

CORPORATION OF THE COUNTY OF DUFFERIN

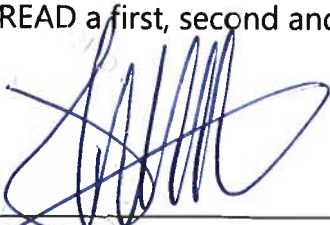
BY-LAW NUMBER 2019-44

A BY-LAW TO APPROVE AN AGREEMENT BETWEEN THE CORPORATION OF THE COUNTY OF DUFFERIN AND WSP CANADA GROUP LTD. (Municipal Comprehensive Review)

BE IT ENACTED BY THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF DUFFERIN AS FOLLOWS:

1. That the Agreement between the Corporation of the County of Dufferin and the WSP Canada group Ltd., in a form substantially the same as attached hereto as Schedule "A" be approved.
2. That the Warden and Clerk be hereby authorized to execute the agreement and affix the corporate seal thereto.
3. That the staff of the County of Dufferin is hereby authorized to take such actions as are appropriate, and the Warden and Clerk are hereby authorized to execute such documents as are appropriate to implement the agreement referred to herein.

READ a first, second and third time and finally passed this 10th day of October, 2019.



Darren White, Warden



Pam Hillock, Clerk





CONSULTANT AGREEMENT

Entered into in Markham, Province of Ontario, on the effective date of September-6-2019 (the "Agreement").

AMONG: **Dufferin County**, a duly incorporated corporation, having its head office at 55 Zina Street, Orangeville, Ontario L9W 1E5, represented by Darrell Keenie, who declares being duly authorized to act herein.

(herein referred to as the "Client")

AND:

WSP Canada Group Ltd., a duly incorporated corporation, having its head office at 100 Commerce Valley Drive West, Thornhill, Ontario, L3T 0A1, represented by Chris Tyrrell, who declares being duly authorized to act herein.

(herein referred to as the "Consultant")

(The Client and the Consultant referred to individually as a "Party" or collectively as the "Parties")

THE PARTIES MAKE THE FOLLOWING PRELIMINARY STATEMENTS:

- A. The Client wishes to review and update the Dufferin County Official Plan at Dufferin County, Canada (the "Project").
- B. The Client desires to retain the Consultant to provide to the Client the professional services described in Schedule B (the "Services").
- C. The Consultant is a corporation specializing in the field of Municipal Planning and agrees to providing the Services to the Client.

In consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement, unless the context indicates a different meaning:

- (a) "Affiliate" shall have the meaning given to that term in the *Canada Business Corporations Act* or any replacement or supplemental Law in effect from time to time, which meaning shall, mutatis mutandis, apply to partnerships, general partnerships and limited partnerships;

- (b) **"Change"** means any alterations, amendment, additions, reductions or other changes in the Services initially provided for in the Agreement, either by a Change Order or a Change Directive;
 - (c) **"Change Directive"** means a written instruction signed by the Client directing the Consultant to proceed with a Change in the Services, prior to the Parties agreeing on an adjustment in the Agreement Price and/or the Time Schedule (if such adjustment is necessary);
 - (d) **"Change Order"** means a written amendment to this Agreement signed by both Parties agreeing on a Change in the Services, an adjustment in the Contract Price and/or the Time Schedule;
 - (e) **"Contract Price"** means the amount payable to the Consultant set forth in Schedule A. The amount payable shall be fixed and firm, unless otherwise provided in Schedule A. The Contract Price may only be modified in accordance with Section 7 (Changes);
 - (f) **"Deliverables"** means all those things that have been or are to be conceived, developed and delivered to the Client in the course of the execution of this Agreement or otherwise in connection with the Project or the Services, including without limitation, all drawings, plans, models, designs, specifications, reports, photographs, computer software, surveys, calculations and other data, including computer print outs, in any material form and support whatsoever, prepared, procured or provided by or on behalf of the Consultant;
 - (g) **"Force Majeure"** means an event beyond the control of the Parties, which materially prevents a Party from complying with any of its obligations under this Agreement, and could not reasonably have been foreseen or provided against, including but not limited to an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods), war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo, rebellion, revolution, insurrection, or military or usurped power, or civil war, contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly, riot, commotion, or disorder or acts or threats of terrorism, but does not include general economic or other conditions affecting financial markets generally;
 - (h) **"Law"** or **"Laws"** means collectively all valid applicable common law, federal, provincial and municipal and other local laws, orders, rules, regulations and decisions of regulatory bodies, including, occupational health and safety, fire, employment insurance, workers' compensation, environmental protection legislation, building codes, anti-bribery law or international convention, as may apply now or in the future and any other governmental requirements, work practices and procedures prescribed by law and related to the Project or the Services;
 - (i) **"Place of the Work"** means the designated site or location of where the Services are performed;
 - (j) **"Reimbursable Expenses"** means those expenses that are identified in Schedule A of this Agreement and which are payable by the Client to the Consultant;
 - (k) **"Services Commencement Date"** means the date as set out in Schedule C; and
 - (l) **"Time Schedule"** means the time schedule for performing the Services and delivering the Deliverables, as set out in Schedule C.
- 1.2 **Schedules.** The Schedules referenced in this Agreement shall be deemed to form an integral part hereof.



2 INTERPRETATION

- 2.1 **Interpretation.** The interpretation of this Agreement shall be governed by the following rules:
- (a) Headings contained in this Agreement are for convenience and reference only and are not to be considered in the interpretation of, or affect the meaning of any of its provisions;
 - (b) Words importing the singular only also include the plural and vice versa where the context requires; and
 - (c) All dollar figures shall mean Canadian Dollars, unless otherwise specifically referenced.
- 2.2 **Precedence.** If there is a conflict or inconsistency among or between the documents comprising this Agreement, the order of priority of the documents which make up this Agreement, from the highest to the lowest, shall be:
- (a) This Agreement;
 - (b) The Schedules to this Agreement; and
 - (c) If any, the other attachments to this Agreement.

3 CONSULTANT OBLIGATIONS

- 3.1 **Execution of Services.** The Consultant shall provide the Services in accordance with this Agreement.
- 3.2 **Schedule and Completion.** The Consultant shall perform the Services and submit the Deliverables as set out in Schedule C.
- Should the Consultant determine that the Time Schedule will not be met for any reason, the Consultant shall so notify the Client without delay and the Parties shall forthwith discuss in good faith to find a mutually acceptable solution.
- 3.3 **Standard of Care.** Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care, skill and diligence normally provided by members of the same profession performing the same or comparable services in respect of projects of a similar nature in similar circumstances.
- 3.4 **Deliverables.** The Consultant shall prepare, issue and submit for review to the Client, all Deliverables within the Time Schedule. If and when applicable, Deliverables shall be stamped by a licensed professional engineer duly authorized and licensed to work in the jurisdiction of the Project. Unless otherwise agreed to by the Parties, all Deliverables and other documents produced hereunder shall be in English.
- 3.5 **Laws and Regulations.** The Consultant shall comply in all respects with the provisions of all Laws applicable to the Services.
- 3.6 **Representation.** The Consultant represents that the Services provided in connection with the Project shall be in conformity with the requirements of this Agreement. If at any time during the performance of the Services or thereafter the Client notifies the Consultant of any non-conforming Services, the Consultant, at its own costs, shall promptly correct such Services. The Client and the Consultant shall agree upon a schedule for the Consultant's re-performance of its Services, which shall allow the Consultant to complete the corrective services within a reasonable period of time.
- 3.7 **Occupational Health and Safety.** The Consultant shall take all necessary precautions for the health and safety of its employees, consultants, agents and other persons under the Consultant's responsibility or control. The Consultant shall comply with all applicable occupational health and safety legislation as well as with all safety precautions and programs of the Client. The Consultant shall coordinate its actions with those of the Client and others, as applicable, but the Consultant



shall remain responsible for independently evaluating the risks specifically related to the Services and take such additional safeguards as appropriate. The Client retains the right to review the Consultant's health and safety plan in order to monitor the Consultant's compliance.

4 CLIENT OBLIGATIONS

- 4.1 **Duty to Answer.** The Client shall forthwith consider any requests made by the Consultant in connection with this Agreement, including, without limitation, as it relates to information, directions or decisions and answer to such request within a reasonable period of time so as to avoid delaying the performance of the Services.
- 4.2 **Duty of Information.** The Client shall make available to the Consultant any and all information and data relating to the Project that is required by the Consultant in connection with the performance of the Services.
- 4.3 **Permits and Other Authorizations.** The Client shall obtain and pay for all permits, licences, authorizations and approvals required by federal, provincial, municipal or other authority and satisfy any other conditions necessary or desirable for the execution of the Services.
- 4.4 **Exclusive Use by Client.** Reports, opinions, findings, recommendations, including expert testimony, or other documents prepared under this Agreement are prepared for the exclusive use of the Client identified as the intended recipient. The Consultant accepts no responsibility for damages, if any, suffered by any third party as a result of decisions made or actions taken based on these documents. The Consultant is not responsible for the use of, or reliance on, these documents by any other party without the written consent of the Consultant.

In the event that the Client wishes to provide a third party with a document prepared under this Agreement, the Consultant may, at its sole discretion, provide a reliance letter on its own terms.

5 PAYMENT

- 5.1 **Invoicing & Payment.** The Consultant shall submit its invoice to the Client, on a monthly basis for Services performed during the immediate preceding month, together with such information and supporting documentation.
- The Client shall pay the full amount invoiced to the Consultant within thirty (30) days of receipt thereof. The acceptance by the Consultant of the final payment under this Agreement shall not operate as a release to the Client for all claims and liability to the Consultant, its representatives, subcontractors, suppliers, and assigns for any additional compensation or payment relating to any and all things done or furnished relating to the Services rendered by the Consultant.
- 5.2 **Disputed Invoice.** The Client shall notify the Consultant in writing if any portion of an invoice is disputed within ten (10) days following the receipt of the invoice. The failure to notify the Consultant of the existence of disputed amounts within the aforementioned time period shall be deemed an acceptance of the amounts shown in said invoice.
- 5.3 **Taxes.** The Client is fully responsible for the payment of any and all sales, use, transfer or similar taxes in connection with the Services including, for more certainty, the federal goods and services tax, the harmonized sales tax and the Quebec sales tax, as the case may be.
- 5.4 **Interest.** Any amounts outstanding thirty (30) days from the date of an invoice shall bear interest at a rate of one percent (1 %) per month, compounded annually or twelve percent (12 %) per annum.
- 5.5 **Disbursements.** Disbursements will be billed at cost plus a five percent (5 %) administrative charge.



- 5.6 **Suspension of Services.** If any invoice submitted by the Consultant remains unpaid by the Client for forty-five (45) days or more from the date the invoice was submitted, then the Consultant may give seven (7) days' written notice to the Client that the Consultant will suspend Services. The Client shall not have any claim whatsoever against the Consultant for any loss, cost, damage, or expense incurred or anticipated to be incurred by the Client as a result of the suspended Services.

6 OWNERSHIP OF DELIVERABLES AND INTELLECTUAL PROPERTY RIGHTS

- 6.1 **Intellectual Property Rights.** All intellectual property, including any Deliverables, data, information, reports, drawings, calculations, renderings, plans, specifications, memoranda or other documents, test data, financial information, calibration records, survey results, photographs, renderings, sketches, models, written works of authorship, regardless of format and all other items used or developed as a part of the Services (the "Data"), including under copyright, patent or industrial design laws (collectively, the "Intellectual Property"), remain with the Consultant whether or not such Intellectual Property was developed or used in the context of the Project.
- 6.2 **Client's Rights Regarding Data.** To the extent any part of the Data was delivered to the Client pursuant to the terms of this Agreement, the Client has the right to keep a copy of such Data and Deliverables, it being understood that the foregoing shall not be construed as the Consultant granting any right of ownership on to such Data and Deliverables in favour of the Client.

7 FORCE MAJEURE

- 7.1 **Delays Caused by Force Majeure.** A Party shall not be liable for any failure of or delay in the performance of this Agreement by reason of an event of Force Majeure. Where there is an event of Force Majeure, the Party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other Party giving full particulars of the event of Force Majeure and the reasons for the event of Force Majeure preventing that Party from, or delaying that Party in performing its obligations under this Agreement and that Party must take all reasonable precautions, due care and reasonable alternative measures to mitigate the effect of the event of Force Majeure upon its performance of the Services.
- 7.2 **Resumption of Obligations.** Upon completion of the event of Force Majeure the Party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement. The Consultant must provide a revised programme rescheduling the works to minimise the effects of the prevention or delay caused by the event of Force Majeure.
- 7.3 **Continuing Obligations.** An event of Force Majeure does not relieve a Party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.
- 7.4 **Additional Time.** In the event that a Party is unable to perform its obligations due to an event of Force Majeure, the affected Party shall benefit from an additional period equal to the time during which such Party was unable to perform such obligations as a result of Force Majeure.

8 CHANGES

- 8.1 **Change Order.** Upon the Client's request for a Change, the Consultant shall promptly provide the Client with a written Change Order proposal respecting all aspects of the Change, including the scope of the Change, the amount of the adjustment in the Contract Price and progress payments, if any and the effect on the Time Schedule, if any. If the Parties agree on all aspects of the Change for which a Change Order proposal is made, they shall execute a written Change.

The Change Order is effective when agreed to and signed by the Parties. The Consultant shall carry out such Change Order as well as its obligations under the Agreement and continues to be bound by all the provisions of the Agreement.

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The Consultant shall only be entitled to additional compensation and, to the extent provided in a Change Order, extension of time for Services forming part of a Change.

- 8.2 **Change Directive.** If the Client requires the Consultant to proceed with a Change before the Consultant agrees to a Change Order, or if the Parties are unable to agree on a Change Order proposal, the Client may issue a Change Directive. Upon receipt of a Change Directive, the Consultant shall promptly carry out the Change specified in the Change Directive.

If the Consultant believes that a Change Directive will increase or decrease the Contract Price or affect the Time Schedule or the performance of a warranty, covenant or obligation, the Consultant shall, within five (5) days of receipt such Change Directive or before carrying out the Change, whichever is earlier, give written notice of its concerns and anticipated impacts to the Client.

- 8.3 **Change Required by the Consultant.** The Consultant shall not make any Change to the Services unless having obtained prior approval from the Client.

For a Change that results from circumstances that were totally unforeseeable at the time of the signature of the Agreement, the Consultant may submit to the Client a request for an adjustment in the Contract Price, Time Schedule or any other condition of the Agreement. Any such request shall (i) be made in writing within fifteen (15) days after the occurrence of the event giving rise to the request for adjustments, and (ii) contain explanation regarding the basis for the adjustment requested and include realistic estimates, an explanation of the methods of calculation and information on the relevant costs and quantities of materials or additional labour.

The Client shall consent in writing to any written request for adjustments submitted by the Consultant by issuing a Change Order. Regardless of the Client's position regarding a request for adjustments, the Consultant must continue to meet its obligations for the duration of the Agreement. For clarity, in the absence of the Client's written consent, the Consultant's request for adjustments in the Contract Price shall be deemed to have been accepted.

- 8.4 **Change without the Client consent.** The Consultant shall not make any Change, regardless of the reason, without first receiving a duly executed Change Order or Change Directive from the Client, failing which the Consultant shall assume the entire risks, costs and expenses related to the Changes.

- 8.5 **Incorporation into the Agreement.** The Changes are incorporated into the Agreement once a Change Order or Change Directive is made in writing and duly signed by the Parties in the case of a Change Order, and in the case of a Change Directive, once signed by the Client and delivered to the Consultant.

9 CONSULTANT EVENTS OF DEFAULT

- 9.1 **Consultant Default.** The Consultant shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a "**Consultant Event of Default**"):

- (a) The Consultant fails to commence the Services on the Services Commencement Date or suspends the progress of the Services or fails to perform the Services or any part thereof within the scheduled dates set out in Schedule C, except where the Consultant as the right to suspend the Services pursuant to this Agreement;
- (b) The Consultant defaults of any of its obligation under the Agreement and fails to remedy such default to the satisfaction of the Client, acting reasonably, within the time period stated in a written notice from the Client specifying the default, which period shall be reasonable;
- (c) The Consultant proceeds to wind up all or most of all its assets outside the normal course of its business, permanently ceases all or substantially all of its activities, becomes bankrupt or insolvent, or makes an assignment for the benefit of its creditors in general, or

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is unable to pay its debts as they become due, or if a receiver, liquidator, official or interim receiver is appointed with respect to its property or part of its property, or commits an act of bankruptcy; or

- (d) The Consultant fails to correct the Services rejected by the Client within the time period stated in a written notice to this effect, which period shall be reasonable.

10 SUSPENSION OR TERMINATION

10.1 Termination for Default of Consultant. Upon the occurrence of any Consultant Event of Default, the Client shall notify the Consultant that the default must be corrected. If the Consultant fails to correct the default within thirty (30) calendar days after receipt of such notice or, where the default is not susceptible of being corrected within such time, if the Consultant fails to provide a corrective measures plan acceptable to the Client within thirty (30) calendar days, the Client may terminate this Agreement by written notice to the Consultant. Upon such termination, the Client may, without prejudice to all its other remedies, take possession of the Services, including, whether completed or in progress, all Deliverables in order to have the Services completed by a third party.

10.2 Termination for Default of Client. Should the Client be in default of its obligations pursuant to this Agreement, the Consultant shall notify the Client that the default must be corrected. If the Client fails to correct the default within fifteen (15) calendar days after receipt of such notice or, where the default is not susceptible of being corrected within such time, the Client fails to provide a corrective measures plan acceptable to the Consultant within fifteen (15) calendar days, the Consultant may terminate this Agreement by written notice to the Client. Upon such termination, the Client shall pay to the Consultant the portion of the Contract Price due to the Consultant for Services effectively completed up to the date of termination and all Reimbursable Expenses (which shall, for more certainty, include all fees payable by the Consultant to third parties in connection with the early termination of their contractual arrangements with the Consultant) incurred by the Consultant up to the said date. For more certainty, the payment by the Client of the sums provided in this Subsection 10.2 shall not operate as a waiver of any further claim that the Consultant may have against the Client for the termination of the Agreement or otherwise.

11 SURVIVAL OF OBLIGATIONS

11.1 Survival. The end of this Agreement shall not terminate any provision which, implicitly or explicitly, shall remain in force including, without limiting the generality hereof, Sections 6 (Ownership of Deliverables and Intellectual Property Rights), 12 (Liability and Indemnification), 14 (Non-Solicitation), 15 (Confidentiality), 16 (Dispute Resolution), 17.3 (Governing Law) and 17.4 (Forum).

12 LIABILITY AND INDEMNIFICATION

12.1 Indemnification by the Consultant. The Consultant agrees to indemnify the Client, its principals, employees, directors, officers and agents from and against all claims, actions, losses, expenses, costs or damages which the Client, its principals, employees, directors, officers, or agents may suffer, sustain, or incur arising from any negligent or faulty acts or omissions of the Consultant or anyone for whom the Consultant is responsible.

Notwithstanding anything hereunder to the contrary, the Consultant shall not have any liability whatsoever to the Client for:

- (a) any indirect, consequential, special, incidental, exemplary or punitive damages or similar damages or losses including, without limitation, for any loss of opportunity, revenue, sales or profits, regardless of whether arising from breach of contract, warranty, tort (including negligence), strict liability, statutory liability or otherwise, even if such party is advised of the possibility of such damage or loss or if such loss or damage could have been reasonably foreseen;

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- (b) the failure of a contractor, retained by the Client, to perform the work required in the Project, nor shall the Consultant be responsible for job site safety or construction means and methods;
- (c) the design of or defects in equipment supplied or provided by the Client for incorporation into the Project;
- (d) any cross-contamination resulting from subsurface investigations;
- (e) any advice on any matter given by an independent third party, even if such third party's advice was requested on the recommendation of the Consultant;
- (f) any default affecting goods that were recommended by the Consultant;
- (g) any damage to subsurface structures and utilities which were identified and located by the Client, or by the Client's other consultants or contractors;
- (h) any Project decisions made by the Client, if the decisions were made without the advice of the Consultant, or contrary to or inconsistent with the Consultant's advice;
- (i) the unauthorized distribution of any confidential document or report prepared by or on behalf of the Consultant for the exclusive use of the Client; or
- (j) claims for damages for bodily injury, including death which is actually or allegedly, in whole or in part, directly or indirectly, caused by, based upon or in any way involving asbestos or any material derived therefrom in whatever form or quantity.

12.2 **Indemnification by the Client.** The Client agrees to defend, indemnify and hold the Consultant, its principals, employees, directors, officers and agents harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Consultant, its principals, employees, directors, officers, or agents may suffer, sustain, or incur arising from:

- (a) claims of third parties in relation to the Project;
- (b) any negligent or faulty acts or omissions of the Client or anyone for whom the Client is responsible; or
- (c) any breach of the Client's obligations under this Agreement.

12.3 **Limit of Liability.** Notwithstanding the foregoing, the Client acknowledges and agrees that the liability of the Consultant, its affiliates and their respective employees, officers, directors, agents, consultants and subcontractors under this Agreement, whether in contract, tort or otherwise, shall in no event exceed the total fees received by the Consultant under this Agreement.

12.4 **Limitation Period.** Notwithstanding any other provision of this Agreement, no claim may be brought against the Consultant in contract or in tort, more than one (1) year after the Services were completed or terminated under this Agreement. The Client waives any and all rights, remedies, and claims that it may have against the Consultant, its principals, employees, directors, officers, or agents whether at law, under any statute or in equity or otherwise, directly or indirectly, relating to the performance of this Agreement to the extent limited by this Section 12.

13 INSURANCE

13.1 **Coverage.** The Consultant shall carry and continuously maintain the following insurance:

- (a) such coverage as required by the applicable Workers' Compensation legislation;
- (b) commercial general liability insurance with a minimum occurrence and aggregate limit of not less than Two Million (\$2,000,000.00) Dollars; and

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- (c) professional liability (errors and omissions) insurance in an amount not less than Two Million (\$2,000,000) Dollars per claim and as an annual aggregate, throughout the term of this Agreement and for a period of three (3) years thereafter.

13.2 **Notice of Insurance Claim.** Each Party shall forthwith give to the other Party any and all information relating to events and circumstances that may result in a claim pursuant to any insurance coverage maintained by the Consultant pursuant to this Agreement. The Parties agree to collaborate with each other in a commercially reasonable manner in connection with any such insurance claim.

14 NON-SOLICITATION

14.1 Unless otherwise agreed to in writing, the Client, during the term of this Agreement and for an additional six (6) month period, undertakes and binds itself not to, directly or indirectly, alone or through an intermediary, in association with any third party, for its own benefit or on behalf of a third party, for any reason, solicit or assist in the solicitation of an employee of the Consultant who is assigned to the provision of Services for the purpose of offering him/her an employment, a participation or a form of partnership, or to convince an employee of the Consultant involved in the Services to terminate his/her employment relationship, under risk of penalty equal to twelve (12) months of each solicited employee's gross salary. Nothing in this Subsection 14.1 shall apply if the employee is hired in response to a public advertisement or general solicitation disseminated by the Client.

15 CONFIDENTIALITY

15.1 **Confidential Information.** The information of one Party (the "**Disclosing Party**") brought to the attention of another Party (the "**Receiving Party**"), whether such information is identified as being confidential or proprietary (the "**Confidential Information**"), must be treated by the Receiving Party in a strictly confidential manner during the term of this Agreement and for an additional twenty-four (24) month period. The Receiving Party agrees to take appropriate action so that its employees, agents, Affiliates, subsidiaries, associated companies, subcontractors and entire staff abide by the confidentiality obligations described herein. The Receiving Party which breaches the provisions of this Section shall be liable towards the Disclosing Party for damages arising out of its default. The confidentiality obligations shall not apply to any information which (i) is generally available to and known by the public (other than as a result of improper disclosure by the Receiving Party, (ii) is available to (or in the possession of) the Receiving Party on a non-confidential basis, provided that the source of such information was not known by the Receiving Party to be bound by a confidentiality obligation to the Disclosing Party, (iii) must be disclosed pursuant to an order or final directive of a court or government agency in authority, or in accordance with the Law.

15.2 **Disclosure.** In such case, the Receiving Party which is required to disclose information shall, as soon as possible after receiving said order or directive, or upon becoming aware of its legal obligation of disclosure, notify the Disclosing Party in writing that it is required to make such disclosure.

15.3 **Liability for Breach of Confidentiality Obligation.** Without limitation and in addition to any other rights or remedies each Party may have, each Party acknowledges that it shall be liable to and shall indemnify and hold harmless the other Party and its Affiliates and the Client from any claims brought against or suffered, sustained, paid or incurred by the other Party or its Affiliates resulting from a breach of this Section 15.

15.4 **Right to Injunction.** Each Party acknowledges that a breach of any of the undertakings or provisions contained in this Section 15 may cause the other party to suffer irreparable harm. In addition to claiming damages or an indemnity, the affected party shall be entitled to any injunctive relief and specific performance and the other party consents to any such injunctive relief and

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specific performance. The foregoing rights shall be cumulative and shall be in addition to any other remedies which may be available to the concerned Party.

16 DISPUTE RESOLUTION

16.1 **Process.** Any dispute or disagreement arising out of or relating to this Agreement or arising from its interpretation or application shall be dealt with in accordance with the dispute resolution mechanism described below and shall be conducted on a confidential basis. In the event of a dispute, a written notice by either Party to the other shall set in motion the formal dispute resolution mechanism. The notice of dispute shall provide all details reasonable available regarding the matter that is subject of the dispute. Upon receipt of a notice of dispute, the Parties agree to resolve the dispute in the following order:

- (a) through amicable negotiations between the representatives each Party;
- (b) before the courts in the judicial district where the Services are rendered.

17 MISCELLANEOUS PROVISIONS

17.1 **Good Faith.** The Parties endeavor to use reasonable diligence as well as good faith in their performance of this Agreement.

17.2 **R&D Incentives.** Should any portion of the Services and Deliverables performed by Consultant be eligible for the Scientific Research and Experimental Development Tax Incentive Program (as such program is defined by the Canada Revenue Agency) or any other equivalent tax credit or grant program which may be awarded in Canada, Consultant retains the exclusive right to claim such incentive, tax credit or grant.

17.3 **Governing Law.** This Agreement shall be interpreted pursuant to, governed by and construed under the Laws of the Province of the Place of the Work and the federal Laws of Canada applicable therein, without regard to the principles of conflict of laws. The Parties agree, subject to Section 16, to accept and submit to the exclusive jurisdiction of the courts of the Province of the Place of the Work, to the exclusion of the courts of any other Province.

17.4 **Forum.** The Parties waive any objection based on venue or *forum non conveniens* with respect to any claim or other disputes arising under this Agreement or in any way connected to or related to or incidental to the dealings of the Consultant and the Client in respect of this Agreement or any related transactions, in each case whether now existing or hereafter arising and whether in contract, tort, civil liability, or other legal theories or specific statutes.

Notice. Any notice required or which may be given under this Agreement is sufficient if in writing and sent in a way that allows the sending Party to prove that such notice was actually delivered to the address or to the fax number of each receiving Party or to any other address, fax number or email address set out below. Notices and other forms of communication are deemed received from the time of their delivery, if delivered by messenger, on the date of the acknowledgement of receipt, if delivered by mail, on the date received, if sent by fax, on the date stated on the transmission slip, and on the transmittal date in the case of an email sent to a valid email address specified below:

- (a) if to the Client at:
 - 55 Zina Street, Orangeville, Ontario L9W 1E5
 - Attention of Darrell Keenie
 - Telephone: 519-941-1114
 - Facsimile: n/a
 - Email: dkeenie@dufferincounty.ca



(b) if to the Consultant at:
100 Commerce Valley Drive West, Thornhill, Ontario L3T 0A1
Attention of Chris Tyrrell
Telephone: 905-882-7303
Facsimile: 905-882-0055
Email: Chris.Tyrrell@wsp.com

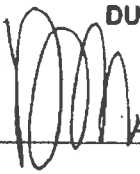
- 17.5 **Assignment.** Neither Party shall assign or subcontract any part of this Agreement, including the Services, nor any rights or obligations herein without the prior written consent of the other Party. In the event this Agreement is assigned or subcontracted with the consent of a Party, the assignor shall remain responsible to the non-assigning Party for the proper performance of the assignee's obligations under this Agreement.
- 17.6 **Entire Agreement and Amendments.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement or the other documents mentioned herein. No change, amendment or modification to this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment or modification is made in writing and duly executed by both Parties hereto.
- 17.7 **No Waiver.** Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce such provisions or require compliance with such terms.
- 17.8 **Severability.** If any term, covenant or condition of this Agreement, to any extent, is held to be invalid or unenforceable, the remainder of this shall not be affected and each remaining term, covenant or condition of this Agreement shall be separately valid and shall be enforceable to the fullest extent permitted by Law.
- 17.9 **Adverse Rule of Construction Not to Apply.** The words in this Agreement shall bear their natural or defined meaning. The Parties have each had full opportunity of obtaining legal advice and accordingly any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of this Agreement.
- 17.10 **Rights and Remedies.** The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a substitution to any duties, obligations, rights and remedies otherwise available by Law.
- 17.11 **Further Assurances.** Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.
- 17.12 **No Joint Venture.** Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between the Client and the Consultant. The relationship between the Client and the Consultant is that of an independent contractor and a client, respectively, and under no circumstances shall either Party be deemed agents or representatives of the other Party. Neither Party shall have the right to enter into any contracts or commitments in the name of or on behalf of the other Party in any respect whatsoever. In addition, neither Party shall hold itself out to anyone, or otherwise represent, that it has any such authority vis-a-vis the other Party.



17.13 **Language Clause.** This Agreement and all documents and notices relating thereto have been drawn up in English at the express request of the Parties. *Le présent contrat ainsi que tous les documents et avis y afférent ont été rédigés en anglais à la demande des parties.*

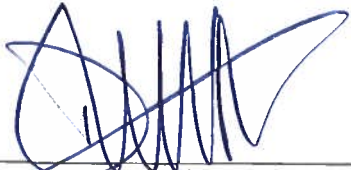
IN WITNESS WHEREOF the Parties have signed this Agreement at the place and on the date first hereinabove mentioned.

DUFFERIN COUNTY



Name : Darrell Keenie

Title : Director - Planning, Economic Development and Culture



Name: Darren White

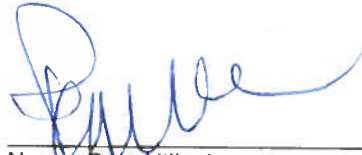
Title: Warden, Dufferin County

WSP CANADA GROUP LTD.



Name : Chris Tyrrell

Title : Vice President, Planning, Landscape Architecture & Urban Design



Name: Pam Hillock

Title: County Clerk

AUTHORIZED BY DUFFERIN COUNCIL
BY-LAW RESOLUTION NO. 2019-44
THE 10th DAY OF October, 2019.

11511

**SCHEDULE A
CONTRACT PRICE AND REIMBURSABLE EXPENSES**

Contract Price:

\$521,960.50

The Contract Price payable by the Client to the Consultant in respect of the Services shall be the aggregate of all fees payable to the Consultant (exclusive of the Reimbursable Expenses) for the base services and additional services set forth in Schedule B, which fees shall be as follows:

The fee for the Consultant's base services shall be: in accordance with Appendix B.

The fee for the Consultant's additional services shall be: determined on an as-needed basis where additional meetings and tasks are required outside of the scope of services identified in the Consultant's proposal.

Reimbursable Expenses:

To be charged within upset limit in accordance with Appendix B.



**SCHEDULE B
DESCRIPTION OF THE SERVICES**

Contract No: n/a

Base Services:

The base services shall consist of:

Planning services to complete an Official Plan review and update in accordance with Appendix B.

Additional Services:

The following Services, which shall be considered to be additional to the Consultant's base Services set forth above, shall be provided by the Consultant to the Client at the written request of the Client:

1. Additional meetings or tasks identified by the Client shall be identified and assigned a scope and fee in consultation with both parties.

Excluded Services:

Notwithstanding any other provision of this Agreement, the Consultant shall not be responsible for the following services:

n/a

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Consultant Agreement

**SCHEDULE C
TIME SCHEDULE**

In accordance with Appendix A: Proposed Work Schedule

Services Commencement Date: September-6-2019