

General terms and conditions for professional consultants

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1 DEFINITIONS – in addition to any terms defined within the Contract, the following terms shall have their respective meanings indicated below.

- 1.1 **“City”** means the City of Ottawa and where applicable all its directors, officers, and employees.
- 1.2 **“Consultant”** means a registered or licensed professional engineer, architect, or other specialist, or a firm employing such persons, engaged directly by the City under this Contract for the purposes of performing the Work.
- 1.3 **“Contract”** means the undertaking by the Parties to perform their respective duties, responsibilities and obligations, as set out in the Contract Documents.
- 1.4 **“Contract Documents”** means the documents listed in the City’s formal agreement which set out the Parties’ respective duties, responsibilities and obligations. To the extent of any inconsistency or conflict among the Contract Documents, the inconsistency or conflict shall be resolved in favor of the document which appears first on the list.
- 1.5 **“Contract Price”** means the price to be paid by the City to the Consultant for the Work, subject to any adjustments provided by the Contract.
- 1.6 **“Work”** means the services required by the Contract Documents without limiting the foregoing, the Work includes the labour, equipment and materials necessary to perform said services.
- 1.7 **“Parties”** means the City and the Consultant.

2 GENERAL CLAUSES

2.1 Interpretation

- 2.1.1 Documents forming the Contract are complementary; what is required by any one document will be as binding as if required by all;
- 2.1.2 The Contract has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party, does not apply to the construction or interpretation of the Contract;
- 2.1.3 In the Contract the word “dollar” and the “\$” sign refer to Canadian currency; and
- 2.1.4 The words “including” and “include” shall each mean “including without limitation”, and shall not be construed as limiting any general statement which they follow to the specific or similar items or matters immediately following such words.

2.2 Conduct of Work

- 2.2.1 The Consultant represents and warrants that it is competent to perform the Work and that it has the necessary qualifications, including knowledge, skill and experience to perform the Work, together with the ability to use those qualifications effectively for that purpose.
- 2.2.2 The Consultant shall supply everything necessary for the performance of the Work.
- 2.2.3 The Consultant shall: (a) carry out the Work in a diligent and efficient manner; (b) ensure the Work: (i) is in full conformity with the specifications; and (ii) meets all other requirements of the Contract.
- 2.2.4 The Consultant represents and warrants that the Work will be free from defect and will be performed to the standard of a reasonably competent Consultant in similar circumstances. Notwithstanding prior acceptance of the Work by the City and without limiting any other right of the City under the Contract, the Consultant shall replace or repair, at its option and its own expense, any Work which is defective or which fails to conform to the requirements set out in the Contract.

2.3 Time of the Essence

- 2.3.1 Time is of the essence of the Contract.

2.4 Award

- 2.4.1 Any award of a contract will be in accordance with the City's Procurement By-Law, as amended, and may be subject to City Council approval.

2.5 Subcontracting

- 2.5.1 Unless otherwise provided in the Contract, the Consultant shall obtain the consent of the City in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.
- 2.5.2 Notwithstanding subsection 2.5.1, the Consultant may, without prior consent of the City, subcontract such portions of the Work as is customary in the carrying out of similar contracts.
- 2.5.3 The Consultant shall be responsible for the acts and omissions of its subcontractors and suppliers. The Consultant shall ensure that its subcontractors and suppliers abide by those provisions of the Contract which are applicable to their work.
- 2.5.4 Unless otherwise provided in the Contract, the Consultant shall obtain the consent of the City in writing, prior to changing any of the subcontractors named in the Contract.

2.6 Assignment

- 2.6.1 The Contract, or the right to receive payment hereunder, shall not be assigned, in whole or in part, by the Consultant without the prior consent in writing of the City and any purported assignment made without that consent shall be void and of no effect.
- 2.6.2 Assignment of the Contract shall not relieve the Consultant from any obligation under the Contract or impose any liability upon the City, unless otherwise agreed to in writing by the City.
- 2.6.3 The Contract shall be binding on the parties hereto and their respective successors and assigns.

2.7 Replacement of Personnel

- 2.7.1 When specific persons have been named in the Contract as the persons who must perform the Work, the Consultant shall provide the services of the persons so named unless the Consultant is unable to do so for reasons beyond its control.
- 2.7.2 If, at any time, the Consultant is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person who is of similar ability and attainment.
- 2.7.3 The Consultant shall, before replacing any specific person named in the Contract, provide notice in writing to the City. The replacement must be acceptable to the City.

2.8 Conflict of Interest

- 2.8.1 The Consultant is required to disclose to the City any potential conflict of interest prior to commencing the Work.
- 2.8.2 If a conflict of interest does exist as referred to above, the City may, at its discretion, withhold the Work from the Consultant until the matter is resolved to the satisfaction of the City.
- 2.8.3 If, during the Contract, the Consultant is retained by another client giving rise to a potential conflict of interest, then the Consultant shall so inform the City and if a significant conflict of interest is deemed to exist by the City, then the Consultant shall:
 - 2.8.3.1 Refuse the new assignment, OR;
 - 2.8.3.2 Take such steps as are necessary to remove the conflict of interest.

2.9 Force Majeure

- 2.9.1 If the Consultant is delayed in completion of the Contract by reasons of labor disputes, strikes, lock-outs, fire, or by any cause of any kind whatsoever beyond the Consultant's control, then the time of delivery shall be extended for a period of time equal to the time lost due to such delays, at no cost or penalty to the City.
- 2.9.2 No delivery time extension shall be granted for delays unless written notice of the delay is given to the City within three (3) business days of its commencement. In the case of a continuing cause of delay, only one notice shall be necessary.

2.10 Excusable Delay

- 2.10.1 Any delay by a Party to the Contract in the performance of its obligations hereunder that is caused by an event beyond its control and which could not have been avoided by means reasonably available to it shall be an Excusable Delay. In the event of an Excusable Delay, the Party delayed shall, within three (3) business days, give notice to the other Party of the events that caused the delay indicating the reasons for the delay and showing what portion of its obligations hereunder are affected, and how. Within five (5) further business days the Party delayed will give the other Party a further written notice detailing its plans to prevent further delay and recovery plan for lost time. Notwithstanding the times set out herein for provision of notices the Party delayed shall act promptly when any event causing an Excusable Delay occurs and use all reasonable means to prevent further delay and recover lost time.

2.11 Invoice Submission

- 2.11.1 Invoices must be submitted electronically in the Consultant's name. The Consultant must submit invoices for the provision of the Work as per the terms of the contract and final invoices shall be identified as such.
- 2.11.2 The Consultant is required to ensure it identifies the following information on all invoices:
- a. Consultant name, mailing address, email address and telephone number
 - b. Invoice date
 - c. Unique Invoice number
 - d. Payment terms
 - e. Description of the good or service purchased
 - f. Purchase order number (if applicable)
 - g. Identification of the City contact by full name and email address or established City client/customer
 - h. Unit cost, quantity, subtotal, taxes and total amount due
 - i. Consultant's tax registration number where applicable.

2.11.3 Unless indicated otherwise in the Contract, Consultants are required to transact with the City on the SAP Business Network, which includes but is not limited to the submission of invoices. Contractors must register through the SAP Business Network using either a free account or a fee-based enterprise account.

2.11.4 By submitting an invoice, the Consultant certifies that the invoice is consistent with the Work delivered and is in accordance with the Contract.

2.12 Payment Period

2.12.1 The City follows a policy whereby in the absence of prompt payment discount terms, subject to the provisions of the Contract and the Construction Act, R.S.O. 1990, c. C.30, if applicable, invoices are paid 28 days after receipt and acceptance by the City.

2.12.2 Consultants are required to receive payment via Direct Deposit (EFT) unless indicated otherwise in the Contract. Information regarding how to register is available at the following link:

http://www.ottawa.ca/en/city_hall/accounts_payable.

2.13 Accounts and Audit

2.13.1 The Consultant shall keep proper accounts and records of transactions and activities associated with the Contract, in addition to all expenditures or commitments made by the Consultant in connection therewith and shall keep all documents, invoices, receipts and vouchers relating thereto. All such accounts, records, invoices, receipts and vouchers shall at all times during the contract period be open to audit, inspection and examination by the City upon written notice.

2.13.2 Copies of said records shall be provided to the City when requested by the employee responsible for the Contract so that they can be maintained in accordance with the City's Records Management Policy and Records Retention and Disposition By-Law 2003-527, as amended.

2.13.3 When activities requiring the collection or handling of personal information are contracted out, the Contract shall set out the privacy protection and security obligations assumed by the Consultant. Those obligations shall be at least as stringent as those applicable to the Consultant under the Contract.

2.13.4 The Consultant represents, warrants and covenants to the City that it is not aware of any actions, suits or proceedings pending or to its knowledge threatened against or adversely affecting it, which might materially affect its financial condition or its ability to perform and meet all duties, liabilities and obligations as may be required of it under this Contract.

2.14 Survival

2.14.1 All Consultant representations and warranties set out in the Contract as well as the provisions concerning indemnity against third party claims, accounts and audit, and confidentiality shall survive the expiry of the Contract or the termination of the Contract, as shall any other provision of the Contract which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.

2.15 Severability

2.15.1 If any provision of this Contract becomes illegal or unenforceable in whole or in part, the remaining provisions shall nevertheless be valid, binding and subsisting.

2.16 Successors and Assigns

2.16.1 The Contract shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the City and of the Consultant.

2.17 Entire Agreement

2.17.1 The Contract shall constitute the entire and sole agreement between the parties with respect to the subject matter of the Contract and shall supersede all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There shall be no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.

2.18 Status of the Consultant

2.18.1 The Consultant is engaged as an independent consultant for the sole purpose of performing the Work. Neither the Consultant nor any of its personnel is engaged as an employee, servant or agent of the City.

2.19 Amendments

2.19.1 No amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment executed by the authorized representatives of the City and the Consultant.

2.20 Waiver

2.20.1 No Party will be deemed to have waived the exercise of any right that it holds under this Contract unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

2.21 Staff and Methods

2.21.1 The Consultant shall perform the Work to a professional standard in accordance with current “best practices” and shall employ only skilled and competent staff who shall be under the supervision of a senior member of the Consultant’s staff with the appropriate level of experience.

2.22 Publication

2.22.1 The Consultant shall obtain the consent in writing of the City before publishing or issuing any information regarding the Work on its website or in future proposals as proof of experience with this type of work. Such consent will not be unreasonably withheld by the City.

2.23 Drawings and Documents

2.23.1 Drawings and documents or copies thereof required to perform the Work shall be exchanged between the parties on a reciprocal basis. Drawings and documents, including all drawings and documents delivered in an electronic, digital or other than paper format, prepared by the Consultant for the City, shall be the property of the City.

2.23.2 Without limiting the City’s rights as set out herein, all property rights (including but not limited Copyright) in all documents, drawings, materials produced as part of the Work or by the parties pursuant to the Contract, including but limited to any instruments of service, construction documents and record drawings, are held and owned by the City. Without limiting the foregoing, the City holds all rights to royalties from the aforementioned material. The Consultant may retain copies, including electronic or digital and other reproducible copies, for information and reference in connection with the Work only. Copies may only be used for the purposes intended and may not be offered for sale or transfer without the express written consent of the City. Without limiting the City’s rights of ownership over these documents and materials, the City shall be entitled to use the documents and materials including all electronic or digital files and information, for renovations, additions, or alterations to the Project for which the documents and materials were intended. Reproduction of any documents or materials arising from the Contract for use by anyone is forbidden, without express permission in writing by the City, such permission shall not be unreasonably withheld. Upon completion of the aforementioned documents and materials, the Consultant shall make available to the City one electronic copy of the documents in the City’s current standard format for City’s future use with regard to alterations and extension to the completed Project.

2.23.3 Should the City reuse or modify any design drawings, construction drawings or other materials provided by the Consultant as part of the Work, on another project without the Consultant’s written consent, the City agrees, to indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorney’s fees and defence costs) arising or allegedly arising out of any reuse or modification by the City of said drawings or materials prepared by the Consultant.

2.24 Notice

2.24.1 Any notice, demand or other communication required or permitted to be given to any Party to this Contract shall be in writing and may be delivered by hand, courier, mail, facsimile or other electronic method that provides a paper record of the text of the notice. It must be sent to the Party for whom it is intended at the address stated in the Contract. Subject to the provisions set out below, any notice will be effective on the day it is delivered to that address.

- a. If a notice is sent by email, the notice is effective on the day the Party sending the notice receives an email delivery receipt confirming delivery of the notice to the other Party's email address.
- b. If a notice is sent by courier, registered mail or facsimile, the notice is effective on the day indicated on the delivery confirmation.
- c. If a notice is sent by regular mail, the notice is effective on the fifth (5th) day after the notice was placed in the mail.

2.25 Deviations

2.25.1 The Consultant will not make any deviations from the Contract documents without the prior written permission of the City. Unauthorized deviations shall be corrected at Consultant's expense.

2.26 Insurance

2.26.1 The Consultant shall provide and maintain, at its sole expense, during the term of the Contract the following policies of insurance:

2.26.2 Commercial General Liability insurance issued on an occurrence basis for an amount of not less than \$5,000,000 per occurrence. Consultant Such insurance shall include, but is not limited to, bodily injury and property damage including loss of use, personal injury, blanket contractual injury, premises, property and operations, non-owned automobile, broad form property damage, owners and Consultants protective, occurrence property damage, products, broad form completed operations, employees as additional insured(s), contingent employer's liability, medical payments, cross liability and severability of interest clause. The Commercial General Liability insurance policies shall be in the name of the Consultant and shall name the City of Ottawa as additional insured thereunder.

2.26.3 If applicable to the services being provided, Automobile Liability insurance with respect to owned or leased licensed vehicles covering liability for bodily injury, death and property damage including loss of use with a limit of not less than \$2,000,000 inclusive for each and every loss.

2.26.4 Professional Liability (errors and omissions) insurance coverage to a limit of not less than \$2,000,000. Such insurance shall include bodily injury and property damage and shall provide coverage for all negligent acts, error and omissions made by the Consultant. If such insurance is written on a claims made basis, the coverage shall be maintained for a period of two years subsequent to conclusion of services provided under this Agreement or contain a 24-month extended reporting period. The deductible shall be the sole responsibility of the Consultant.

2.26.5 All the above insurance policies shall contain an endorsement to provide the City of Ottawa with thirty (30) days prior written notice of cancellation. Evidence of insurance satisfactory to the City of Ottawa shall be provided prior to the commencement of the Work.

2.27 Ownership

2.27.1 Without limiting the City's rights under section 2.24 and with the exception of Consultant's pre-existing intellectual property unless otherwise provided in the Contract, the Work or any part of the Work shall belong to the City after delivery, and acceptance by or on behalf of the City.

2.27.2 If any payment is made to the Consultant for or on account of any Work or any part of the Work either by way of progress or milestone payments, that Work or any part of the Work paid for by the City shall belong to City upon such payment being made. This transfer of ownership does not constitute acceptance by the City of the Work or any part of the Work and does not relieve the Consultant of its obligation to perform the Work in accordance with the Contract.

2.27.3 Consultant shall defend and indemnify the City from any lien claims that arise from the Consultant's performance of the Work. Upon transfer of the Work or any part of the Work to the City, the Consultant shall ensure that the City receives ownership of the Work free of any claims by third parties.

3 ACCEPTANCE OF THE WORK

3.1 Inspection of the Work

3.1.1 The Work and any and all parts thereof shall be subject to inspection and acceptance by the City.

3.2 Approval of the Work

3.2.1 Before advancing any payment to the Consultant, the City reserves the right to determine, in its sole and absolute discretion, acting reasonably, whether the Work was performed to the satisfaction of the City.

3.2.2 The method of approving the Work done will be in writing through electronic mail, courier, fax or traditional mail.

3.2.3 In the event that the Work was not performed to the satisfaction of the City, the City may take such action as it deems necessary to correct the Consultant's default, including, without limitation, the following:

3.2.3.1 Direct Consultant to re-perform the Work in whole or in part at no cost to the City.

3.2.3.2 Withhold payment due or accrued due to the Consultant for the Work performed pursuant to the Contract;

3.2.3.3 Set off any expenses incurred by the City in remedying any or all default or failures of the Consultant in having performed the Work satisfactorily against payment due or accrued due to the Consultant;

3.2.3.4 Terminate the contract for default and/or seek indemnification from the Consultant for losses suffered by the City as a result of such default.

3.3 Final Acceptance

3.3.1 Final acceptance shall occur when the City is satisfied that the Consultant has completed the Work as required by the Contract.

4 TERMINATION OF CONTRACT

4.1 Suspension of the Work

- 4.1.1 The City may at any time, by written notice, order the Consultant to suspend or stop all or part of the Work under the Contract for a period of up to 180 calendar days. The Consultant shall immediately comply with any such order in the manner that minimizes the cost of so doing. At any time prior to the expiration of the 180 calendar days, the City shall either rescind the order or terminate the Contract, in whole or in part, under the provisions for termination under the Contract.

4.2 Termination for Consultant Default

- 4.2.1 Notwithstanding anything to the contrary in this document, should the Consultant fail to comply with a direction or decision of the City properly given under the terms of the Contract, or where the Consultant is deemed by the City to be in default in any other manner as set forth by the following reasons constituting default, the City may, after giving ten (10) calendar days prior written notice to the Consultant of the default, immediately terminate this Contract, in whole or in part, and without charge with respect to all or any part of the Contract. The City shall provide notice in writing to the Consultant of the termination. Reasons constituting default include:

- 4.2.1.1 The Consultant commits a material breach of its duties and obligations under this Contract, unless, in the case of such breach, the Consultant, within ten (10) calendar days after delivery of the written notice set out in Section 4.2.1 above,, and in a manner satisfactory to the City in its sole, absolute and non-reviewable discretion, (a) cures such breach and (b) indemnifies the City for any resulting damage or loss;
- 4.2.1.2 The Consultant commits numerous breaches of its duties under the Contract that collectively constitutes a material breach;
- 4.2.1.3 A change in control of the Consultant where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Consultant are acquired, by any entity, or the Consultant is merged with or into another entity to form a new entity, unless the Consultant demonstrates to the satisfaction of the City that such event will not adversely affect its ability to perform the services under the Contract;
- 4.2.1.4 The Consultant commits fraud or gross misconduct; or
- 4.2.1.5 Where the Consultant becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Consultant, or an order is made or a resolution passed for the winding up of the Consultant.

- 4.2.2 In the event of a termination notice being given under the provisions of this section, the Consultant shall be liable to the City for any milestone payments paid by the City for unfinished work, including all losses and damages which may be suffered by the City by reason of the default or occurrence upon which the notice was based, and also including any increase in the cost incurred by the City in procuring the Work from another source.
- 4.2.3 In the event of a termination notice being given under the provisions of this section, the City may do such things and incur such costs as it deems necessary to correct the Consultant's default, including without limitation the withholding of payment due or accrued due to the Consultant for services rendered pursuant to this Contract, which moneys may be set off by the City against any expenses that it may incur in remedying a default or failures as described above.
- 4.2.4 In the event of a termination notice being given under the provisions of this section, the Consultant shall agree to repay immediately to the City the portion of any advance payment that is unliquidated at the date of the termination. In the event of a termination notice being given under the provisions of this section, and subject to the resolution of any claim or claims which the City may have against the Consultant as set forth in the previous three paragraphs, payment will be made within thirty (30) calendar days of the date of the invoice from the City to the Consultant for the value of all finished work delivered and accepted by the City, such value to be determined in accordance with the rate (s) specified in the Contract.
- 4.2.5 No specific remedy expressed in the Contract is to be interpreted as limiting the rights and remedies which the City may be entitled to under the Contract or otherwise in law.

4.3 Termination for City Default

- 4.3.1 Consultant may terminate the Contract upon the City failing to cure a material breach of the Contract within thirty (30) calendar days of delivery to City of written notice of that breach, unless, in the case of such breach, City, within twenty (20) calendar days after receipt of written notice of Default from the Consultant, cures such breach.

4.4 Termination for Convenience

- 4.4.1 Notwithstanding anything contained in the Contract, the City may, at any time prior to the completion of the Work, by giving notice to the Consultant, terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given under this section, the Consultant shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The City may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.
- 4.4.2 In the event of a termination notice being given pursuant to this section, the Consultant shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Consultant has not already been so paid or reimbursed by the City:
- 4.4.2.1 on the basis of the Contract Price, for all completed Work that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in, the termination notice; and
- 4.4.2.2 the cost to the Consultant for all Work terminated by the termination notice before completion, the cost to the Consultant being determined in accordance the Contract Price and percentage completed.
- 4.4.3 The Consultant shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the City under this section, except to the extent that this section expressly provides.
- 4.4.4 Where a contract may extend beyond the term of Council and the subsequent Council not approve sufficient funds to complete the Contract, notwithstanding anything contained in the Contract, the City may, by giving notice to the Consultant, terminate the Contract in accordance with section 4.4 Termination for Convenience.

5 INDEMNITY

5.1 Infringement

5.1.1 The Consultant warrants that no Work furnished in accordance with this Contract shall infringe upon any patent, registered industrial design, trademark, trade secret, copyrighted work or other intellectual property right. The Consultant, at its sole cost and expense, shall defend and hold harmless the City, its agents, employees and customers against any and all suits, actions claims, costs, losses and damages arising out of any and every charge of infringement.

5.2 Indemnification

The Consultant will at all times, defend, indemnify and save harmless the City from and against all actions, whether in contract, tort or otherwise, claims, demands, losses, costs, damages, suits or other proceedings by whomsoever brought, which are in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by, or arising directly or indirectly from the performance of this Contract, the breach of any term or condition of this Contract by the Consultant, or any negligence or wilful misconduct on the part of the Consultant in performing the Contract

5.2.1 Neither Party shall be liable for indirect, special, incidental or consequential damages or damages for loss of profits arising directly or indirectly from any contract breach, fundamental or otherwise.

5.2.2 The City shall indemnify the Consultant from and against all third party claims or damages which arise directly as a result of the City's breach of this Contract or the City's negligent acts or omissions.

5.3 Royalties and Infringement

5.3.1 In this section, "Royalties" includes:

5.3.1.1 License fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other intellectual property right, and any costs or expenses incurred as a result of the exercise by any person of Moral Rights.

5.3.2 The Consultant shall defend, indemnify and save harmless the City and its employees and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by the City of anything furnished by the Consultant under the Contract provided that the City notifies the Consultant immediately of any such claim, action, suit or other proceeding. For the settlement of any claim against the City, the City shall have the right to consent to the settlement.

5.3.3 The City shall indemnify and save harmless the Consultant and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the use by the Consultant of equipment, Specifications or other information not prepared by the Consultant and supplied to the Consultant by or on behalf of the City, provided that the Consultant notifies the City immediately of any such claim, action, suit or other proceeding, but the City shall not be liable to indemnify or save harmless the Consultant for payment of any settlement unless the City has consented to the settlement.

6 CONFIDENTIALITY

6.1 Confidentiality

6.1.1 "**Confidential Information**" means all information within the custody or control of the City that is relevant to the Work that is of a proprietary or confidential nature regardless of whether it is identified as proprietary or confidential or not including, without limitation, the terms of the Contract, any information which is confidential or proprietary to third parties, any personal information regarding the City's employees or residents, all information conceived, developed or produced by the Consultant as part of the Work when copyright or any other intellectual property rights in such information belongs to the City under the Contract. Without limiting the foregoing, any such information that a reasonable person would determine to be confidential shall be deemed Confidential Information hereunder. Notwithstanding the foregoing, Confidential Information shall not include information that:

- 6.1.1.1 Is or becomes generally available to the public without fault or breach on the part of the Consultant, including, without limitation, breach of any duty of confidentiality owed by the Consultant to the City or to any third party, but only after that information becomes generally available to the public;
 - 6.1.1.2 The Consultant can demonstrate was rightfully obtained by the Consultant, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the Consultant free of any obligation of confidence;
 - 6.1.1.3 The Consultant can demonstrate was rightfully known to or in the possession of the Consultant at the time of disclosure free of any obligation of confidence; or
 - 6.1.1.4 Is independently developed by the Consultant without the use of any Confidential Information.
 - 6.1.1.5 Is disclosed pursuant to the requirements of a governmental authority or judicial order.
- 6.1.2 The Consultant agrees that it will keep the Confidential Information provided to it by the City strictly confidential and will not use the Confidential Information in any way for its own account or the account of any third Party, nor will the Consultant disclose Confidential Information without the City's prior written consent. Further, the Consultant agrees it will not use such Confidential Information for any purpose other than as may be reasonably necessary for the performance of its duties pursuant to the Contract. The Consultant may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential in accordance with the requirements of this Section and that the Confidential Information will be used only to perform the subcontract.

6.2 *Municipal Freedom of Information and Protection of Privacy Act*

- 6.2.1 The City is subject to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M.56, as amended ("MFIPPA") with respect to all information under its custody and control. Accordingly, all information provided to the City by the Consultant pursuant to this Contract may be available to the public notwithstanding the Consultant's request to keep the information confidential.

7 COMPLIANCE WITH LAWS AND POLICIES

7.1 Applicable Laws

- 7.1.1 This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 7.1.2 The Consultant shall comply with all laws applicable to the performance of the Work.

7.2 Occupational Health And Safety Act

- 7.2.1 Consultants should note that, where the provisions of the Province of Ontario's Occupational Health and Safety Act, R.S.O. 1990, c. O.1, as amended, and Regulations thereunder apply to the services to be provided under the Contract, all of the responsibilities and obligations imposed upon the Consultant as an "employer" under the Act must be assumed by the Consultant. All costs for services/materials required to fulfill these obligations shall be included in the Contract Price. Should the City become aware of any violations of this Act and Regulations, a notification will be made to the appropriate authorities. Where so warranted work could be suspended or indeed terminated without cost to the City.
- 7.2.2 The Consultant shall fulfill all of its obligations in compliance with the Occupational Health and Safety Act, and further agrees to take responsibility for any health and safety violation that may occur which was caused by the Consultant. Furthermore, if the City (or any of its council members or employees) shall be made a party to any charge under the Occupational Health and Safety Act in relation to any violation of the said Act by the Consultant, the Consultant shall indemnify and save harmless the City from any and all charges, fines, penalties, and costs that may be incurred or paid by the City.

7.3 Employees in Receipt of a Severance Package

- 7.3.1 Consultants must comply with the City of Ottawa's policy regarding former City employees in receipt of a severance package. In accordance with this policy, a former employee may not be re-employed on a permanent, temporary, fee for service or contract basis, whether independently or as part of a consulting firm, until the complete period of time equal to the length of their notice period and/or payment at departure has expired. A former employee may be employed by a consulting firm, but may not be assigned to work on a City contract by the firm until their combined notice period and/or payment at departure has expired.

7.4 Sustainable Procurement

- 7.4.1 7.4.1 The City is committed to principles of sustainability, including improving the environment and building stable, resilient communities, and will apply environmentally and socially sound practices in fulfilling its mandate in the planning and provision of materials, services and programs. To further endorse this commitment, Consultants are strongly encouraged to adopt and promote environmentally and socially sound practices and introduce environmentally and socially sound goods, materials and services when dealing with the City. The City may at any time, by written notice, request that the Consultant demonstrate to the City measures taken by the Consultant to promote environmental and social sustainability in its goods, materials, services and operations.

7.5 Equity and Diversity

- 7.5.1 In May 2017, the City of Ottawa Council approved Ottawa's updated "Equity and Diversity Policy". To further endorse this policy, the City of Ottawa strongly encourages all consultants employing fifty (50) employees or more, to establish an Equity and Diversity program. The City may at any time, by written notice, request that the Consultant demonstrate to the City, the Equity and Diversity Program or measures taken by Consultant's firm.

7.6 Ethical Procurement

- 7.6.1 The City is committed to procuring goods and services from responsible producers that supply quality products at competitive prices and abide by ethical standards and norms. The updated Ethical Purchasing Policy adopted by City Council on July 8, 2019 ensures that procurement activities are aligned with the City's values and that workplaces producing goods for the City respect human and workers rights.
- 7.6.2 The Supplier Code of Conduct sets the minimum performance standards for the City's Ethical Purchasing Policy. The Consultant and its subcontractors agree to comply with the minimum labour standards set out in the Supplier Code of Conduct. The Ethical Purchasing Policy and the Supplier Code of Conduct are located on the Procurement page of Ottawa.ca. <http://ottawa.ca/en/business/procurement/ethical-purchasing>
- 7.6.3 Where federal law differs from the principles set out in the Ethical Purchasing Policy, the standard that provides the greater right, benefit or protection to the worker shall apply.

7.7 Bilingualism

- 7.7.1 The City of Ottawa recognizes both official languages as having the same rights, status and privileges, and is committed to providing equal treatment to people with respect to the use and benefit of City services, programs, and goods in a manner that respects their linguistic preferences. The Consultant undertakes to perform all of the duties of this Contract while meeting the requirements and provisions of the City of Ottawa's Bilingualism Policy, such as they apply to the active delivery of goods and services in both official languages.

7.8 Extensions of Hospitality

- 7.8.1 City employees are prohibited from accepting gifts, favours, hospitality or entertainment, except as specifically provided in the City of Ottawa Employee Code of Conduct.

7.9 Patents

- 7.9.1 Consultant shall make a prompt written disclosure of any patentable invention, improvement or discovery conceived or first actually reduced to practice in the performance of the Work and shall submit separately, or as part of the final report on the Work, a complete list of all such inventions, improvements and discoveries, including those previously disclosed.
- 7.9.2 Subject to the provisions of this Section, any patentable rights or other rights in any invention, improvement or discovery conceived or actually reduced to practice in the performance of the Work, shall be the property of the Consultant.
- 7.9.3 The Consultant, upon request in writing, shall grant to the City, for itself, pursuant to any statute of the Province of Ontario, an irrevocable, non-exclusive, royalty-free license to practice any invention, improvement or discovery conceived or actually reduced to practice, in the performance of the Work, in the manufacture, use and disposition, according to law, of any article or material, and in the use of any method, but such license shall not include the right to sub-license.

7.10 Laws, Permits, Notices, and Fees

- 7.10.1 The Consultant shall comply with all City of Ottawa by-laws, policies, ordinances, legal requirements, rules, regulations, codes and orders during the performance of the Work.
- 7.10.2 The Consultant shall give required notices and comply with laws, ordinances, rules, regulations, codes and orders of authorities other than the City which may have proper jurisdiction in relation to the Work which are or come into force during the performance of Work.
- 7.10.3 The Consultant shall obtain and pay for licences and certificates required for the performance of the Work.
- 7.10.4 The City will obtain and pay for building permits on behalf of the Consultant when required.
- 7.10.5 The City will be responsible for verifying Contract Documents are in compliance with applicable laws, ordinances, rules, regulations and codes relating to the Work.
- 7.10.6 If subsequent to the time of bid closing, changes are made to applicable laws, statutes, regulations, By-laws, ordinances, rules or codes by authorities having jurisdiction to make such changes, and such changes affect the Contract Price, the Consultant shall immediately notify the City in writing requesting direction on variance or change.
- 7.10.7 If the Consultant fails to notify the City and performs Work knowing it to be contrary to laws, by-laws, ordinances, rules, regulations, codes and orders of authorities having proper jurisdiction, the Consultant shall be responsible for costs, changes, modifications and correction of damages attributable to its failure to comply with those provisions.

7.11 Workplace Safety and Insurance Board

- 7.11.1 The Consultant shall pay to the appropriate provincial Board/Commission all assessments and levies owing to the Board/Commission in respect to the Contract and any unpaid assessments or levies shall be the sole responsibility of the Consultant.
- 7.11.2 Prior to commencing the Work, Consultants required to be registered in Ontario, must provide evidence of compliance with the requirements of the Province of Ontario with respect to worker's compensation insurance.
- 7.11.3 Out-of-province Consultants are not exempt from having to register and must comply with the requirements of the Workplace Safety and Insurance Board of Ontario. Prior to commencing the Work, out-of-province Consultants NOT required to be registered in Ontario shall provide:
- 7.11.3.1 written confirmation from the Workplace Safety and Insurance Board of Ontario stating the Consultant is not required to be registered in Ontario; and,
 - 7.11.3.2 evidence of compliance with the requirements of the province or territory of the Consultant's place of business with respect to workers compensation insurance.
 - 7.11.3.3 at any time during the term of the Contract, when requested by the City, the Consultant shall provide such evidence of compliance by it and its Subcontractors. Failure to provide satisfactory evidence in respect to workers compensation insurance shall result in payment being withheld until satisfactory evidence of compliance has been provided by the Consultant.

7.12 The Accessibility for Ontarians With Disabilities Act, 2005 (AODA)

- 7.12.1 The City of Ottawa is committed to providing equal treatment to people with disabilities with respect to the use and benefit of City services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public. All Consultants with the City must comply with all laws applicable to the performance of the work.
- 7.12.2 Third party Consultants who deal with the public or other third parties on behalf of the City, as well as Consultants who participate in developing City policies, practices or procedures governing the provision of goods and services to members of the public or other third parties, must conform with the Accessibility for Ontarians With Disabilities Act, 2005 ("AODA"), in particular the Accessibility Standards for Customer Service, O. Reg. 429/07 as well as the Integrated Accessibility Standards, O. Reg. 191/11.

- 7.12.3 Pursuant to section 6 of Ontario Regulation 429/07, Accessibility Standards for Customer Service (the "Customer Service Regulation"), made under the AODA, Consultants who deal with the public or other third parties on behalf of the City, as well as Consultants who participate in developing City policies, practices or procedures governing the provision of goods and services to members of the public or other third parties shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training about the provision of goods and services provided to people with disabilities. The Accessible Customer Service Training shall be provided in accordance with section 6 of the Customer Service Regulation and shall include, without limitation, a review of the purposes of the AODA and the requirements of the Customer Service Regulation, as well as instruction regarding all matters set out in section 6 of the Customer Service Regulation.
- 7.12.4 Pursuant to section 7 of Ontario Regulation 191/11, Integrated Accessibility Standard (the "Integrated Regulation"), made under the AODA, Consultants who provide goods, services or facilities on behalf of the City shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training on the requirements of the accessibility standards referred to in the Integrated Regulation and on the Human Rights Code as it pertains to persons with disabilities.
- 7.12.5 The Consultant shall submit to the City or Ministry, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees. The City reserves the right to require the Consultant, at the Consultant's expense, to amend its accessibility policies, practices and procedures if the City deems them not to be in compliance with the requirements of the Customer Service Regulation and/or the Integrated Regulation. The Consultant shall only assign those employees who have successfully completed training in accordance with such Regulations to provide services to, or on behalf of, the City.
- 7.12.6 The Consultant shall ensure that any information, products, deliverables and/or communication (as defined in the Integrated Regulation) produced pursuant to the Contract shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF, etc.

7.13 Permits

- 7.13.1 The Consultant is responsible for all work permits applicable to the performance of the Work in Canada at no cost to the City.

7.14 Location and Consultant's Office

7.14.1 For the purposes of this Agreement, all services performed by the Consultant shall be deemed to be performed in the Ottawa office of the Consultant located in the City of Ottawa unless written approval of an alternate location is obtained from the City. All fees and disbursements shall be calculated and invoiced according to the applicable deemed location of the Consultant's office.

7.15 Changes and Additional Services

7.15.1 The City may, with the consent of the Consultant, in writing and at any time before or after the commencement of the Work, extend, increase, vary or otherwise alter the Work, and in such cases the City shall pay the Consultant in accordance with agreed upon rates, either per hour, per diem or fixed costs, as may be determined.

7.16 Approval by Other Authorities

7.16.1 Where either the services of the Consultant or the project is subject to the approval or review of an authority, government department or agency other than the City, such approval or review shall be obtained through the offices of the City and unless authorized by the City in writing, such approval or review shall not be obtained by direct contact by the Consultant with such other authority, government department or agency.

7.17 Interim Expenditure Reports and Payment Restriction

7.17.1 The Consultant's total fees and disbursements for the performance of all the Services required under the terms of this Agreement shall not exceed the total amount stated in the Purchase Order.

7.17.2 The total amount specified in the Purchase Order, as well as all applicable taxes payable, shall represent the total amount payable to the Consultant with respect to the supply of any Services or intangible property by the Consultant to the City, or in connection with the supply, transfer or sale of any goods, material or tangible property by the Consultant to the City pursuant to this Agreement. Any changes in taxes payable during the term this Agreement may, in the discretion of the City, either increase or decrease the total amount payable to the Consultant under the terms of this Agreement.

7.18 Withholding Tax

7.18.1 For the purposes of assessing applicable withholding tax, invoices provided by non-resident Consultants must clearly indicate that either a) services were not provided in Canada or b) if services were performed in Canada, what portion of the amount invoiced pertains to those services and how many days were spent in Canada for those services.

8 DISPUTE RESOLUTION

8.1 Dispute Resolution

8.1.1 Except as otherwise provided in the Contract any dispute under the Contract (a "Dispute") will be resolved as follows:

- 8.1.1.1 The Consultant and City shall make all reasonable efforts to promptly resolve any Dispute, controversy or claim by negotiations, which shall be initiated by either of them giving to the other written notice (the "Dispute Notice") containing details of the Dispute and the other shall provide its written reply thereto within ten (10) Business Days;
- 8.1.1.2 If the Dispute has not been resolved as aforesaid within a further twenty (20) Business Days after receipt of the reply to the Dispute Notice, then the Parties shall proceed to attempt to resolve the Dispute by way of attending a mediation in Ottawa. Either party may initiate the mediation by providing a written notice to the other Party to schedule the mediation (the "Mediation Notice"). The Mediation Notice will include the name of the proposed mediator. Provided the Parties agree on the name of a mediator and subject to the availability of the mediator, such mediator and the Parties shall hold the mediation within thirty (30) Business Days of the mediator's appointment. If the Parties cannot agree on the mediator to be appointed within three (3) Business Days of receipt of the Mediation Notice, either may apply to the Ontario Superior Court of Justice in Ottawa, Ontario, to have such a mediator appointed. The mediator's fees, costs and expenses shall be borne equally by the Parties.
- 8.1.1.3 Should the Parties not be able to resolve the Dispute at a mediation, the Parties may commence a proceeding in the Ontario Superior Court of Justice in Ottawa, Ontario to resolve the matter; and
- 8.1.1.4 The time limits referred to in this Section may be abridged or extended by mutual agreement of the Parties.

8.1.2 Dispute General - The Consultant and the City shall continue to fulfill their obligations in respect of the Contract during any claim or Dispute. It is understood by the Parties that such action will not jeopardize any Dispute or claim either Party might have. Unless the Contract has been terminated, after providing notice of a Dispute to City, the Consultant shall continue to proceed with the work necessary to complete the Work.

8.2 Application of Part II.1 of the Construction Act

8.2.1 For any Dispute to which Part II.1 of the Construction Act applies, the parties agree as follows:

- 8.2.1.1 If a party refers a Dispute listed in s. 13.5(1) of the Construction Act, to the Construction Dispute Interim Adjudication Procedure set out in Part II.1 (the "Adjudication Procedure"), the time limits and time lines applicable to the Dispute as set out in Section 8.1 of these General Terms and Conditions are temporarily suspended. The suspension begins on the date of the delivery of a Notice of Adjudication under s. 13.7 of the Construction Act. The suspension is lifted on the later of the following dates;
- a. The date a determination of the matter under s. 13.13(1) of the Construction Act is delivered to the parties;
 - b. The date the Adjudication Procedure is terminated in accordance with s. 13.14 of the Construction Act;
 - c. Where an application for judicial review of the determination is brought, the later of date;
 - i. the motion for leave is dismissed; or
 - ii. the decision on the application for judicial review is released and all rights of appeal have been exhausted.