

AGREEMENT FOR CONSULTING SERVICES

BETWEEN:

THE CITY OF RED DEER

(referred to as the “City”)

AND:

LEGAL NAME OF CONSULTANT

(referred to as the “Consultant”)

In consideration of their respective agreements set out herein, the parties covenant and agree as follows:

1. Contract Documents

The contract between the parties in respect of:

Environmental Remediation and Risk Management at 4609 52 Avenue, Red Deer

is comprised of the following documents, which are collectively referred to as the “Contract”:

- (a) this Agreement;
- (b) the Schedule of Deliverables, Rates and Specific Provisions, attached hereto as Schedule 1;
- (c) the Standard Terms and Conditions, attached hereto as Schedule 2;
- (d) the “Solicitation Document” which is any addenda and Environmental Remediation and Risk Management at 4609 52 Avenue, Red Deer 2025-063, attached hereto as Schedule 3; and
- (e) the documentation submitted by the Consultant in response to the Solicitation Document (the “Consultant’s Submission”).

2. Interpretive Value of Contract Documents

Any ambiguity, conflict or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document.

3. Execution

This agreement may be executed and scanned or otherwise signed electronically and delivered by electronic transmission and when so executed will be deemed an original and binding on the parties. This agreement may be executed in one or more counterparts, each of which taken together, shall constitute only one legal instrument.

The parties to this Agreement have signed by the hands of their proper authorized officers and/or representatives.

THE CITY OF RED DEER

TITLE SIGNATURE

NAME DATE

I HAVE THE AUTHORITY TO BIND THE CITY OF RED DEER

COMPANY NAME

TITLE SIGNATURE

NAME DATE

I HAVE THE AUTHORITY TO BIND COMPANY NAME

Schedule 1 – Schedule of Deliverables, Fees and Specific Provisions

A. Description of Deliverables

The Deliverables are described in the Solicitation Document.

B. Fees

B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by the City to the Consultant under the Contract shall not exceed contract amount (\$xxx), unless prior written authorization has been obtained by the Consultant from The City.

B.2 Personnel and Rates

The following individuals are responsible for the provision of the Deliverables. These individuals shall not be changed nor shall additional individuals be added without the prior written consent of the City.

The rates for these individuals are set out below and shall remain fixed during the Term of this Contract:

personnel and rate information

C. Payment Terms

The payment terms for the Contract are as follows:

- (a) Invoices are to be addressed to the Financial Services Department, Attention: Accounts Payable, The City of Red Deer, PO Box 5008, Red Deer, Alberta, T4N 3T4 or to accountspayable@reddeer.ca.
- (b) The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
- (c) Goods and Services Tax (GST) must be shown separately on the invoice.
- (d) Only an invoice for the value of the goods and/or services delivered to the City shall be submitted and be payable.
- (e) The City will pay invoices in full within 30 days of receipt.

D. Client and Consultant Representatives

The City Representative and contact information for the Contract is:

The City of Red Deer
Purchasing Section
Box 5008, T4N 3T4
purchasing@reddeer.ca

The Consultant Representative and contact information for the Contract is:

name and title of Consultant representative in charge of the contact and contact details, including mailing address and email address

E. Term of Contract

The Contract commences on the date of the last signature (the “**Effective Date**”) and ends upon completion of the Deliverables to the full satisfaction of the City, which completion shall not be later than date.

F. Project Specific Provisions

F.1 Time is of the Essence

Subject to reasonable time extensions for delays not caused by the Consultant, time is to be of the essence in this Contract and the completion timelines set out in the Contract shall be strictly enforced. The City may withhold 20% of the Consultant’s fees until such time as performance and timelines are judged acceptable.

Where As-built drawings are required, they shall be submitted in the approved format to the City within 90 days of issuing the Substantial Completion Certificate. The City will withhold 5% of the Consultant’s earned fees until as-built drawings are received.

F.2 Prime Contractor

The Consultant is the prime contractor under applicable safety legislation.

F.3 Safety

The Consultant shall be aware of and observe all requirements of the Occupational Health and Safety Act and the Workers Compensation Act.

Any Consultant performing work for the City will be required to provide either:

- (a) a current copy of an issued COR or SECOR endorsed by the Government of Alberta, or an equivalent certificate or designation under an equivalent program in a jurisdiction other than Alberta;
- (b) a Temporary Letter of Certification endorsed by the Government of Alberta, or an equivalent certificate or designation under an equivalent program in a jurisdiction other than Alberta; or
- (c) a detailed safety program. The City reserves the right to accept or deny this submission.

The Consultant shall appoint a representative to be responsible for communication with the City, the Consultant’s workers, and Alberta Occupational Health and Safety with respect to health and safety issues.

The Consultant shall provide the Deliverables with the utmost regard for the safety and welfare of workers and the public, taking all necessary safety precautions as required at law.

Non-compliance with any of these Safety provisions is a material breach of the Contract.

F.4 Foreign Consultants

The City shall not be liable in any way whatsoever to the Consultant in the event that the Consultant or any of its employees, agents, subconsultants or subcontractors do not receive admission into Canada to perform any of the Consultant's obligations under this Agreement. The City shall not be liable for any consequences arising from the failure of the Consultant or any of its employees, agents, subconsultants or subcontractors to gain entry to Canada. Without limiting anything else in this Agreement, the Consultant shall indemnify the City for any damages, losses, or expenses the City incurs as a result of the failure of the Consultant or any of its employees, agents, subconsultants or subcontractors to gain entry to Canada.

FOR PREVIEW

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Schedule 2 - Standard Terms and Conditions

Index

Article 1 - Interpretation

- 1.01 Defined Terms

Article 2 - General Provisions

- 2.01 No Indemnities from City
- 2.02 Entire Contract
- 2.03 Non-Canadian Consultants
- 2.04 Severability
- 2.05 Failure to Enforce Not a Waiver
- 2.06 Changes by Written Amendment Only
- 2.07 Force Majeure
- 2.08 Notices by Prescribed Means
- 2.09 Governing Law

Article 3 – Relationship Between City and Consultant

- 3.01 Consultant's Power to Contract
- 3.02 Representatives May Bind Parties
- 3.03 Consultant Not a Partner, Agent or Employee
- 3.04 Non-Exclusive Contract, Work Volumes
- 3.05 Responsibility of Consultant
- 3.06 No Subcontracting or Assignment
- 3.07 Duty to Disclose Change of Control
- 3.08 Conflict of Interest
- 3.09 Contract Binding

Article 4 – Performance by Consultant

- 4.01 Commencement of Performance
- 4.02 Standard of Care
- 4.03 Health and Safety
- 4.04 Notification by Consultant to City
- 4.05 Shipment of Goods
- 4.06 Performance by Specified Individuals Only
- 4.07 Use and Access Restrictions
- 4.08 City Premises
- 4.09 Change Requests
- 4.10 Pricing for Requested Changes
- 4.11 Time
- 4.12 Rights, Remedies & Obligations Not Limited

Article 5 - Payment for Performance and Audit

- 5.01 Payment According to Contract Fees
- 5.02 Hold Back or Set Off
- 5.03 No Expenses or Additional Charges
- 5.04 Payment of Taxes and Duties
- 5.05 Withholding Tax
- 5.06 Interest on Late Payment
- 5.07 Document Retention and Audit

Article 6 – Confidentiality

- 6.01 Confidentiality and Promotion Restrictions
- 6.02 City Confidential Information
- 6.03 Restrictions on Copying
- 6.04 Notice of Breach
- 6.05 Injunctive and Other Relief
- 6.06 Notice and Protective Order
- 6.07 FOIP Records and Compliance
- 6.08 Survival

Article 7 - Intellectual Property

- 7.01 City Intellectual Property
- 7.02 No Use of City Insignia
- 7.03 Ownership of Intellectual Property
- 7.04 Consultant's Grant of License
- 7.05 No Restrictive Material in Deliverables
- 7.06 Third-Party Intellectual Property
- 7.07 Survival

Article 8 - Indemnity and Insurance

- 8.01 Consultant Indemnity
- 8.02 Insurance
- 8.03 Proof of Insurance
- 8.04 Workplace Safety and Insurance

Article 9- Termination, Suspension, Expiry and Extension

- 9.01 Immediate Termination of Contract
- 9.02 Dispute Resolution by Rectification Notice
- 9.03 Alternative Dispute Resolution
- 9.04 Termination on Notice
- 9.05 Consultant's Obligations on Termination
- 9.06 Consultant's Payment Upon Termination
- 9.07 Termination in Addition to other Rights
- 9.08 Suspension of Contract
- 9.09 Expiry and Extension of Contract

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“Authority” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; 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 Representative” is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

“Confidential Information” means all information that is of a confidential nature, including all confidential information in the custody or control of the City or the Consultant, 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 either party in connection with the Contract. For greater certainty, Confidential Information shall: (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 parties of any duty of confidentiality owed by the parties to each other or to any third-party; (ii) either party can demonstrate to have been rightfully obtained by it, without any obligation of confidence, from a third-party who had the right to transfer or disclose it free of any obligation of confidence; (iii) the party can demonstrate to have been rightfully known to or in the possession of the party at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by either party; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“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 access to information that is confidential to the City and not available to other bidders or 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; or (b) in relation to the performance of the Contract, 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;

“Deliverables” means everything developed for or provided to the City in the course of performing under the Contract or agreed to be provided to the City under the Contract by the Consultant or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, Schedule 1, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques,

ideas, information, documentation and other materials, however recorded, developed or provided;

“Effective Date” is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

“Fee at Risk” means a payment structure where all or a part of the Consultant’s fees are made payable only after the City is satisfied that the Consultant’s performance has been provided in accordance with measurement criteria mutually agreed upon by the parties.

“Fees” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

“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 directors, officers, agents, employees and volunteers;

“Industry Standards” include, but are not limited to (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 Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall 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 in the course of performance of its obligations under the Contract;

“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;

“Record”, for the purposes of the Contract, 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 Contract; or (b) created by the Consultant in the performance of the Contract;

“Requirements of Law” mean 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 Contract or the Deliverables or any part of them;

“Consultant Representative” is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions);

“Consultant’s Intellectual Property” means Intellectual Property owned by the Consultant prior to its performance under the Contract or created by the Consultant during the Term of the Contract independently of the performance of its obligations under the Contract;

“Term” is as set out in Schedule 1 (Schedule of Deliverables, Fees and Specific Provisions); and

“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 **No Indemnities from the City**

Notwithstanding anything else in the Contract, any express or implied reference to the City providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City beyond the obligation to pay the Fees in respect of Deliverables accepted by the City, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

2.02 **Entire Contract**

The Contract embodies the entire agreement between the parties with regard to the provision of the 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 Effective Date of the Contract.

2.03 **Non-Canadian Consultants**

The City shall not be liable in any way whatsoever to the Consultant in the event that the Consultant or any of its employees, agents, sub consultants or subcontractors do not receive admission into Canada to perform any of the Consultant's obligations under this Agreement. The City shall not be liable for any consequences arising from the failure of the Consultant or any of its employees, agents, sub consultants or subcontractors to gain entry to Canada. Without limiting anything else in this Agreement, the Consultant shall indemnify the City for any damages, losses, or expenses the City incurs as a result of the failure of the Consultant or any of its employees, agents, sub consultants or subcontractors to gain entry to Canada.

2.04 **Severability**

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, 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, shall not be affected thereby.

2.05 **Failure to Enforce 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 Contract shall 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 shall continue in full force and effect.

2.06 **Changes by Written Amendment Only**

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

2.07 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall 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 Contract 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 shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall 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 Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

2.08 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the City Representative and the Consultant Representative. Notices shall 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 email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.09 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

ARTICLE 3 – RELATIONSHIP BETWEEN 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 Contract and there is no agreement with any other Person which would in any way interfere with the rights of the City under this Contract.

3.02 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 Consultant Not a Partner, Agent or Employee

The Consultant shall 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 shall not hold itself out as an agent, partner or employee of the City. Nothing in the Contract shall 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 **Non-Exclusive Contract, 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 Contract. 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.

3.05 **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. This paragraph is in addition to any and all of the Consultant's liabilities under the Contract and under the general application of law. The Consultant shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Consultant pursuant to the Contract or otherwise at law or in equity, the Consultant shall be liable for all damages, costs, expenses, losses or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities. This paragraph shall survive the termination or expiry of this Contract.

3.06 **No Subcontracting or Assignment**

The Consultant shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the City. Such consent shall 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 consenting to the Consultant's use of a subcontractor, every contract entered into by the Consultant with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the City.

3.07 **Duty to Disclose Change of Control**

In the event that the Consultant undergoes a change in control the Consultant shall immediately disclose such change in control to the City and shall comply with any terms and conditions subsequently prescribed by the City resulting from the disclosure.

3.08 **Conflict of Interest**

The Consultant shall: (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 Contract 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 to the reasonable satisfaction of the City. This paragraph shall survive any termination or expiry of the Contract.

3.09 **Contract Binding**

The Contract can be enforced by and is 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 shall commence performance upon receipt of written instructions from the City.

4.02 Standard of Care

The Consultant shall perform the Services under this Agreement with that degree of care, skill and diligence generally accepted as typical of the industry in the performance of such Services as contemplated by this Agreement at the time such Services are rendered. The Consultant shall employ only competent staff who will be under the supervision of a senior member of the Consultant's staff.

4.03 Health and Safety

Without limiting the generality of section 4.02, the Consultant warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws and regulations in relation to the performance of the Consultant's obligations under the Contract. The Consultant shall provide the City with evidence of the Consultant's compliance with this section upon request by the City.

4.04 Notification by Consultant to the City

During the Term, the Consultant shall advise the City promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.05 Shipment of Goods

To the extent that the Deliverables include the shipment of goods to the City, all such goods shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the City's place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the City, unless specifically agreed by the City in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Consultant until the Deliverables are received by the City. Receipt of the Deliverables at the City's location does not constitute acceptance of the Deliverables by the City. The Deliverables are subject to the City's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the Consultant shall make the necessary corrections at its own expense as specified by the City in a rectification notice.

4.06 Performance by Specified Individuals Only

The Consultant agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Consultant shall not replace or substitute any of the individuals named in the Contract 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 named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Consultant shall not claim fees for any replacement individual greater than the Fees established under the Contract.

4.07 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. The Consultant further acknowledges that the City may monitor the Consultant to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Consultant.

4.08 City Premises

To the extent that the Deliverables are performed on the City's premises, the Consultant shall provide the Deliverables in an orderly manner with:

- (a) the utmost regard for the safety and welfare of workers and the public, taking all necessary safety precautions as required at law and by the City; and
- (b) the least possible interference or disturbance to occupants, members of the public, and normal use of the premises.

The Consultant will ensure the City's premises are kept clean during and after providing the Deliverables and, upon completion will remove its materials, waste products and debris.

4.09 Change Requests

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

4.10 Pricing for Requested Changes

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

4.11 Time

Time is of the essence.

4.12 Rights, Remedies and Obligations Not Limited

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

ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Contract Fees

The City shall, subject to the Consultant's compliance with the provisions of the Contract, pay the Consultant for the Deliverables provided at the Fees established under the Contract.

5.02 Hold Back or Set Off

The City may hold back payment or set off against payment if, in the opinion of the City acting reasonably, the Consultant has failed to comply with any requirements of the Contract.

5.03 No Expenses or Additional Charges

There shall be no other charges payable by the City under the Contract to the Consultant other than the Fees established under the Contract.

5.04 Payment of Taxes and Duties

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

5.05 Withholding Tax

The City shall withhold any applicable withholding tax from amounts due and owing to the Consultant under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

5.06 Interest on Late Payment

If a payment is in arrears through no fault of the Consultant, the interest charged by the Consultant, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.

5.07 Document Retention and Audit

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Consultant shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Consultant shall permit and assist the City in conducting audits of the operations of the Consultant to verify (a) and (b) above. The City shall provide the Consultant with at least ten (10) Business Days prior notice of its requirement for such audit. The City's right to inspect, copy and audit shall include reviewing such records as may be required to understand the composition of the Consultant's rates and fees, percentage mark-ups or multipliers as well as their application to the applicable units. The Consultant's obligations under this paragraph shall survive any termination or expiry of the Contract.

ARTICLE 6 – CONFIDENTIALITY

6.01 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall 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 provided that Consultant shall be entitled to mention the project and the services provided in future proposals as proof of Consultant's experience with this type of work. The Consultant shall not make use of its association with the City without the express prior written consent of the City. Without limiting the generality of this paragraph, the Consultant shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the City.

6.02 Confidential Information

During and following the Term, the parties shall: (a) keep all Confidential Information confidential and secure; (b) limit the disclosure of 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 Confidential Information (except for the purpose of providing the Deliverables, or except if required by law or by order of a court or tribunal), without first obtaining: (i) the written consent of the other party and (ii) in respect of any Confidential Information about any third-party, the written consent of such third-party; (d) provide Confidential Information solely pertaining to the other party to the other party on demand; and (e) where the Confidential Information belongs to the City, return all City Confidential Information to the City before the end of the Term, with no copy or portion kept by the Consultant. The only exception to the above is that the Consultant may retain one complete copy of the City Confidential Information for archiving purposes, under the same confidentiality conditions as described herein.

6.03 Restrictions on Copying City Confidential Information

Neither party shall copy any Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables or management of the Contract. On each copy made, the copies must clearly show all notices which appear on the original.

6.04 Notice of Breach

The parties shall notify each other promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of Confidential Information.

6.05 Injunctive and Other Relief

The Consultant acknowledges that breach of any provisions of this 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 seek 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.

6.06 Notice and Protective Order

If the Consultant or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any City Confidential Information, the Consultant will, if the terms of such order allow it, 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 shall co-operate with the City and its legal counsel to the fullest extent. 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 shall 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 Contract and, if possible, shall obtain each recipient's written agreement to receive and use such City Confidential Information subject to those terms and conditions.

6.07 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 shall prevail over any inconsistent provisions in the Contract.

6.08 Survival

The provisions of this Article shall survive any termination or expiry of the Contract.

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 shall remain the sole property of the City at all times.

7.02 No Use of the City Insignia

The Consultant shall 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.

7.03 Ownership of Intellectual Property

The City shall 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 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. To the extent that any of the Deliverables include, in whole or in part, the Consultant's Intellectual Property, the Consultant grants to the City a licence to use that Consultant Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Fees to the Consultant by the City. City agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any reuse or modification of the Newly Created Intellectual Property and/or Deliverables by the City or any person or entity that obtains the Newly Created Intellectual Property and/or Deliverables from or through the City.

7.04 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, 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.

7.05 **No Restrictive Material in Deliverables**

The Consultant shall not incorporate into any Deliverables anything that would restrict the right 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.

7.06 **Third-Party Intellectual Property**

The Consultant represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Consultant further represents and warrants that it 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.

7.07 **Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 **Consultant Indemnity**

The Consultant hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including reasonable legal, expert and Consultant fees), actions, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, to the extent caused by the negligent acts, errors or omissions of the Consultant, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Consultant's obligations under, or otherwise in connection with, the Contract (save and except for third party injury or property damage caused by the willful, intentional or negligent acts of the Indemnified Parties). The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 **Insurance**

The Consultant hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Consultant would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$5,000,000** per occurrence and including products and completed operations liability
The policy is to include the following:
 - the City, its officers, directors, employees, agents and volunteers as an additional insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract

- blanket contractual liability coverage
- cross-liability and severability of interests clause
- employers liability coverage
- 30 day written notice of cancellation, termination or material change
- tenants legal liability coverage (if applicable and with suitable sub-limits)
- non-owned automobile coverage with blanket contractual coverage for hired automobiles
- Owner's and Contractor's protective liability;
- Broad form property damage;
- Products and completed operations liability;
- waiver of subrogation and
- Accidental Pollution Liability (IBC2313 or equivalent)

The insurance limit as specified for commercial general liability may be met by utilizing any combination of primary or umbrella liability insurance policies.

- (b) automobile liability with:
- limit of liability not less than **\$2,000,000**
 - coverage for all vehicles owned, leased or rented

The insurance limit as specified for automobile liability may be met by utilizing any combination of primary or umbrella liability insurance policies.

- (c) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in the Contract, in the amount of not less than **\$2,000,000** per claim and in the annual aggregate.
- (d) umbrella liability insurance, if utilized, shall be excess of the commercial general liability, automobile liability, and employer's liability policies listed. This coverage shall follow form over the underlying primary policies.

8.03 **Proof of Insurance**

The Consultant shall provide the City with proof of the insurance required by this Contract in the form of valid certificates of insurance that reference this Contract and confirm the required coverage. The Consultant shall provide the City with renewal replacements on or before the expiry of any such insurance. In the event, and upon demand by the City, the City shall have the right to review the insurance policies as required by this agreement, upon full payment of all monies owed to the Consultant. The Consultant shall ensure 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 City and Indemnified Parties are named as additional insured 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.

8.04 **Workers Compensation Insurance**

The Consultant warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if the Consultant is subject to the Workers' Compensation Act, will provide proof of valid coverage by means of a current Workers' Compensation Board clearance letter to the City upon request. The Consultant covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under the Workers' Compensation Act during the Term. The Consultant further agrees to indemnify (but not defend) the City for any and all liability, loss, costs, damages and expenses (including reasonable legal fees) or other

charges in connection with the Consultant's failure to comply with any applicable workplace safety and insurance laws or related to the Consultant's status with the Workers' Compensation Board.

ARTICLE 9 – TERMINATION, SUSPENSION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

The City may immediately terminate the Contract 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); (c) the Consultant breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between City and Consultant); (d) the Consultant, prior to or after entering into the Contract, 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 Contract; (f) the Consultant subcontracts for the provision of part or all of the Deliverables or assigns the Contract 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 Rectification Notice

Subject to s.9.01, where either party fails to comply with any of its obligations under the Contract, the other party may issue a rectification notice to the non-compliant party setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the non-compliant party shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the other party. If the non-compliant party fails to either comply with that rectification notice or provide a reasonably satisfactory rectification plan, the other party may immediately terminate the Contract. Where the non-compliant party is the Consultant and the Consultant has been given a prior rectification notice, the same subsequent type of non-compliance by the Consultant shall allow the City to immediately terminate the Contract.

9.03 Alternative Dispute Resolution

The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this Agreement or related to this Agreement ("Dispute") using the dispute resolution procedures set out here.

- (a) The parties will make reasonable efforts to resolve any Dispute by amicable negotiations between the City's Project Manager and the Consultant's representative and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.
- (b) If no resolution is reached after the negotiations between the City's Project Manager and the Consultant's representative, negotiations will be elevated to the Project Manager's Director at the City and the Consultant's management representative who has the authority to make decisions to resolve disputes.
- (c) If no resolution is reached after the negotiations between the Director and the Consultant's management representative, negotiations will be elevated to the City Manager and the Consultant's management representative.
- (d) If all or any portion of a Dispute cannot be resolved under the process outlined in subparagraphs (a) through (c) above, by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within seven days of

delivery of the notice, the parties will mutually appoint a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be the central offices of the City. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.

- (e) If within 90 days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.

9.04 **Termination on Notice**

There are no implied obligations in this Contract.

This contract may be terminated for convenience by the City at any time by giving forty-eight (48) hours written notice of termination for convenience to the Consultant.

Termination for convenience is at the City's sole and unfettered discretion. The City does not require any reason or justification, including but not limited to good faith, policy re-direction, or cause, for invoking the termination for convenience clause.

The effective date of the termination for convenience shall be set out in the Notice of Termination for Convenience.

The Consultant's rights to consideration shall be limited to payment for services performed and not previously paid for up to the effective date as set out in the Notice of Termination for Convenience. The Consultant specifically agrees that the Notice of Termination for convenience and consideration set forth in this clause constitutes reasonable, fair and equitable notice and compensation for damages, if any, which may be suffered by the Consultant as a result of the termination for convenience of this Contract.

In the event this Contract is terminated for convenience, the Consultant shall perform the services required by this Contract, up to and including the effective date set out in the Notice of Termination for Convenience and shall, upon request, provide the City with a written report on the services rendered to the time of termination for convenience. Except for any such report, the Consultant shall not perform any further services subsequent to the effective date set out in the Notice of Termination for Convenience.

9.05 **Consultant's Obligations on Termination**

On termination of the Contract, the Consultant shall, in addition to its other obligations under the Contract 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 Contract; (c) execute such documentation as may be required by the City to give effect to the termination of the Contract; 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 shall survive any termination of the Contract.

9.06 **Consultant's Payment Upon Termination**

On termination of the Contract, the City shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall 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.

9.07 **Termination in Addition to Other Rights**

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

9.08 **Suspension of Contract**

The City may at any time and at its sole discretion suspend the Services for a specified or unspecified time by written notice to the Consultant. The City shall pay all fees due to the Consultant accrued to the time of suspension, payment of all other fees may at the City's sole discretion be suspended.

Upon receiving notice of suspension the Consultant shall immediately suspend all operations. The City shall not be responsible to pay any fees incurred by the Consultant during the period of any suspension unless the Consultant satisfies The City, before incurring any such fees, of the necessity for the same and provides the City with such documentation as may be required by the City in support of the claim for fees.

9.09 **Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date, unless the City exercises its option to extend the Contract, Any extension will be upon the same terms (including the Fees in effect at the time of extension), conditions and covenants contained in the Contract or revised terms at the City's discretion. The option shall be exercisable by the City giving notice to the Consultant not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.