



Document Number: 2024-RFP-01

Document Name: **Consulting Services for Characterizing the Building Performance Gap in the GTHA**

Date Issued: July 9, 2024

The Atmospheric Fund (TAF) is seeking a qualified consultant to help characterize the performance gap between design and post-occupancy performance in commercial and multi-family buildings in the Greater Toronto and Hamilton Area (GTHA). Through this work, TAF aims to develop sound recommendations for municipalities, government officials for provincial and national codes, and the building industry.

Submissions must be made in accordance with this document and will be received on or before: September 5, 2024.

You are hereby invited to bid for which you are prepared to furnish the merchandise or services described, all in accordance with the Terms and Conditions and other instructions as stated in this document.

Contact Name: Jaime Klein
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Procurement Representative

NOTE(S):

It is the Vendor's sole responsibility to ensure their submissions are received by the time and date specified within the document.

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2. Required Services

This Request for Proposal (herein referred to as “RFP”) is issued for the purpose of obtaining Proposals from Proponents that will be expected to provide the services, perform the work, and meet the requirements described in the “RFP Particulars” section. The services, work and requirements are collectively referred to as the “Services”.

3. Definitions

“Agency” means The Toronto Atmospheric Fund, herein referred to as the “TAF”, the organization conducting the RFP process.

“Applicable Law” and “Applicable Laws” means any common law requirement and all applicable and enforceable statutes, regulations, directives, policies, administrative interpretations, orders, by laws, rules, guidelines, approvals, and other legal requirements of any government and/or regulatory authority in effect from time to time.

“Addenda/Addendum” means an attachment to the RFP that modifies the terms and conditions of the original RFP. Addendums are used to efficiently update the terms or conditions of many types of Contracts. It is also used for the Proponent clarification stage (questions and answers) during a Competitive Procurement process. An Addenda is the plural form of Addendum.

“Business Day” or “Business Days” means Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m. EST, except when such a day is a public holiday, as defined in the Employment Standards Act (Ontario), or as otherwise agreed to by the parties in writing.

“Competitive Procurement” means a process that includes a bidding or a proposal process to provide equal opportunity to multiple vendors, intended to solicit fair and competitive bids.

“Contract” means the contract executed between the selected Proponent and TAF following successful completion evaluations in accordance with Section XX.

“Conflict of Interest” means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Proponent’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of its obligations under the Agreement.

“Days” means calendar days.

“Evaluation Team” means individuals designated/responsible to evaluate Proposals and make award recommendations. The Evaluation Team would typically include representatives from the Purchasing Organization and subject matter expert(s). Each member participates to provide business, legal, technical and financial input.

“Goods” are moveable property, including the cost of operating, maintaining or manufacturing such moveable property, and includes raw materials, products, equipment and other physical objects of every kind and description whether sold in solid, liquid, gaseous or electronic form, unless they are procured directly as part of a general construction contract.

“Indigenous Peoples” means individuals known as First peoples, Aboriginal peoples or Native peoples, are groups who are the original owners and caretakers of a given region, in contrast to groups that have settled, occupied or colonized the area more recently.

“Personal Information” means recorded information about an identifiable individual or that may identify an individual, but does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

“Preferred Proponent” means the Proponent(s) that TAF has identified as the highest-ranked Proponent(s) in accordance with the evaluation process.

“Procurement Representative” means the individual identified in Section 6.8 (Procurement Representative). The Procurement Representative is an employee of TAF, leading the RFP process.

“Proponent” or “Proponents” means an entity that submits a Proposal in response to this RFP and, as the context may suggest, refers to a potential Proponent or Vendor.

“Proposal” or “Proposals” means all of the documentation and information submitted by a Proponent in response to the RFP.

“Purchasing Organization” means The Toronto Atmospheric Fund, herein referred to as the “TAF”, the organization conducting the RFP process.

“Request for Proposal” or “RFP” means this Request for Proposal document for the purchase of the Services, including all attachments and documents referenced herein and all Addenda to this document (if any) and all Addenda thereto issued by TAF.

“Submission Deadline” means the Proposal submission date and time as set out in “RFP Anticipated Schedule” section and as may be amended from time to time in accordance with the terms of the RFP.

“Schedules” means those documents outlined in the Table of Contents and form part of this RFP.

“Services” means the services intended to be procured pursuant to this RFP. Intangible products that do not have a physical presence. No transfer of possession or ownership takes place when services are sold, and they (1) cannot be stored or transported, (2) are instantly perishable, and (3) come into existence at the time they are bought and consumed.

“TAF” means The Toronto Atmospheric Fund.

“Unfair Advantage” means any conduct, direct or indirect, by a Proponent that may result in gaining an unfair advantage over other Proponents, including but not limited to (i) possessing, or having access to, information in the preparation of its Proposal that is confidential to TAF and which is not available to other Proponents, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFP process, or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFP process and result in any unfairness.

“Value-Add” means an incentive which is an offer by a Proponent over and above the primary goods or services being proposed, with the intent to increase the total value received by the purchaser.

“Vendor” means the entity submitting a Vendor Submission to the Document and includes the terms “Bidder” and “Proponent”.

“Vendor Submission” means the proposal response submitted by the Vendor, Proponent.

4. Instructions to Bidders

4.1. Information and Communications

Any information regarding this Document must be addressed in writing to the attention of the Procurement Representative, and received in accordance to the specified timeline. No oral communications will be considered binding.

Any Proponent who requests and/or receives any information, with regards to this Document, by any person(s) other than the above stated or its designate, may be disqualified from further consideration.

Submit one original submission with a completed and signed Form of Proposal.

4.2. Notice

Proponents are advised that from the date of issue of the RFP through to any award notification:

- Only the Procurement Representative is authorized to amend or waive the requirements of the RFP pursuant to the terms of this RFP;
- As noted above, Proponents must not contact any person, including but not limited to any officer, director, employee, agent of the Agency, or the associated governing body, except for the Procurement Representative, unless instructed to do in writing by the Procurement Representative;
- Under no circumstances shall a Proponent rely upon any information or instruction from any person, including but not limited to any officer, director, employee, agent of

- the Agency, or the associated governing body, unless the information or instruction is provided in writing by the Procurement Representative; and
- Officer, director, employee, agent of the Agency, or the associated governing body shall be responsible for any information or instructions provided to the Proponent, with the exception of information or instructions provided in writing by the Procurement Representative.

4.3. Proponent's Costs

Every Proponent shall bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in this RFP process, including all costs and expenses relating to the Proponent's participation in:

- The preparation, presentation, and submission of its Proposal;
- The Proponent's attendance at any meeting in relation to the RFP process, including any oral presentation and/or demonstration;
- The conduct of any due diligence on its part, including any information gathering activity;
- The preparation of the Proponent's own questions prior to the Submission Deadline; and
- Any discussion and/or negotiation, if any, in respect of the Agreement.

At the Agency's sole discretion, upon request, the Agency may grant exemptions to Section 4.3 from time to time. If exemption is being sought, the request must be made in writing following the submission and the following requirements must be demonstrated and met:

- The Proponent has demonstrated the submission of a full and proper proposal provided that TAF shall determine whether a proposal is full and proper based on the factors that include whether the proposal is compliant with the submission requirements.
- The amount shall represent full and final satisfaction of any obligation or liability of TAF to the Proponent.
- The Proponent acknowledge and agree that TAF bears no obligation to compensate for the partial or full cost of participation and will choose to do so at its sole discretion.

4.4. Proposal Irrevocability

Vendor Submissions shall be irrevocable and open for acceptance for a period of 90 days following the date of the Vendor Submission closing.

It is the Vendor's sole responsibility to ensure their submissions are received by the time and date specified within the document. Proposals will not be opened publicly.

4.5. Contract Award

Award of the Contract is subject to the receipt of all necessary approvals among which is the approval of the Agency's Approval Authority Schedule and Procurement Policy. Without limiting any rights otherwise available to the Agency in the Document or at law to cancel the proposal or to decline to award the proposal to any Vendor, the Agency specifically reserves the right, in its sole and absolute discretion, to cancel this proposal should the above approval not be granted.

Without limiting all other rights that may be exercised by the Agency pursuant to this Document, vendors are advised that the Agency reserves the right to fully evaluate Vendor Submissions, which evaluation may include, without limitation, a review of references, past performance history, completion history (including extended completion dates), litigation history and claims history of the vendors, and to reject a Vendor Submission if same is not satisfactory to the Agency.

4.6. Entering into An Agreement

The Preferred Proponent shall be required to enter into an agreement ("Agreement") based on the Service Agreement, Supplement C included in the RFP. The Agency understands that changes to the Agreement may take place as agreed upon by both parties.

There is no guarantee of any volume of Services being purchased by the Agency.

4.7. Document Familiarization

The Proponent acknowledges that it has based its submission on its own knowledge, field examination, information and judgment. The Proponent represents and agrees that by making its submission, it has assumed all risk of the work, even if it proves to be more onerous than was contemplated when the submission was made.

4.8. Proponent To Review

Every Proponent should carefully review the RFP to ensure that it has no reason to believe there are any uncertainties, inconsistencies, errors, omissions, or ambiguities in any part of the RFP. Every Proponent is responsible for conducting its own investigations and due diligence necessary for the preparation of its Proposal.

4.9. Proponent To Notify

In the event a Proponent has any reason to believe that any of the circumstances listed in the "Proponent to Review" section exist, the Proponent must email a question to the Procurement Representative prior to submitting a Proposal. The Procurement

Representative will then clarify the matter for the benefit of all Proponents by emailing an Addendum.

Proponents shall not:

- After submission of a Proposal, claim that there was any misunderstanding or that any of the circumstances set out in the 'Proponent to Review' section were present with respect to the RFP; or
- Claim that the Agency is responsible for any of the circumstances listed in the 'Proponent to Review' section.

4.10. Clarifications

The following shall apply regarding any request for clarification of any aspect of the RFP:

- Proponents must submit requests for clarification to the Procurement Representative via email for the respective RFP.
- Where a question relates to a specific section of this RFP, reference should be made to the specific section number and page of the RFP.
- Requests for clarification must be submitted as per the dates indicated in the RFP Anticipated Timetable.

4.11. Questions And Answers

TAF shall make reasonable efforts to provide Proponents with written responses to questions that are submitted in accordance with the Submission Requirements section, subject to the provisions of this Section. Questions and answers will be distributed in numbered Addenda to Proponents by email. In answering a Proponent's questions, the Agency will set out the question(s), but without identifying the Proponent that submitted the question(s). Also, the Agency may, in its sole discretion, answer similar questions from various Proponents only once.

Where an answer results in any change to the RFP, such answer will be formally documented through the issue of a separate Addendum reflecting that change.

4.12. Issued Addenda

Before submitting a Proposal, a Proponent shall be responsible to verify that it has received all of the Addenda that have been issued, which shall be shared at least seven (7) Days prior to the Submission Deadline, unless it is an Addendum that extends the Submission Deadline.

Any amendment or supplement to the RFP made in any other manner will not be binding on the Agency.

4.13. Proposal Submission

Proposals received after the Submission Deadline shall not be accepted or considered. Each Proponent is responsible for the actual submission of its Proposal per the “Submission Instructions” section.

Proposals are to be submitted in English only, and any Proposal received by the Agency that is not in English will be disqualified.

4.14. Proposal Receipt

Every Proposal that has been successfully submitted via email will be so acknowledged via an email back to the Proponent confirming receipt and indicating the time and date of submission.

The Proponent should allow sufficient time in the preparation of its Proposal to ensure its Proposal is successfully submitted by the Submission Deadline.

4.15. Withdrawal Of Proposal

A Proponent may withdraw its Proposal via email notification to the Procurement Representative before the Submission Deadline. A Proposal may not be withdrawn after the Submission Deadline.

4.16. Amendment Of Proposal

A Proponent may amend its Proposal by emailing the Procurement Representative directly notifying of the need to submit a new Proposal before the Submission Deadline.

4.17. Completeness Of Proposal

By submitting a Proposal, the Proponent confirms that all of the components required to use and/or manage the Services and Goods have been identified in its Proposal and are to be provided to the Agency at no additional charge. Any requirement that may be identified by the Proponent after the Submission Deadline or subsequent to signing the Agreement shall be provided at the Proponent’s expense.

4.18. Proponent’s Proposals

All Proposals submitted by the Submission Deadline shall become the property of the Agency.

All correspondence, documentation, and information provided in response to or because of this RFP may be reproduced for the purposes of evaluating the Proponent’s Proposal.

If a portion of a Proponent's Proposal is to be held confidential, such provisions must be clearly identified in the Proposal.

4.19. Confidentiality

Unless expressly agreed otherwise, during any part of this RFP process, the Agency, or any of their representatives or agents, shall be under no obligation to execute a confidentiality agreement.

In the event that a Proponent refuses to participate in any required stage of the RFP (such as a presentation) because the Agency has refused to execute any such confidentiality agreement, the Proponent shall receive no points for that particular stage of the evaluation process.

Submission of Information – The Proponent should not submit as part of its Proposal any information related to the qualifications or experience of individuals who will be assigned to provide services unless specifically requested. Should the Agency request such information, the Agency will treat this information in accordance with the provisions of this section and will maintain the information for a period of seven (7) years from the time of collection.

Use – Any Personal Information that is requested from each Proponent by the Agency shall only be used to (i) to select the qualified individuals to undertake the project/services; (ii) to confirm that the work performed is consistent with these qualifications; (iii) for any audit of this procurement process; and (iv) in the case of the successful Proponent, for contract management purposes.

Consent – It is the responsibility of each Proponent to obtain the consent of such individuals prior to providing the information to the Agency. If any Personal Information is disclosed by a Proponent, the Agency will consider that the appropriate consents have been obtained for the disclosure to and use by the Proponent of the requested information for the purposes described herein.

4.20. Acceptance of RFP

By submitting a Proposal, a Proponent agrees to accept and to be bound by all of the terms and conditions contained in this RFP, and by all of the representations, terms, and conditions contained in its Proposal.

4.21. Amendments To The RFP

Subject to the timeline and any addenda issued in the procurement process, the Agency shall have the right to amend or supplement this RFP in writing prior to the Submission

Deadline via an Addendum (4.12). No other statement, whether written or oral, shall amend this RFP. The Proponent is responsible to ensure it has received all Addenda.

4.22. Clarification of Proponent's Proposal

The Agency shall have the right at any time after the Submission Deadline to seek clarification from any Proponent in respect of that Proponent's Proposal, without contacting any other Proponent. The Agency shall not be obliged to seek clarification of any aspect of any Proposal.

Any clarification sought shall not be an opportunity for the Proponent to either correct errors or to change the Proponent's Proposal in any substantive manner. Subject to the qualification in this provision, any written information received by the Agency from a Proponent in response to a request for clarification from the Agency may be considered to form an integral part of the Proponent's Proposal, in the Agency's sole discretion.

4.23. Verification Of Information

The Agency shall have the right, in its sole discretion, to:

- Verify any Proponent's statement or claim made in the Proponent's Proposal or made subsequently in an interview, site visit, oral presentation, demonstration, or discussion by whatever means the Agency may deem appropriate, including contacting persons in addition to those offered as references; and
- Reject any Proponent's statement, claim or Proposal, if such statement, claim or Proposal is patently unwarranted or is questionable; or

The Proponent shall cooperate in the verification of information and is deemed to consent to the Agency verifying such information.

4.24. Proposal Acceptance

The lowest price Proposal or any Proposal shall not necessarily be accepted. While price is an evaluation criterion, other evaluation criteria, as set out in this document, will form a part of the evaluation process.

4.25. Substantial Compliance

The Agency shall be required to reject proposals that are not substantially compliant with this RFP.

4.26. No Publicity or Promotion

No Proponent, including the Preferred Proponent, shall make any public announcement or distribute any literature regarding this RFP or otherwise promote itself in connection with

this RFP or any arrangement entered under this RFP without the prior written approval of the Agency.

In the event that a Proponent, including the Preferred Proponent, makes a public statement either in the media or otherwise in breach of this requirement, in addition to any other legal remedy it may have in law, in equity or within the context of this RFP, the Agency shall be entitled to take all reasonable steps as may be deemed necessary, including disclosing any information about a Proponent's Proposal, to provide accurate information and/or to rectify any false impression which may have been created.

4.27. Debriefing

For procurements valued at \$121,200 or more, and not later than sixty (60) calendar Days following the date of sending a Contract award notification in respect of the RFP, a Proponent may contact the Procurement Representative to request a debriefing. For procurements valued at \$121,200 or more, a Proponent can request and receive a debrief; otherwise, a debrief may be granted based on the request, at the Agency's sole discretion.

Any request that is not received within the foregoing timeframe will not be considered and the Proponent will be notified of same in writing.

Proponents should note that, regardless of the time of submission of a request by a Proponent, debriefings will not be provided until a Contract award notification has been posted.

4.28. Bid Protest Procedure

In the event that a Proponent wishes to review the decision of the Agency in respect of any material aspect of the RFP process, and subject to having attended a debriefing, the Proponent shall submit a written protest ("Protest") to the Agency within ten (10) calendar days from such a debriefing.

Any Protest that is not received within the foregoing timeframe will not be considered and the Proponent will be notified of same in writing.

A protest shall include the following:

- A specific identification of the RFP provision and/or procurement procedure that is alleged to have been breached;
- A specific description of each act alleged to have breached the RFP provision and/or procurement procedure;
- A precise statement of other relevant facts;
- An identification of the issues to be resolved;

- The Proponent’s arguments and supporting documentation; and
- The Proponent’s requested remedy.

For the purpose of a protest under this RFP, the Bid Protest shall be recorded and acknowledged by the Procurement Representative in a prompt manner. A response to the Bid Protest will be developed by the Agency and may involve such personnel at an appropriate level as are reasonably required to provide a response to the Bid Protest (the “Response”). The Agency may wish to seek clarifications before providing a response and reserves the right to delay providing a response until an Agreement has been entered into by the Agency and a Proponent.

4.29. Competition Act

Under Canadian law, a Proponent’s Proposal must be prepared without conspiracy, collusion, or fraud. For more information on this topic, visit the Competition Bureau website at <https://ised-isde.canada/site/competition-bureau-canada/en>, and in particular, part VI of the Competition Act, R.S.C. 1985, c. C-34.

4.30. Trade Agreements

Proponents should note that procurements coming within the scope of either Chapter 5 of the CFTA or Chapter 19 of the Canada-European Union Comprehensive Economic and Trade Agreement (“CETA”) or within the scope of the Trade and Cooperation Agreement between Quebec and Ontario are subject to such agreements, although the rights and obligations of the parties shall be governed by the specific terms of this RFP. For more information, please refer to the CFTA website at <https://www.cfta-alec.ca/> or to the CETA website at <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng> or the Trade and Cooperation Agreement between Quebec and Ontario at <http://www.ontario.ca/business-and-economy/trade-and-cooperation-agreement-between-ontario-and-quebec>.

4.31. Order Of Precedence In The Event of Conflict

In the event of any inconsistency or conflict in the provisions of the Document, such provisions shall take precedence and govern in the following order, where applicable:

- Addenda as issued.
- Form of Proposal.
- Instructions to Bidders.
- Supplementary Terms and Conditions.
- Service Agreement.

4.32. Compliance With Accessibility Standards

The Proponent must be capable of delivering accessibility consistent with the Accessibility for Ontarians with Disabilities Act, 2005 (“AODA”) and its regulations, to the extent applicable. Proponents are required to comply with the Agency’s accessibility standards, policies, practices and procedures, as the same may be in effect during the term of any Agreement and apply to the Services to be provided by the Proponent.

As part of its response to this RFP, the Proponent should describe all measures that the Proponent intends to implement or make available in order that the Services provided in response to this RFP be in compliance with applicable accessibility standards under the AODA and its regulations, including but not limited to:

- Any training that has been, or will be, provided to Proponent’s staff;
- All policies implemented by Proponent in respect of the AODA and its regulations;
- Identified barriers to accessing Services and proposals for removal or mitigation of such barriers;
- Feedback procedures that will allow the Agency to identify concerns; and
- Processes or procedures to deal with ongoing identification and removal of barriers

The Agreement shall require that the successful Proponent provide all Services in accordance with the AODA and its regulations. This legislation can be accessed through the following link to the Government of Ontario’s website: www.ontario.ca/laws/statute/05a11.

4.33. Freedom Of Information and Protection of Privacy Act (FIPPA)

The Freedom of Information and Protection of Privacy Act (Ontario) will apply to information provided by the Proponents. Proposals are received in confidence subject to the disclosure requirement applies to records in the custody or control of Purchasers, and includes any information provided by Proponents in connection with this RFP. Such information may be subject to requests for access under that Act and can only be withheld from disclosure in specific circumstances.

A Proponent should identify any information in its Proposal that, if disclosed to any other person, would harm that Proponent’s competitive position. The confidentiality of such information will be maintained by the Procurement Representative, except as otherwise required by law or by order of a court, tribunal, or the Ontario Privacy Commissioner. Generally, only specific portions of a Proposal should be identified.

5. RFP Particulars

5.1. Purpose

The Atmospheric Fund (TAF) is seeking a qualified consultant to help characterize the performance gap between design and post-occupancy performance in commercial and multi-family buildings in the Greater Toronto and Hamilton Area (GTHA). Through this work, TAF aims to develop sound recommendations for municipalities, government officials for provincial and national codes, and the building industry.

The available budget for this project is \$120,000. This is provided for information purposes only and should not form the basis for bids. The Proposal selected, if any, will not necessarily be the one offering the lowest fees or cost. Pricing is only one component used to determine the best value for TAF.

5.2. Background Information

TAF is a regional climate agency that collaborates with stakeholders in the private, public, and non-profit sectors in the GTHA. Since 1991, TAF has supported and implemented strategies that reduce carbon emissions as well as improve people's health, create new green jobs, boost urban resiliency, and contribute to a fair society. TAF is focused on enabling the acceleration and scale-up of low-carbon solutions with the goal of making the GTHA carbon neutral by 2050.

Buildings in the GTHA are responsible for nearly half of total emissions and are now at the highest levels since 2015. As the region continues to quickly grow, TAF is focusing on accelerating net-zero readiness in new construction. This is critical for reducing the carbon impact of the building sector and making progress towards our climate targets.

TAF recognizes the power of codes and standards, especially ones with absolute performance targets that provide a clear direction of where the building sector needs to go. They can help ensure newly constructed buildings are more resilient in the face of a changing climate, use less energy, emit less carbon, and provide a healthier and more comfortable indoor environment to occupants. However, newly constructed buildings are often assumed to perform as intended, and key elements like air leakage, thermal bridging and equipment efficiencies are rarely verified during construction. Additionally, operation, maintenance, and occupant behavior can have big impacts on actual building performance.

There is also a lack of research assessing how newly constructed buildings (post-occupancy) are performing against their modeled performance. Limited work done to date is based on buildings designed to older codes and standards which used a reference-building approach. Limited post-occupancy data also makes it difficult to draw specific conclusions. Additionally,

improvements in new construction, including the adoption of green development standards across much of the GTHA, as well as the larger body of data now publicly available through Ontario's Energy and Water Reporting and Benchmarking (EWRB) has not been captured.

There is a clear need to assess how newly constructed buildings today perform against their intended design. This work will consist of evaluating energy models and building post-occupancy performance to identify key drivers of the performance gap. There will be a specific focus on identifying building 'hot spots' where the largest discrepancies occur, impacts of thermal modeling, and performance of major end-use systems. The selected consultant will develop recommendations that can reduce the identified gaps, focusing on policy, program and verification/compliance processes and best practice recommendations for building design, energy modeling, construction and maintenance. The selected consultant will also identify any areas for further research.

These recommendations are timely as cities in the GTHA are looking to enable adoption of higher performance targets as buildings built over the next few years are unlikely to undertake deep energy retrofits before 2050. Findings will be shared with cities to support their capacity building in implementing codes and standards and with the larger building sector, including planners, architects, and builders. Findings will also be shared with provincial and federal codes officials to better inform future updates.

5.3. Scope of Work and Expected Deliverables

Working with TAF staff, the selected consultant will characterize the differences between modeled and post-occupancy performance for multi-family and commercial buildings in the GTHA. The goal of this work is to develop a series of recommendations that can help address the identified differences and improve future standards and codes.

The final report must address three (3) interrelated objectives:

- **Objective 1A:** Assessing key performance metrics of modeled whole building energy use (at Design Development Stage) and post-occupancy performance.
- **Objective 2A:** Characterizing the performance gaps between Design Development Stage energy models and post-occupancy performance.
- **Objective 3:** Development of sound recommendations that can address the identified performance gaps.

In addition, there are two optional objectives, where consultants that choose to undertake this work can provide a separate price in the proposal submission (see Supplement B):

- Objective 1B: Characterizing the performance trends of As-Constructed energy models for a sampling of projects.
- Objective 2B: Deep-dive analysis of building end-uses identifying the highest differences between modeled (incl. Design Development Stage and As-Constructed) and post-occupancy performance.

Objective 1A: Assessing key performance metrics of modeled whole building energy use (at Design Development Stage) and post-occupancy performance.

This first stage of the work will characterize the performance metrics of Design Development Stage energy models for commercial and multi-family buildings in the GTHA. The selected consultant will have access to the following data:

- Whole building energy models: approximately 1400 design development stage energy models (2014-2022), with key performance metrics (e.g., percentage better than reference; TEUI, GHGI, TEDI after 2018) and building characteristics summarized in an excel file.
- Post-occupancy performance data: for a subset of the modeling files above, up to four years of annual building energy use intensity (EUI), annual electricity and gas consumption, annual greenhouse gas intensity (GHGI), and annual water consumption.

This part of the work is restricted to characterizing each of the above two data sets independently and does not include comparing specific building modelled performance with post-occupancy performance. Key findings should be characterized by major buildings archetypes, e.g., multifamily low-rise (less than 4 storeys), multifamily mid-and-high rise (4 storeys and over), office, and retail.

Key analysis questions include:

- How has total energy use intensity (TEUI) of design models and post-occupancy building performance changed over time?
- How has carbon use intensity (GHGI) of design models and post-occupancy building performance changed over time?
- Are there key differences between building types, age, and/or heating-fuel type?
- Are there any trends indicating fuel-switching? And are these relevant to specific building types?

Consultants are highly encouraged to supplement the provided data with their own modelling files and utility post-occupancy data to help develop robust conclusions. Relevant data from buildings in a similar climate outside the GTHA can also be included. All additional

data, including the number of models and number/types of buildings, needs to be clearly outlined in the proposal submission.

Expected Deliverables

- A **kickoff meeting** to align on the project objectives, schedule, deliverables, communication protocols, and next steps.
 - Regular working group meetings with TAF staff and feedback cycles.
 - A **briefing note** summarizing the following:
 - Key performance metrics of Design Development Stage energy models and post-occupancy performance trends over time as well as any relevant impacts from building age, building type, and heating-fuel type.
 - Brief comparison to other related studies previously done in the GTHA.
- This briefing note will be distributed in draft form to TAF, and verbal and/or written feedback will be integrated prior to finalizing this deliverable. This briefing note is intended to become part of the final report deliverable under Objective 3.
- A **list of assembled data sources and data files** used in this analysis.
 - A **summary of key analytical/statistical modeling elements** - exact format will be determined with TAF and can include excel spreadsheet format.

Objective 1B (OPTIONAL): Characterizing the performance trends of As-Constructed energy models for a sampling of projects.

This is an optional component which involves characterizing the design and performance trends of up to 30 as constructed energy models. Part of this work will also include comparing to building permit compliance submittals. Consultants can also provide their own As-Constructed building modelling files to help develop robust conclusions. All additional data, including the number of models and number/types of buildings, needs to be clearly outlined in the proposal submission.

Consultants need to provide a separate price for this optional component of the work in the proposal submission (see Supplement B).

Objective 2A: Characterizing the performance gaps *between* Design Development Stage energy models and post-occupancy performance.

The second stage of this work will focus on characterizing the **energy performance gap** and the **carbon performance gap** between Design Development Stage energy models submitted to GTHA municipalities and post-occupancy performance. The consultant must characterize these gaps for the provided data set (summarized in Objective 1A) and by key building types.

While the data set provided to Proponents includes approximately 1400 Design Development Stage energy models, it is estimated that post-occupancy performance data will only be available for less than 50% of those buildings.

Key analysis questions include:

- How big and how consistent are the energy and carbon performance gaps
- How has the energy performance gap and the carbon performance gap changed over time?
- Are there any key differences between building types?
- Are there any key differences between heating fuel types?

Consultants are highly encouraged to supplement the provided data set with their own building modelling files and additional utility post-occupancy data to develop robust conclusions. Relevant data from buildings in a similar climate outside the GTHA can also be included. All additional data, including the number of models and number/types of buildings, needs to be clearly outlined in the proposal submission.

Objective 2B (OPTIONAL): Deep-dive analysis of building end-uses identifying the highest differences between modeled (incl. Design Development Stage and As-Constructed) and post-occupancy performance.

This is an optional component for consultants that can provide their own building modelling files (including any As-Constructed energy models) and post-occupancy data (including any utility or sub-metered data).

This part of the work will involve diving deeper within major building end-uses to analyze the energy and carbon performance gaps. End-uses of interest include space heating, domestic hot water, lighting, in-suite electricity consumption, and common baseloads. Key analysis questions include:

- What are the building end-uses with the highest discrepancies between modeled and actual performance?
- Are there any trends between different heating fuel types and different heating systems?
- Are there any seasonal impacts?
- How has thermal energy demand intensity (TEDI) changed over time?
- Are there any key findings related to occupant behaviour and/or maintenance practices?

All additional data, including the number of models and number/types of buildings, needs to be clearly outlined in the proposal submission. Consultants need to provide a separate

price for this optional component of the work in the proposal submission (see Supplement B).

Objective 2 Expected Deliverables

- A **briefing note** summarizing the characteristics of the energy and carbon performance gaps, including any impacts from building age, building type, and/or heating fuel type. This briefing note will be distributed in draft form to TAF, and verbal and/or written feedback will be integrated prior to finalizing this deliverable. This briefing note is intended to become part of the final report deliverable under Objective 3.
- A **list of assembled data sources and data files** used in this analysis.
- A **summary of key analytical/statistical modeling elements** - exact format will be determined with TAF and can include excel spreadsheet format.

Objective 3: Development of sound recommendations that can address the identified performance gaps.

The final stage of this work consists of developing a set of recommendations that can assist in reducing the identified gaps going forward. Specific focus will be on verification/compliance processes (e.g., review guidelines, compliance checklists, capacity building and training for city staff) and best practice recommendations for building design, energy modeling, construction, and maintenance. Recommendations will be shared with cities to support their capacity building in implementing codes and standards as well as with the larger building sector.

As part of this work, the selected consultant will engage in a stakeholder process to help develop and validate these recommendations. Engagement methods can include workshops, targeted interviews, one-on-one meetings, or a combination of multiple methods. TAF will identify key stakeholders, targeting 3-4 different groups. Consultants can choose to conduct separate meetings with each stakeholder group or combine outreach to multiple stakeholder groups.

Consultants are encouraged to identify and describe their planned engagement method(s) and approximate timelines in their proposal submission.

Objective 3 Expected Deliverables

- A **stakeholder engagement process** to develop and validate recommendations that can assist in reducing the identified gaps going forward. This process consists of engaging 3-4 different stakeholder groups (to be identified and assembled by TAF).
- A **briefing note** summarizing:

- A set of recommendations that are developed and refined using the stakeholder process described above as well as the data analysis from Objectives 1-2.
- A summary of the stakeholder engagement process and key feedback gathered, organized by stakeholder group.

This briefing note will be distributed in draft form to TAF, and verbal and/or written feedback will be integrated prior to finalizing this deliverable. This briefing note is intended to become part of the final report deliverable outlined below.

- A **final, public facing report** summarizing:
 - Key performance metrics of Design Development Stage energy model and post-occupancy performance over time (see details in Objective 1).
 - Characteristics of the energy and carbon performance gap, including any relevant findings based on building age, type or heating system (see details in Objective 2).
 - Key recommendations that can assist in reducing the identified performance gaps, specifically developed for municipalities, government officials for provincial and national codes, and industry.
- A **public facing slide deck with infographics**, summarizing key information from the final report.
- A **project close-out meeting**.

5.4. Anticipated Project Schedule

Milestones	Anticipated Dates
Kick-Off	Week of October 7, 2024
Objective 1	To be confirmed based on proponent workplan
Objective 2	To be confirmed based on proponent workplan
Objective 3	To be confirmed based on proponent workplan
Close-Out	April 2, 2025

5.5. Submission Requirements

Please respond to this section in its entirety. Failure to respond to any requested information will be deemed as unresponsive, and subsequently, no points will be assigned during the evaluation process.

Responses should be limited to six (6) pages, not including proponent CVs and the Price Detail Form in Supplement B. Please assemble your proposal documents as a single PDF for submission, organized in the following four (4) subsections:

1. VENDOR PROFILE

Provide a summary that includes the following:

- Provide a brief synopsis of your Organization's background and areas of expertise relevant to the scope of work described in the RFP.
- Explain why your Organization is most suited for this project and can provide the deliverables in the most cost effective manner.
- Demonstrate your knowledge of the current and future trends of the subject matter knowledge required to succeed in this initiative.
- Describe the company reporting structure and indication on how the account would be serviced.

2. EXPERIENCE AND QUALIFICATION OF THE PROPONENT TEAM AND RESOURCES

This work will need to be undertaken by a team who can demonstrate specific knowledge of and experience in performing similar work on projects of comparable nature, size, and scope. The proponent should provide the following:

- a. A list of key staff that the Proponent proposes to use for this work, highlighting the professional qualifications, related project experience, and the intended role and responsibilities for each team member. This should include, at minimum, the Project Manager intended to be the lead and primary point of contact for this work.
- b. Strategies for fulfilling the roles and responsibilities for any unforeseen events requiring replacement of team members, including any named individuals where possible.
- c. CVs for key staff listed in subsections 2a and 2b, to be included in an Appendix to this proposal (and not counted towards the above page limit).
- d. A statement of any conflict of interest, if applicable.

3. UNDERSTANDING OF RFP AND PROPOSED SOLUTION

The proposal must include realistic timelines that ensure the work is completed efficiently and effectively. The Proponent is requested to provide:

- A summary of the overall approach, including the Proponent's perspective on data analysis and size needed to develop meaningful recommendations.
- A detailed work plan including the proposed approach to completing each Objective, and the associated schedule, tasks, and deliverables.
- For each Objective, the member(s) of the Proponent's team that will be completing the work, including an assigned lead.
- An estimated overall timeline for completion of the project, including an indication of how soon you could commence work.
- Assumptions regarding roles and involvement of TAF staff, including estimated amounts of their time involvement and meetings to discuss, review, and advance project work.

4. PRICING

The Pricing Form (Supplement B) must be enclosed and provided and included with the Vendor's submission in order for the Vendor's bid submission to be considered.

Upon completion of the evaluation process, only those Pricing Form submitted by Vendors whose submissions are deemed to meet the needs of the Agency will be evaluated and their pricing will be considered as the final phase of this call.

The intent of the two-phase evaluation process is to ensure that submissions are evaluated initially on the basis of the Agency's criteria only, without regard to pricing. If vendors attempt to indicate pricing outside of the process indicated above, the vendor shall, at the Agency's sole discretion, be deemed non-compliant and given no further consideration.

5. REFERENCES

Provide a list of two project references for similar work, including the following information:

- Description of the project and role played by your firm
- The approximate value of the service provided by your firm
- Approximate start and completion dates
- Name, title, email address and telephone number of client contact

Please note that TAF cannot be listed as a reference.

5.6. Submission Instructions

Submissions will be received only by the Procurement Representative by email to purchasing@taf.ca and must be received on or before September 5, 2024 at 5:00pm. Proponents to reference the procurement name and document, as identified in the title page, in the email subject line.

Upon submitting the Proposal, the Proponent will receive an email notification confirming successful completion of their submission. If you do not receive this notification, contact the Procurement Representative directly.

5.7. Anticipated Procurement Timeline

The following is a summary of the key dates in the RFP process:

Event	Date
RFP Issue Date	July 9, 2024
Questions and Requests for Clarification to be Submitted in writing	July 30, 2024
Response to Vendor Questions Addenda Deadline	August 7, 2024
RFP Submission Deadline	September 5, 2024
Anticipated Tentative Award Date	September 23 - 30, 2024
Anticipated Tentative Agreement Start Date	September 30, 2024

TAF may change any of the above dates and times, including the RFP Submission Deadline, in its sole discretion and without liability, cost, or penalty. In the event a change is made to any of the above dates prior to the RFP Submission Deadline, TAF will email any such change directly to the Vendors.

In the event of any change in the RFP Submission Deadline, the Vendors shall thereafter be subject to the extended RFP Submission Deadline.

5.8. Evaluation Methodology

This Document will be issued in two phases:

Phase I - Technical Evaluation of Vendors

Phase I requires that Proponents provide information on their company, related experience, subject area knowledge, methodology and approach. Based on the information received an evaluation committee will evaluate all responses. Those deemed, at the sole discretion of the evaluation committee, best qualified will enter into Phase II.

Phase II - Pricing Evaluation

Only those Proponents who have been deemed best qualified in Phases I will enter into Phase II and the pricing to be evaluated for award.

5.9. Evaluation Process

Submissions will be evaluated on the overall ability to meet/exceed the requirements as set out in this Document. A short list of Proponents will be selected from this initial process for further evaluation.

The initial evaluation will consist of, but not limited to, the following:

- Mandatory Requirements
- Experience And Qualification of The Proponent Team and Resources
- Understanding of RFP and Proposed Solution
- References
- Pricing

The evaluation of the Proposals will be conducted by the Evaluation Team in several phases, as described below. The phases and the points allocated to each stage of the evaluation process are as follows:

Stage	Criteria	Weight %	Points
	Mandatory Requirements Checklist Schedule	Pass/Fail	
	<i>Fail is automatic disqualification</i>		
Phase I	UNDERSTANDING OF RFP AND PROPOSED SOLUTION <ul style="list-style-type: none"> - Demonstrated understanding of the scope of work (10) - Well-aligned approach for achieving the intended objectives of the RFP within the identified timeframe (10) 	20	20
	EXPERIENCE AND QUALIFICATIONS OF THE PROPONENT <ul style="list-style-type: none"> - Demonstrated evidence that the team member(s) identified to deliver the outlined activities have the relevant skills and experience to do so with excellence 	20	20
	KNOWLEDGE OF THE SUBJECT MATTER <ul style="list-style-type: none"> - Demonstrated understanding of building systems and evaluating energy end-use performance (15) - Demonstrated understanding of the technical and practical issues related to while building energy modeling and thermal modeling (10) - Demonstrated understanding of local green development standards, design development stage energy models (5) - <i>Up to five (5) extra points will be awarded if a Proponent includes a</i> 	30	30

Stage	Criteria	Weight %	Points
	<i>submission for the optional scope (Objectives 1B and 2B).</i>		
Phase II	Pricing Schedule B Based on objectives 1A, 2A, and 3	30	30
Phase III	Reference Validation	Pass/Fail	
Total		100%	100

The table below outlines the evaluation methodology to be applied to Vendor Submissions.

Scoring Characteristics

In applying scores through the evaluation process, evaluators should note that proposals are evaluated against the Evaluation Team’s expectations of what are acceptable responses to the criteria. For consistency, the following table describes the characteristics attributable to particular scores.

Score (% of total points available)	Characteristics
0	Submission is unacceptable; demonstrates no understanding of the requirements; criterion is absent from submission
Below mid-point 10% - 30%	Submission is not adequate; misses some key requirements
Mid-point 40% - 60%	Submission meets basic expectations and requirements
Above mid-point 70% - 90%	Submission substantially meets expectations and requirements
Full Marks 100%	Submission meets and exceeds expectations and requirements, clearly demonstrates an understanding of requirements and details how services will be provided to meet stated standards/expectations/service levels

By responding to this Document, Vendors agree to accept the decision of the evaluation committee as final.

6. Supplement A – Form of Proposal

I, We, the undersigned, having examined the Document, do hereby submit an offer to enter into an Agreement with The Atmospheric Fund, to provide Consulting Services for Characterizing the Building Performance Gap in the GTHA in accordance with the Document.

1. DOCUMENT ADDENDA

The Vendor submits that they have thoroughly reviewed this document together with the following Addenda and hereby accepts and agrees to all provisions and conditions stated therein and has included fully for all requirements in the Pricing:

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

2. CONTACT INFORMATION

In the space provided, please list the contact names and numbers:

Description	Contact Information
Contact Person Full Name	
Phone number	
Email address	

4. HARMONIZED SALES (HST) TAX INFORMATION

Please provide in the space below your HST Registration Number. Please note that all invoices provided to the Agency must show the HST Registration Number and show this tax on a separate line.

H.S.T. number _____

5. PRICING

The Pricing Form must be enclosed and included with your submission in order for your bid submission to be considered. Upon completion of the evaluation process, only those Pricing Form submitted by Vendors whose services are deemed to meet the needs of the Agency will be evaluated and their pricing will be considered as the final phase of this call.



By your signature hereunder, it is deemed that you have read and agreed to all terms and conditions in the same manner as had such terms and conditions appeared above your signature, and that you have the authority to bind the vendor.

VENDOR NAME AND ADDRESS:

TELEPHONE NUMBER: _____

E-MAIL ADDRESS: _____

PER: _____
(Please Print)

TITLE: _____

SIGNATURE: _____

DATE: _____

WITNESS NAME: _____
(Please Print)

TITLE: _____

SIGNATURE: _____

DATE: _____

7. Supplement B – Pricing Form

Complete the table below, indicating rates and estimated hours for the project team. Add columns for additional team members as needed.

	Estimated Effort (hours)			Fixed Cost (\$)
	Team Member Name and Position	Team Member Name and Position	Team Member Name and Position	
Rate (\$/hr)				
Estimated Effort (hours)				Fixed Cost (\$)
Objective 1A				
Objective 1B (Optional)				
Objective 2A				
Objective 2B (Optional)				
Objective 3				
Total Estimated Cost for Objectives 1A, 2A and 3				
Based on the above, the estimated total cost is \$ _____ +HST				

Prices are all inclusive of the cost of labour, materials and equipment required to complete the work, including but not limited to all applicable taxes, overheads, profits and all other associated Vendor expenses except HST. The Vendor acknowledges by signature hereunder that it has verified for itself the extent of the work referenced by this document.

No allowances or extra consideration on behalf of the Vendor will be allowed by the Agency by reason of additional costs, damages or other difficulties incurred by the Vendor for failure to have fully investigated and determined conditions affecting the work.

The Vendor may from time to time be required to perform works for which there is not suitable unit price item in the proposal documents. These works will be done on a time and material basis. The Vendor shall in all cases obtain written authorization from the Agency prior to proceeding with such works.

8. Supplement C – Service Agreement

SERVICES AGREEMENT

THIS AGREEMENT is made effective the DAY day of MONTH, 2024 (the “**Effective Date**”).

BETWEEN:

NAME

(hereinafter called the “**Contractor**”)

- and -

TORONTO ATMOSPHERIC FUND

(hereinafter called “**TAF**”)

BACKGROUND

- A. **WHEREAS both TAF and the Contractor** are committed to advancing low-carbon solutions in the urban context;
- B. **AND WHEREAS TAF** wishes to engage the Contractor to perform the services set out in this Agreement;
- C. **AND WHEREAS** the Contractor has agreed to perform such services for TAF upon the terms and conditions of this Agreement;

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

ARTICLE 1 SERVICES

- 1.1 The Contractor shall provide to TAF the services (the “**Services**”) set out in Schedule A, Scope of Work. The Contractor shall provide the Services in accordance with this Agreement and in accordance with any additional instructions which may be given by TAF from time to time. The Contractor shall not subcontract the Services without prior written consent of TAF.
- 1.2 The Contractor shall provide the Services: (a) in accordance with the terms and subject to the conditions set forth in this Agreement; (b) using personnel of required skill, experience, licences, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with generally recognized industry standards in the Contractor’s field; and (e) to the reasonable satisfaction of TAF.
- 1.3 Nothing in this Agreement shall be construed to prevent TAF from itself performing or from receiving services from other providers that are similar or identical to the Services.

- 1.4 Pursuant to Article 4, TAF may take possession of and use any completed or partially completed portions of the work undertaken in performance of the Services. TAF or persons authorized by TAF may, at all reasonable times, inspect or otherwise review the progress of the said work.

ARTICLE 2 TERM AND TERMINATION

- 2.1 The term of this Agreement begins on the Effective Date, and continues until the completion of the project outlined in Schedule A, or until terminated in accordance with the provisions of this section.
- 2.2 TAF reserves the right to terminate this Agreement without cause, for any reason, including but not limited to the loss of funding from a funder of TAF, on 14 days' written notice to the Contractor.
- 2.3 The failure of either party to perform any of its respective obligations under this Agreement, which failure is not remedied within 10 days of receipt of notice from the non-defaulting party requiring the failure to be remedied, or either party's insolvency, voluntary or involuntary bankruptcy, receivership or assignment for the benefit of creditors will entitle the other party, without limiting any of their other rights or remedies, to terminate this Agreement without penalty.
- 2.4 The Contractor reserves the right to terminate this Agreement without cause, for any reason, on 60 days' written notice to TAF.
- 2.5 Upon termination of this Agreement, TAF will pay all amounts due and owing to the Contractor for Services performed to the date of termination. The Contractor will not be entitled to any other remuneration in respect of the termination of this Agreement by TAF.
- 2.6 Upon termination of this Agreement, the Contractor shall promptly: (a) deliver to TAF all documents, work product, and other materials, whether or not complete, prepared by or on behalf of the Contractor in the course of performing the Services; (b) return to TAF all TAF-owned property, equipment, or materials in its possession or control; (c) remove any Contractor-owned property, equipment, or materials located at TAF's office or other locations; (d) deliver to TAF all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on TAF's confidential information; (e) provide reasonable cooperation and assistance to TAF in transitioning the Services to an alternate service provider; (f) on a pro rata basis, repay all fees and expenses paid in advance for any Services that have not been provided; (g) and permanently erase all of TAF's Confidential Information (defined below) from the Contractor's computer systems.
- 2.7 Where TAF has loaned the Contractor any matter or thing to assist the Contractor in respect of the performance of this Agreement, the Contractor shall return any and all such matters or things in as good condition as when received by the Contractor, reasonable use therefore excepted, upon the termination of this Agreement or as soon as practicable after such matters or things have served their purpose, whichever first occurs. Where the Contractor fails to return any matter or thing loaned by TAF, in addition to any other remedy, TAF may deduct the cost or replacement therefor from any moneys otherwise payable to the Contractor under this Agreement.

ARTICLE 3 REMUNERATION

- 3.1 In consideration of the performance of the Services in accordance with this Agreement, TAF will pay the Contractor the fees as set out in Schedule A (the “**Service Fees**”). The Service Fees will be due and payable within 30 days of the completion of the project, or as otherwise agreed to between the parties. The Service Fees are inclusive of the cost of all materials used for the provision of the Services. At any time, TAF and the Contractor may amend the Service Fees, the Services, and/or the deliverables, subject to their mutual approval.
- 3.2 TAF will not reimburse the Contractor for any cost or expenses incurred by the Contractor in the performance of the Services unless specifically set out in Schedule A or agreed to in advance in writing.

ARTICLE 4 INTELLECTUAL PROPERTY

- 4.1 The parties acknowledge and agree that, subject to and in accordance with this Article 4, all original work created or produced by the Contractor in the course of providing the Services (the “**Work Product**”) and all intellectual property rights therein are the property of TAF. The Contractor agrees to and does hereby expressly and irrevocably assign to TAF all right, title, and interest (including ownership of copyright) in the Work Product. Further, if during the course of providing the Services, the Contractor develops any Work Product that is protected by copyright, the Contractor hereby waives unconditionally any moral rights it may have in such Work Product, and if applicable, the Contractor shall cause its personnel, or any subcontractors and their personnel, to waive their moral rights.
- 4.2 TAF acknowledges and agrees that the Contractor has developed and will continue to develop certain underlying processes, concepts and ideas, techniques, skills, and know-how, and may have developed or purchased technology licences, independently of any activity undertaken by the Contractor hereunder (collectively, the “**Background Information**”), and that (i) the Background Information and all intellectual property rights therein shall remain the property of the Contractor or its respective owner; and (ii) the Background Information, along with information of general public knowledge, is not included in the transfer of rights in the Work Product contained in Article 4.1. The Contractor agrees to grant to TAF an irrevocable, royalty-free, perpetual, worldwide, non-exclusive, sublicensable licence to any Background Information necessary for TAF to fully use the Work Product.
- 4.3 The Contractor warrants that no Work Product or Background Information will infringe or otherwise violate any patent, copyright, trademark, trade secret, or other proprietary right of any third party and confirms that no consents of any other parties are necessary under any agreements concerning any of the Work Product or any Background Information in order for the transfer, assignment, and license of any of the intellectual property rights in the Work Product and Background Information to be effective. The Contractor shall not incorporate into any Work Product anything that would restrict the rights of TAF to modify, further develop or otherwise use the Work Product in any way that TAF deems necessary, or that would prevent TAF from entering into any contract with any contractor or consultant other than the Contractor for the modification, further development or other use of the Work Product.

ARTICLE 5 CONFIDENTIALITY

- 5.1 For the purpose of this Agreement, “**Confidential Information**” means all non-public information belonging to TAF, including all strategic, technical, corporate, financial, economic, legal or other information or knowledge generally concerning TAF or any of its affiliates, subsidiaries or other parties in which it has an ownership interest, or specifically concerning the Services, whether disclosed orally, or in the form of written material, computer data or programs, and includes trade secrets, computer programs, code, methods, techniques, processes, computer applications, information about or relating to grantees and/or customers of TAF and financial information, however obtained, and whether obtained before or after the execution of this Agreement. Confidential Information does not include information that:
- (a) is disclosed lawfully to the Contractor by a third party who has no obligation of confidentiality to TAF with respect to the disclosed information;
 - (b) is or becomes generally known to the public, other than by a breach by the Contractor of its obligations under this Agreement; or
 - (c) is obligated to be produced under order of a court of competent jurisdiction or similar requirement of a government entity, so long as prior notice of such order or requirement is provided to TAF and the Contractor co-operates to the extent reasonable in preserving its confidentiality.
- 5.2 The Contractor acknowledges and agrees that the Confidential Information is the property of TAF and that the Contractor will use the Confidential Information only for the purpose of performing the services under the Services Agreement. The Contractor will maintain the Confidential Information in strict confidence and will not disclose Confidential Information to any employee, except to the extent necessary to perform the Services, or to any third party, except with the prior written consent of TAF. The Contractor agrees that it will inform its employees performing the Services of the confidential nature of the Confidential Information and will ensure that those employees maintain the confidentiality of the Confidential Information in accordance with the terms of this Agreement. The Contractor will cause each of its employees, and any third party to whom the Confidential Information is disclosed with the consent of TAF, to execute and deliver a written confidentiality agreement obliging such employee or third party to maintain the confidentiality of the Confidential Information in accordance with the terms of this Agreement.
- 5.3 Upon termination of this Agreement or otherwise upon the request of TAF, the Contractor will deliver to TAF all copies, whether written, in the form of computer data or otherwise, of all Confidential Information in the possession of the Contractor or other parties to whom the Contractor has provided Confidential Information. Neither the Contractor nor any parties to whom the Contractor has provided confidential Information will retain copies of any Confidential Information.

ARTICLE 6 DISPUTE RESOLUTION AND INJUNCTIVE RELIEF

- 6.1 In the event of a dispute claim, question or disagreement arising from or relating to this Agreement or the breach thereof (individually and collectively, “**Dispute**”) the parties shall use reasonable efforts to attempt to resolve the Dispute. If the parties do not reach such a solution (or agree in writing to mediate the Dispute), within a period of 45 days, then, upon notice by either party to the other party, and prior to taking

any other legal actions, all Disputes shall be finally settled by arbitration pursuant to the Arbitration Act of Ontario before a single arbitrator, selected by the parties or appointed (in the event the parties cannot agree). The arbitration shall be held in Toronto, Ontario. The arbitrator's decision shall be final and binding. The arbitrator shall issue a written decision setting forth in reasonable detail the basis for the decision. The arbitrator shall have no authority to award damages inconsistent with this Agreement or punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute, and the parties hereby expressly waive their right to obtain such punitive damages in arbitration or in any other forum. The arbitrator shall award to the prevailing party, as determined by the arbitrator and if any, all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorney's fees. The arbitral award may be entered in any court having jurisdiction. All aspects of the arbitration will be final.

- 6.2 Notwithstanding sub-paragraph 6.1, the Contractor hereby recognizes that violation, breach or anticipated breach of the Confidential Information obligations and/or the Intellectual Property obligations of this Agreement may cause serious and irreparable harm to TAF for which an action in damages may not be a sufficient remedy. Consequently, the Contractor recognizes that TAF may, in addition to an action in damages, have the right to take the appropriate proceedings to obtain an interlocutory or permanent injunction in any jurisdiction of its choice as soon as possible as a necessary remedy to enjoin any further breach or anticipated breach by the Contractor and without prejudice to the rights of TAF to obtain damages.

ARTICLE 7 INDEMNIFICATION

- 7.1 The Contractor agrees to indemnify, defend, and save harmless TAF, and its directors, officers, employees, agents, successors, and permitted assigns (collectively, the "**Indemnified Party**") from all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs, and expenses (including reasonable legal fees and disbursements) suffered or incurred by the Indemnified Party that are related directly or indirectly to: (i) the provision of the Services under this Agreement; (ii) any inaccuracy of any representation or warranty of the Contractor contained in this Agreement or in any document delivered pursuant to this Agreement; (iii) any negligence or willful misconduct of the Contractor; (iv) any breach or non-performance by the Contractor of any covenant to be performed by it that is contained in this Agreement or in any document delivered pursuant to this Agreement; and (v) any breach or alleged breach by the Contractor of the intellectual property rights or privacy rights of any person, including TAF. The Contractor shall not enter into any settlement without TAF's or an Indemnified Party's prior written consent.
- 7.2 In no event will either party be liable for any special, consequential, incidental or indirect damages of any kind, howsoever caused, whether for breach of warranty, breach or repudiation of contract, tort, negligence or otherwise, even if the other party has been advised of the possibility of such loss. In no event shall either party be liable for any loss of profits, loss of business or goodwill.
- 7.3 The limitations of liability in section 7.2 shall not apply to any claims of third parties to the extent caused or contributed to by the Contractor, or to claims that arise from fraud, fraudulent misrepresentation, willful misconduct, abandonment, corruption, or the criminal conduct of employees, officers, or directors of the Contractor or any related party.

**ARTICLE 8
CONFLICT OF INTEREST**

- 8.1 The Contractor warrants that it, its partners, directors, officers, employees, agents, contractors, subcontractors and volunteers shall not during the term of this Agreement provide any services to any person, corporation, body, group or organization where the provision of such services, actually or potentially, creates a conflict of interest with the provision of the Services pursuant to this Agreement, without the Contractor first disclosing to TAF the actual or potential conflict of interest and obtaining the express prior written consent of TAF to perform such work, which approval may not be unreasonably withheld.

**ARTICLE 9
REPRESENTATIVES AND NOTICES**

- 9.1 Any power, right or function of TAF contemplated by the Agreement may be exercised by the representatives named in sub-paragraph 9.3 and when so exercised shall be deemed to be the act of TAF.

- 9.2 The Contractor's representative shall be:

Name:

Address:

Phone:

Email:

- 9.3 TAF's representative shall be:

Name:

Address: Toronto Atmospheric Fund
Metro Hall (c/o Union station, 2nd Floor East Wing)
55 John Street
Toronto, Ontario M5V 3C6

Phone:

Email:

- 9.4 All communications shall be given by or to the respective parties through the above individuals. The representatives of each party may be changed or substituted by notice to the other party of the name and address of the substitute representative.

- 9.5 All notices shall be in writing and shall be sufficiently given if personally delivered or mailed by pre-paid registered mail to the other party at the address shown above, in which case it shall be deemed to have been received on the 5th business day after it was mailed. Day-to-day communications may also be

delivered by fax or electronic transmission, in which case they shall be deemed to have been received on the first business day following transmission.

ARTICLE 10 GENERAL

- 10.1 Compliance with laws. The Contractor is in compliance with and shall comply with all applicable laws, regulations and ordinances. The Contractor has and shall maintain in effect all the licences, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.
- 10.2 No Waiver. The failure by TAF to insist in one or more instances upon the performance by the Contractor of any of the terms or conditions of this Agreement shall not be construed as a waiver of TAF's right to require future performance of any such terms or conditions, and the obligations of the Contractor with respect to such future performance shall continue in full force and effect. A waiver is binding on TAF only if it is in writing.
- 10.3 Assignment. The Contractor shall not assign this Agreement or any part thereof, without the prior written approval of TAF which approval may not be unreasonably withheld.
- 10.4 Survival. Upon termination of this Agreement, all rights and obligations of the parties shall cease, except: (i) such rights and obligations as may have accrued on or prior to the date of termination of expiration; and (ii) under any provision of this Agreement which, by the nature of the rights or obligations set out therein, might reasonably be expected to survive, including in respect of confidentiality, intellectual property, liability, and indemnification.
- 10.5 Force Majeure. A party shall not be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the party's reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, tsunami, epidemics, pandemics including the 2019 novel coronavirus pandemic (COVID-19), or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labour stoppages or slowdowns, or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of a party.
- 10.6 Enurement. This Agreement will enure to the benefit of and will be binding upon the successors and permitted assigns of the parties.
- 10.7 Entire Agreement. This Agreement embodies the entire Agreement with regard to the matters dealt with and supersedes any understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution.
- 10.8 Amendments. No change to or modification of this Agreement shall be valid unless it is in writing and signed by TAF and the Contractor.

- 10.9 Severability. If any provision of this Agreement or any covenant herein contained on the part of either party shall be determined to be invalid or unenforceable it shall not affect the validity of any provision or covenant hereof or therein contained.
- 10.10 Governing Law. This Agreement shall be construed in accordance with the laws of the Province of Ontario, Canada.
- 10.11 Headings. The headings which precede the paragraphs of this Agreement are merely for the assistance of the reader and do not affect the meaning, effect or construction of the Agreement.
- 10.12 Technical Meanings. Whenever words which have well-known technical or trade meanings are used in this Agreement, they are used in accordance with such recognized meanings.
- 10.13 No contra proferentem. This Agreement has been negotiated by each party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party does not apply to the construction or interpretation of this Agreement.
- 10.14 Relationship between the parties. The relationship established between TAF and Contractor by this Agreement is that of purchaser and vendor of services. Nothing contained in this Agreement shall be deemed to establish or otherwise create a relationship of principal and agent between TAF and Contractor. It is understood that Contractor is an independent contractor, and neither it nor any of its agents or employees shall have any right or authority to assume or create any obligation of any kind, whether express or implied, on behalf of TAF.
- 10.15 Authority to enter into Agreement. Each party stipulates that it has full authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of the named party is properly authorized to sign it, and each party further acknowledges that it has read this Agreement, understands and agrees to be bound by it.
- 10.16 Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in legible form, including in a tagged image format file (TIFF) or portable document format (PDF), shall be equally effective as delivery of a manually executed counterpart of this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF this Agreement has been executed as of the date first above written.

CONTRACTOR

Per: _____

Name:

Title:

I have authority to bind the Corporation

TORONTO ATMOSPHERIC FUND

Per: _____

Name: Julia Langer

Title: CEO

I have authority to bind the Corporation

Schedule A Scope of Work

Note- this schedule to be elaborated to include dates and align with the selected consultant's workplan

Objective

Working with TAF staff, the selected consultant will characterize the differences between modeled and post-occupancy performance for multi-family and commercial buildings in the GTHA. The goal of this work is to develop a series of recommendations that can help address the identified differences and improve future standards and codes.

Tasks & Deliverables

- Objective 1A: Assessing key performance metrics of modeled whole building energy use (at Design Development Stage) and post-occupancy performance.
- Objective 1B (OPTIONAL): Characterizing the performance trends of As-Constructed energy models for a sampling of projects.
- Objective 2A: Characterizing the performance gaps between Design Development Stage energy models and post-occupancy performance.
- Objective 2B (OPTIONAL): Deep-dive analysis of building end-uses identifying the highest differences between modeled (incl. Design Development Stage and As-Constructed) and post-occupancy performance.
- Objective 3: Development of sound recommendations that can address the identified performance gaps.

Service Fees: