



THE CORPORATION OF THE CITY OF BRAMPTON

# BY-LAW

Number 193-2007

A By-law to provide for the procurement of goods and services  
(Purchasing By-law)

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WHEREAS the Municipal Act 2001, provides that a municipality shall adopt a policy for the procurement of goods and services; and

WHEREAS the fundamental objective of the procurement function is to provide operating departments with the goods/services they need in the right quality and quantity, on a timely basis, as efficiently as possible, and at the lowest overall cost; and

WHEREAS, to achieve this objective, the procurement function seeks to foster as much competition as possible and, in doing so, adopts the goal of fairness by ensuring that all whom wish to compete for the opportunity to sell to the City can do so; and

WHEREAS the goal of integrity is woven through the procurement cycle, so as to maintain the public's trust and reduce the City's exposure to criticism and suit, achieved through the requirement of complying with all applicable legal provisions.

NOW THEREFORE the Council of The Corporation of the City of Brampton ENACTS as follows:

## 1.0 DEFINITIONS

In this Policy:

- 1.1 **"Authority"** means the legal right to conduct the tasks outlined in this policy as directed by the Office of the City Manager to the Commissioner of Finance and subsequently to the Sr. Manager of Purchasing .
- 1.2 **"Bid"** means an offer or submission received from a vendor in response to a request, which offer or submission may be accepted or rejected.
- 1.3 **"Blanket Purchase Order"** means any contract for the purchase of goods and/or services which will be required frequently or repetitively but where the exact quantity of the goods and/or services required may not be precisely known or the time period during which the goods and/or services are to be

provided may not be precisely determined, but having a maximum on both the total price or value of all goods and/or services and the time period during which all goods and/or services are to be supplied under such contract.

- 1.4 **“City”** means The Corporation of the City of Brampton.
- 1.5 **“City Manager”** means the City Manager of the City of Brampton or designate.
- 1.6 **“Competitive”** means vendors are given an equal opportunity to compete for City business.
- 1.7 **“Confidential”** means delivered under circumstances where all or part of the goods and/or services relate to any matter of the kind which may be considered by Council in the absence of the public or where the goods and/or services include the creation of records, the disclosure of which would be denied upon receipt of a request under the Municipal Freedom of Information and Protection of Privacy Act.
- 1.8 **“Consultant”** means a vendor, who by virtue of a particular expertise, is hired by the City to undertake a specific task or assignment that may include designing specifications and preparing plans or programs, architectural services or consulting services.
- 1.9 **“Contract”** means a formal legal agreement between two or more parties, usually written, or a purchase order with binding legal and moral implications; usually exchanging goods and/or services for money or other consideration.
- 1.10 **“Contract Extension”** means an amendment to a contract which can include either an increase in funds, increase in the scope of work and or an extension in time and must meet specified criteria. Contract extension approval authority shall be the cumulative amount of all increases.
- 1.11 **“Council”** means the Municipal Council of the Corporation of the City of Brampton.
- 1.12 **“Department”** means any department within the City.
- 1.13 **“Department Head”** means the individual accountable for departmental operations and a member of the Management Team or designate.
- 1.14 **“Designate”** means a person authorized by the Department Head to act on his/her behalf, for the purposes of this policy.
- 1.15 **“Direct Negotiation”** means a procurement method where the usual competitive process is suspended and negotiations are entered into with one or more than one vendor.
- 1.16 **“Direct (Emergency) Process”** means a procurement process where the usual competitive process is suspended due to the prevailing emergency circumstances, see definition of emergency.
- 1.17 **“Dispose”** means the sale, exchange, transfer, destruction or gift of goods owned by the City which are deemed surplus to its needs, and “disposal” and “disposed” shall have similar meanings.

- 1.18 **“Emergency”** means a situation where the immediate purchase of goods and/or services or repair or replacement of equipment, or facilities is essential in order to maintain a required service or to prevent danger to life, limb or property within the City of Brampton.
- 1.19 **“Expression of Interest”** means a situation where vendor/s approach the City or are solicited by the City to advise the City of their ability or desire to undertake City requirements.
- 1.20 **“Goods”** means all materials, equipment, fixtures, and structures to be delivered, installed or constructed.
- 1.21 **“Irregular Result”** means that in any procurement process where competitive bids or proposals are submitted and any of the following has occurred or is likely to occur:
- (a) no bids received;
  - (b) two or more identical responsible and responsive low bids or proposals have been received;
  - (c) the lowest responsible and responsive bid or proposal exceeds the estimated cost or budget allocation;
  - (d) all bids or proposals received are not responsible and responsive;
  - (e) for any reason the award of the contract to or the purchase from the lowest responsible and responsive vendor is considered inappropriate;
  - (f) the policy and procedures has not been followed; or
  - (g) less than 3 valid bids received.
- 1.22 **“Sr. Manager of Purchasing ”** means the person responsible for the Purchasing function of the City or designate who acts as the “Purchasing Agent” for the City.
- 1.23 **“Mayor”** means the elected Mayor of the City or the person duly appointed to act in the place of the Mayor.
- 1.24 **“Officer”** means any elected official or a member of a Board or a Commission of the City.
- 1.25 **“Procedures”** means internal instructions or guidelines to departments as approved by the Sr. Manager of Purchasing.
- 1.26 **“Procurement Process”** means the process by which the required goods and/or services are obtained.
- 1.27 **“Purchase”** means the act of acquiring goods and/or services of any legal or equitable interest, right or title in goods and/or services or the making of any contract or offer for goods and services and includes the lease of goods and/or services; and “purchased”, “purchasing”, “acquisition”, “procurement”, “procure”, “buy” shall have similar meanings.
- 1.28 **“Purchase Order”** means the legal document which is the City’s commitment to the vendor for the purchase of goods and/or services at an agreed upon price, terms, conditions and

delivery date. It is also the vendor's authority to ship and charge for the goods and/or services specified on the order.

- 1.29 **"Purchasing Card"** means a charge card approved by the City that can be used by authorized employees of the City to purchase low dollar value items (Refer to Purchasing Card Policy and Procedures)
- 1.30 **"Purchasing"** means the Division within the Finance Department authorized to perform the Purchasing function.
- 1.31 **"Quotation"** means a request for prices on specific goods and/or services from selected vendors which are submitted verbally, in writing or transmitted by facsimile as specified in the Request for Quotation.
- 1.32 **"Relative"** means a spouse (including common law spouse), parent, child, brother, sister, brother-in-law, sister-in-law, grandparent, grandchild, nephew, niece, uncle or aunt of an employee or officer of the City.
- 1.33 **"Request for Information"** means a process where information is requested from vendors regarding the feasibility and availability of specific goods and/or services in the marketplace.
- 1.34 **"Request for Proposal"** means a process where a need is identified, but how it will be achieved is unknown at the outset. This process allows vendors to propose solutions or methods to arrive at the end product. Allows for evaluation on criteria other than price.
- 1.35 **"Responsible"** means a vendor whose reputation, past performance and business and financial capabilities are such that the vendor would be judged as capable of satisfying the City's needs for a specific contract.
- 1.36 **"Responsive"** means a vendor whose bid does not vary from the specifications and terms and conditions set out in the invitation for bids.
- 1.37 **"Requisition"** means a request for goods and/or services initiated by the user, approved and electronically transmitted to Purchasing.
- 1.38 **"Services"** means all professional, consulting, construction, or maintenance services, including the delivery, installation, repair, restoration, demolition or removal of personal property and real property.
- 1.39 **"Single Source"** means there is more than one source in the open market but only for reasons of function or service one vendor is recommended for consideration of the particular goods and/or services.
- 1.40 **"Sole Source"** means there is only one source of supply of the particular goods and/or services.
- 1.41 **"Tender"** means an offer in writing to execute some specified services, or to supply certain specified goods, at a certain price, in response to a publicly advertised request for bids.
- 1.42 **"Tender Opening Committee"** means a committee comprised of a representative/s from the Clerks Department or delegate,

the Requesting Department and under the chairmanship of the Purchasing Division to facilitate the public opening of bids.

- 1.43 **“Total Acquisition Cost”** means the most cost efficient and effective manner, being the sum of all costs including but not limited to purchase price, warranty, life cycle cost, administrative, operating and disposal costs.
- 1.44 **“Total Aggregate Value”** means the sum of all costs that are paid for goods and services required to satisfy a need over a period of time.
- 1.45 **“Vendor”** means an individual, firm, supplier, vendor, contractor, architect, consultant, bidder or tenderer.

## 2.0 PURCHASING OBJECTIVES

It is the objective of this Policy to promote procurement processes and decisions which are consistent with the strategic objectives of the City, including preservation of the natural environment; waste reduction and recycling; co-operative purchasing, where beneficial; and the support of local and Canadian business and industry when possible, provided that the objective of this Policy and the requirements of any applicable international or inter-provincial trade agreements are not compromised.

The principles which the City advocate include:

- 2.1 To be responsible for the acquisition and disposal of goods and/or services required by the City
- 2.2 To promote the most cost effective and efficient use of City funds by attaining optimum quality, quantity, price, delivery and performance
- 2.3 To exercise professional purchasing practices which obtain the most competitive offers from the most responsible and responsive vendors
- 2.4 To promote the acceptance of bids based on the total acquisition cost rather than the lowest bid received, wherever possible
- 2.5 To delegate the appropriate level of authority to enable the City to meet service requirements
- 2.6 To assess the total project cost and/or the total aggregate value of the goods and/or services prior to determining the appropriate procurement process
- 2.7 To ensure that employees who are responsible for the requisitioning and purchasing of goods and/or services are accountable for their actions and decisions
- 2.8 In deciding to purchase goods or services through the procurement process, the City of Brampton shall have regard to accessibility for persons with disabilities.

## 3.0 AUTHORITY OF THE SR. MANAGER OF PURCHASING

The Sr. Manager of Purchasing , acting on behalf of or in consultation with Department Heads, shall authorize the issuance of requests for

information or pricing, bid documents and contractual commitments in accordance with this Policy.

#### **4.0 RESPONSIBILITY OF THE SR. MANAGER OF PURCHASING**

The Sr. Manager of Purchasing:

- 4.1 Will provide leadership, quality customer service and best value to the taxpayers of the City through the provision of open, fair, equitable, accessible and competitive procurement processes;
- 4.2 Is committed to timely, efficient service delivery while developing and maintaining good client relations through consultation and cooperation, and the promotion of both internal and external partnerships;
- 4.3 Will promote standardization, education and share knowledge of products and market conditions while seeking innovative solutions;
- 4.4 Will provide the appropriate level of delegated authority;
- 4.5 May remove a vendor from consideration for contracts under this Policy on the basis of poor performance or non-performance on a City contract;

Success will be measured by Purchasing ability to respond to the needs and issues in a courteous, expedient and professional manner while at the same time ensuring the best value to the taxpayers and the City's interests are being served.

#### **5.0 RESPONSIBILITY OF THE DEPARTMENT HEAD**

The Department Head is responsible for the delegation of authority to designated employees under this Policy. When the process is non-compliant with the Policy and Procedures, the Department Head is required to obtain the written approval of the City Manager and forward such approval to Purchasing authorizing the acquisition to proceed.

#### **6.0 APPLICATION OF POLICY**

- 6.1 All goods and/or services required for the purposes of the City, save and except only those goods and/or services, listed in Schedule A to this by-law, shall be purchased and disposed of in accordance with the provisions of this Policy unless:
  - 6.1.1 City Council by resolution directs that any particular purchase or disposal of goods and/or services shall be carried out in some other manner or;
  - 6.1.2 any applicable law of the Province of Ontario or the Dominion of Canada requires that the purchase or disposal of goods and/or equipment be carried out in some other manner.
- 6.2 Where the circumstances mentioned in subsection 6.1.1 or 6.1.2 occur, the purchase or disposal of those goods and/or services shall be carried out in accordance with the resolution or the applicable law, as the case may be and the provisions of

this Policy shall in all other regards continue to apply to such purchase or disposal with all necessary modifications.

6.3 The Sr. Manager of Purchasing, in consultation with the Department Heads, is hereby authorized to prescribe procedures consistent with this Policy and the objectives set out in Item 2.0 regarding:

6.3.1 the form, content and use of forms, whether electronic or printed, purchase orders, bonds, letters of credit and other forms of guarantees or surety, tendering, proposals and other contract documents;

6.3.2 method of acquisition or disposal which will more effectively achieve the objectives of the Policy, where alternative methods are permitted and the process to be followed in the issuing, receipt and evaluation of quotes, tenders, proposals and other submissions;

6.3.3 any other aspects of the process or procedure not specifically provided for under this Policy.

## 7.0 GENERAL AUTHORITY

7.1 The purchase of goods and/or services having pricing or value in excess of \$2,500.01, including taxes shall not be authorized unless:

7.1.1 the required goods and/or services have been requisitioned in accordance with this Policy and prescribed procedure;

7.1.2 a method of purchase permitted under this Policy has been used as detailed in Schedule A to this by-law;

7.1.3 the form and content of all documents forming any part of the purchase contract including quotation, tender or proposal documents, form of agreement, special provisions, terms and conditions, insurance, surety bonds, etc. have been reviewed by Purchasing; and

7.1.4 the purchase has been approved by the appropriate level of authority as detailed in Schedule A to this by-law.

7.2 Where any goods and/or services are to be delivered confidentially, the City Manager may act as the agent and provide the necessary advice and services which would otherwise be provided by Purchasing.

7.3 Where the purchase of goods and/or services has been authorized in accordance with this Policy, the purchase order forming part of the contract to purchase may be executed on behalf of the City by:

- i) The Sr. Manager of Purchasing; or
- ii) an employee in Purchasing authorized by the Sr. Manager of Purchasing ; or
- iii) any employee authorized to do so under an approved delegation of authority by the City Manager.

7.4 Where bids are received in response to a bid solicitation but exceeds project estimates, the Department Head and Sr. Manager of Purchasing, jointly, may enter into negotiations with

the lowest compliant bidder to achieve an acceptable bid within the project estimate. When the negotiations result in a contract price acceptable to both parties no re-bidding of the project is necessary and the Contract is awarded at the negotiated price.

- 7.5 If a tender/proposal has been approved by Council and awarded to the successful bidder and the successful bidder fails to enter into a contract, the Sr. Manager of Purchasing shall be granted the authority to proceed to the next lowest bidder for the award of this contract, without going back to Council for approval, providing there are no irregularities, requirements remain unchanged, within budget.

Purchase approval shall be obtained from Department Head, Sr. Manager of Purchasing and the City Manager. The Sr. Manager of Purchasing shall prepare a report to Council for information purposes.

## 8.0 PROCUREMENT PROCESSES

- 8.1 Unless otherwise provided in this Policy, all goods and/or services having a price or value within each of the dollar ranges set out in Column 1 of Appendix "A", to this Policy, shall be purchased using a procurement method listed in Column 2 and shall be authorized by the officer, employee, or City Council listed in Column 3. Where an irregular result occurs, the purchase shall only be authorized by the Approval Authority listed in Column 3, opposite to the words Irregular Result in Column 2 for that dollar range.

### 8.2 PURCHASING CARD PROCESS (0-\$2,500.00)

The acquisition of goods and/or services having a value of up to \$2,500.00 per transaction including taxes or a lesser amount as determined by the Department Head, which are not covered by a blanket purchase order or internal printing shall be carried out by the requesting Department Head, in accordance with the Policy and the approved *Purchasing Card Policy* (13.8.1).

### 8.3 INFORMAL QUOTATION PROCESS (\$2,500.01– \$49,999.99)

#### Requirements \$2,500.01 to \$4,999.99

For any requirement having an estimated value under \$4,999.99 including taxes, competition need not be solicited and can be handled by the using department, if they so desire, or Purchasing. Prices may be obtained verbally from a vendor which has proven, in a competitive situation, to offer the most favourable price consistent with reliability, delivery and service requirement. Verbal quotes must be recorded. The market is to be surveyed periodically in order to confirm that suppliers are in fact providing competitive prices and a competitive service. Where this is not confirmed, prices are to be solicited in accordance with below. The user department shall process a requisition and along with the quote, forward to Purchasing. At any time the Sr. Manager of Purchasing may get competitive pricing, at his sole discretion.

#### Requirements \$5,000.00 to \$49,999.99

The acquisition of goods and/or services with an estimated value greater than \$5,000.00 including taxes and less than



\$49,999.99 including taxes shall be obtained using a competitive process.

This process may be handled by the using department if they so desire, or by Purchasing. At least three (3) written or verbal quotes shall be obtained from those vendors registered in the City's approved vendor file or any other vendor known to provide the required goods and/or services. Verbal quotes must be recorded. The user department shall prepare a report, accompanied by the quotations received indicating the selected vendor for purchase order issuance or other appropriate action. Purchasing will review the supporting documentation for completeness and compliance with the prescribed Policy and Procedures.

#### **8.4 FORMAL QUOTATION PROCESS (\$50,000.00 - \$99,999.99)**

The acquisition of goods and/or services with an estimated value greater than \$50,000.00 and less than \$99,999.99 including taxes shall be obtained using a competitive process. At least three (3) written sealed quotes must be received on or before the specified closing date and time and will be opened by Purchasing and a representative from the user department. All bids will be evaluated and approved in consultation with Purchasing and the requisitioning Department Head. Purchasing shall prepare the purchase approval report along with consultation with the User Department, indicating the selected vendor for purchase order issuance or other appropriate action.

#### **8.5 TENDER PROCESS (\$100,000.00 AND OVER)**

The acquisition of goods and/or services with an estimated value greater than \$100,000.00 including taxes shall be obtained using a competitive process and may require vendor pre-qualification.

The requirement will be advertised in a local newspaper as well as on the internet or in a national publication at least fifteen (15) days prior to the specified closing date and time, in accordance with the requirements of the Ontario/Quebec Trade Agreement. At the discretion of the Sr. Manager of Purchasing Request for Proposals or any other requirement may be advertised where deemed appropriate.

All bids will be sealed and received on or before the specified closing date and time, and will be opened in public by the Tender Opening Committee. All bids will be evaluated and approved in consultation with Purchasing and the requisitioning Department Head.

#### **Approvals**

8.5.1 A Purchase Approval Report shall be prepared by Purchasing and the requisitioning department for awards that meet the following criteria:

- i) award is less than or equal to \$1 million
- ii) award is within budget
- iii) award is the lowest bid
- iv) award is not an irregular result.

The authority for tenders meeting this criteria shall be delegated to the Sr. Manager of Purchasing, Department Head, Commissioner of Finance and City Manager.

For such tender awards that do not require Council approval, Purchasing shall issue a monthly report to Council regarding these awards, for information only.

8.5.2 If the recommendation of award does not meet the criteria listed in 8.5.1, Purchasing and the requisitioning department shall prepare a report for Council approval.

8.5.3 For tenders in excess of \$1 million during the months of July and August, and in the year of a Municipal Election during the period between Nomination Day and the commencement of the new term of office, where no regular meeting of Council is scheduled, the following shall apply:

- i) Where the results of a tender are regular and within the approved budget such that it would be the recommendation of staff that the contract be awarded to the lowest and most responsive bidder, authority is delegated to:
  - the City Manager,
  - the Commissioner of Finance,
  - the Sr. Manager of Purchasing and
  - the appropriate Department HeadSubject to those approvals and the approval of the Commissioner of Corporate Services, the Sr. Manager of Purchasing and the City Clerk are authorized to execute the related contracts.

The award of such tender will be reported to the next meeting of City Council, by the Sr. Manager of Purchasing, for information only.

- ii) Where the results of a tender or request for proposal are not regular, a Special Council Meeting be held to deal with the matter.

## 8.6 REQUEST FOR PROPOSAL PROCESS

This method of acquisition can be used for any dollar value and involves the solicitation of proposals when the requirements for goods and/or services cannot be definitely specified. It may or may not include pre-qualification or an expression of interest. This process has the most flexibility and will generally be governed by the terms of the request for proposal as developed by the City. Depending on its terms, the process may involve negotiations subsequent to the submission of proposals on any or all of the specifications, contract terms and prices.

Unsolicited proposals received by the City shall be reviewed by the Sr. Manager of Purchasing and Department Head to determine if it is in the best interests of the City to follow a competitive process or sole source requirement as outlined in this Policy.

**8.7 CONSULTANTS AND/OR ARCHITECTS**

The acquisition of professional consultants and/or architectural services shall be carried out in accordance with the approved policy and procedures entitled "Hiring of Consultants and/or Architects." (Schedule C to this by-law)

**8.8 DIRECT (EMERGENCY) PURCHASE ORDER PROCESS**

The direct (emergency) purchase order process may be used for any dollar value, when the acquisition of any goods and/or services is deemed an emergency, or when the requesting Department Head authorizes the procurement process outlined in this Policy be suspended. This process is undertaken at the sole discretion of the requesting Department Head, who will provide written justification to the Sr. Manager of Purchasing Division, indicating why the prescribed procurement process was not followed for all purchases exceeding \$2,500.01 including taxes. The Sr. Manager of Purchasing shall report monthly to each Department Head the previous month's Direct (Emergency) purchases. For all transactions the City Auditor and the City Manager will receive the report including justification of each emergency.

**8.9 DIRECT NEGOTIATED PROCESS**

Unless otherwise provided in this Policy, the requisitioning Department Head in consultation with the Sr. Manager of Purchasing may enter into negotiations with one or more vendors for the supply of goods and/or services when any of the following conditions apply:

- 8.9.1 The goods and/or services are deemed necessary by the Department Head as a result of an emergency which would not reasonably permit the use of any other prescribed procurement process.
- 8.9.2 No bids are received on a formal quotation, tender or request for proposal call.
- 8.9.3 The extension or reinstatement of an existing contract would prove more cost effective or beneficial.
- 8.9.4 Bids have been solicited using one of the procurement processes with all bids received being non responsive or responsible.
- 8.9.5 The lowest bid received exceeds the approved budget and it is impractical to recall.
- 8.9.6 Goods and /or services are available from a single or sole source, as defined in 1.39 and 1.40.
- 8.9.1 Goods are required for resale and the determining criteria is marketability and profitability as determined by the using Department when costs are recovered through sales.

**8.10 CONTRACT EXTENSIONS**

Purchasing shall notify the Department Heads at least 120 days prior to the actual expiring date of the contract. Purchasing in consultation with the Department shall commence to acquire the goods/services by the appropriate procurement method, otherwise arrange for a contract extension in accordance with the Policy. In order to constitute a valid contract extension, Purchasing in consultation with the using department shall consider the following points prior to initiating an extension:

- Would it be cost effective or beneficial?
- Were the previous bids competitive?
- What are the current market conditions?
- Have any new companies expressed an interest in bidding the requirement?
- Previous performance of the vendor?
- Are there revisions to the specifications/ quantity/ terms and conditions?
- How does proposed pricing compare to CPI, Canadata or other municipalities?
- Had local companies bid previously?
- Number of previous extensions?
- Are the best interest of the City being served?

**8.11 REQUEST FOR INFORMATION PROCESS**

A process where information is requested from vendors regarding the feasibility and availability of specific goods and/or services in the market place. This process can be used for any dollar value, and can also be used as a means of pre-qualification wherein information is requested regarding specific products or services, company profile, qualifications, etc. Based on the information received, the City may solicit quotations, tenders or proposals consistent with the procedures prescribed in this Policy, at which time prices would be requested.

**8.12 USE OF FORMAL AGREEMENTS**

Formal agreements shall be used along with a purchase order, for complex requirements, which may contain terms and conditions other than those of the City's standard terms and conditions.

The Sr. Manager of Purchasing in consultation with the Department Head and Corporate Services shall determine if a formal agreement is required.

Formal agreements shall be reviewed and approved as to form by the Commissioner of Corporate Services, or their designate, and approved by the Sr. Manager of Purchasing and requisitioning Department Head.

When a formal agreement is required, the Sr. Manager of Purchasing shall issue a purchase order incorporating the formal agreement.

**8.13 TIE BIDS RECEIVED**

In the case of tied bids, preference will be given to purchase of goods and/or services firstly to Brampton based businesses, secondly to businesses located in the Region of Peel and thirdly

to Canadian owned businesses. If a decision still cannot be reached, the contract should be awarded on the basis of the most advantageous time schedule. If a decision still cannot be reached, the City should determine the successful bidder by coin toss in the presence of the tied bidders and Commissioner of Corporate Services.

#### **8.14 DESIGN AND DEVELOPMENT SERVICE**

Vendors or potential vendors shall not be requested to expend time, money and effort to design or develop specifications or otherwise assist to define a requirement beyond the normal level of service expected from vendors. Should such extraordinary services be required, the Sr. Manager of Purchasing will be advised. If there is no alternative but to request such services, then the vendor providing it shall be compensated at a pre-determined fee. The resulting specification shall become the property of the City for use in obtaining competitive bids.

Specifications shall be written to obtain the most competitive pricing as possible and shall not be a deterrent to the competitive bid process. If vendors expend effort of developing specifications, otherwise defined beyond the normal level of service expected from a vendor, the vendor shall be considered a consultant and shall be unable to make an offer for the supply of goods/services unless approved by the Sr. Manager of Purchasing and Department Head.

#### **8.15 RESTRICTED CONTACT PERIOD THROUGHOUT THE BIDDING PERIOD**

The official point of contact is always named in the bid document and that person or designate is the **only** person who communicates with vendors during the tender and award process. This procedure is necessary to protect both the interest of the City and of the businesses competing in the process.

When the tender requires the use of a technical contact person, that person is also named in the bid document. Purchasing requires that any communications between technical staff and vendors in the bid process be forwarded to the Purchasing Division.

#### **9.0 DISPOSAL OF SURPLUS GOODS AND/OR EQUIPMENT**

The Sr. Manager of Purchasing is authorized to dispose of surplus, obsolete or non repairable goods and equipment declared surplus to the Sr. Manager of Purchasing by using it in other City departments or if no longer useful for City purposes, arrange for their disposal at the highest return using one of the following methods:

- i) scrap, dismantle or destroy, classify as waste and dispose
- ii) donate or sell for a nominal fee to a non-profit or charitable organization
- iii) trade-in
- iv) sell by formal quotation or public tender
- v) public auction

**10.0 COOPERATIVE PURCHASING**

The Sr. Manager of Purchasing may participate with other governments, agencies or public authorities in co-operative ventures or contracts where the best interest of the City would be served.

**11.0 IN-HOUSE BIDS**

In-house bidding means a bid made by a Department and authorized by the Commissioner of that Department, submitted in response to a bid solicitation. In-house bids may be used for the procurement of goods and services, where applicable and approved by Council prior to the procurement process. In-house bids will be carried out in accordance with normal purchasing practices.

**12.0 ENVIRONMENTAL PURCHASING**

The Sr. Manager of Purchasing shall encourage wherever possible, specifications which provide for expanded use of durable goods, reusable goods and goods including those services, containing the maximum post consumer waste and/or re-cyclable content, without affecting the intended use of the good or service.

**13.0 LOCAL PREFERENCE**

In accordance with the Discriminatory Business Practices Act, there will be no local preference for purchases. All things being equal, preference will be given to purchases of goods and/or services firstly to Brampton based businesses, secondly to businesses located in the Region of Peel and thirdly to Canadian owned businesses.

**14.0 CODE OF CONDUCT**

The code of conduct (Policy 2.1.0) established by the City, shall apply to all staff involved in the purchasing process.

**15.0 ADMINISTRATIVE PROCEDURES**

The Sr. Manager of Purchasing shall prepare and maintain the appropriate purchasing administrative procedures to implement this Policy.

**16.0 PROHIBITIONS AND COMPLIANCE**

- 16.1 All employees of the City shall comply with the Financial and Policy controls meeting the audit requirements of the City to ensure that those responsible for requisitioning and purchasing goods and/or services are held accountable for their actions and decisions
- 16.2 All employees of the City shall act in a manner consistent with the objectives of the Policy. Any employee who knowingly contravenes this Policy commits an act of misconduct is liable to disciplinary action
- 16.3 No acquisition of goods and/or services or disposal of surplus goods, or equipment shall be made where the quantity or delivery is divided or in any other manner arranged so that the

price or value of the goods and services to be acquired or disposed of is artificially reduced to circumvent the prescribed procurement process

- 16.4 No goods and/or services shall be requisitioned by any officer or employee unless:
  - i) the goods and/or services are legitimately required for the purposes of the City or any other local Board or other Agency on whose behalf the purchase is being undertaken; or
  - ii) the funds for the purchase of the goods and/or services are available with an approved budget or the request to purchase is expressly made subject to funding approval of the City or any other local Board or other Agency on whose behalf this is being made
  
- 16.5 No officer or employee or any relative of that officer or employee shall be permitted to purchase any surplus goods to be disposed of except by successfully bidding on the same at a public auction or by sealed bid but in no case if the duties of that officer or employee include making decisions regarding the disposal of such goods or activities relating to the conduct of the disposal process
  
- 16.6 Officers and employees shall not knowingly cause or permit anything to be done or communicated to anyone which is likely to cause any potential vendor to have an unfair advantage or disadvantage in obtaining a contract for the supply of goods and/or services to the City, or any other municipality, local board or public body involved in the purchase of goods and services either jointly or in cooperation with the City
  
- 16.7 No officer or employee shall knowingly cause or permit anything to be done which will jeopardize the legal validity or fairness of any purchase and/or goods and services under this Policy which is likely to subject the City to any claim, demand, action or proceeding as a result of such act or omission.

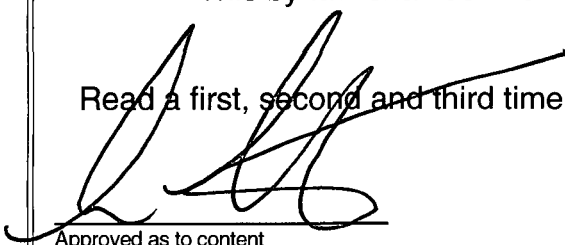
**17.0 REPEAL OF FORMER PURCHASING POLICY**

All purchasing policies approved prior to the enactment of this by-law are hereby repealed.

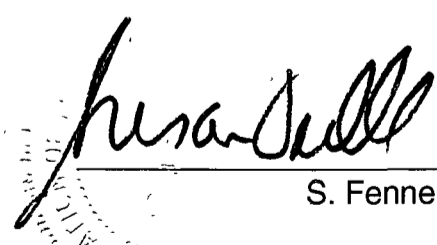
**18.0 SHORT TITLE**


This by-law shall be known as "The Purchasing By-law".

Read a first, second and third time passed this 27th day of June, 2007.

  
 Approved as to content  
 A Livingston, Sr Manager of  
 Purchasing, Finance

Approved as to form.  
 07/06/27  
 wce

  
 S. Fennell, Mayor

  
 K. Zammit, City Clerk

**SCHEDULE "A" TO BY-LAW 193-2007**

<b>COLUMN 1 DOLLAR RANGES</b>	<b>COLUMN 2 PROCUREMENT PROCESS</b>	<b>COLUMN 3 AUTHORITY</b>
Any Dollar Value	Direct (Emergency) Purchase	Department Head
0 – 2,500.00	Purchasing Card Cheque Requisition	Department Head
2,500.01 – 49,999.99	Informal Quotation Direct Negotiation Contract Extension (Cumulative) Request for Proposal  Hiring of Consultants and/or Architects Irregular Result	Sr. Manager of Purchasing and Department Head    Department Head Sr. Manager of Purchasing & Department Head
50,000.00 – 99,999.99	Formal Quotation Direct Negotiation Request for Proposal  Contract Extension (Cumulative)  Hiring of Consultants and/or Architects Irregular Result	Sr. Manager of Purchasing and Department Head  Sr. Manager of Purchasing, Department Head and Commissioner of Finance Department Head and City Manager Sr. Manager of Purchasing, Department Head and City Manager
100,000.00 – \$1 million	Public Tender – Regular Result	Sr. Manager of Purchasing, Department Head Commissioner of Finance and City Manager
100,000.00 +	Public Tender – other than Regular Result Hiring of Consultants and/or Architects Request for Proposal Irregular Result  Direct Negotiation  Contract Extension (Cumulative)	City Council ( <i>See Clause 8.5</i> )    Sr. Manager of Purchasing, Department Head, City Manager and Commissioner of Finance Sr. Manager of Purchasing, Department Head, and Commissioner of Finance
in excess of \$1 million	Public Tender	City Council ( <i>See Clause 8.5.3 for exceptions</i> )



## SCHEDULE "B" TO BY-LAW 193-2007

The following items are not subject to the City's Purchasing Policy and procedures and a purchase order is not required:

- 1.0 Purchasing Card Purchases as per Item 8.2 of this Policy. See **Policy 13.8.1, Purchasing Cards**.
- 2.0 Petty Cash Items – purchases less than \$50.00 including taxes
- 3.0 Cheque Requisition – purchases less than \$2,500.00 including taxes
- 4.0 Training and Education
  - (a) Conferences
  - (b) Courses
  - (c) Seminars
  - (d) Conventions
  - (e) Memberships
  - (f) Periodicals
  - (g) Magazines
  - (h) Subscriptions
  - (i) Staff Training
  - (j) Staff Development
  - (k) Staff Workshops
- 5.0 Refundable Employee Expenses
  - (a) Cash Advances
  - (b) Meal Allowances
  - (c) Travel Expenses
  - (d) Entertainment
  - (e) Miscellaneous – Non-Travel
  - (f) Hotel Accommodation
  - (g) Mileage
- 6.0 General Expenses
  - (a) Licenses (vehicles, elevators, radios, etc.)
  - (b) Charges to or from other government bodies or Crown Corporations except for construction and/or maintenance projects
  - (c) Real Estate including land, buildings, leasehold interests, easements, encroachments and licenses
  - (d) Items of a confidential nature
  - (e) Professional and special services, including appraisals, medical, etc.
  - (f) Freight charges
  - (g) Legal Fees and other professional services related to litigation or legal matters
  - (h) Witness Fees
  - (i) Charges to or from government legislated controlled agencies (i.e. – Technical Standards & Safety Association, Electrical Safety Authority, Liquor Control Board
  - (j) Original works of art
  - (k) Entertainers (i.e. – for Theatre, Special Events)
- 7.0 Utilities
  - (a) Postage
  - (b) Water and Sewage Charges
  - (c) Telephone Service i.e. Bell Canada
  - (d) Cable Television Service

## SCHEDULE "C" TO BY-LAW 193-2007

### HIRING OF CONSULTANTS AND/OR ARCHITECTS

#### DEFINITION:

A "Consultant" means a vendor, who by virtue of a particular expertise, is hired by the City to undertake a specific task or assignment that may include designing specifications and preparing plans or programs, architectural services or consulting services.

#### PRINCIPLE:

- Fair access to bid on City work shall be provided to consultants and/or architects. The City must not permit one vendor to gain a monopoly for a specific type of assignment.
- Consulting and/or architectural services shall be acquired through a competitive purchasing process, wherever possible, to ensure that best value is obtained for funds expended.

#### PROCEDURE:

- Consultants and/or architects must complete and submit a Vendor's Application to Purchasing .
- User departments must pre-qualify each consultant and/or architect.
- Pre-qualification criteria must include, but is not limited to, expertise and experience, financial stability, previous performance, ability to complete on budget and on time, personnel, etc.
- User department must advise Purchasing when the consultants and/or architects are pre-qualified.
- Purchasing will then add the consultants and/or architects to the City's approved vendor file.
- Pre-qualified consultants and/or architects must be used on a rotational basis, to provide all consultants and/or architects with the opportunity to bid on City work.

#### ***\$0.00 TO \$49,999.99 including taxes***

- the user department shall develop the Terms of Reference
- the user department shall select the consultants and/or architects to be invited to submit a bid or proposal
- a **minimum** of three (3) written bids or proposals will be requested, whenever feasible, exceptions must be approved by the Department Head
- the user department will issue and receive the bids or proposals. The user department may, at its option, request Purchasing to perform this function
- the user department will evaluate the bids or proposals and will prepare an award recommendation which will be forwarded to Purchasing
- Purchasing, upon receipt of the recommendation, will issue a purchase order to the successful vendor

***\$50,000.00 TO \$99,999.99 including taxes***

- the user department will select the consultants and/or architects to be invited to submit a bid or proposal and submit the vendor names to Purchasing
- the user department shall develop and provide the Terms of Reference to Purchasing
- a **minimum** of three (3) written bids or proposals will be requested, wherever feasible, exceptions must be approved by the City Manager
- Purchasing will issue, receive and open the sealed bids or proposals
- Purchasing will forward the received bids or proposals to the user department for evaluation
- the award recommendation will be determined by the user department in consultation with Purchasing and approved by City Manager
- the user department will prepare an award recommendation which will be forwarded to Purchasing
- upon receipt of the recommendation, Purchasing will arrange for contract execution

***\$100,000.00 AND OVER including taxes***

- the user department will select the consultants and/or architects to be invited to submit a bid or proposal and submit the vendor names to Purchasing
- the user department shall develop and provide the Terms of Reference to Purchasing
- a **minimum** of three (3) written bids or proposals will be requested by Purchasing ; exceptions must be approved by the City Manager
- Purchasing will issue, and receive the sealed bids or proposals
- the sealed bids or proposals will be opened by the Tender Opening Committee
- Purchasing will forward the received bids or proposals to the user department for evaluation
- the award recommendation will be determined by the user department in consultation with Purchasing
- a report to Council will be prepared by the Sr. Manager of Purchasing and the requisitioning Department Head, recommending an award or other appropriate action, Council will review the report
- upon receipt of the Council resolution, and their approval of the recommended vendor, Purchasing will arrange for contract execution.

# **Management & Administrative Services**

**Date:** January 11, 2008

**To:** (Clerk's Office (original))  
Jim Howell (Photocopy)  
Gene Duval (Photocopy)  
Jeff Lane (Photocopy)

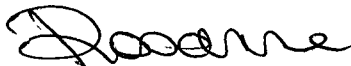
**From:** Rosanne Reda, Realty Services

**Subject:** Concession License Agreement (Addendum to Purchase Order)  
With Juice and Java Corporation  
Gage Park and City Hall Cafeteria  
Our File Nos. L16G.4 and L16W.3.1

---

Attached, for your records, is one copy of each Agreement above-referenced.

Thank You,



Rosanne Reda  
Realty Services  
City of Brampton  
905-874-2869

## ADDENDUM TO PURCHASE ORDER

**This Concession Agreement** dated the 1<sup>st</sup> Day of November 2007 (hereinafter referred to as the Agreement)

**BETWEEN**

**THE CORPORATION OF THE CITY OF BRAMPTON**  
(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

**JUICE AND JAVA CORPORATION**  
(hereinafter referred to as the "JJC")

OF THE SECOND PART

(hereinafter together referred to as the "Parties")

**WHEREAS** the City is the registered owner of certain lands and premises known as Gage Park, in the City of Brampton at 45 Main Street South at the southwest corner of the intersection of Main Street South and Wellington Street (the "Park"),

**AND WHEREAS** JJC entered into a concession agreement for the 2006 to 2007 skating season, in order to serve food and beverages to the patrons of the Park with a term that commenced on November 20<sup>th</sup>, 2006 and terminated on April 23<sup>rd</sup>, 2007;

**AND WHEREAS** JJC entered into a subsequent concession agreement for the summer season, with a term commencing on June 10, 2007 and terminating on September 10, 2007;

**AND WHEREAS** as the result of a recently completed RFP, JJC was identified as the successful candidate to operate the concession stand in Gage Park, in the westerly portion of the building that is shown outlined on Schedule "A" (the "Premises") for in order to serve food and beverages to the patrons of the Park;

**NOW THEREFORE** in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

### TERMS OF OPERATION

1. **Right to Operate** - The City hereby grants to JJC, the non-exclusive right to operate a concession stand, within the Premises, solely for the purpose of selling food and beverage products of the type that are normally sold at other concession stands operated on City property (the "Operation").
2. **Non-Exclusive Use**- JJC acknowledges that the right to operate the concession stand is non-exclusive, and that the City hereby reserves the right to enter upon and use the Premises whether the Operation is functioning or not, so long as the City does not unreasonably disturb the Operation. JJC further acknowledges that special events scheduled by the City, may impact sales and that JJC will not receive compensation by the City and that JJC will not receive compensation by the City for any lost revenue.
3. **Premises As Is** - JJC agrees to use the Premises on an "as is" basis, and the Owner makes no representation or warranty as to the condition of the Premises or its suitability for the Operation.

4. **Term** - The Operation shall occur commencing on November 1, 2007 and terminating on October 31, 2009 (the "Term").
5. **Renewal Term**-JJC will have the option of renewing the Agreement for one (1) additional term of two (2) years upon the expiration of the Term ("Renewal Term"), provided that JJC shall give to the City notice in writing of the exercise of such option at least six (6) months prior to the expiration of the Term, but such written notice may not and shall not be given earlier than eight (8) months prior to the expiration of the Term. JJC may only exercise such option to renew, provided that JJC has not been in default throughout the Term and provided that JJC is not in default of the Agreement at the time it provides notice that it would like to renew, unless the City, in its sole discretion, waives such default for the purposes of the renewal.
6. **Hours of Operation** - JJC must maintain the following minimum operating hours:
 

**Summer Season (June 18 to September 7)**

Monday to Friday, from 11:00 a.m. to 8. p.m,

Saturday, Sunday, and Holidays from 11:00 a.m. to 10:00 p.m.

**Winter Season (December 1 to March 30)**

Monday to Friday, from 6:00 p.m. to 9:30 p.m,

Saturday, Sunday, and Holidays from 11:00 a.m. to 10:00 p.m.
7. **Amended Hours** - JJC agrees that, upon request from the Concession Coordinator in writing, it shall amend its operating hours, in order to accommodate various special events scheduled by the City for the summer and winter seasons.,
8. **Closure of Premises:** In the event that the City is required to close the Premises, the City will provide to JJC ninety (90) days prior written notice and no compensation will be paid to JJC by the City for any loss of revenue.
9. **Rink Operational** - There is no obligation for the Operation to function when the skating rink in the Park is not operational.
10. **Licences and Approvals** - JJC agrees to obtain all permits, licences, and/or approvals necessary to undertake the Operation, and provide copies of such to the Concessions Co-ordinator upon execution of this Agreement.
11. **Rent** -In consideration for JJC providing a service to the patrons of the City-owned Park, and providing that service during the hours indicated by the Owner, and for JJC assuming all costs related to the Operation, there will be no rental fee for the Operation or use of the Premises during the Term.
12. **No Alcohol** - There shall be no alcoholic beverages served at the Premises at any time.
13. **Cleanliness** - JJC agrees that at all times during the Term, it shall maintain the Premises in a neat, orderly and clean fashion to the satisfaction of the Concessions Coordinator, and also in accordance with the Region of Peel Health Inspection/Certification program.
14. **Damage and Repair** - The City will be responsible for repairs to equipment and property owned by the City, and the cost thereof, as deemed to be required by the Concession Coordinator, at the Premises (provided such damage has not been caused by the negligent act or omission of JJC). The City is not responsible for any type of repairs to any equipment or items owned by the JJC.

If JJC finds any of the City-owned equipment or property in a damaged condition, JJC shall contact the Concessions Coordinator as soon as possible.

15. **Signage** – JJC shall not erect, or cause to be erected, any signage on or in the vicinity of the Premises, unless such has been properly approved by the City. Any signage permitted shall be at the sole cost of JJC.
16. **Conduct of Operation** - JJC shall not conduct or permit the conduct of the Operation in a manner that, in the opinion of the Concession Coordinator would diminish the reputation of the Park or the City, or constitute unethical, deceptive, unlawful, offensive, unsafe or fraudulent actions or omissions.
17. **Responsibility and Costs of Operation** - JJC agrees to be responsible for any and all set up, take down and ongoing Operation at the Premises, and any and all costs associated therewith, including, but not limited to, the costs of any contents, equipment, maintenance, and/or security thereof.
18. **Termination** - JJC and the City agree that the City may terminate this Agreement at anytime at its discretion, without any compensation to JJC, upon one weeks' written notice to JJC.
19. **Notices:**
  - (1) the address of the City for purpose of notification shall be:

Concessions Coordinator  
Community Services  
City of Brampton  
2 Wellington St. West  
Brampton, Ontario  
L6W 4R2
  - (2) the address of JJC for purpose of notification shall be:

20 Main Street South  
Brampton, ON  
L6W 2C3

Attn: Helen Bergeron
20. **Inspection** - Upon termination of this Agreement, either by the City or by expiration of the Term, JJC shall prepare and make available to the Owner for inspection at the end of the Term, a complete sales breakdown for the Operation during the Term.
21. **Final Condition of Premises** - Upon termination of this Agreement, either by the City or by expiration of the Term, JJC shall clean the Premises and remove all contents and equipment belonging to JJC to the satisfaction of the Concessions Coordinator.
22. **Insurance**
  - (a) JJC shall, during the Term, at its own cost and expense, take out and keep in full force and effect, the following insurance.

General Liability Insurance (including products liability coverage) in respect to the Premises and Operation against all claims for personal injury, including injury resulting in death, and property damage, with an inclusive limit of not less than three million dollars (\$3,000,000.00) per occurrence.

Tenant's Legal Liability Insurance in respect to the Premises and Operation in an amount not less than five hundred thousand dollars (\$500,000).

- (b) Such policy or policies shall name The Corporation of the City of Brampton as an additional insured as its interest may appear and be with an insurer that has a rating which meets the requirements of the City's policy on insurance.
  - (c) JJC shall deposit with the Concession Coordinator, a Certificate of Insurance on a form provided by the City, as proof of the above-noted insurance requirements, as soon as possible after receiving the City's form.
  - (d) If such policy or policies are cancelled, changed or materially altered in any way that would affect the City, thirty (30) days prior written notice by registered mail will be given by JJC's insurer to the City.
  - (e) The City reserves the right to request such higher limits of insurance or other types of insurance policies appropriate to this Agreement as the City may reasonably require from time to time.
  - (f) **Content Insurance & Storage** - JJC shall also be responsible to secure content insurance for its stock and equipment or any other items it has stored in the Premises. JJC shall not store any item in or at the Premises that is not directly related to the Operation, and the City, at its discretion, may require the removal of any item it deems unrelated to the Operation.
23. **Indemnity** – JJC will indemnify, save harmless, and defend (at the discretion of the Owner) the Owner, its elected officials and any other person for whom it is in law responsible, from any kind of liability, suit, claim, demand, fine, action, or proceeding of any kind which may be brought against it, and from and against any and all losses, costs, damages, or expenses (including reasonable legal fees) suffered or incurred by the Owner (the "Claims and Losses"), howsoever caused, including, but not limited to, by reason of any damage to property (including the City's Land), delay, or injury (including injury resulting in death) to any person, in any way connected with this Agreement or the Operation, or the use of the Premises by JJC or by those for whom it is in law responsible, or arising from any breach of or non-performance by JJC of any provision of this Agreement, unless such Claims and Losses are caused by the negligence or wilful misconduct on behalf of the Owner or those whom in law it is responsible. This indemnity and release shall survive the Term.
24. **Audit**-The City shall have the right to audit or appoint an independent Chartered Accountant or public accounting firm to audit all financial and related records, including payroll records associated with the contract kept by or under the control of JJC, including JJC's employees, agents, assigns, successors, and subcontractors. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies or discloses overpricing or overcharges (of any nature) by JJC to the City in excess of one percent (1%) of the total billings. In this case, in addition to making adjustments for the overcharges, JJC shall reimburse the City for the actual cost of the City's audit.
- (\*) JJC shall provide the City within 90 days after December 31, on an annual basis for the term of the contract audited financial data associated with the contract, prepared by an independent Chartered Accountant in accordance with Canadian Generally Accepted Auditing Standards. This financial data associated with the contract includes data kept by or under the control of JJC, including the JJC's employees, agents, assigns, successors, and subcontractors. The costs of the above shall be borne by JJC.
- JJC shall maintain such financial and related records, together with such supporting or underlying documents and materials, for the duration of this contract and for at least seven years following the completion, expiry or termination of this contract, including any and all renewals thereof.



All information requested or required pursuant to this right to audit shall be made available during normal business hours at JJC's office or place of business.

This right to audit shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Municipal, Provincial, or Federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

This right to audit shall survive the completion, expiry or termination of this agreement.

## GENERAL TERMS

25. **Binding Nature** - This Agreement, when executed by the Parties shall constitute a binding agreement which shall enure to and be binding on the Parties, their successors, and permitted assigns.
26. **Entire Agreement** - It is agreed that there is no representation, warranty, collateral agreement or condition affecting the terms of this Agreement or the use of the Premises as permitted in this Agreement other than as expressed herein.
27. **Recitals and Schedules** - The recitals and schedules herein are true and accurate and form part of this Agreement.
28. **Prohibition on Assignment** - Neither this Agreement nor any rights or obligations of any of the parties under this Agreement may be assigned by the JJC without the prior written consent of the City, which consent may be unreasonably withheld.
29. **Amendments** - Any amendment, supplement, modification, waiver or termination of this Agreement shall be in writing and signed by all parties.
30. **Compliance with Laws** - The JJC shall promptly observe and comply with all Laws now or hereafter in force, which pertain to or affect the Operation and/or the use of the Premises.
31. **Construction Liens** - The JJC shall not permit any construction liens to be registered on the City Lands, and if such shall occur, JJC shall immediately take such action as is required and that is possible, and pay any and all costs, to facilitate the removal of such from title.
32. **Waiver** - No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No forbearance by any party to seek a remedy for any breach by any other party of any provision of this Agreement shall constitute a waiver of any rights or remedies with respect to any subsequent breach.
33. **Applicable Law** - This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract.
34. **Currency** - Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful Canadian funds.
35. **Invalidity** - If any provision of this Agreement or any part of any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision or part shall not affect the validity, legality or enforceability of any other provision of this Agreement or the balance of any provision of this Agreement absent such part and such invalid, illegal or unenforceable provision or part shall be deemed to be severed from this Agreement and this Agreement shall be construed and enforced as if such invalid,

illegal or unenforceable provision or part had not been included in this Agreement at the time it had become invalid, illegal or unenforceable.

- 36. **Signing Authority** - If this Agreement is signed in the name of a corporation, partnership, business, association, club or society, the person or persons, signing represents and warrants that, in the case of a corporation, the corporation is a corporation in good standing and duly organized under the laws of Ontario, and in any case, that she/he has full authority to sign this Agreement and to bind such organization, and that in the event she/he is not so authorized (or if she/he is signing as an individual) she/he will be personally liable for the faithful and full performance of this Agreement.
- 37. **No Partnership** - The parties understand and agree that nothing contained in this Agreement shall constitute or be deemed to create a partnership or joint venture between the parties.

\*\*\*\*\*the rest of this page is left intentionally blank\*\*\*\*\*

IN WITNESS WHEREOF the parties have, on the 11 day of December, 2007 attested by the hands of their duly authorized officer(s).

Authorization  
By-Law No.  
193-2007

**THE CORPORATION OF THE  
CITY OF BRAMPTON**

Document Execution Authorized  
by City of Brampton By-Law  
Number 193-2007  
**Al Livingston, Purchasing Agent**  
Al Livingston  
Senior Manager of Purchasing  
Date: Dec 8 2008

Approved as  
to form  
[Signature]  
Dec 4/07

Approved as  
to content  
C.S.  
[Signature]  
Dec 3/07

**JUICE AND JAVA CORPORATION**

Witness:

[Signature]  
Name: JIM HINWELL  
Title: Consumer Coordinator

[Signature]  
Print Name: Helen Bergeron  
Print Title: president

I have the authority to bind the Corporation/Company

SCHEDULE "A"

THE PREMISES



## ADDENDUM TO PURCHASE ORDER

This Addendum dated the 1<sup>st</sup> day of November 2007 (hereinafter referred to as the Agreement)

### **BETWEEN**

**THE CORPORATION OF THE CITY OF BRAMPTON**  
(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

**JUICE AND JAVA CORPORATION**  
(hereinafter referred to as the "JJC")

OF THE SECOND PART

(hereinafter together referred to as the "Parties")

**WHEREAS** the City is the registered owner of certain lands and premises known as City Hall, in the City of Brampton at 2 Wellington Street West the "Premises"),

**AND WHEREAS** as the result of a recently completed Request for Purchase, JJC was identified as the successful candidate to operate the cafeteria in City Hall (the "Cafeteria") in the westerly portion of the building that is shown outlined on Schedule "A" (the "Premises")

**AND WHEREAS** this Addendum sets out the terms and conditions for purchase order to which it is attached;

**NOW THEREFORE** in consideration of the sum of Two Dollars (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

### TERMS OF OPERATION

1. **Right to Operate** - The City hereby grants to JJC, the non-exclusive right to operate the Cafeteria, within the Premises, solely for the purpose of selling food and beverage products (the "Operation").
2. **Non-Exclusive Use** - JJC acknowledges that the right to operate the Cafeteria is non-exclusive, and that the City hereby reserves the right to enter upon and use the Premises whether the Operation is functioning or not, so long as the City does not unreasonably disturb the Operation. JJC further acknowledges that special events scheduled by the City may impact sales and that JJC will not receive compensation by the City for any lost revenue.
3. **Entry by the City** - The City, including its agents and contractors, shall have the right to enter the Cafeteria at any time without notice in the event of an emergency or perceived emergency, as same is determined in the sole and absolute discretion of the City. In the event the City must carry out emergency work necessary to preserve the Cafeteria, the City may bring all necessary materials and equipment into the Cafeteria to complete the necessary additions, alterations, improvements, installations and repairs to the Cafeteria or any part thereof or to any services thereto. JJC acknowledges and agrees that in carrying out such work, the City shall not be liable to JJC for any interference with the use and enjoyment of the Cafeteria, or for any interruption or suspension of the supply of electricity, water or other utilities or services to the Cafeteria.

4. **Access to the Cafeteria** - Access to the Cafeteria will be through the main doors of City Hall. JJC hereby acknowledges and agrees not to place locks on any entrance, exit, door, window or any part of the Cafeteria without first obtaining the written consent of the City, which consent may be arbitrarily withheld or delayed.
5. **Premises As Is** - JJC agrees to use the Premises on an "as is" basis, and the City makes no representation or warranty as to the condition of the Premises or its suitability for the Operation.
6. **Term** - The Operation shall occur commencing on November 1, 2007 and terminating on October 31, 2009 (the "Term").
7. **Renewal Term** - JJC will have the option of renewing this Agreement for one (1) additional term of two (2) years upon the expiration of the Term ("Renewal Term), provided that JJC shall give to the City notice in writing of the exercise of such option at least six (6) months prior to the expiration of the Term, but such written notice may not and shall not be given earlier than eight (8) months prior to the expiration of the Term. JJC may only exercise such option to renew, provided that JJC has not been in default throughout the Term and provided that JJC is not in default of the Agreement at the time it provides notice that it would like to renew, unless the City, in its sole discretion, waives such default for the purposes of the renewal.
8. **Hours of Operation** - JJC shall maintain the following minimum operating hours: Monday to Friday, 8:00 a.m. to 2:00 p.m., with the exception of the days in which City Hall and the Premises are closed due to regularly scheduled Statutory Holidays and the Christmas shutdown.
9. **Catering**- In addition to providing food service in the Cafeteria, the City may request JJC to provide a catering service for various casual meetings throughout City Hall. JJC acknowledges that this may occur outside of normal business hours of 8:30 am to 4:30pm. (i.e. evening meetings)
10. **Staffing**-JJC shall retain the existing staff at the Cafeteria upon execution of this Addendum. Any decisions to hire additional and/or future staff shall be made by JJC in their sole discretion.
11. **Closure of Premises** - In the event that the City is required to close the Premises, in order to complete renovations to City Hall, the City will provide to JJC ninety (90) days prior written notice of such closure. No compensation will be paid to JJC by the City for any loss of revenue. Any decision to close the Premises or otherwise cease operation of the Premises for any length of time will be at the sole discretion of the City.
12. **Licences and Approvals** - JJC agrees to obtain all permits, licences, and/or approvals necessary to undertake the Operation, and provide copies of such to the Concessions Co-ordinator upon execution of this Agreement.
13. **Rent** - For the first two years of the Term, the City will pay to JJC, an annual rent of six thousand dollars (\$6000.00), plus G.S.T., paid in equal monthly installments of five hundred dollars (\$500.00), plus G.S.T. to offset operating costs of the cafeteria by JJC. Should JJC exercise its option to renew for an additional two (2) years, JJC will pay to the City an annual rent of six thousand dollars (\$6000.00) plus G.S.T. paid in equal monthly installments of five hundred dollars (\$500.00) plus G.S.T.
14. **No Alcohol** - There shall be no alcoholic beverages served at the Premises at any time.
15. **Cleanliness** - JJC agrees that at all times during the Term, it shall maintain the Premises in a neat, orderly and clean fashion to the satisfaction of the Concessions Coordinator, and also in accordance with the Region of Peel Health Inspection/Certification program.

16. **Deliveries** - JJC will arrange for all product deliveries to be delivered to the loading dock doors, located on the west side of City Hall. At no time shall any product be delivered through the main doors of City Hall.
17. **Damage and Repair** - The City will be responsible for repairs to equipment and property owned by the City, and the cost thereof, as deemed to be required by the Concessions Coordinator, at the Premises (provided such damage has not been caused by the negligent act or omission of JJC). The City is not responsible for any repairs to any equipment or items owned by the JJC. If JJC finds any of the City-owned equipment or property in a damaged condition, JJC shall contact the Concessions Coordinator as soon as possible.
18. **City Signage** - JJC shall not erect, or cause to be erected, any signage on or in the vicinity of the Premises, unless such signage has been approved by the City. Any signage permitted shall be at the sole cost of JJC.
19. **Alterations and Improvements** - JJC shall not be permitted to make alterations and/or improvements to the Cafeteria without the prior written consent of the City.
20. **Fixtures and Improvements** - All fixtures and improvements placed in or upon the Cafeteria shall immediately upon their placement be and become the City's property without compensation to JJC.
21. **Conduct of Operation** - JJC shall not conduct or permit the conduct of the Operation in a manner that, in the opinion of the Concessions Coordinator would diminish the reputation of the City, or constitute unethical, deceptive, unlawful, offensive, unsafe or fraudulent actions or omissions.
22. **Responsibility and Costs of Operation** - JJC agrees to be responsible for any and all set up, take down and ongoing Operation at the Premises, and any and all costs associated therewith, including, but not limited to, the costs of any contents, equipment, maintenance, and/or security thereof.
23. **Termination** - JJC and the City agree that the City may terminate this Agreement upon thirty (30) days prior written notice, without any compensation to JJC.
24. **Notices:**
- (1) the address of the City for purpose of notification shall be:
- Concessions Coordinator  
Community Services  
City of Brampton  
2 Wellington St. West  
Brampton, Ontario  
L6W 4R2
- (2) the address of JJC for purpose of notification shall be:
- 20 Main Street South  
Brampton, ON  
L6W 2C3
- Attn: Helen Bergeron
25. **Inspection** - Upon termination of this Agreement, either by the City or by expiration of the Term, JJC shall prepare and make available to the Owner for inspection at the end of the Term, a complete sales breakdown for the Operation during the Term.

26. **Final Condition of Premises** - Upon termination of this Agreement, either by the City or by expiration of the Term, JJC shall clean the Premises and remove all contents and equipment belonging to JJC to the satisfaction of the Concessions Coordinator.

27. **Insurance**

(a) JJC shall, during the Term, at its own cost and expense, take out and keep in full force and effect, the following insurance.

*General Liability Insurance (including products liability coverage)* in respect to the Premises and Operation against all claims for personal injury, including injury resulting in death, and property damage, with an inclusive limit of not less than three million dollars (\$3,000,000.00) per occurrence.

Tenant's Legal Liability Insurance in respect to the Premises and Operation in an amount not less than five hundred thousand dollars (\$500,000).

(b) Such policy or policies shall name The Corporation of the City of Brampton as an additional insured as its interest may appear and be with an insurer that has a rating which meets the requirements of the City's policy on insurance.

(c) JJC shall deposit with the Concession Coordinator, a Certificate of Insurance on a form provided by the City, as proof of the above-noted insurance requirements, as soon as possible after receiving the City's form.

(d) If such policy or policies are cancelled, changed or materially altered in any way that would affect the City, thirty (30) days prior written notice by registered mail will be given by JJC's insurer to the City.

(e) The City reserves the right to request such higher limits of insurance or other types of insurance policies appropriate to this Agreement as the City may reasonably require from time to time.

(f) **Content Insurance & Storage** - JJC shall also be responsible to secure content insurance for its stock and equipment or any other items it has stored in the Premises. JJC shall not store any item in or at the Premises that is not directly related to the Operation, and the City, at its discretion, may require the removal of any item it deems unrelated to the Operation.

28. **Indemnity** – JJC will indemnify, save harmless, and defend (at the discretion of the City) the City, its elected officials and any other person for whom it is in law responsible, from any kind of liability, suit, claim, demand, fine, action, or proceeding of any kind which may be brought against it, and from and against any and all losses, costs, damages, or expenses (including reasonable legal fees) suffered or incurred by the City (the "Claims and Losses"), howsoever caused, including, but not limited to, by reason of any damage to property (including the City's Land), delay, or injury (including injury resulting in death) to any person, in any way connected with this Agreement or the Operation, or the use of the Premises by JJC or by those for whom it is in law responsible, or arising from any breach of or non-performance by JJC of any provision of this Agreement, unless such Claims and Losses are caused by the negligence or wilful misconduct on behalf of the City or those for whom in law it is responsible. This indemnity and release shall survive the Term.

29. **Audit**- The City shall have the right to audit or appoint an independent Chartered Accountant or public accounting firm to audit all financial and related records, including payroll records associated with the contract kept by or under the control of JJC, including JJC's employees, agents, assigns, successors, and subcontractors. Costs of any audits conducted under the authority of this



section and not addressed elsewhere will be borne by the City unless the audit identifies or discloses overpricing or overcharges (of any nature) by JJC to the City in excess of one percent (1%) of the total billings. In this case, in addition to making adjustments for the overcharges, JJC shall reimburse the City for the actual cost of the City's audit.

(\*) JJC shall provide the City within 90 days after December 31, on an annual basis for the term of the contract audited financial data associated with the contract, prepared by an independent Chartered Accountant in accordance with Canadian Generally Accepted Auditing Standards. This financial data associated with the contract includes data kept by or under the control of JJC, including the JJC's employees, agents, assigns, successors, and subcontractors. The costs of the above shall be borne by JJC.

JJC shall maintain such financial and related records, together with such supporting or underlying documents and materials, for the duration of this contract and for at least seven years following the completion, expiry or termination of this contract, including any and all renewals thereof.

All information requested or required pursuant to this right to audit shall be made available during normal business hours at JJC's office or place of business.

This right to audit shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Municipal, Provincial, or Federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

This right to audit shall survive the completion, expiry or termination of this agreement.

## GENERAL TERMS

30. **Binding Nature** - This Agreement, when executed by the Parties shall constitute a binding agreement which shall enure to and be binding on the Parties, their successors, and permitted assigns.
31. **Loss or Damage** - The City shall not be liable for any bodily injury or death of any of JJC 's employees, invitees or licensees or any other person in, on or about the Cafeteria and the City shall not be liable for any loss or damage to any property belonging to JJC or its employees, invitees or licensees or any other person in, on or about the Cafeteria.
32. **Entire Agreement** - It is agreed that there is no representation, warranty, collateral agreement or condition affecting the terms of this Agreement or the use of the Premises as permitted in this Agreement other than as expressed herein.
33. **Recitals and Schedules** - The recitals and schedules herein are true and accurate and form part of this Agreement.
34. **Prohibition on Assignment** - Neither this Agreement nor any rights or obligations of any of the parties under this Agreement may be assigned by the JJC without the prior written consent of the City, which consent may be unreasonably withheld.
35. **Amendments** - Any amendment, supplement, modification, waiver or termination of this Agreement shall be in writing and signed by all parties.
36. **Compliance with Laws** - The JJC shall promptly observe and comply with all Laws now or hereafter in force, which pertain to or affect the Operation and/or the use of the Premises.

- 37. **Construction Liens** – The JJC shall not permit any construction liens to be registered on the City Lands, and if such shall occur, JJC shall immediately take such action as is required and that is possible, and pay any and all costs, to facilitate the removal of such from title.
- 38. **Waiver** - No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No forbearance by any party to seek a remedy for any breach by any other party of any provision of this Agreement shall constitute a waiver of any rights or remedies with respect to any subsequent breach.
- 39. **Applicable Law** - This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract.
- 40. **Other Laws** - During the Term of this Agreement JJC shall be and remain subject to all by-laws of the City now or hereinafter enacted and to all statutes, orders and rules made or to be made by lawfully constituted authority having jurisdiction.
- 41. **Currency** - Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful Canadian funds.

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- 42. **Invalidity** - If any provision of this Agreement or any part of any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision or part shall not affect the validity, legality or enforceability of any other provision of this Agreement or the balance of any provision of this Agreement absent such part and such invalid, illegal or unenforceable provision or part shall be deemed to be severed from this Agreement and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision or part had not been included in this Agreement at the time it had become invalid, illegal or unenforceable.
- 43. **Signing Authority** - If this Agreement is signed in the name of a corporation, partnership, business, association, club or society, the person or persons, signing represents and warrants that, in the case of a corporation, the corporation is a corporation in good standing and duly organized under the laws of Ontario, and in any case, that she/he has full authority to sign this Agreement and to bind such organization, and that in the event she/he is not so authorized (or if she/he is signing as an individual) she/he will be personally liable for the faithful and full performance of this Agreement.
- 44. **Good Standing of JJC** - JJC warrants and represents that it is a duly subsisting and validly organized corporation incorporated pursuant to the *Corporations Act* of Ontario, as amended. JJC has caused such meetings to be held, by-laws to be passed and a board of directors to be constituted all in accordance with the requirements of the *Corporations Act*. JJC is not in default in the filing of its annual returns and on five (5) days written notice by the City, shall make all of its corporate records and returns available to the City for review and where deemed necessary by the City, for reproduction as well. JJC covenants to promptly notify the City in writing in the event it shall have defaulted in any of its obligations under the *Corporations Act* or any other statute or law governing the conduct of JJC.
- 45. **No Partnership** - The parties understand and agree that nothing contained in this Agreement shall constitute or be deemed to create a partnership or joint venture between the parties.

IN WITNESS WHEREOF the parties have, on the 11 day of December, 2007 attested by the hands of their duly authorized officer(s).

Authorization  
By-Law No.  
193-2007

Approved  
as to form  
Legal  
*[Signature]*  
Dec 4/07

Approved  
as to  
content C.S.  
*[Signature]*  
Dec 3/07

THE CORPORATION OF THE  
CITY OF BRAMPTON  
Document Execution Authorized  
By-Law  
Number 193-2007  
*[Signature]*  
At Livingstone, Purchasing Agent  
Senior Manager of Purchasing  
Date: Jan 18 2008  
(mm/dd/yyyy)



**JUICE AND JAVA CORPORATION**

Witness:

*[Signature]*  
Name: JIM HOWELL  
Title: CONCERNED CITIZEN

*[Signature]*  
Print Name: Helen Bergeman  
Print Title: president

I have the authority to bind the Corporation/Company