Information, and includes all Insiders of that party;
- (7) **“Services”** means the services set out in this agreement; and
- (8) **“Work Product”** includes all information in any form prepared by or for the Contractor as part of the Services.

2. Retainer

- (1) The City hereby retains the Contractor to provide the Services, and the Contractor shall provide those Services to the City under the general direction and control of the City and subject to the provisions of this agreement.

3. Performance Security

- (1) Prior to, and as a pre-condition to, the signing of this agreement by the City, the Contractor shall provide to the City security for the Contractor's performance of this agreement, and also security for labour and material payment, each of which securities shall be in the Contractor's own name, in the amount of at least fifty percent (50%) of the total price of this agreement and in the form of:
 - (a) Certified cheque;
 - (b) Irrevocable standby letter of credit; or
 - (c) Performance of contract bond.
- (2) If either of the two above-mentioned securities is in the form of a certified cheque, the City may cash it immediately upon receipt, and shall, after this agreement has been completed to the satisfaction of the City and any warranty period has expired, refund, without interest, the balance not required to achieve such satisfaction.
- (3) If either of the two above-mentioned securities is in the form of an irrevocable standby letter of credit or a performance of contract bond, the Contractor shall ensure that :
 - (a) The security is in a form and from a provider satisfactory to the City; and
 - (b) The security remains in effect throughout the term of this agreement and any warranty period, whether in its original form or by substitution to the satisfaction of the City.
- (4) If either of the two above-mentioned securities is in the form of an irrevocable standby letter of credit, the Contractor shall ensure that it clearly states on its face

that the provider will pay any demand to the City before notifying the Contractor of such demand.

4. Services

- (1) The Services include the goods and services set out in Schedule "A" to this agreement.
- (2) With the consent of the Contractor, the City may, in writing, delete, add to, vary or otherwise alter the Services.
- (3) The Contractor shall, in consultation with the City, promptly prepare a work plan for the provision of the Services, which work plan includes the following:
 - (a) A staffing schedule, indicating the estimated times to be spent or portions of the Services to be provided, by the respective Insiders of the Contractor;
 - (b) An estimated time line for the provision of each phase of the Services, which time line reflects timely, diligent provision of the Services with the utmost dispatch; and
 - (c) An estimated budget for the provision of each phase of the Services.
- (4) The Contractor shall provide the Services skilfully, competently, efficiently, effectively and economically, complete in every particular, in a good and workerlike manner, consistent with industry standards and current state of the art principles, law and practice, to the satisfaction of the City, and, unless approved by the City otherwise, in accordance with the staffing schedule and within the estimated time lines and estimated budgets.
- (5) The Contractor shall, upon request of the City, provide reports to the City on the Services, including opinions regarding the progress and resolution of the Services, and including any variances from the time lines and budgets in the work plan and explanations for such variances.
- (6) The Contractor shall ensure that the Services will meet both the current and long term communications needs of the City for at least 15 years, and that the radio system coverage that the Contractor provides meets the City's requirements.
- (7) The Contractor shall satisfy all applicable requirements specified in the Terms of Reference, including the terms of use for City Water Towers.

5. Personnel

- (1) The Contractor shall provide the Services through Insiders approved in writing by the City.
- (2) The Contractor shall ensure that it has sufficient Insiders to provide the Services in accordance with this agreement.
- (3) The Contractor shall ensure that its Insiders have the requisite competence, knowledge, skill, ability, experience, expertise and qualifications to provide the Services.
- (4) The Contractor shall coordinate the activities of its Insiders, shall be liable to the City for any losses and liabilities related to its Insiders and shall pay the costs of its Insiders.
- (5) The Contractor shall ensure that no Insider of the City becomes interested, directly or indirectly, in the provision of the Services or any payment by anyone for any portion thereof.
- (6) Unless the Contractor provides proof to the City under the *Workplace Safety and Insurance Act, 1997* (the “**WSIA**”) that the Contractor does not require insurance under the *WSIA*, the Contractor shall, upon execution by the Contractor of this agreement, and, upon request by the City from time to time, provide original *WSIA* clearance certificates to the City.

6. Work Product

- (1) The Work Product is, unless approved by the City in writing to the contrary, the sole property of the City and the City shall own the copyright to all such information. If the Contractor owns any Work Product, or the copyright in any Work Product, it shall promptly transfer and assign such ownership or copyright to the City.
- (2) The Contractor shall promptly sign all documents and take all actions that may be necessary to ensure that the City owns the Work Product and the copyright in the Work Product.
- (3) The Contractor waives any and all Moral Rights as against the City. The Contractor shall ensure that anyone other than the Contractor, who has any Moral Rights, shall waive all such Moral Rights as against the Contractor and the City.

7. Contacts and Communication

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

8. Chargeable Amounts

- (1) The Contractor shall, at its own sole cost, and at no cost to the City, except as specifically provided in this agreement or agreed to by the City in writing, obtain and supply all work, labour, Insiders, permits, licences, travel, plant, accommodations, equipment, materials, supplies and administrative, technical or other support necessary to provide the Services, including insurance, local or long distance telephone, facsimile, postage, courier or other transportation or communication costs, and photocopying, printing or other reproduction costs. For greater certainty, the Contractor shall not, unless specifically agreed to by the City in writing, charge any of such costs to the City as disbursements.
- (2) The Contractor may charge the City, for the provision of the Services, amounts set out in Schedule "B" to this agreement, or such other amounts, including block fees, which are agreed to in writing by the parties for specific portions of the Services. The Contractor shall not increase any fee rate or block fee unless the City has provided its prior written consent.
- (3) The Contractor may charge the City for the costs of such disbursements as the City has agreed in writing to pay.
- (4) The Contractor may charge the City for any Harmonized Sales Tax payable on the fees and disbursements charged to the City by the Contractor.
- (5) Notwithstanding anything to the contrary contained in this agreement, the City is not required to pay, for the total of all fees, disbursements and Harmonized Sales Tax charged pursuant to this agreement, any amount greater than \$ _____
- (6) Unless the City has provided its prior written consent to the contrary, the Contractor shall not charge the City in respect of more than a single member of its Insiders participating in any:

- (a) Internal Contractor meetings, discussions or communications;
 - (b) External meetings or court or tribunal appearances; or
 - (c) Reviews of correspondence, transcripts or other documents.
- (7) The Contractor shall not charge the City for value-added or premium billing.
- (8) Notwithstanding anything to the contrary contained in this agreement, if the City decides at any time, for any reason, to discontinue a particular portion of the Services, the Contractor shall not charge the City for any amount over and above payment, including payment on a pro-rated basis if applicable, for the chargeable fees and disbursements incurred in respect of such discontinued portion of the Services up to the date that the City gives to the Contractor Notice of such decision to discontinue that portion of the Services, or a later date if work, already commenced by the Contractor, cannot reasonably be discontinued until such later date.
- (9) Notwithstanding anything to the contrary contained in this agreement, if this agreement is terminated prior to completion of the provision of the Services, the Contractor shall not charge the City for any amount over and above payment, including payment on a pro-rated basis if applicable, for the chargeable fees and disbursements incurred up to the effective date of such termination, or a later date if work, already commenced by the Contractor, cannot reasonably be discontinued until such later date.

9. Accounts

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

10. Payment

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

11. Confidential Information

- (1) The Receiving Party shall use Confidential Information only for the purposes of this agreement.
- (2) Except as provided in this agreement, the Receiving Party shall keep confidential all Confidential Information disclosed to it by the Disclosing Party.
- (3) The Receiving Party shall not copy or transcribe into another form, any Confidential Information received from the Disclosing Party except as reasonably necessary.
- (4) The Receiving Party shall protect the Confidential Information disclosed to it by the Disclosing Party, in the same manner and to the same extent that it protects its own Confidential Information.
- (5) Upon the termination of this agreement, or earlier upon the request of the Disclosing Party, the Receiving Party shall promptly destroy or return (as directed by the Disclosing Party) all copies of the Confidential Information disclosed to the Receiving Party.
- (6) The Receiving Party may disclose Confidential Information if:
 - (a) The Disclosing Party consents;
 - (b) The Receiving Party is required by law to disclose it; or
 - (c) The Confidential Information is generally and publicly available.
- (7) If the Receiving Party is required by law to disclose Confidential Information, it shall promptly notify the Disclosing Party so that the Disclosing Party may intervene to prevent the disclosure.
- (8) The Receiving Party shall ensure that all Insiders of the Receiving Party comply with all the provisions of this agreement relating to Confidential Information and the Receiving Party shall be responsible for any failure by any Insider to do so.

- (9) The Contractor specifically acknowledges that the City is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, and that the City may be compelled to disclose certain Confidential Information.
- (10) If either party breaches any provision of this agreement relating to Confidential Information, it shall immediately give Notice of such breach to the other party and take all necessary steps to limit the extent and impact of the breach.
- (11) The harm that would be suffered by a party in the event of a breach of the provisions of this agreement relating to Confidential Information by the other party would not be compensable by monetary damages alone. Therefore a party shall be entitled, in addition to any other remedies, to seek an injunction against a breach or threatened breach of any such provision.
- (12) The provisions of this agreement relating to Confidential Information will remain in effect for five years after the termination of this agreement.

12. Indemnification and Insurance

- (1) The Contractor shall indemnify the City and the City's Insiders against all losses and liabilities including damage to property and personal injury (including death) related to acts or omissions, in connection with this agreement, of the Contractor, the Contractor's Insiders or any person for whom the Contractor is in law responsible, including any acts or omissions involving infringement of any intellectual property rights and any acts or omissions involving any covenant, condition or obligation in this agreement. The Contractor shall, at the City's election, either assume the City's defence of any proceeding brought in respect of such loss or liability, or cooperate with the City in the defence, including providing the City with prompt Notice of any possible loss or liability and providing the City with all information and material relevant to the possible loss or liability. This section will survive the termination of this agreement.
- (2) The Contractor shall not be liable for costs or damages arising from errors or omissions in any of the information which is supplied to the Contractor by the City.
- (3) Without restricting the generality of the provisions in this agreement related to indemnification, the Contractor shall obtain, and for as long as this agreement is in effect, maintain, pay for and, upon request by the City from time to time, provide evidence, satisfactory to the City, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario and satisfactory to the City's Procurement and Risk Manager:

(a) Commercial General Liability Insurance:

- i. Including “The Corporation of the City of Guelph” as an additional insured;
- ii. To a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence;
- iii. Including bodily injury, personal injury, death and damage to property, including loss of use thereof;
- iv. In a form satisfactory to the City’s Procurement and Risk Manager; and
- v. Endorsed to provide “The Corporation of the City of Guelph” with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage;

(b) Automobile Liability Insurance:

- i. In respect of licensed vehicles;
- ii. To a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence;
- iii. Including bodily injury, death and damage to property;
- iv. Endorsed to provide “The Corporation of the City of Guelph” with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage; and
- v. In the following forms: standard owner’s form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Contractor, and standard non-owned automobile form policy including standard contractual liability endorsement; and

13. Compliance with Law and Policies

- (1) The Contractor shall comply with all applicable federal, provincial and local laws, regulations and rules.
- (2) If the Services include testimony by any Insider of the Contractor, as an expert witness, before any court or tribunal, the Contractor shall ensure that such Insider signs such forms and follows such procedures as may be required of expert witnesses before such court or tribunal.
- (3) The Contractor shall comply with the City’s Occupational Health and Safety policies, Workplace Safety and Insurance requirements and Human Rights policies.
- (4) In the design of City facilities, the Contractor shall comply with the City’s Facility Accessibility Design Manual.
- (5) The Contractor shall comply with the provisions, to the extent that they are applicable, of the *Accessibility for Ontarians with Disabilities Act, 2005, S.O.*

2005, c. 11 and regulations thereunder, in respect of all goods or services provided by the Contractor on behalf of the City. Without limiting the generality of the foregoing, the Contractor shall ensure that all of its Insiders and others for whom it is at law responsible, receive training about the provision of the goods and services contemplated herein to persons with disabilities, in accordance with section 6 of *Ontario Regulation 429/07, Accessibility Standards for Customer Service*, made under the *Accessibility for Ontarians with Disabilities Act, 2005*. This training includes, but is not limited to, training relating to, and ensuring compliance with, the policies, practices and procedures of the City respecting the provision of goods and services to persons with disabilities.

- (6) Any reference in this agreement to legislation, policies or rules is to such legislation, policies or rules as amended, extended, re-enacted or replaced.

14. Relationship between Parties

- (1) The Contractor is an independent contractor of the City. The Contractor shall not, except as the City may specifically authorize in writing, enter into any contracts or commitments in the name of or on behalf of the City, or bind the City in any respect whatsoever. Neither the Contractor nor any Insider of the Contractor is a partner, joint venturer, agent or employee of the City.
- (2) The Contractor shall not assign this agreement or any of the rights, benefits or obligations under this agreement.
- (3) This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior commitment, representation, warranty, arrangement, understanding or agreement, written or oral, collateral or other, with respect to the subject matter hereof, existing between the parties at the date of execution of this agreement.

15. City Responsibilities

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

16. Notices

- (1) A party giving Notice shall give it in writing and shall deliver it by personal delivery, email, facsimile, courier or prepaid regular mail to an address of the other party provided for herein.
- (2) Either party may from time to time change any of its addresses by Notice given in accordance with this section.
- (3) A Notice sent by personal delivery is deemed to be delivered on the date it is personally delivered. A Notice sent by email is deemed to be delivered upon the sender receiving from the recipient a written acknowledgment of receipt. A Notice sent by facsimile is deemed to be delivered one day after the date it is sent. A Notice sent by courier is deemed to be delivered two days after the date it is sent. A Notice sent by prepaid regular mail is deemed to be delivered three days after the date it is sent, provided that if a postal interruption occurs, the Notice is deemed to be delivered three days after the resumption of postal service.
- (4) The initial addresses for the City are as follows:

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

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

17. Force Majeure

- (1) Whenever and to the extent a party is unable to fulfil, or is delayed or restricted in fulfilling, any of the obligations under this agreement by reason of any cause

beyond the party's reasonable control, then the time for fulfilling such obligation is to be extended for such reasonable time as may be required by the party to fulfil such obligation, provided that any such inability, delay or restriction does not relate to any extent to any act or omission by such party or any of its Insiders or others for whom it is at law responsible, and further provided that the party seeking such extension submits promptly to the other party a Notice of extension of time and the specific reason and expected duration of such extension.

18. Waiver

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

19. Termination

- (1) The City may, with or without cause, terminate this agreement upon at least five days' written notice.
- (2) If the Contractor defaults in the performance of any provision of this agreement or of any order or request of the City, the City may provide Notice to the Contractor of the particulars of the default. If the Contractor does not cure the default within seven days after the Notice is delivered, the City may, at its sole option, terminate this agreement immediately by providing Notice to the Contractor.
- (3) Subject to the provisions of any applicable legislation, if, during the term of this agreement, the Contractor makes an assignment for the benefit of its creditors, or becomes bankrupt or insolvent, or undergoes reorganization, or makes a proposal to its creditors, or otherwise becomes financially unable to perform this agreement, the City may, at its sole option, declare this agreement immediately terminated.
- (4) Upon any termination of this agreement, the City may enter an agreement with another party, without the consent of the Contractor, for that other party to provide the Services. The City shall not be liable for any payment to the Contractor by reason of termination as provided herein. Termination as provided herein will in no way prejudice any other rights or remedies that the City may have at law against the Contractor.

20. Interpretation

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

21. Signing

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

22. Miscellaneous

- (1) All provisions of this agreement are severable, and if any provision is declared invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this agreement remain in full force and effect.

- (2) This agreement is to enure to the benefit of and bind the parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (3) No change or modification of this agreement is valid unless it is in writing and signed by each party.

[SIGNATURE PAGE FOLLOWS]

DRAFT

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

THE CORPORATION OF THE CITY OF GUELPH

Date

By: _____
Name:
Title:

I have authority to bind the corporation.

Date

By: _____
Name:
Title:

I have authority to bind the corporation.