

# CONSULTING GENERAL CONDITIONS

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## ARTICLE 1 – INTERPRETATION

### 1.01 Defined Terms

All defined terms set out in the Agreement Letter will have the same meanings when used in the Agreement as set out in the Agreement Letter. In addition, when used in the Agreement, the following words or expressions have the following meanings:

**“Agreement”** includes all documents as set out in the Agreement Letter;

**“Agreement Letter”** means the letter to which these Consulting General Conditions are attached, confirming the Consultant’s engagement to provide the Deliverables;

**“Authority”** means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Agreement; and **“Authorities”** means all such authorities, agencies, bodies and departments;

**“Business Day”** means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which The City has elected to be closed for business;

**“City Confidential Information”** means all information of The City that is of a confidential nature, including all confidential information in the custody or control of The City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Consultant in connection with the Agreement. For greater certainty, City Confidential Information will: (a) include: (i) all new information derived at any time from any such information whether created by The City, the Consultant or any third-party; (ii) all information (including Personal Information) that The City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Consultant of any duty of confidentiality owed by the Consultant to The City or to any third-party; (ii) the Consultant can demonstrate to have been rightfully obtained by the Consultant, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Consultant free of any obligation of confidence; (iii) the Consultant can demonstrate to have been rightfully known to or in the possession of the Consultant at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Consultant; but the exclusions in this subparagraph will in no way limit the meaning of Personal Information or the obligations attaching thereto under the Agreement or at law;

**“City Representative”** means the individual named in the Agreement Letter as the designated representative or contact at The City for all operational matters related to the Agreement;

**“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Consultant had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage,

including but not limited to (i) having or having access to information in the preparation of the Consultant's submission that is confidential to The City and not available to other proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process and render that process non-competitive and unfair; or (b) in relation to the performance of its contractual obligations in a City contract including this Agreement, the Consultant'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 judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**"Consultant"** means the professional service provider named in the Agreement Letter, with whom The City enters into an agreement to which these Consulting General Conditions are attached;

**"Consultant Accounts"** means the Consultant's detailed books, accounts, records and documentation, including, without limitation, contracts, original and unedited payroll records, bank records, invoices issued to Subcontractors and suppliers, records of quotations and related correspondence, ledgers and other similar books of records, detailed daily time records for personnel and equipment, and all similar information that is necessary to substantiate and verify all direct and indirect costs incurred by the Consultant relating directly or indirectly to the Agreement and all work performed under the Agreement;

**"Consultant's Intellectual Property"** means Intellectual Property owned by the Consultant prior to its performance under the Agreement or created by the Consultant during the Term of the Agreement independently of the performance of its obligations under the Agreement, or that was developed at the sole initiative of the Consultant without any time billed to or expectation of payment from The City;

**"Deliverables"** means everything developed for or provided to The City in the course of performing under the Agreement or agreed to be provided to The City under the Agreement by the Consultant or its directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors, including but not limited to any goods or services or any Intellectual Property and any concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**"Documentation"** means the specifications, user manuals, technical documents, release notes, instructions and other materials furnished or published by The City concerning the Proprietary Information;

**"Expiry Date"** is as set out in the Agreement Letter;

**"FOIP"** means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of Alberta 2000, Chapter F-25, as amended;

**“Indemnified Parties”** means The City and The City’s elected officials, officers, agents, employees and volunteers;

**“Industry Standards”** means (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Agreement or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Alberta and; (b) adherence to all Requirements of Law and to commonly accepted norms of ethical business practices, which must include the Consultant establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by The City;

**“Intellectual Property”** means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

**“Newly Created Intellectual Property”** means any Intellectual Property created by the Consultant or by The City and Consultant jointly, in the course of performance of its obligations under the Agreement;

**“Person”** if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

**“Personal Information”** means recorded information about an identifiable individual or that may identify an individual;

**“Proceeding”** means any action, claim, demand, lawsuit, or other proceeding;

**“Proof of Concept” (or “PoC”)** means a trial of the Deliverables by The City commencing after execution of the Agreement for a period set out in the procurement documents and confirmed in the Agreement Letter; to verify that the Deliverables are satisfactory to The City in its sole discretion;

**“Proprietary Information”** means all inventions, concepts, ideas, data, processes, methods, formulas, techniques, improvements, modifications or enhancements, whether or not patentable, as well as all trade secrets, including, but not limited to, all data, marketing strategies, new research material, pending projects and proposals, research and development, technological data, all proprietary information, lists, pricing, documentation, software and know-how;

**“Rates”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the Agreement, representing the full amount chargeable by the Consultant for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes (except applicable sales tax, which should be itemized separately); (b) all fees, labour and material costs; (c) all travel and carriage costs; (d) all

insurance costs; and (e) all other overhead including any fees or other charges required by law;

**“Record”**, for the purposes of the Agreement, means any recorded information, including any Personal Information, in any form: (a) provided by The City to the Consultant, or provided by the Consultant to The City, for the purposes of the Agreement; or (b) created by the Consultant in the performance of the Agreement;

**“Requirements of Law”** means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Agreement or the Deliverables or any part of them;

**“Scope and Fee Schedule”** means a written outline of the Consultant’s engagement for each Phase under the Agreement and includes the scope of services, Consultant’s fees and specified individuals or persons who are to provide the services, as agreed to between the parties and attached to the Agreement Letter;

**“Subcontractor”** means any party hired or engaged by the Consultant to perform any aspect of the Deliverables, that is not an employee of the Consultant, and includes both contractors and subconsultants;

**“Supplier Code of Conduct”** means The City’s Supplier Code of Conduct (Attachment 3 to Council Policy CFO008) which sets out the minimum performance standards for suppliers to The City regarding working conditions, labour issues and the environment;

**“Term”** means the period of time from the effective date set out in the Agreement Letter up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Agreement in accordance with its terms;

**“Third-Party Intellectual Property”** means any Intellectual Property owned by a party other than The City or the Consultant.

## ARTICLE 2 – GENERAL TERMS

### 2.01 Entire Agreement

The Agreement embodies the entire agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the date of execution of the Agreement.

### 2.02 Severability

If any term or condition of the Agreement, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the parties, Persons or

circumstances other than those to which it is held invalid or unenforceable, will not be affected thereby.

### **2.03 Force Majeure**

Neither party will be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event will not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events will include natural disasters and acts of war, insurrection and terrorism but will not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Agreement due to a force majeure event, that party will immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Agreement by giving notice of termination and such termination will be in addition to the other rights and remedies of the terminating party under the Agreement, at law or in equity.

### **2.04 Notices by Prescribed Means**

Notices must be in writing and addressed to The City address to the attention of the City Representative and to the Consultant address to the attention of the Consultant Representative as respectively set out in the Agreement Letter. In the absence of evidence proving actual date of delivery, notices will be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party; or (c) in the case of electronic mail (email) on the date of sending or, if sent after 16:00 Calgary time, on the next Business Day after it is sent. In the event of a postal disruption, notices will be given by personal delivery or by facsimile or email. Proof of sending a notice by email will be by a delivery receipt. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

### **2.05 Governing Law and Jurisdiction**

The Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. The parties submit to the exclusive jurisdiction of the courts of Alberta.

### **2.06 Work to Comply with all Laws**

During performance of the Agreement, the Consultant must comply with all applicable statutes, regulations, bylaws, rules, orders and other requirements enacted or imposed by Federal, Provincial, Municipal or other government bodies, agencies, tribunals or other



authorities (as in force or amended or substituted from time to time), including, without limitation, the *Worker's Compensation Act* (Alberta), *Occupational Health and Safety Act* (Alberta), the *Labour Relations Code* (Alberta) and the Supplier Code of Conduct. The Consultant is responsible for obtaining any permits, licenses or certifications (and any associated fees or charges) required by such statutes, regulations, bylaws, rules, orders and other requirements and, at The City's request, the Consultant must provide to The City a copy of such permits, licenses or certifications.

## **ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN THE CITY AND CONSULTANT**

### **3.01 Consultant's Power to Contract**

The Consultant represents and warrants that it has the full right and power to enter into the Agreement and there is no agreement with any other Person that would in any way interfere with the rights of The City under this Agreement.

### **3.02 Representatives May Bind the Consultant**

The Consultant represents that its representatives have the authority to legally bind the Consultant to the extent permissible by the Requirements of Law.

### **3.03 Consultant Not a Partner, Agent or Employee**

Unless otherwise agreed to in writing, the Consultant will have no power or authority to bind The City or to assume or create any obligation or responsibility, express or implied, on behalf of The City. The Consultant will not hold itself out as an agent, partner or employee of The City. Nothing in the Agreement will have the effect of creating an employment, partnership or agency relationship between The City and the Consultant (or any of the Consultant's directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors).

### **3.04 Responsibility of Consultant**

The Consultant agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and Subcontractors. The Consultant will advise these individuals and entities of their obligations under the Agreement and will require and use all reasonable efforts to ensure their compliance with the applicable terms of the Agreement. In addition to any other liabilities of the Consultant pursuant to the Agreement or otherwise at law or in equity, the Consultant will be liable for all damages, costs, expenses, losses, claims or actions arising from any breach by the Consultant of the Agreement resulting from the actions of the above mentioned individuals and entities. This paragraph will survive the termination or expiry of this Agreement.

### **3.05 Subcontracting or Assignment**

The Consultant will not assign the whole or any part of the Agreement or any monies due under it without the prior written consent of The City. Such consent will be in the sole

discretion of The City and subject to the terms and conditions that may be imposed by The City.

Without limiting the generality of the conditions which The City may require prior to the Consultant's use of a Subcontractor, every contract entered into by the Consultant with a Subcontractor will adopt all of the terms and conditions of this Agreement as far as applicable to those parts of the Deliverables provided by the Subcontractor. Nothing contained in the Agreement will create a contractual relationship between any Subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and The City.

### **3.06 Duty to Disclose Change of Control**

In the event that the Consultant undergoes a change of control, as considered by the Business Corporations Act, R.S.A. 2000, C. B-9, the Consultant will immediately disclose such change of control to The City and will comply with any terms and conditions subsequently prescribed by The City, acting reasonably, resulting from and related to the disclosure.

### **3.07 Conflict of Interest**

The Consultant will: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to The City without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by The City to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, The City may immediately terminate the Agreement upon giving notice to the Consultant where: (a) the Consultant fails to disclose an actual or potential Conflict of Interest; (b) the Consultant fails to comply with any requirements prescribed by The City to resolve a Conflict of Interest; or (c) the Consultant's Conflict of Interest cannot be resolved. This paragraph will survive any termination or expiry of the Agreement.

### **3.08 Agreement Binding**

The Agreement will enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

## **ARTICLE 4 – PERFORMANCE BY CONSULTANT**

### **4.01 Commencement of Performance**

The Consultant will commence performance upon receipt of written instructions from The City.

### **4.02 Deliverables**

The Consultant hereby represents and declares that the Deliverables (i) will be provided by persons possessing the skill, care, diligence and experience of competent and skilled professionals qualified in their occupations; (ii) will be performed in a professional manner



that meets or exceeds the standards for services and projects of a similar nature; and (iii) will be in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables will be provided in accordance with: (a) the Agreement; (b) Industry Standards and applicable professional standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of The City, are inadequately provided or require corrections, the Consultant will forthwith make the necessary corrections at its own expense as specified by The City in writing.

#### **4.03 Use and Access Restrictions**

The Consultant acknowledges that unless it obtains specific written preauthorization from The City, any access to or use of The City property, technology or information that is not necessary for the performance of its contractual obligations with The City is strictly prohibited. To obtain authorization to access a City facility or technology resources, the Consultant may be required provide a police information check satisfactory to The City that: (1) is from a Canadian law enforcement agency (or equivalent state or federal law enforcement agency in the country of origin if not a Canadian citizen), and (2) is not more than 5 years old. Other location-specific access protocols may also apply. The Consultant further acknowledges that The City may monitor the Consultant to ensure compliance with this paragraph. This paragraph is in addition to and will not limit any other obligation or restriction placed upon the Consultant.

#### **4.04 Notification by Consultant to The City**

During the Term, the Consultant will advise The City promptly of: (a) any contradictions, discrepancies or errors found or noted in the Agreement; (b) supplementary details, instructions or directions that do not correspond with those contained in the Agreement; (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Agreement and Requirements of Law; and (d) any observed hazards or changes to the physical condition of the project site that may require cleanup, interfere with the timely completion of the anticipated project or otherwise require corrective action.

#### **4.05 Condonation Not a Waiver**

Any failure by The City to insist in one or more instances upon strict performance by the Consultant of any of the terms or conditions of the Agreement will not be construed as a waiver by The City of its right to require strict performance of any such terms or conditions, and the obligations of the Consultant with respect to such performance will continue in full force and effect.

#### **4.06 Changes By Written Amendment Only**

Any changes to the Agreement will be by written amendment signed by the parties. No changes will be effective or will be carried out in the absence of such an amendment. Any such written changes will be included in the definition of Agreement.

#### **4.07 Consultant to Comply With Reasonable Change Requests**

The City may, in writing, request changes to the Agreement, which may include altering, adding to, or deleting any of the Deliverables. The Consultant will comply with all reasonable change requests made by The City and the performance of such request will be in accordance with the terms and conditions of the Agreement. If the Consultant is unable to comply with the change request, it will promptly notify The City and provide reasons for such non-compliance. In any event, any such change request will not be effective until a written amendment reflecting the change has been executed by the parties.

#### **4.08 Pricing for Requested Changes**

Where a change request includes a change in the scope of the previously contemplated Deliverables, the Consultant will set out the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of services contemplated in the change request, the Consultant will not unreasonably refuse to provide those services and related goods at prices consistent with those Rates; or (b) are silent to the applicable price for the particular services and related goods contemplated in the change request, the price will be negotiated between The City and the Consultant within a reasonable period of time and in any event, such change request will not become effective until a written amendment reflecting the change has been executed by the parties.

#### **4.09 Non-Exclusive Agreement, Work Volumes**

The Consultant acknowledges that it is providing the Deliverables to The City on a non-exclusive basis. The City makes no representation regarding the volume of goods and services required under the Agreement. The City reserves the right to contract with other parties for the same or similar goods and services as those provided by the Consultant and reserves the right to obtain the same or similar goods and services internally.

#### **4.10 Performance by Specified Individuals Only**

The Consultant agrees that to the extent that specific individuals or Subcontractors are named in the Agreement as being responsible for the provision of the Deliverables, only those individuals or Subcontractors will provide the Deliverables under the Agreement. The Consultant will not replace or substitute any of the individuals or Subcontractors named in the Agreement without the prior written approval of The City, which may not arbitrarily or unreasonably be withheld. Should the Consultant require the substitution or replacement of any of the individuals or Subcontractors named in the Agreement, it is understood and agreed that any proposed replacement will possess similar or greater qualifications than the individual or Subcontractor named in the Agreement. The Consultant will not claim additional fees for any replacement individual or Subcontractor, greater than the Rates established under the Agreement.

#### **4.11 City Rights and Remedies and Consultant Obligations Not Limited to Agreement**

The express rights and remedies of The City and obligations of the Consultant set out in the Agreement are in addition to and will not limit any other rights and remedies available to The City or any other obligations of the Consultant at law or in equity.

#### **4.12 Proof of Concept**

If set out in the procurement documents, upon award of the Agreement the Consultant may be required to develop and participate in a PoC process and will be evaluated on its performance of the Deliverables during the PoC. Subsequent to the PoC process and based on the Consultant's performance during the PoC process, The City may, in its sole discretion, either continue to implement the Consultant's proposed solution and continue with the Agreement or terminate the Agreement.

#### **4.13 Reliance on Deliverables**

The City and its consultants, contractors and their subcontractors will at all times be entitled to rely on the Deliverables as needed for the purpose of completing City projects identified in or contemplated by the Agreement as set out in the agreed Scope and Fee Schedule, in each case notwithstanding any provision, disclaimer, or waiver in the Deliverables to the contrary. Nothing in this clause is intended to create a contractual relationship between the Consultant and such other parties.

## **ARTICLE 5 – PAYMENT FOR PERFORMANCE**

#### **5.01 Payment According to Agreement Rates**

The City will, subject to the Consultant's compliance with the provisions of the Agreement, pay the Consultant for the Deliverables provided at the Rates and intervals set out in the Agreement Letter.

To obtain timely payment, the Consultant must, within 10 Business Days following the end of a payment period, as set out in the Agreement Letter, prepare and submit to The City a consolidated period invoice in respect of Deliverables that have been performed by the Consultant, to the satisfaction of The City, during the most recent payment period detailing as applicable: hours worked or percentage of Deliverables completed, fees, disbursements and any other relevant items according to the payment schedule set out in the Agreement Letter.

All invoices submitted by the Consultant must also reference the purchase order number of the purchase order issued by The City to authorize payment to the Consultant.

The Consultant will cooperate with the reasonable requirements of The City's finance department and will submit invoices and all other documentation relating to the Agreement, with the structure and content as is reasonably required to be compatible with The City's information systems.

Invoices approved by The City's Representative will become payable within 30 days of approval by The City's Representative

#### **5.02 Hold Back or Set Off**

The City may hold back payment or set off against payment for other contracts between The City and the Consultant if, in the opinion of The City acting reasonably, the Consultant has failed to comply with any requirements of the Agreement and has not rectified such failure seven (7) calendar days after written notice of the failure has been given by The City to the Consultant.

#### **5.03 No Expenses or Additional Charges**

There will be no other charges payable by The City under the Agreement to the Consultant other than the Rates established under the Agreement. .

#### **5.04 Payment of Taxes and Duties**

Unless otherwise stated, the Consultant will pay all applicable taxes, including excise taxes incurred by or on the Consultant's behalf with respect to the Agreement.

#### **5.05 Withholding Tax**

The City will withhold any applicable withholding tax from amounts due and owing to the Consultant under the Agreement and will remit it to the appropriate government in accordance with applicable tax laws. If the Consultant is a non-resident of Canada as that term is interpreted under the tax laws of Canada, or if The City has reasonable grounds to believe that the Consultant is a non-resident of Canada, the Consultant agrees that The City may deduct income, withholding or other taxes from any payment to the Consultant in compliance or intended compliance with applicable laws. Any such deductions, taken together with payment of the balance of the amount owed, will be deemed to constitute full payment of amounts owed to the Consultant. The City will account to the Consultant for all tax deductions by providing the Consultant with a copy of the applicable tax remittance form or other government document. If a non-resident Consultant wishes to distinguish between services rendered within Canada and from outside of Canada, this must be set out in each invoice.

#### **5.06 Limitations on Work and Fee**

- (a) Where during the performance of a Phase of the Agreement it appears to the Consultant that the aggregate of the Rates to be paid to the Consultant by The City will exceed the maximum limit of Rates permitted to be paid pursuant to the applicable Purchase Order, the Consultant must forthwith advise The City in writing of:
- (i) the amount by which the aggregate of the Rates will exceed the limit or limits applicable thereto; and
  - (ii) the reason or reasons why the limit or limits applicable thereto will be exceeded.

- (b) The Consultant must not proceed to perform any altered or additional Deliverables which if performed would cause the limits of the Rates as set out to be exceeded unless notice has been given and until the written approval of the Director, Supply Management, has been obtained.
- (c) Unless the Consultant gives the required notice in writing as soon as practicable after the Consultant discovered or reasonably ought to have discovered that the initial limit or limits will or may be exceeded, and in any event not later than fourteen (14) days after such time, The City may refuse to pay additional fees, or disbursements, or both.

## **ARTICLE 6 – CONFIDENTIALITY AND FOIP**

### **6.01 Confidentiality and Promotion Restrictions**

Any publicity or publications related to the Agreement will be at the sole discretion of The City. The City may, in its sole discretion, acknowledge the Deliverables provided by the Consultant in any such publicity or publication. The Consultant will not make use of its association with The City without the prior written consent of The City. Without limiting the generality of this paragraph, the Consultant will not, among other things, at any time directly or indirectly communicate with the media in relation to the Agreement unless it has first obtained the express written authorization to do so by The City.

### **6.02 City Confidential Information**

During and following the Term, the Consultant will: (a) keep all City Confidential Information confidential and secure; (b) limit the disclosure of City Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any City Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of The City and (ii) in respect of any City Confidential Information about any third-party, the written consent of such third-party; (d) provide City Confidential Information to The City on demand; and (e) return all City Confidential Information to The City before the end of the Term, with no copy or portion kept by the Consultant.

### **6.03 Restrictions on Copying**

The Consultant will not copy any City Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Consultant, the Consultant will reproduce all notices that appear on the original.

### **6.04 Injunctive and Other Relief**

The Consultant acknowledges that breach of any provisions of this Confidentiality and FOIP Article may cause irreparable harm to The City or to any third-party to whom The

City owes a duty of confidence, and that the injury to The City or to any third-party may be difficult to calculate and inadequately compensable in damages. The Consultant agrees that The City is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

#### **6.05 Notice and Protective Order**

If the Consultant or any of its of its directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors become legally compelled to disclose any City Confidential Information, the Consultant will provide The City with prompt notice to that effect in order to allow The City to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it will co-operate with The City and its legal counsel to the fullest extent. The City will pay for Consultant's legal fees and disbursements associated with any such co-operation. If such protective orders or other remedies are not obtained, the Consultant will disclose only that portion of City Confidential Information which the Consultant is legally compelled to disclose, only to such person or persons to which the Consultant is legally compelled to disclose, and the Consultant will provide notice to each such recipient (in co-operation with legal counsel for The City) that such City Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, will obtain each recipient's written agreement to receive and use such City Confidential Information subject to those terms and conditions.

#### **6.06 FOIP Records and Compliance**

The Consultant and The City acknowledge and agree that FOIP applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Consultant agrees (a) to keep Records secure; (b) to provide Records to The City within seven (7) calendar days of being directed to do so by The City for any reason including an access request or privacy issue; (c) not to access any Personal Information unless The City determines, in its sole discretion, that access is permitted under FOIP and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by The City; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a City representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of The City would improve the adequacy and effectiveness of the Consultant's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any



confidential information supplied to The City may be disclosed by The City where it is obligated to do so under FOIP, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph will prevail over any inconsistent provisions in the Agreement.

#### **6.07 Professional Records Retention Requirements and Backup Systems**

Notwithstanding the requirements of Section 6.02(e):

- (a) if a Consultant is governed by a professional body that requires the Consultant to retain records or copies of documents or other records that are City Confidential Information, on the basis that such records were relied on to produce the Deliverables, the Consultant may retain one copy of each such record for the sole purpose of compliance with and for so long as required by the professional standards of its professional governing body. The obligations of this Article 6 shall continue to apply for the duration of the retention of such records; and
- (b) with respect to City Confidential Information that is in electronic form, the Consultant shall use all commercially reasonable efforts to destroy, delete or erase all electronic copies and will provide a written notice to The City when this is completed. However, unless expressly requested by The City, the Consultant shall not be required to review electronic back-up media or destroy the same or to take other extraordinary steps to delete City Confidential Information which is stored on electronic backup media in the ordinary course of the Consultant's business, provided that such back-up media or hard drive systems will be protected in the same manner as a prudent business owner would treat systems containing its own proprietary or confidential information and the duty to maintain the confidentiality of such City Confidential Information will continue to apply.

#### **6.08 Survival**

The provisions of this Article will survive any termination or expiry of the Agreement.

## **ARTICLE 7 – INTELLECTUAL PROPERTY**

#### **7.01 City Intellectual Property**

The Consultant agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by The City to the Consultant will remain the sole property of The City at all times.

#### **7.02 License for Use**

The City grants, and the Consultant accepts, a non-exclusive, non-assignable license under Intellectual Property owned, licensed or otherwise controlled or in the possession of The City to permit the Consultant to use the Proprietary Information and Documentation provided by The City to the Consultant only as necessary to allow the Consultant to satisfy

its obligations under this Agreement. The benefit of the license granted under this Agreement is limited solely to the Consultant.

### **7.03 No Use of The City Insignia**

The Consultant will not use any insignia or logo of The City except where required to provide the Deliverables, and only if it has received the prior written permission of The City to do so.

### **7.04 Ownership of Newly Created Intellectual Property**

The City will be the sole owner of any Newly Created Intellectual Property. The Consultant irrevocably assigns to and in favour of The City and The City accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and the Consultant irrevocably waives in favour of The City all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. In the event of any reuse or modification by or on behalf of The City of the Newly Created Intellectual Property that is not in accordance with its intended use as set out in the Agreement or agreed to in writing by the Consultant, The City will have no recourse to the Consultant and The City will indemnify the Consultant from any claims resulting from such unauthorized use or modification.

### **7.05 Consultant's Grant of License**

For those parts of the Deliverables that are Consultant Intellectual Property, the Consultant grants to The City a perpetual, world-wide, non-exclusive, irrevocable, non-transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of The City. The total consideration for the license described in this section will be payment of the Rates to the Consultant by The City. In the event of any reuse or modification by or on behalf of The City of the Consultant Intellectual Property in the Deliverables that is not in accordance with its intended use as set out in the Agreement or agreed to in writing by the Consultant, The City will have no recourse to the Consultant and The City will indemnify the Consultant from any claims resulting from such unauthorized use or modification.

### **7.06 No Restrictive Material in Deliverables**

The Consultant will not incorporate into any Deliverables anything that would restrict the right or ability of The City to modify, further develop or otherwise use the Deliverables in any way that The City deems necessary, or that would prevent The City from entering into any contract with any contractor other than the Consultant for the modification, further development of or other use of the Deliverables.

### **7.07 Consultant Representation Regarding Third-Party Intellectual Property**

The Consultant represents and warrants that the provision of the Deliverables will not infringe or induce the infringement of any Third-Party Intellectual Property rights, and that the Consultant has obtained assurances with respect to any Consultant Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived to the extent needed to be consistent with the terms of this Agreement.

#### **7.08 Survival**

The obligations contained in this Article will survive the termination or expiry of the Agreement.

### **ARTICLE 8 – INDEMNITIES, INSURANCE AND WORKERS' COMPENSATION**

#### **8.01 Consultant Indemnity**

The Consultant will indemnify and hold harmless The City, together with all of its respective officials, officers, employees and authorized representatives, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, legal fees on a solicitor-client basis, costs and expenses arising from the performance of the Agreement to the extent caused, occasioned by, or contributed to, by reason of any negligent act, error, omission, wrong or fault of the Consultant or its affiliates, any Subcontractor, and any other Person or entity employed or contracted with or directed by the Consultant in connection to the performance of the Agreement, for whom the Consultant is responsible.

#### **8.02 Insurance**

The Consultant hereby agrees to put in effect and maintain insurance for the Term, at its own expense, in a form that is satisfactory to The City and with insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta, the following insurance policies:

- (a) A commercial general liability insurance policy for bodily injury (including death) and property damage in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) inclusive limit for any one occurrence and such policy must include:
  - (i) "the City of Calgary" as an additional insured;
  - (ii) a cross-liability clause;
  - (iii) contractual liability coverage; and
  - (iv) a non-owned automobile liability clause; and
- (b) A provision for The City to be given thirty (30) days written notice prior to cancellation, and thirty (30) days prior notice of any material change requested by

the Consultant of the insurance policies that would restrict the coverage required as set out in 8.02(a) above.

The Consultant will be responsible for all deductibles that may apply in any of the required insurance policies.

The Consultant covenants and agrees that the insurance requirements in this Agreement will not be construed to and will not, in any manner, limit or restrict the liability of the Consultant.

### **8.03 Subcontractors' Insurance**

The Consultant will require that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain and that the Indemnified Parties are named as additional insured in their commercial general liability policies with respect to any liability arising in the course of performance of the Subcontractor's obligations under the subcontract for the provision of the Deliverables. When the Subcontractor performs services of a regulated profession in Alberta, as part of the Deliverables provided under the Agreement, that Subcontractor must be required to carry the same amount of professional liability insurance as would be required if such services were to be performed by the Consultant. The City may request proof of adequate Subcontractor insurance, through the Consultant, as set out in Section 8.04.

### **8.04 Proof of Insurance**

The Consultant will provide The City with proof of the insurance required by this Agreement in the form of valid certificates of insurance that confirm the required coverage, before the execution of the Agreement by The City, and renewal replacements on or before the expiry of any such insurance. Upon the request of The City's Manager of Risk Management and Claims, a copy of each insurance policy will be made available to it, excluding information that is confidential and not relevant to the specific project requirements.

### **8.05 Account with the Alberta Worker's Compensation Board**

Where applicable, the Consultant must maintain an account in good standing with the Worker's Compensation Board (Alberta) ("WCB"). The City may refuse to make final payment (as may be applicable) to the Consultant unless the Consultant provides a letter or other evidence from the WCB that the Consultant's account with the WCB is in good standing. The Consultant's account must include coverage for all partners, proprietors or directors of the firm, company or corporation who are present or may have cause to be at the work site, except to the extent such personnel are engaged in industries listed as exempt by the WCB. The City may seek verification from the WCB at any time during the Consultant's performance of the Agreement to confirm that the proponent's account remains in good standing.

If The City receives information from the WCB that the account of the Consultant has ceased to be in good standing with the WCB, The City may suspend payment to the Consultant until either:

- (a) the Consultant has obtained a letter of clearance from the WCB indicating that the Consultant has been brought back into good standing; or
- (b) The City pays the WCB any amount owing on behalf of the Consultant or pays the amount of the WCB's demand for payment in respect of the Consultant or its sub-contractor.

If The City pays any amount to the WCB on behalf of the Consultant, including its failure to maintain its account in good standing by reason of any wrongful act or omission of the Consultant, The City may deduct the amount from any amount owing to the Consultant under the Agreement or under any other contract, or may demand a reimbursement by the Consultant to The City for the amount paid by The City to the WCB. Such right is in addition to and not in substitution for any other right at law or in equity which The City has by reason of the failure of the Consultant to comply with the requirements of the WCB.

## **ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION**

### **9.01 Immediate Termination of Agreement**

The City may immediately terminate the Agreement upon giving notice to the Consultant where (a) the Consultant is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Consultant's insolvency; (b) the Consultant breaches any provision in Article 6 (Confidentiality and FOIP); (c) the Consultant breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between The City and Consultant); (d) the Consultant, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to The City; (e) the Consultant undergoes a change in control which adversely affects the Consultant's ability to satisfy some or all of its obligations under the Agreement; (f) the Consultant subcontracts for the provision of part or all of the Deliverables or assigns the Agreement without first obtaining the written approval of The City; or (g) the Consultant's acts or omissions constitute a substantial failure of performance, and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

### **9.02 Performance Improvement Notice**

Subject to the above paragraph, where the Consultant fails to comply with any of its obligations under the Agreement, The City may issue a notice to the Consultant setting out the manner and time-frame for performance (the "Performance Notice"). Within five (5) Business Days of receipt of that Performance Notice, the Consultant will either: (a) comply with that Performance Notice; or (b) provide a performance plan satisfactory to The City. If the Consultant fails to either comply with that Performance Notice or provide

a satisfactory performance plan, The City may immediately terminate the Agreement. Where the Consultant has been given a prior Performance Notice, the same subsequent type of non-compliance by the Consultant will allow The City to immediately terminate the Agreement.

### **9.03 Termination on Notice**

The City reserves the right to terminate the Agreement, without cause, upon thirty (30) calendar days' prior notice to the Consultant. If requested by The City under the notice of termination, the Consultant will suspend the provision of Deliverables under the Agreement upon receipt of the notice of termination and take all necessary or appropriate steps to limit disbursements and minimize costs.

### **9.04 Consultant's Obligations on Termination**

On termination of the Agreement, the Consultant will, in addition to its other obligations under the Agreement and at law (a) at the request of The City, provide The City with any completed or partially completed Deliverables; (b) provide The City with a report detailing: (i) the current state of the provision of Deliverables by the Consultant at the date of termination; and (ii) any other information requested by The City pertaining to the provision of the Deliverables and performance of the Agreement; (c) execute such documentation as may be required by The City to give effect to the termination of the Agreement; and (d) comply with any other instructions provided by The City, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph will survive any termination of the Agreement.

### **9.05 Consultant's Payment Upon Termination**

On termination of the Agreement, The City will only be responsible for the payment for Deliverables provided under the Agreement up to and including the effective date of any termination. Termination will not relieve the Consultant of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, The City may hold back payment or set off against any payments owed if the Consultant fails to comply with its obligations on termination.

### **9.06 Termination in Addition to Other Rights**

The express rights of termination in the Agreement are in addition to and will in no way limit any rights or remedies of The City under the Agreement, at law or in equity.

### **9.07 Right to Audit Consultant Accounts**

The City shall have the right to inspect, examine, make copies of and audit all Consultant's Accounts at all reasonable times, without prior notice, for the purpose of auditing and monitoring compliance with the Agreement. During the term of the Agreement and for a period of six (6) years after termination or expiry of the Agreement, the Consultant shall keep and maintain all Consultant Accounts in accordance with generally accepted accounting principles and International Financial Reporting Standards and all such Consultant Accounts shall be made available to The City at the Consultant's sole expense.



The parties agree that:

- (a) the Consultant Accounts shall be maintained in their original form without alteration, deletion or addition;
- (b) if any Consultant Accounts are kept in electronic form or in any other form that requires special equipment or specialized knowledge to convert the data into readily readable form, all assistance and facilities reasonably required for such purpose shall be provided by the Consultant at its sole expense;
- (c) if the Consultant subcontracts all or a portion of its obligations under the Agreement, the agreements formed between the Consultant and any Subcontractors or supplier of goods or services shall expressly include provisions similar to the provisions contained in this section and shall require such Subcontractors or suppliers of goods and services to extend the audit rights set out in these provisions to The City;
- (d) The City's audit rights do not extend to the confidential or proprietary information, if any, of the Consultant or Subcontractors;
- (e) the costs of any audit conducted by The City under authority of this paragraph will be the responsibility of The City unless the audit identifies materially inaccurate, misleading or incomplete records ; and
- (f) in the event an audit identifies materially inaccurate, misleading or incomplete records, the Consultant shall reimburse The City for the total costs of the audit.

This paragraph shall not be interpreted to limit, revoke, or abridge any other rights, powers or obligations relating to audit that The City may have by Federal, Provincial or Municipal law, whether those rights, powers or obligations are express or implied. The provisions of this paragraph will survive any termination or expiry of the Agreement.

#### **9.08 Limitation Period Extension**

The two (2) year limitation period provided in the Alberta *Limitations Act* is hereby extended for an additional period of two (2) years in respect of any matter connected with this Agreement.

## **ARTICLE 10 – RIGHTS AND OBLIGATIONS WHEN ON-SITE WORK IS REQUIRED**

### **10.01 General Requirements**

- (a) Prior to accessing any City property that is necessary for on-site performance of its contractual obligations with The City, the Consultant must schedule a meeting with The City Representative to discuss and be briefed on safety issues and, if different from The City, the party holding prime contractor for safety status pursuant to occupational health and safety legislation. No assignment of prime contractor for safety status to the Consultant is implied by this clause.

- (b) During performance of any on-site activities in connection with the Agreement, the Consultant will cause a minimum of interference with The City's operations and the operations of other contractors on the premises, take all necessary precautions to protect the premises and all persons and property thereon from damage, and, on completion of the Deliverables, leave the premises clean and free of all tools, equipment, waste material, and rubbish.

#### **10.02 Management of Hazardous or Unknown Substances**

- (a) In the event that the Consultant, while accessing the project site or any City property, encounters an unexpected substance release, a known contaminant or unknown substance (the "Found Substance"), the Consultant must cease work, document the Found Substance and report it to the City Representative as soon as practicable.
- (b) Unless required to do otherwise by law, the Consultant must not commence removal or abatement measures or otherwise disturb the Found Substance until instructions are given by the City Representative respecting management of the Found Substance.
- (c) Subject to compliance with this Article 10 and to Section 4.13 (Reliance on Deliverables), The City agrees that the Consultant will not be held liable for the presence, discharge, release or escape of pre-existing contaminants of any kind, except as may arise out of a negligent act, error, omission, wrong, breach or fault of the Consultant in the performance of the Agreement.