

CreateTO

Request for Proposal

RFP 2019-002 (CTO)

Industrial Yards Modernization Study
Services

City of Toronto Industrial Portfolio

February 11, 2019

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1. Request For Proposals (“RFP”) Instructions

1.1 Response Timetable

Please review the RFP document for Industrial Yards Modernization Study Services (“**Services**”) from CreateTO for City of Toronto industrial portfolio and please follow the required activity timeline below.

Dates	Activity
February 11, 2019	RFP information is sent to invited participants, and posted at Merx and the CreateTO website shortly after.
February 25 2019	Final Date to Submit Questions regarding the RFP. Please email all questions to alwang@createto.ca and reference the section and question number by 12:00pm EST. Final Date to notify CreateTO if your firm decide not to submit the proposal back.
March 8, 2019	Completed RFPs delivered at Closing Time (“Closing Time”) by 12:00 pm EST.

Four (4) hard copies and two (2) electronic version of the Response (USB) are to be submitted in a sealed envelope. The entire content of the Response (“**Response**”) must be contained within the documents contained within the sealed envelope. The envelope used to submit your Response must be clearly marked with the following information:

COMPANY NAME:

COMPANY ADDRESS:

RFP No. 2019 – 002(CTO)

DATE AND TIME:

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

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

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

1.2 Questions and Communications

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

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

CreateTO will provide both the questions and the answers to all participants by email or post it at Merx and CreateTO website.

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

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

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

2. Background on CreateTO

CreateTO is the City of Toronto's new real estate agency and a catalyst for city building. We manage the City's real estate portfolio, develop City building and lands for municipal purposes and deliver client-focused real estate solutions to City divisions, agencies and corporations.

Toronto has more than 8,000 properties within its real estate portfolio. And, CreateTO has a team of real estate and development experts that are continually looking for new and better ways to use those assets.

For the first time in Toronto's history, one agency has been given the mandate to take a strategic, whole of government, city-wide approach towards the delivery of real estate services. The onus is on CreateTO to be practical, fiscally responsible, and to deliver value to the City and the people who live here.

CreateTO is committed to working with our partners to build a more livable city – and that means identifying opportunities to pursue initiatives like building more affordable housing, creating transit-oriented developments, establishing new parks, cleaning up brownfield sites, and restoring heritage properties.

Working in partnership with our City partners and stakeholders, CreateTO has the potential to have a tremendous impact on creating more livable, inclusive communities across Toronto.

3. Purpose of This Document

CreateTO, on behalf of the City, is inviting proposals from qualified firms (“**Proponent**”) with the proven skills, resources and relevant experience to carry out the services as described in Scope of Work section below. This RFP is being issued to select a qualified, multi-disciplinary team to provide recommendations on an industrial yards modernization initiative.

The objectives of the initiative are to:

- Modernize City of Toronto industrial yard operations and business practices while maintaining or improving service delivery;
- Enhance the efficiency of the industrial portfolio footprint with a focus on improving space utilization, reducing real estate costs and improving co-location ratios, and;
- Generate synergies between programs who utilize industrial assets.

The Consultant would be tasked with engaging a diversity of programs that have operations within industrial yards, and will provide options and recommendations to CreateTO, as an agency of the City of Toronto, regarding operational optimization.

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

The targeted budget for this project is approximately \$150,000 based on the scope of work (details, please refer to Section 3.3.2 – Project Objective and Deliverables. Please note this amount is an approximation and does not reflect the total amount to be paid to any successful proponent.

3.1 Project Background

Professional services are being procured by CreateTO, as an agent of the City of Toronto, for a multi-disciplinary team to conduct an Industrial Operations Modernization Study that is aimed at improving and modernizing industrial yard operations in an effort to improving service delivery, space utilization (optimizing industrial properties and uses), and generating synergies between programs. Areas of operational modernization include, but are not limited to:

- Use of technology to support operations;
- Co-location, sharing of space, and reconfigurations to optimize the use of the property;
- Improved site governance;
- Streamlined service delivery where there are realty implications;
- Contractor equipment parking best practices;
- Use of service boundaries

The City of Toronto has yard and industrial facilities that are dispersed over 85 properties accommodating a diversity of programs including, but not limited to: manufacturing facilities, waste management, salt domes/snow removal operations, storage, garages/maintenance facilities and transit vehicle yards. A number of the facilities, in their current state, are operating under sub-optimal conditions. Deficiencies in these sites include: over or underutilized spaces, outdated office accommodation, poor storage systems, poor vehicular circulation, significant deferred maintenance/state-of-good-repair, lack of technology and inefficient sharing of spaces amongst divisions.

While initial stages of work within this study will involve a cursory assessment of the entire portfolio and market trends, the scope of work in this RFP will largely be a modernization exercise focused on two high priority industrial consolidation/relocation initiatives known as “Booth Yard” and “Oriole Yard” (named after the existing primary sites):

1) **Oriole Yard** is a multi-programmatic yard (located at 251 Esther Shiner Blvd.) which was recently announced as one of 11 City-owned sites that will be developed for affordable housing as part of the City’s “Housing Now” initiative. As such, existing programs at Oriole Yard must be relocated to unlock the lands for residential development. In order to reduce capital costs and drive space efficiencies, a business modernization review is needed in advance of relocating programs to proposed host sites (currently identified as Ellesmere Yard and Murray Yard).

2) **Booth Yard** is a relocation/consolidation initiative of multiple programs currently accommodated directly at Booth Yard (433 Eastern Ave) and surrounding industrial City sites. Booth Yard itself is a large, multi-occupant site located within the Unilever Precinct just north of the Port Lands. Due to adjacency to the Unilever lands, the yard represents significant development potential and a master planning exercise is currently underway, being managed by CreateTO and the City. Over the years, attempts to execute relocation/consolidation plans for these City programs have been unsuccessful as they were deemed to be costly. The successful proponent will review and challenge assumptions and recommendations made in previous work (e.g. functional programs for each Division) with evidence-based findings on best and emerging practices. The Consultant will be required to further collaborate with programs to identify modernization opportunities and provide recommendations for a cost-effective plan that consolidates various operations into a new or existing location.

City Programs in scope within the Booth and Oriole initiatives include: Parks, Forestry & Recreation; Fleet; Transportation; Solid Waste Management; Municipal Licensing Services (MLS); Facility Management, and Fire Services

Booth and Oriole initiatives are being used as pilots to demonstrate the City’s ability to modernize industrial operations and drive efficiencies.

In short, the Consultant will be required to undertake a broader, shallow evaluation of industrial needs through consultations with Divisions; conduct an in-depth review of the Booth & Oriole initiatives; challenge assumptions and provide pragmatic options and recommendations on best/emerging practices; and recommend new standards and approaches for modern industrial

operations. Areas of modernization opportunity include, but not limited to: operational policies (e.g. use of on-site contractor parking, service boundaries, etc.), governance structures, use of technology, alternative service delivery, and sharing/co-location of space and consolidations.

The intent of this targeted approach is to develop proof of concepts that that would support application of the recommendations made (i.e. policies, standards, best practices, integration of operations, etc.) to the broader industrial portfolio. It is a possibility that future work may come from the successful completion of this initial contract.

3.2 Project Schedule

The following schedule of events will apply to the evaluation process:

Milestone	Date
RFP Issue Date	February 11, 2019
Deadline for Proponent Questions	February 25, 2019
RFP Close Date – Proposal Submission Deadline	March 8, 2019
Evaluation of Proposals and Interviews	March 14, 2019
RFP Awarded	March 21, 2019
Contract Start Date	March 26, 2019
Purchase Order Issued	March 26, 2019
Interim Report (Stage 1 & Stage 2)	May 26, 2019
Completion of the Project, including submission of the final report*	October 4, 2019

This schedule is subject to change and appropriate written notice of any changes will be provided where feasible.

3.3 Scope of Work

3.3.1 Project Communications and Consultations

The Consultant will be required to participate in a number of internal stakeholder communications and consultation activities as part of the scope of work throughout the duration of the project. Internal stakeholders will include staff from various City Divisions.

3.3.2 Overview of Services and Deliverables

The Consultant will be required to provide the following professional services and deliverables under a multi-staged approach.

Stage 1-2: Shallow City-wide Portfolio review & Market Trends analysis, including municipal examples

Stage 3-6: Site Specific Analysis - Booth & Oriole

SHALLOW PORTFOLIO REVIEW & MARKET TRENDS - CITY-WIDE

Based on the shallow review and market research, the Consultant will highlight modernization opportunities within the industrial portfolio that would result in operational and space efficiencies.

Stage 1 – Baseline

1. Shallow Review of Industrial Yards Portfolio

- i. Develop an awareness of the City of Toronto's industrial yards portfolio and user groups.
- ii. Review prior modernization and real estate portfolio studies completed by the City and other Consultants.
- iii. Summarize the portfolio and types of core and ancillary spaces (office space) which are supporting the yards across the portfolio.

Stage 2 – Industrial Operations Market Research and Trends

2. Market Research and Cross-Jurisdictional Trends

- i. Undertake an international review of relevant program operations and practices with regards to space utilization, use of technology, governance, service boundaries and catchment areas, on-site vs. offsite contractor equipment storage etc. Jurisdictions of similar size and service levels should be prioritized as part of the review.
- ii. Advise on best and emerging practices or technology which could improve program delivery and be otherwise advantageous to the stakeholder programs to help achieve the City's objectives with regards to reducing operating costs, overall real estate footprint and carbon emissions. Costs associated with implementing such trends or technologies must also be provided.

3. Service Delivery Review

- i. Provide an assessment of the capacity and capabilities of service delivery and recommend alternative options for services and storage on behalf of the City on a short-term/immediate basis, as well as a longer term basis, based on industrial needs.

Estimated time for completion: 4-6 weeks

Deliverable: Stage 1 and 2 report

SITE SPECIFIC ANALYSIS - BOOTH & ORIOLE

Stage 3 – Booth & Oriole Current State Review and Consultations

4. Develop Work Plan, Schedule for Approval, and Terms of Reference

- i. Identify all documents, reports, standards, and information that may be relevant to the project.
- ii. Develop and submit a work plan for approval by the CreateTO/City Project Team.
- iii. Develop terms of reference for working group and steering committee engagement.

- iv. Identify all workshop topic areas for engagement with stakeholders.

5. In-depth Review of Initiatives

- i. Review initiatives currently underway at Booth and Oriole Yard, including Council directions and current work programs
- ii. Review and leverage previous work completed (e.g. contractor parking risk assessment, functional program, etc.) but also challenge assumptions and recommendations made based on evidence-based findings.
- iii. Consult with all key stakeholders for fulsome information gathering.

6. Undertake Consultations and Needs Assessment

- i. Develop a questionnaire with the Project Team for use during interviews with the Division Leaders, to understand the variety of functions, contractor services, service delivery objectives, current challenges, opportunities and space needs at the City.
- ii. Consult with up to 10 Division Leaders (including Parks, Forestry & Recreation; Fleet; Transportation; Solid Waste Management; MLS; and Facility Management, Fire Services)

Estimated time for completion: 4-6 weeks

Stage 4 – Identification of Opportunities (for Booth & Oriole initiatives)

7. Target Metrics, Principles, Standards

- i. The Consultant will make recommendations regarding the appropriate target metrics and standards for the use of space, with consideration for the diversity of operations and work which is undertaken by different programs within the portfolio.
- ii. Develop pragmatic operational and design principles that promote synergies amongst programs and best practices in order to achieve a modern and efficient industrial footprint. These principles are intended to inform the planning and design process of a yard modernization initiative.

8. Identification of Areas of Synergy and Modernization

- i. Based on the Consultant's knowledge of industrial operations, the review of the portfolio/assets and engagement with stakeholders, the Consultant is to identify overlapping practices and commonalities with regards to the function, equipment, graphical requirements or facility use. Areas of site governance (e.g., central site body v. decentralized amongst programs) and logistical operations should also be examined. Based on these findings, the Consultant is to provide preliminary recommendations as to how these commonalities could operate and be programmed together to achieve modernization objectives.
- ii. As it related to Booth & Oriole, provide a pragmatic assessment of capacity and capabilities of additional or alternative services to support improved delivery and storage and an efficient realty footprint.
- iii. As it related to Booth & Oriole, advise on emerging business practices or technologies which could improve program delivery and be otherwise advantageous to the stakeholder programs to help achieve a modern operation. Recommendations should aim to maintain or improve service delivery while achieving the City's objectives with regards to reducing operating costs, overall real estate footprint and carbon emissions.

- iv. Costs associated with implementing practices or technologies must also be provided.

Estimated time for completion: 6-8 weeks

Deliverable: Stage 3 and 4 Report

Stage 5 – Design and Implementation Plan for Booth & Oriole Initiatives

9. Design Concepts and Test Fits

- i. Work with City project team to identify appropriate relocation sites for Booth and Oriole occupants
- ii. Work with the Project Team to develop high-level conceptual designs for Booth & Oriole initiatives.
- iii. Establish high-level conceptual designs and estimate realty space needs.
- iv. Identify any apparent site risks or deficiencies (e.g. servicing, geotechnical, environmental, etc.) with relocation
- v. The Consultant will complete high-level test fits on host sites that will be identified by CreateTO - one (1) test fit per potential host site, to a maximum of three (4).
- vi. Provide up to three (3) order of magnitude, high-level cost estimates for preferred options, as requested by CreateTO.

10. Implementation Plan and Impact Analysis

- vii. The Consultant will provide a roadmap for implementation and financial impact analysis of the recommended options for Booth & Oriole.
- viii. Prepare a project delivery action plan with associated investment costs to implement modernization activities CreateTO/City Project Team.

Estimated time for completion: 6-8 weeks

Deliverable: Stage 5 work, Consolidated Final Report, Implementation Plan

Stage 6 – Business Case

11. Business Case Support

- i. The Consultant will support CreateTO and City Staff, as required, in development and review of business cases that will be required for Booth and Oriole initiatives.

3.4 Roles and Responsibilities

3.4.1 CreateTO and the City

1. CreateTO will assign a Project Manager who will be responsible for
 - a. Serving as the key contact for the Consultant;
 - b. Providing clarifications and instructions to the Consultant throughout the Service
2. A Project Team will be chaired by a CreateTO-assigned Project Manager with membership that includes City Real Estate Services, and City programs. The Project

- Team will be established for the Project to provide access to current information, guidance, insight and support, as well as perspectives in their respective areas to the Consultant as the project moves forward. The Project Team will be responsible for:
- a. Approving the successful Proponents Work plan at the outset of the Services;
 - b. Providing overall direction, management and leadership of the Project
 - c. Convene working groups comprised of CreateTO and City staff to provide input in assessing current situations, future plans, directions and priorities
3. The Project Team may be adjusted during the duration of the Project due to facilities staff changes and project needs

3.4.2 For the Consultant

1. The Consultant will assign a Project Manager to coordinate the delivery of the Services and to report to the City's Project Team and Project Manager. The Consultant will be responsible for, among other things, the following:
 - a. Submitting a detailed work plan and schedule within 10 business days of the initial kick-off meeting between the Project Team and the Consultant
 - b. Providing regular progress reports as the situation warrants, including meeting with the Project Team throughout the project as required
2. The Consultant will take direction from the CreateTO's Project Manager and receive assistance and support from the Project Team
3. The Consultant will develop the terms of reference for the Project Team and Steering Committee
4. The Consultant will establish the topics and agendas for Project Team and Steering Committee; lead discussions; and prepare minutes for distribution
5. Attend and record meetings as set out in the work plan, as agreed to between the Consultant and CreateTO/City staff
6. Revise and finalize report based on City feedback

The Consultant will also be required to:

1. Submit a draft report (10 hard copies and 1 electronic copy in MSWORD) on the project findings and recommendations for review and comment by City staff.
2. Submit any financial or impact analysis models (in MSEXCEL)
3. Submit any cost estimates, conceptual designs, test fits or space needs in PDF
4. Submit, at the completion of the project, ten (10) hard copies and one (1) electronic copy in MSWORD of the final report and accompanying material along with a PowerPoint presentation summarizing the report and recommendations
5. Allow for the following meetings:
 - a. Kickoff meeting with Project Team (Project team to be comprised of staff from CreateTO, Real Estate Services, city program staff, and the balance of the consulting team upon retention)
 - b. Up to eight (8) additional meetings with the collective Project Team, individual members, or any combination of members. These meetings are anticipated to be recurring, bi-weekly over the duration of this project.
 - c. Individual meetings with identified Divisional Leads as identified in Stage 3.5.ii

- d. Up to (2) senior-level meeting with Steering Committee (Steering committee to be comprised of Director, Real Estate Services; Executive Advisor, CreateTO; program Directors and, on an as needed basis, representation from a senior member of the consulting team upon retention)
- e. Present final report to the Project Team, Steering Committee, CreateTO senior management/board and other City staff

3.4.5 Future/Follow-on Work

It is a possibility that future development work may come from the successful completion of the initial contract. In the case that further development work is needed, the work may be awarded to the Consultant without further bid call using the rates proposed in Section 4.2 -, at the sole discretion of the City.

Alternatively, the City reserves the right to go out for a competitive bid for the future work.

Consultant Multi-Disciplinary Team

The lead consultant is expected to be an advisor who is experienced with operational modernization, asset reviews, challenging assumptions and financial analysis.

The study requires subject matter experts who:

- Have strong knowledge in the diversity of industrial operations (solid waste, fleet, transportation, winter maintenance, forestry, etc.) and modern work practices.
- Can engage stakeholders and assess and **challenge assumptions** regarding their technical program needs
- Can easily articulate to the balance of the project group these technical needs, as well as industry standards and trends.
- Are engineers and/or architects in with experience in site analysis and functional programs who can translate programmatic opportunities into realty needs (of note: the development of a detailed functional program is not a deliverable for this study).
- Have experience in process improvement and streamlining.

4. Response Content

4.1 General Overview and Minimum Requirements

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

The documentation for each Response:

- i. must be submitted in a sealed envelope or container (Responses made by fax, telephone, electronic message or telegram will not be accepted) displaying the full and correct address of the Respondent; and
- ii. must be limited to 15 pages or less (excluding necessary attachments), single sided in 11 point font for the responses to the questions required in Section 4.2 below.

4.2 Response Content

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

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

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

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

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

- c) **RFP Scope of Work, Timeline and Respondent Fee Proposal** – Provide a description and overview of the proposed scope of work, deliverables, stakeholder engagement plan, client meeting assumptions and timeline for the work as described Section 3. It is important that the project is started and completed in an efficient and effective manner. The proponent is to provide:
 - A detailed work plan indicating the project method, schedule, Gantt chart, tasks, and deliverables.
 - Provide an estimated overall timeline of the project, including an indication of the date the Respondent could commence work.
 - Key dates for major deliverables must be clearly defined in the Proponent's detailed work plan.

- For each deliverable provide sufficient detail for the reviewers to evaluate the value of the effort expended.
- Provide an all-inclusive fixed price (including cost break down) that includes all expenses incurred in providing the services, including overhead, profit, courier services, telephone costs, travel, accommodations, etc.

Specifically:

- The submission is to include a brief summary of the proponent's understanding of the assignment. This may include but is not limited to the proponent's understanding of the Client's objectives, a high-level work plan, the role / interests of the stakeholders, and management responsibilities of the proponent throughout the duration of the assignment.
 - The submission is to include an outline of the approach the Respondent would take to required stakeholders. This section should outline the recommended sequence and format for engagement, the roles of particular team members, and the tools / resources that will be utilized.
 - In the submission, the Respondent is expected to provide an estimate for this project as well as a rate for any additional ad-hoc work as needed (up to 200 hours of work). The ad-hoc hours will be optional to use and only billed if consumed.
- d) **Proposed Staff Team and Resources** - Respondents should identify persons or teams who demonstrate specific knowledge of, and strong experience in performing similar work for projects of comparable nature, size and scope that will be utilized on this project for CreateTO. In particular, the Respondent should provide a list of key staff that the Respondent would propose to use for this work together with their professional qualification, related project experience and an indication of their duties, responsibilities and years of experience.

Specifically:

- The submission must outline the Respondent's team members, as well as an outline of the team structure (team lead, Single Point of Contact, etc.).
 - Team member resumes are to be provided along with a summary of relevant previous work.
 - Lead Project Person & Subject matter experts relevant experience
 - Balance of team relevant experience
- e) **RFP Process Terms and Conditions**– Please confirm that you have read and agree with the additional RFP process terms and conditions in **Appendix A** of this RFP.
- f) **Declaration of a Non-Discrimination Policy** – Please provide a completed and executed Declaration of a Non-Discrimination Policy, in the form attached to this RFP as Appendix C. For information about this declaration, please see Section 17 in Appendix B – Agreement Terms and Conditions.

- g) **Declaration re Former Employees** – Please provide a completed and executed Declaration re Former Employees, in the form attached to this RFP as Appendix D. For information about this declaration, please see Section 16 in Appendix B – Agreement Terms and Conditions.
- h) **Contract Terms and Conditions** - Please provide comments on the Contract Agreement Terms and Conditions in **Appendix B** – Agreement Terms and Conditions and provide comments and proposed changes to these terms and conditions, if any. Such comments will be taken into account by CreateTO in its evaluation of the Respondent's Response.

Please also provide the declaration on Appendix C&D.

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

- i) Proponents may propose additional/alternate scope of work, but the costing included in the proposal should reflect the proposed scope of work outlined above. Clear and detailed rationale must be provided for the additional/alternate scope of work proposed.
- j) The all-inclusive fixed prices are to include all expenses incurred in providing the above services, including overhead, profit, courier services, telephone costs, travel, accommodations, etc., but excluding HST. Please provide a list of staff who will work on the project, and hourly rates to be charged in respect of any extra work which may be requested.

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

Hours of Project Manager – contains 20% of the total hours
Hours of Engineer — contains 50% of the total hours
Hours of technician --- contains 20% of the total hours
Hours of Assistant — contains 10% of the total hours

5. Evaluation

5.1 Selection Committee

All Proposals will be evaluated through a comprehensive review and analysis by a Selection Committee, which will include both CreateTO and City of Toronto staff.

The aim of the Selection Committee will be to select one (1) Proposal which in its opinion meets the requirements under this RFP and provides the best overall value to CreateTO. The Proposal selected, if any, will not necessarily be the one offering the lowest fees or cost (pricing). Pricing is only one of the components that will be used to determine the best overall value.

By responding to this RFP, proponents will be deemed to have agreed that the decision of the Selection Committee will be final and binding.

5.2 Selection Criteria

The selection of the successful proponent will be based on the following selection criteria by using the evaluation table below.

The aim of the Evaluation Committee will be to select one (1) Proposal which in its opinion meets the requirements under this RFP and provides the best overall value to CreateTO. The Proposal selected, if any, will not necessarily be the one offering the lowest fees or cost (pricing). Pricing is only one of the components that will be used to determine the best overall value.

By responding to this RFP, proponents will be deemed to have agreed that the decision of the Evaluation Committee will be final and binding.

Stage 1 – Mandatory Requirements

Proposals will be reviewed to assess compliance with the mandatory submission requirements. Proposals failing to comply with these requirements will be rejected.

The detailed evaluation shall be based on multiple criteria, including:

- a) The proponent profile;
- b) The proponent experience and qualifications, including demonstrated relevant experience, qualifications, and success in comparable assignments;
- c) The proposed staff team and resources, including the caliber of specific professional services qualifications of the team proposed for this assignment, specific consulting skills and relevant work experience on projects of similar size and scope;
- d) The proposed approach to the Project, including demonstrating a clear understanding of the scope of the work/assignment and logical method of achieving the quality deliverables required; and
- e) The work plan and deliverables, costs as well as the schedule.

Stage 2 – Interview and/or reference checks (if required)

- 1) A short list of top-scoring respondents may be selected and CreateTO may validate the written Proposals as follows:
 - a) Detailed reference checks of the assigned project team.
 - b) Interviews will be used within pre-determined and strictly defined limits separate from the evaluation of the Proposals, where no new information shall be submitted.

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

Evaluation Matrix:

Criteria	Weighting	Sub-Criteria	Sections For Reference	
Corporate Capabilities	10	Company Reputation, Company Financial Situation Overall Project Management Capabilities	Section 4.2 (a) and (b)	
Respondent Experience, Proposed Staff Team and Resources	30	Respondent and Sub-Consultants Experience, including understanding the SOW, Experience and Expertise Relevant to this Project; Consulting Experience, Contact Share Holders, Proposed Staff Team, Primary and Secondary Contacts, Knowledge and Resources (including subcontractors, if any)	Section 4.2 (a) and (d)	
Proposal, Scope of work	30	Proposal, including Scope of Work, Deliverables, Project Timeline, Key Milestones.	Section 4.2 (c) (i) (j)	
Fees	20	Proposed Fees/Costs and Structure, including Disbursements Fees for Potential Future Phases/assignments (Hourly Rates)	Section 4.2 (c) (i) (j)	
Confirmation on RFP Process and CreateTO Contract Terms and Conditions	10	Confirmation on RFP process, CreateTO Contract Terms and Conditions (Including Appendix B, C&D)	Section 4.2 (e) and (f) (g) (h)	
Sub-Total	100			

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

6. Reliance

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

APPENDIX A - RFP Process Terms and Conditions

1.	Governing Law	20
2.	Incurred Costs	20
3.	No Collusion or Conflict of Interest	20
4.	Language	20
5.	Ownership and Confidentiality of CreateTO-Provided Data	21
6.	Ownership and Disclosure of Response Documentation	21
7.	Intellectual Property Rights	21
8.	Reservation of Rights	22
9.	Limitation of Liability	23
10.	Other Process Details and Conditions	24

1. Governing Law

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

2. Incurred Costs

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

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

3. No Collusion or Conflict of Interest

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

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

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

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

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

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

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

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

4. Language

Responses must be entirely in English.

5. Ownership and Confidentiality of CreateTO-Provided Data

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

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

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

6. Ownership and Disclosure of Response Documentation

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

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

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

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

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

7. Intellectual Property Rights

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

8. Reservation of Rights

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

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

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

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

9. Limitation of Liability

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

10. Other Process Details and Conditions

CreateTO has set out the following process conditions:

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

APPENDIX B - AGREEMENT TERMS AND CONDITIONS

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Note to Appendix:

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

1. Definitions

In this Agreement, the following definitions will apply:

- (a) **"Confidential Information"** shall mean
 - (i) information disclosed to or obtained by the Consultant in connection with the fulfilment of the terms of this Agreement and which has been identified by CreateTO as information which should be treated as confidential;
 - (ii) all data, preliminary findings, and other material developed in pursuance of the Project; and
 - (iii) as more particularly described in section 16 hereto.

 - (b) **"Consultant"** shall mean and include the Consultant, its agents, contractors, officials, employees and sub-consultants;

 - (c) **"Contract"** means all of the following documents:
 - (a) this Agreement;
 - (b) Proposal; and
 - (c) the RFP.
- and if there is a conflict or ambiguity, this Contract shall be governed by these listed documents in descending order of precedence.
- (d) **"Deliverables"** shall mean the work, product and services, including all data, design, related documentations and interim and final reports, developed or delivered by the Consultant to CreateTO in the course of providing the Services, as set forth in the RFP document and the Consultant's Proposal.

 - (e) **"Key Personnel"** shall mean employee(s) or personnel assigned by the Consultant to deliver the services

 - (f) **"Personnel"** shall mean the employee(s) or personnel hired by the Consultant;

 - (g) **"Proposal"** shall mean the proposal submission appended hereto and forming part of this Agreement as Appendix "A";

 - (h) **"RFP"** shall mean CreateTO's Request for Proposal No. 2019-0XX dated XX, 2019;

 - (i) **"Services"** shall mean the professional services involved in providing a [xxxx] Services to assist CreateTO in developing the properties at [address] (details are described in Section 3 of RFP 2019-0XX and Appendix A (the Consultant's Proposal).

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

2. Services of the Consultant

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

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

3. Time Schedule

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

4. Service Levels

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

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

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

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

5. Delivery of Services; Acceptance Procedures

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

6. CreateTO's Responsibilities

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

7. Consultant's Responsibilities -- Indemnity

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

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

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

8. Insurance

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

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

(i) In the following amounts:

Mandatory Indemnification

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

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

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

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

(ii) adds CreateTO as additional insured;

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

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

9. Sub-Consultants

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

10. Fees

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

11. Right to Audit

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

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

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

12. Additional Services

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

13. Termination Provision – CreateTO

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

14. Termination - Consultant

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

15. Employees of the Consultant

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

16. Former Employees

City of Toronto and CreateTO policy prohibit the rehiring of former employees who left the City of Toronto or any of its agencies, boards or commissions within the previous two years if they have benefited from a retirement incentive or separation program intended to meet downsizing or reorganizing objectives ("Former Employees"). The Consultant and its sub-consultants are prohibited from using any Former Employees to perform or produce the Services or any part thereof. The Consultant shall execute a deliver to CreateTO a declaration confirming that no Former Employees will be engaged in the performance or delivery of the Services.

17. Non-Discrimination Policy

City of Toronto and CreateTO policy require that all firms or organizations who supply goods and services to CreateTO uphold policies which prohibit discrimination and which protect the right to be free of hate activity based on race, ancestry, place of origin, colour, ethnic origin, disability, citizenship, creed, sex, sexual orientation, gender identity, age, marital status, family status, receipt of public assistance, political affiliation, religious affiliation, record of offences, level of literacy, or any other personal characteristics by or within the organization. The Consultant shall execute and deliver to CreateTO a declaration confirming that it upholds such policies.

18. Confidential Information

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

(iv) the Consultant shall not, at any time during or after the term of this Contract, use any Confidential Information for the benefit of anyone other than CreateTO.

19. Right of Ownership and Use

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

20. Conflict of Interest

- (a) The Consultant hereby certifies that there is no conflict of interest or potential conflict of interest between the Consultant, including its employees, officers, directors, sub-consultants or agents, or any of its friends, family or business associates with respect to this Contract or CreateTO. If during the Contract, the Consultant is retained by another client giving rise to a potential conflict of interest, then the Consultant will so inform CreateTO. If CreateTO requests, then the Consultant will refuse the new assignment or will take such steps as are necessary to the complete satisfaction of CreateTO to remove the conflict of interest concerned. If such conflict of interest does exist, CreateTO may, at its discretion, terminate the Contract and will pay to the Consultant any amounts due for Services performed to the date of such termination.
- (b) The Consultant shall ensure that no current or former public office holder or public servant employed by or retained by it, who is not in compliance with the Federal

Government's Conflict of Interest and Post-Employment Code for Public Office Holders or the Federal Government's Values and Ethics Code for the Public Services, or the equivalent thereof applicable in the City of Toronto shall derive a direct benefit from this Agreement.

21. Official Notification

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

in the case of CreateTO to:

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

in the case of the Consultant to:

[supplier name]
[supplier address]

Attention: _____
Phone: _____
Fax: _____
E-mail: _____

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

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

22. Independent Contractor

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

23. Compliance with Laws

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

with CreateTO in connection with any request to disclose the terms of this Contract under that Act.

24. Non-Exclusivity

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

25. Warranties and Covenants

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

26. Third Party Software

- (a) Where CreateTO is in possession of, or makes available, software containing or constituting confidential proprietary information belonging to third parties, the Consultant shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of CreateTO, analyze, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.
- (b) The Consultant shall fully defend, save harmless and indemnify CreateTO and the City of Toronto from and against any loss or damages suffered by CreateTO as a result of any failure by the Consultant, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.
- (c) Should the Consultant include third party components within any software delivered for the project, the Consultant must secure the rights to use and repackage third party components and pass on those rights to CreateTO without additional charges.
- (d) CreateTO will own all intellectual property rights, including (without limitation) copyright, in and to all Deliverables provided by the Consultant and its subcontractors.

27. Payment Schedule

- (a) A payment schedule satisfactory to CreateTO shall form part of the Agreement.
- (b) The Consultant shall submit invoices in such detail as may be required by CreateTO, and CreateTO reserves the right to require further proof or documentation from the Consultant in respect of Services performed or expenses incurred by the Consultant and the Consultant shall provide, without delay, such further proof or documentation.

- (c) If CreateTO does not approve of the Services which are the subject of the invoice, CreateTO shall advise the Consultant in writing of the reasons for non-approval and the Consultant shall remedy the problem at no additional cost to CreateTO before CreateTO shall be obliged to pay the invoice or any part of it, as the case may be.
- (d) The Consultant shall be solely responsible for the payment of all personnel costs, statutory and otherwise (including without limitation, subcontractors and suppliers and their respective personnel) made available by it and used for performance of any of the Services.

28. Governing Law and Venue

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

29. Interpretation

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

30. Complete Contract

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

31. Successors & Assigns

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

ownership or controlling interest in the Consultant, whether through the sale of shares, direct acquisition of assets or otherwise.

- (c) This Agreement shall enure to the benefit of and be binding upon CreateTO, its successors and assigns.

APPENDIX C - DECLARATION OF NON-DISCRIMINATION POLICY

As a City agency, CreateTO requires all firms or organizations who supply goods and services to CreateTO to make and abide by the declaration below.

On behalf of and with the authority of the firm/organization named below, I hereby declare that this organization/firm upholds policies which prohibit discrimination and which protect the right to be free of hate activity based on race, ancestry, place of origin, colour, ethnic origin, disability, citizenship, creed, sex, sexual orientation, gender identity, age, marital status, family status, receipt of public assistance, political affiliation, religious affiliation, record of offences, level of literacy, or any other personal characteristics by or within the organization.

Please type or print where applicable.

Legal Name of Organization:	Common or Business Name (if different)
Address of Principal Place of Business:	Mailing Address (if different):
Tel. No.: Fax No.:	
Name of Chief Executive Officer/Principal:	Name of Employment Equity Official:
Position Title:	
Signature of Authorized Official:	Date:

Check if Firm is more than 50% owned by* (check all that apply):

- Aboriginal Peoples/First Nations of Canada People with Disabilities
 Racial Minorities Women Not Applicable

* Please see below for explanation of definitions

Definitions:

- a) Aboriginal/ First Nations of Canada:** A person is an Aboriginal person if he or she is a member of the Indian, Inuit or Metis peoples of Canada.
- b) Disability:** A person is a "person with a disability" if the person has a persistent physical, mental, psychiatric, sensory or learning impairment and,
- a. the person considers himself or herself to be disadvantaged in employment by reason of that impairment, or
 - b. the person believes that an employer or potential employer is likely to consider the person to be disadvantaged in employment by reason of that impairment.

- c) Race:** A person is a member of a racial minority if the person is, because of his or her race or colour in a visible minority in Canada. The fact that a person is an Aboriginal Person does not make him or her a member of a racial minority.

APPENDIX D - DECLARATION RE FORMER EMPLOYEES

As a City agency, CreateTO requires that no Former Employees be engaged to perform or produce the Services or any part thereof.

“Former Employee” means any employee who left the City of Toronto or any of its agencies, boards or commissions in the previous two years and who received the benefit of a Separation Program or Retirement Incentive.

“Retirement Incentive” means any financial incentive that facilitates early retirement.

“Separation Program” means a special program offering financial incentives that are introduced to meet downsizing or reorganizing objectives.

On behalf of and with the authority of the firm/organization named below, I hereby declare that this organization/firm will not employ or engage any Former Employees, either directly or through a sub-consultant, in the performance or production of the Services, as defined in RFP 2019-001 (CTO).

Please type or print where applicable.

Legal Name of Organization:	Common or Business Name (if different)
Address of Principal Place of Business:	Mailing Address (if different):
Tel. No.: Fax No.:	
Name of Chief Executive Officer/Principal:	
Position Title:	
Signature of Authorized Official:	Date: