

THE CORPORATION OF THE COUNTY OF ESSEX

SERVICES AGREEMENT

This Services Agreement (this “**Agreement**”) is made and is first effective as of the Effective Date.

BETWEEN:

THE CORPORATION OF THE COUNTY OF ESSEX

360 Fairview Avenue, West,
Essex, Ontario N8M 1Y6
(the “**County**”)

AND:

2057689 ONTARIO INC.

21 Gregory Drive West
Chatham Ontario N7L 2L2
(the “**Service Provider**”).

BACKGROUND

A. Essex County is a primarily rural county in Southwestern Ontario, Canada comprising seven municipalities: Amherstburg, Kingsville, Lakeshore, LaSalle, Leamington, Tecumseh and Essex. Essex County has a population of 181,530 as of the Canada 2016 Census. The County of Essex is governed by Essex County Council. The type of municipal government found in Essex County is called a two- tier system, which means that the 7 lower tier municipalities within the County of Essex are governed by elected Councils, and the Council of the upper tier county government is comprised of the Mayors and Deputy Mayors of the 7 lower tier municipalities. Each level of municipal government in a county two-tier system is responsible for providing different programs and services.

B. The County desires to retain the Service Provider to assist the County by providing the Services, as described herein.

IN CONSIDERATION of the mutual covenants, conditions and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. PROVISION OF THE SERVICES AND DELIVERABLES

1.1 The County hereby retains the Service Provider to provide to the County with a Janitorial Services (the “**Services**”) and to supply the work product (the “**Deliverables**”) described in the attached Schedule “A”. If Schedule “A” provides that the Services shall be performed by a specific individual (the “**Representative**”), the County engages the Service Provider to provide the Services on the express and essential condition that the Services shall be performed by the Representative and by no other person. In the event that the

Representative is no longer (i) able or willing to perform the Services, or (ii) active with or employed by the Service Provider, for any reason whatsoever, the County shall have the right to terminate this Agreement immediately upon written notice, without prejudice to the County's rights hereunder. Notwithstanding the foregoing, the Service Provider may replace the Representative with another individual reasonably satisfactory to the County with the prior written consent of the County.

2. TERM

- 2.1 This Agreement is effective as of the commencement date set out in Schedule "A" and, unless earlier terminated pursuant to Section 4, shall continue until the termination date set out in Schedule "A" (the "**Term**"). This Agreement shall not be renewed by its own terms, and any further provision of services (including the Services and supply of Deliverables) by the Service Provider beyond the Term of the Agreement shall require an amendment signed by both parties.
- 2.2 The Service Provider shall complete the Services by date specified in Schedule "A" or such other date as may be agreed upon by the Parties.

3. FEES AND INVOICING

- 3.1 Service Fees. For and in consideration of the Services and Deliverables furnished by the Service Provider to the County under this Agreement, the Service Provider shall receive the fees set out in Schedule "A" (the "**Service Fees**").
- 3.2 Taxes. The fees set out in Schedule "A" may not set out the relevant sales, goods and services, excise, value added or similar taxes, whether of provincial or other jurisdictional level, however taxes should be charged to the County in the normal course. The Service Provider acknowledges that it may be subject to withholding tax under Canadian law. All taxes shall be shown separately on each invoice.
- 3.3 Invoicing. The Service Provider shall invoice the County for the Services on a monthly basis during the Term. Invoices shall be submitted to the attention of "Accounts Payable" as set out in Schedule "A". The invoice shall contain: (i) a description of the Services and Deliverables provided in the previous month; (ii) details of the Service Fees and applicable taxes due for the performance of such Services; and (iii) a description of any disbursements and expenses claimed. If not previously provided, the first invoice shall contain the Service Provider's GST registration number. The Service Provider shall deliver the invoice to the County promptly at the end of each monthly period. The County shall pay any undisputed amounts owing to the Service Provider within thirty (30) days of receipt of the invoice. The Service Provider acknowledges and agrees that failure to include all supporting documentation with the invoice and/or failure to provide any or all of the foregoing information as part of the invoice may result in a delay of payment to the Service Provider and may be returned to the Service Provider unpaid and unprocessed.
- 3.4 Disputed Invoices. If the County disputes an invoice delivered pursuant to Section 3.3, the County shall notify the Service Provider in writing of the reasons for its dispute within fourteen (14) days of receiving the disputed invoice. The County shall pay only the undisputed portion of the Service Fees in accordance with the payment terms in this Agreement. Any dispute in respect of an invoice shall be resolved through the dispute resolution process set out in Section 17.1 of this Agreement.

- 3.5 Withholdings. If any Service Fees payable to the Service Provider are subject to withholding taxes, the County shall withhold and remit such amounts to the applicable taxing authority, unless the Service Provider provides the County with an exemption or waiver certificate. The County will provide the Service Provider with written confirmation of any such withholding and remittance.
- 3.6 Disbursements and Expenses. The Service Provider agrees that in no event shall any expenses or disbursements be payable by the County, nor shall the County be in any way liable for the same, unless such disbursement or expense is pre-approved in writing by the County and supporting documentation is provided to the County along with the invoice for the same.

4. TERMINATION

- 4.1 This Agreement shall terminate as specified in Section 2.1 above. In addition, either party may terminate this Agreement:
- 4.1.1 at any time for convenience upon fourteen (14) days' written notice to the other party; or
- 4.1.2 immediately upon written notice if the other party becomes insolvent, or is made the subject of bankruptcy, conservatorship, receivership or similar proceedings.
- 4.2 The County may also terminate this Agreement, without prejudice to the County's rights hereunder:
- 4.2.1 in accordance with Section 1 of this Agreement; or
- 4.2.2 if the Service Provider breaches any provision of, or any of its obligations under, this Agreement or the Schedules attached hereto and fails to remedy such breach within five (5) business days following notice thereof (or such extended period of time as may be agreed upon by the parties to remedy such breach if it cannot reasonably be cured within five (5) business days).

5. CONSEQUENCES OF TERMINATION

- 5.1 Upon termination of this Agreement pursuant to Section 4, the County shall pay the Service Provider for all of the Services and Deliverables satisfactorily rendered and delivered by the Service Provider prior to termination and for all expenses reasonably and properly incurred by the Service Provider prior to termination, if payable pursuant to Section 3.6 and further, upon such termination of this Agreement, Service Provider shall have no further obligation to provide the Services or Deliverables and the County shall have no obligation to pay the Service Fees or make any other payments hereunder.
- 5.2 In the event of termination the County may set-off any unpaid amounts due to the Service Provider under this Agreement, against any amounts owing by the Service Provider to the County hereunder (including any amounts required to indemnify the County pursuant to Section 7, as determined by the County in its sole discretion) and any costs that the County may incur to complete the Services or Deliverables.

- 5.3 Upon termination, if the Service Provider owes any amounts to the County, including after any set-off made by the County pursuant to Section 5.2, the Service Provider shall promptly pay such amounts to the County.
- 5.4 Upon termination of this Agreement, the Service Provider shall immediately return to the County all records, files, lists, documents (including electronic material), equipment, software, intellectual property and any other property belonging to the County, unless otherwise directed by the County in writing.

6. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

- 6.1 The Service Provider hereby represents and warrants to the County that:
- 6.1.1 the Services will be performed in a timely, professional and competent manner, with all due skill and care, and in accordance with applicable laws and accepted industry standards;
 - 6.1.2 all Deliverables will conform with the requirements and specifications set out in Schedule "A";
 - 6.1.3 it has the authority and capacity to enter into this Agreement and it is not subject to any restrictive covenant or other legal obligation which prohibits the Service Provider from performing the Services or supplying the Deliverables;
 - 6.1.4 the Service Provider has satisfied itself as to the nature and extent of the conditions to be encountered in the performance of the Services;
 - 6.1.5 none of the Services or Deliverables infringe the Intellectual Property Rights (as defined in Section **Error! Reference source not found.**) of any other person and the County shall have the right to use the Services and Deliverables without any restriction or obligation to any other person, except as set out in Schedule "A";
 - 6.1.6 all Deliverables and any equipment, software, or other materials supplied by the Service Provider in the course of the Services shall be in good working order and free of material defects;
 - 6.1.7 where applicable, all of the Service Provider's employees and Representatives are and shall continue to be fully accredited in their profession, and the Service Provider shall verify the registration and accreditation of such employees and Representatives from time to time, but not less than once annually on or by the anniversary of the signing of this Agreement;
 - 6.1.8 neither the Service Provider, the Representative nor any other employee or agent of the Service Provider has any relationship with any third party with whom the County has contracted which would cause the Service Provider to have a conflict of interest in relation to this Agreement or in respect of the Services. Should any such conflict of interest arise during the Term of this Agreement, the Service Provider covenants and agrees to immediately notify the County;

- 6.1.9 all reports (if applicable) and documentation submitted to the County shall be true, accurate, complete and legible; and
 - 6.1.10 the Service Provider is, where applicable, duly registered as a GST registrant under Part IX of the *Excise Tax Act* (Canada).
- 6.2 The Service Provider shall be responsible for maintaining its own business insurance and shall provide the County with proof of such insurance upon request.

7. INDEMNITY

- 7.1 The Service Provider hereby undertakes to indemnify, defend and save harmless the County and its directors, officers, employees, agents and other representatives from and against any and all losses, claims, demands, debts, actions, causes of actions, damages, penalties, interest, costs or expenses (including legal fees and disbursements) or liability of any kind whatsoever resulting from:
- 7.1.1 the negligent or wilful acts or omissions of the Service Provider or its employees and/or agents, including the Representative, arising in connection with this Agreement or the Schedules attached hereto;
 - 7.1.2 any and all breaches by the Service Provider or its employees and/or agents, including the Representative, of any representations, warranties, covenants, terms or conditions of this Agreement or the Schedules attached hereto;
 - 7.1.3 any employee source deduction, employer contribution or other employer/employee obligation, including interest and penalties thereon, which the County may be assessed or otherwise may incur under any federal, provincial, state or municipal law as a result of a federal, provincial or municipal governmental department or agency, authority or competent tribunal determining that the Representative is considered an employee of the County; and
 - 7.1.4 any claim by any third party that the Services or Deliverables infringe the Intellectual Property Rights of any person.

8. NON-EXCLUSIVITY

- 8.1 Subject to any conflict of interest, nothing in this Agreement shall prohibit or restrict the Service Provider and the Representative from contracting with or being engaged in any capacity in promoting, undertaking, providing services to or in any way being involved with another person, firm or entity.
- 8.2 Nothing in this Agreement shall prohibit or restrict the County from contracting with or engaging in any capacity any person to provide services or perform work for the County that are similar to or compete with the Services or Deliverables provided by the Service Provider hereunder.

9. INTELLECTUAL PROPERTY

- 9.1 The County acknowledges that Service Provider and Representative possess knowledge and expertise relating to the subject matter of the Services and Deliverables ("**Service Provider Know-How**"), which may include intellectual property rights in certain pre-existing tools and materials used by Service Provider in performing the Services. Nothing in this Agreement is intended to transfer to the County any rights in the Service Provider Know-How, which shall remain the property of the Service Provider. To the extent that any Service Provider Know-How is included in any Deliverables, Service Provider hereby grants to the County a perpetual non-exclusive right and license to use and reproduce the Service Provider Know-How to the extent reasonably necessary to exercise the County's rights in the Deliverables.

10. CONFIDENTIAL, CUSTOMER AND PERSONAL INFORMATION

- 10.1 The Service Provider acknowledges and agrees that the County is the custodian and owner of confidential, customer and proprietary information as well as personal information, all of which the County is required to protect. The parties agree to execute and abide by the terms of the non-disclosure agreement attached hereto as Schedule "B" (the "**NDA**") concurrently with the execution of this Agreement. The Service Provider agrees that any breach of the terms of the NDA by either the Service Provider or the Representative would cause irreparable harm, and the County shall be entitled to seek specific performance or injunctive relief to enforce the terms of those Schedules in addition to any remedies it may otherwise be entitled to at law or in equity.

11. LOCATION AND ACCESS TO INFORMATION

- 11.1 The Service Provider shall not and shall ensure that all Representatives, employees, and subService Providers shall not transmit or store any data or information received from the County or created in relation to this Agreement outside the boundaries of the jurisdiction identified in Schedule "A", and shall ensure that no person outside the jurisdiction identified in Schedule "A" (including any affiliate or subService Provider of the Service Provider) has access to any such information or data. The Service Provider shall ensure at all times that such information or data (i) shall be held, located, accessed and used solely by Service Provider and subService Providers located in the jurisdiction identified in Schedule "A"; and (ii) shall be processed and stored by Service Provider or subService Providers on hardware resident in Canada that is physically independent from any databases, hardware, networks or systems located outside the jurisdiction identified in Schedule "A", including those of any affiliates of Service Provider.

12. PROVINCIAL LEGISLATION

- 12.1 The Service Provider acknowledges that the County is subject to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c M.56 and that information provided to or from the County in connection with this Agreement may be subject to the provisions of these acts and other applicable law.
- 12.2 Without limiting anything else in this Agreement, the Service Provider hereby covenants and agrees that it shall comply with all duties and obligations as set out in all applicable laws and which arise from the Municipal Freedom of Information and the Privacy, as amended from time to time, and shall make all reasonable efforts to assist the County in

complying with the County's duties and obligations as set out in and which arise from these Acts and any other applicable law as it may relate to this Agreement as well as the Services and the Deliverables provided hereunder.

13. AUDIT

- 13.1 The Service Provider shall keep proper accounts and records of the cost relating to the Services and Deliverables, including all invoices, receipts and vouchers.
- 13.2 If this Agreement includes payment for time spent by the Service Provider, its employees, Representatives, agents or sub-Service Providers providing the Services and Deliverables, the Service Provider must keep a record of the actual time spent each day by each individual providing any part of the Services and Deliverables.
- 13.3 Unless the County has consented in writing to its disposal, the Service Provider must retain all the information described in this section for seven (7) years after either:
- 13.3.1 when the Service Provider receives the final payment under this Agreement;
or
- 13.3.2 until the settlement of all outstanding claims and disputes, whichever is later.

During this time, the Service Provider must make this information available for audit, inspection and examination by the representatives of the County, who may make copies and take extracts. The Service Provider must provide all reasonably required facilities for any audit and inspection and must furnish all the information the County or its representatives may, from time to time, require to perform a complete or partial audit of this Agreement.

14. RELATIONSHIP

- 14.1 The parties hereto expressly acknowledge and agree that the Service Provider shall render the Services hereunder as an independent Service Provider and that the Service Provider's employees and/or agents, including the Representative, are not employees of the County. Neither the Service Provider nor any of its employees and/or agents, including the Representative, shall have any right to any the County employee benefit, entitlement or advantage.
- 14.2 Nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the parties, or as authorizing either party to act as agent for the other or to enter into any contracts on behalf of the other party. Neither the Service Provider nor the Representative is authorized to bind or commit the County, either actually or apparently, in any manner whatsoever, without express prior written authority from the County to do so.

15. REFERENCE

- 15.1 The Service Provider and the Representative shall not make reference to the County in any future promotional material, except as a professional reference, without the prior written authorization of the County.

16. SECURITY AND POLICIES

- 16.1 The Service Provider acknowledges and agrees that it must meet and maintain any requisite government security screening requirements as may be determined as necessary by the County from time to time. The Service Provider further agrees that it will cause its employees and agents, including the Representative, to take all necessary steps to meet such requirements. These requirements may include, but are not limited to, verification of personal data, education/professional qualifications, employment history and other similar checks.

17. DISPUTE RESOLUTION

- 17.1 The parties agree that any dispute between the parties under this Agreement shall be resolved in the following manner. The parties shall first endeavour to resolve any such dispute matter or matters by good-faith negotiation, which shall conclude when: (a) the parties reach an agreement settling the dispute; (b) a party declares impasse; or (c) thirty (30) days following the start of the negotiations have expired. If an impasse is declared or thirty (30) days following the start of negotiation have passed, the dispute shall be settled by binding arbitration subject to the terms of the *Commercial Arbitration Act* (R.S.C., 1985, c. 17 (2nd Supp.)). In no case shall a dispute between the parties, or involving either of them, delay the Services or supply of the Deliverables.

18. SEVERABILITY

- 18.1 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

19. NOTICES

- 19.1 All notices and communications hereunder shall be in writing and shall be either (a) delivered personally, (b) forwarded by registered or certified mail to the postal address indicated below or such other address as may hereafter be designated in writing in accordance herewith, or (c) transmitted by facsimile or e-mail address indicated below:

To the Service Provider:

2057689 ONTARIO INC.
21 Gregory Drive West
Chatham Ontario N7L 2L2
Tel: (519) 436-1041
Shannon.read@smwesternontario.ca

To the County:

THE CORPORATION OF THE COUNTY OF ESSEX
360 Fairview Avenue, West
Essex, Ontario, N8M 1Y6
Tel: (519) 776-6441
Attention: Scott Holland
Email: sholland@countyofessex.ca

- 19.2 Notices delivered personally or transmitted by facsimile or by e-mail shall be deemed to have been received when delivered. Notices forwarded by certified or registered mail shall be deemed to have been received four (4) days after mailing.

20. AMENDMENT, WAIVERS AND ASSIGNMENT

- 20.1 This Agreement may be amended in whole or in part only by the written agreement of the parties hereto.
- 20.2 No waiver of any provision of this Agreement shall be implied, and no waiver shall be valid unless it is in writing and signed by the party waiving its rights. No waiver of any breach of any of the terms, provisions or conditions of this Agreement shall be construed as or held to be a waiver of any other breach, or a waiver of, acquiescence in, or consent to, any further or succeeding breach hereof.
- 20.3 The Service Provider may not assign its rights under this Agreement without the prior written consent of the County, and any attempt to do so shall be a breach of this Agreement and shall be void.

21. ENTIRE AGREEMENT

- 21.1 This Agreement and the Schedules attached hereto constitute the entire agreement between the parties and supersede all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this Agreement except as specifically set out in this Agreement. The Schedules hereto form an integral part of this Agreement and are incorporated by reference herein.

22. GOVERNING LAW AND ATTORNMENT

- 22.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Each party irrevocably and unconditionally attorns to the exclusive jurisdiction of the Provincial or Federal Courts located in the Province of Ontario for the purpose of any action or proceeding brought by either of them in connection with this Agreement or any alleged breach thereof.

23. SURVIVAL

The representations, warranties and other provisions in this Agreement that by their sense and context are intended to survive completion of performance, expiration or termination of this Agreement, shall so survive the performance, expiration or termination of this agreement as necessary to give effect to their intention.

24. LANGUAGE

- 24.1 The parties hereto have explicitly requested and hereby accept that this Agreement be drawn up in English. Les parties aux présentes ont expressément demandé et acceptent par les présentes que le présent document « Agreement » soit rédigé en anglais.

25. COUNTERPARTS

25.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other party by electronic transmission and the signature transmitted by such transmission shall be deemed to be that party's original signature for all purposes.

26. ACKNOWLEDGEMENT

26.1 The parties acknowledge that they have read and understand this Agreement, and agree to be bound by its terms and conditions.

The parties hereto have each executed this Agreement by their respective duly authorized officers.

2057689 Ontario Inc.

Signature: _____
Name: Mark Hasak _____
Title: _____
Date: October , 2019 _____
I have authority to bind the Corporation.

THE CORPORATION OF THE COUNTY OF ESSEX

Signature: _____
Name: _____
Title: _____
Date: October , 2019 _____

Signature: _____
Name: _____
Title: _____
Date: October , 2019 _____
We have authority to bind the Corporation.

SCHEDULE "A"**Purchase Order/Contract Number: IS-2019-05-01**

Effective Date: September 1, 2019
 Commencement Date: September 1, 2019
 Termination Date: August 31, 2022
 Representative: Mark Hasak
 Representative the County: Scott Holland

Description of Deliverables:

The deliverables for this Service Agreement must include but not be limited to Corporate Janitorial Services as described in the RFP IS 2019-05:

Key Personnel:

Shannon Read: Operations Manager: 519.436.1279 ext. 230

Kim Ranchuk: Supervisor: 519.990.7791 kim.ranchuk@smwesternontario.ca

Service Fees:

The fees and amounts set out herein are in **Canadian funds** unless otherwise specified herein. Please refer to Section 3 of this Agreement for further terms regarding the fees.

Monthly: \$8,077.5 before taxes

Annual Fees	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
Roads Depots & EMS	\$ 96,927.00	\$ 98,380.91	\$ 99,856.62	\$ 101,354.47	\$ 102,874.78	\$ 104,417.91	\$ 603,811.68
1.5% increase		\$ 1,453.91	\$ 1,475.71	\$ 1,497.85	\$ 1,520.32	\$ 1,543.12	
							\$ 603,811.68

Optional Years – The County may extend the contract for an additional three (3) years or a portion thereof at the complete unfettered discretion of the County.

**SCHEDULE “B”
NON-DISCLOSURE AGREEMENT**

“Definitions” In this Schedule “B”, capitalized terms not defined below shall have the meanings given to them in the Services Agreement:

“Affiliate”, when used to indicate a relationship with a specified Person, means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person and a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

“Agreement” means the provisions of this non-disclosure agreement, as it may be amended or supplemented by the parties in writing from time to time;

“Business Day” means any day other than a Saturday, Sunday or Federal statutory or civic holiday in Windsor Ontario;

“Canada” means Her Majesty the Queen in Right of Canada, and where the context so requires, means the country of Canada;

“Confidential Information” means information which:

- (a) is non-public, confidential or proprietary in nature and which relates to the County, a County Party; and
- (b) is provided or made available to the Service Provider after the date of this Agreement; and
- (c) is given orally or in writing to the Service Provider or is gathered by inspection by the Service Provider, and regardless of whether it is specifically identified as "confidential"; or
- (d) is prepared by the Service Provider and contains, or is based in whole or in part upon, any such information,

and includes all design, operational and financial information, analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other records, or any other information, whether oral or in writing, in hard copy, electronic or digital form, or in any other form, but does not include Unrestricted Information;

“County Party” means all or any of the County, any Affiliate of the County.

“Service Provider Party” includes the Service Provider and its Representatives;

“Permitted Purpose” means a use of the Confidential Information the fulfilment of the Service Provider’s duties and obligations with respect to the County and the Project;

“**Person**” shall be broadly interpreted and shall include any individual, body corporate (with or without share capital), partnership, limited partnership, syndicate, sole proprietorship, joint venture, association, unincorporated organization, trust, trustee, executor, administrator or other legal representative, and any other entity;

“**Representatives**” means the directors, officers, employees, agents, solicitors, accountants, consultants, financial or legal advisers and all other representatives of the party being referred to;

“**Unrestricted Information**” means information which might otherwise be Confidential Information but:

- (a) is or becomes generally available to the public, other than as a result of a disclosure in breach of this Agreement, although no Confidential Information shall be deemed to be public merely because it forms part of more general information that is public;
 - (b) becomes available to the Service Provider on a non-confidential basis from a Person other than a County Party, so long as that Person is not, to the knowledge (actual or constructive) of a Service Provider Party, bound by a confidentiality agreement or obligation with respect to the information or otherwise prohibited from transmitting the information to such Service Provider Party by a contractual, legal or fiduciary obligation;
 - (c) the Service Provider is able to demonstrate was known to it on a non-confidential basis before it was disclosed to it by a County Party; or
 - (d) a Service Provider Party independently develops without the use of or reliance upon any Confidential Information.
1. **Confidentiality.** The Service Provider will keep all Confidential Information strictly confidential and except as permitted by Sections 4 or 5, shall not disclose, or allow any of its Representatives to disclose, in any manner whatsoever, in whole or in part, or use, or allow any of its Representatives to use, directly or indirectly, the Confidential Information for any purpose other than the Permitted Purpose. The Service Provider will safeguard the Confidential Information from disclosure to any other Person, except as permitted by this Agreement and it shall, and it shall cause each other Service Provider Party to, keep the Confidential Information confidential and be bound by the terms of this Agreement. All information received by the Service Provider relating in any manner whatsoever to the Project will be considered and deemed to be Confidential Information for the purposes of this Agreement unless (i) the County specifically advises that it is not Confidential Information or (ii) it becomes Unrestricted Information.
 2. **Ownership of Confidential Information.** All right, title and interest in the Confidential Information, remains with the County Party which discloses it. No property interest or rights of any kind shall be acquired by the Service Provider in any Confidential Information disclosed to it.
 3. **Limited Disclosure.** The Service Provider may disclose Confidential Information only to those Representatives who need to know the Confidential Information in order for the Service Provider to fulfil its duties and obligations to the County and on the condition that each such Representative agrees in writing to be bound by the same terms contained in

this Schedule "B", except for employees who instead may verbally acknowledge and agree to be bound by the same or terms not less stringent than those in this Schedule "B". The Service Provider will notify the County, on request, of the identity of each Person to whom it has disclosed any Confidential Information.

4. **Obligations when Compelled to Disclose.** If a Service Provider Party becomes legally compelled (by law, rule, regulation, subpoena, civil investigative demand or similar process having force of law or under the rules of any securities exchange) (i) to disclose any Confidential Information or (ii) to make any public comment, statement or communication, the Service Provider will promptly provide the County with particulars so that the County may seek a protective order or other appropriate remedy. The Service Provider shall consent to and reasonably assist the County in obtaining any protective order or other appropriate remedy that the County or another County Party may seek for the purpose of preventing disclosure of any of Confidential Information to the public. If such protective order or other remedy is not obtained, or if the County waives compliance with this Agreement, the relevant Service Provider Party shall furnish only that portion of the Confidential Information which the Service Provider is advised by opinion of its counsel is legally required and the Service Provider shall and it shall cause the relevant Service Provider Party to exercise its commercially reasonable efforts to obtain a protective order (at the County's sole cost) or other reliable assurance that confidential treatment will be accorded the Confidential Information.
5. **Indemnity.** The Service Provider shall be liable for any breach of this Agreement by it or by any Person to whom it discloses Confidential Information. The Service Provider shall indemnify each County Party, and save each of them fully harmless from and against any loss, cost, damage, expense or liability suffered or incurred by any of them arising as a result of or in connection with any breach by any Service Provider Party of any provision of this Agreement. The Service Provider acknowledges that the County acts as trustee for each other County Party with respect to all rights arising in favour of any of them under this Agreement and that the County has agreed to accept such trust and hold and enforce such rights on behalf of each such County Party.
6. **Destruction on Demand.** On written request, the Service Provider will promptly deliver to the County or destroy all documents and copies of Confidential Information in its or each other Service Provider Party's possession or control and the Service Provider will confirm that delivery or destruction to the County in writing, all in accordance with the instructions of the County, provided, however, that the Service Provider may retain:
 - a. one copy of any Confidential Information that it may be required to retain or furnish to a court or regulatory authority pursuant to Applicable Law;
 - b. all internal management or board presentations and related materials prepared by it or another Service Provider Party containing or based on confidential Information; and
 - c. one copy of the Confidential Information in a secure location solely for the purpose of identifying the obligations of the Service Provider under this Agreement and defending against any claim or allegation that any Service Provider Party has breached this Agreement.

7. **Acknowledgment of Irreparable Harm.** The Service Provider acknowledges and agrees that the Confidential Information is proprietary and confidential and that the County and other County Parties may be irreparably harmed if any provision of this Agreement is not complied with by a Service Provider Party and that any such harm could not be compensated reasonably or adequately in damages. The Service Provider further acknowledges and agrees that the County will be entitled to seek injunctive and other equitable relief to prevent or restrain breaches of this Agreement by a Service Provider Party, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the County may be entitled at law or in equity.

SCHEDULE "C"
RFP 2019-05
(see attached)

SCHEDULE "D"
PROPONENT SUBMISSION
(see attached)