

GENERAL CONDITIONS FOR CONSULTANT SERVICES

TABLE OF CONTENTS

C1. Definitions	1
C2. Interpretation	4
C3. Declarations	5
C4. Form and Execution of Contract Documents	6
C5. Authority of Consulting Contract Administrator	6
C6. Consulting Contract Administrator's Decision	7
C7. Consultant's Services and Responsibilities	7
C8. Changes in Services	11
C9. Intellectual Property, Ownership of Information and Reliance	13
C10. Confidentiality	15
C11. Terms of Payment	16
C12. Force Majeure/Suspension	17
C13. Indemnity	18
C14. Default, Suspension and Termination	18
C15. Successors and Assignment	20
C16. Notices	20
C17. Dispute Resolution	21

GENERAL CONDITIONS FOR CONSULTANT SERVICES

C1. DEFINITIONS

C1.1 For the purposes of the Contract the following expressions shall have the following meanings:

- (a) **“Acceptance”** means:
 - (i) when in reference to a Proposal, an Award Letter sent by the Chief Administrative Officer or their delegated authority notifying the Consultant that a contract for Services is being awarded to the Consultant; or
 - (ii) when in reference to Services provided by the Consultant to the City, a letter of acceptance of the particular report, recommendation, program project or totally completed project, or other related matter proposed by the Consultant requiring acceptance, endorsement, confirmation or other appropriate form of approval or consent from the Consulting Contract Administrator prior to continuance by the Consultant of the previously agreed upon Services or the conclusion of same;
- (b) **“Allowable Disbursements”** means the cost of out of town travel and related meals and accommodations, specialized software, rental rates for specialized equipment, drilling, sampling, laboratory testing and any other out-of-pocket expenses, excluding normal overhead, directly related to Services provided. Overhead shall include any items included in day to day operations and shall include, but not be limited to, computer costs, communication costs, digital photography, administrative fees and items incidental to the Services, except as provided herein, and is expressly excluded;
- (c) **“Award Authority”** means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies or procedures;
- (d) **“Award Letter”** means the letter sent by the Chief Administrative Officer or their delegated authority notifying the Consultant that a Contract for Services has been awarded to the Consultant;
- (e) **“Bid” or “Proposal”** means the documents and other things, including but not limited to forms contained in the Bid Submission or Proposal Submission, which must be completed or provided and submitted by the Submission Deadline in order to constitute a responsive offer;
- (f) **“Bid Opportunity”** means the Tender, Request for Proposal, Request for Qualification, or any other bid solicitation document;
- (g) **“Bid Submission” or “Proposal Submission”** means that portion of the Bid Opportunity Tender or Request for Proposal by that name which contains forms to be included in the Bid;
- (h) **“Bidder” or “Proponent”** means any Person submitting a Bid or Proposal for the Services;
- (i) **“Bidding Procedures”** means the portion of the Request for Proposal by that name which sets out the terms and conditions governing the Offer, and a reference to a section, clause or subclause with the prefix “B” designates a section, clause or subclause in that portion of the Request for Proposal;
- (j) **“Business Day”** means any Calendar Day, other than a Saturday, Sunday or statutory or civic holiday;
- (k) **“C”** designates a section, clause or subclause in these General Conditions;
- (l) **“Calendar Day”** means the period from one midnight to the following midnight;
- (m) **“Change in Services” or “Scope Change”** means an addition, deletion or modification to the Services as described in the Contract and which have been approved by the Consulting Contract Administrator;

- (n) “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (o) “**City**” means The City of Winnipeg as continued under The City of Winnipeg Charter, Statutes of Manitoba 2002, c.39, and any subsequent amendments thereto;
- (p) “**City Solicitor**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (q) “**Confidential Information**” means any and all information concerning the City, the Project, and the Services, that is supplied by or to which access is given to the Consultant by the City or which in any other way comes into the possession or knowledge of the Consultant during the course of performance of the Services (regardless of format or medium), the Deliverables and this Contract.
- (r) “**Consultant**” means the Person undertaking the performance of Services under the terms of the Contract;
- (s) “**Consultant Representative**” means the Consultant's representative throughout the duration of the Contract who has the authority to act on behalf of the Consultant to the extent expressly provided for in this Contract;
- (t) “**Consulting Contract Administrator**” means the City's representative throughout the duration of the Contract who has the authority to act on behalf of the City to the extent expressly provided for in this Contract;
- (u) “**Contract Documents**” means the documents prepared by the City and forwarded to the Consultant pursuant to C4, setting out the Contract and includes without limitation, the Request for Proposal and any documents and Drawings referred to and incorporated therein, the Bid or Proposal, together with any submissions required to be made by the Consultant after award, and all amendments to the foregoing;
- (v) “**Contract**” means the terms and conditions that govern the legal relationship between the City and Consultant with respect to the Services;
- (w) “**Contract Price**” means the price agreed upon for Services and any adjustments thereto which may be required or agreed to pursuant to the Contract;
- (x) “**contractor**” is any party or parties, other than the Consultant, contracting with the City for work associated with the Project;
- (y) “**Contract Time**” means the time from the date of award until any milestone including a critical stage and/or Total Performance;
- (z) “**Cost Plus Fee**” means a fee for Services where the Consultant is paid for its total cost associated with carrying out the Services of the Contract, plus a stated percentage for profit;
- (aa) “**Council**” means the Council of The City of Winnipeg;
- (bb) “**Deliverables**” means all reports, drawings, calculations, designs, plans, leading practices, specifications, and other data, information and all material utilized, collected, compiled, drawn and produced (including digital files) to carry out Services contemplated in this Contract;
- (cc) “**Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, technical brochures and other data, digital or otherwise, which are to be created or provided by the Consultant and/or Subconsultant;
- (dd) “**Final Determination**” means a written notice approving a Change in Services or including the term Final Determination;
- (ee) “**Final Total Construction Cost**” means the cost to the City for work associated with the Project, as applicable, including such sums as are paid to the various contractors and approved additions thereto, provided that the following shall not be included:

- (i) Goods and Services tax (GST);
 - (ii) Manitoba Retail Sales Tax (MRST or PST)
 - (iii) administration, interest charges, management and legal costs incurred by the City;
 - (iv) fees paid by the City for soil borings and material testing;
 - (v) the cost of installation or relocation of public utilities or other works when the installation or relocation is not designed and administered by the Consultant;
 - (vi) cost of acquisition of real property or any interest therein;
 - (vii) professional fees and payment to the Consultant;
 - (viii) settlements of dispute resolutions; and
 - (ix) any additional costs incurred due to Consultant errors and omissions.
- (ff) “**Fixed Fee**” means a fee or fees for Services based on the defined Scope of Services, regardless of the time, effort or resources expended by the Consultant and/or its Subconsultants;
- (gg) “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to applicable law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced Person engaged in a similar type of undertaking under the same or similar circumstances;
- (hh) “**Hourly Rate**” means direct salary cost plus provision for statutory holidays, vacations with pay, employment insurance, health, medical and accidental insurance, group life insurance, Canada Pension Plan, Company Pension Plan, sick leave allowance, compensation and overhead and shall apply to all hours that are billed in performance of the Services;
- (ii) “**Manager of Materials**” means the Manager of Purchasing or the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office;
- (jj) “**may**” indicates an allowable action or feature which will not be evaluated;
- (kk) “**must**” or “**shall**” indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (ll) “**Order**” means any authoritative direction or instruction to do something or a determination in relation to any aspect of the Services or the Contract given by the Consulting Contract Administrator to the Consultant;
- (mm) “**Party**” means The City of Winnipeg, the Consultant or both The City of Winnipeg and the Consultant;
- (nn) “**Percentage Based Fee**” means a fee for Services based upon a percentage of the estimated Final Total Construction Cost;
- (oo) “**Person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (pp) “**Project**” shall refer to the project described in the Scope of Services;
- (qq) “**Proponent**” means any Person or Persons submitting a Proposal for Services;
- (rr) “**Proposal**” means the offer contained in the Proposal Submission;
- (ss) “**Proposal Submission**” or “**Submission**” means that portion of the Request for Proposal which must be completed or provided and submitted by the Submission Deadline in order to constitute a responsive Proposal;
- (tt) “**Request for Proposal (RFP)**” means the Proposal Submission, the Bidding Procedures, these General Conditions, the Supplemental Conditions, the Specifications, and all Addenda;

- (uu) “**Services**” means carrying out and doing of all things of every kind, either expressly or impliedly required, that are to be done by the Consultant in accordance with the terms of this Contract and Appendices and Schedules attached hereto and includes all Services, testing, analysis, equipment, matters and things necessary for or incidental to the fulfilment of the requirements of the Contract, and all Changes in Services which may be approved as herein provided;
- (vv) “**Set-off**” means the City deducting monies owed by the Consultant to the City from payment(s) due by the City to the Consultant.
- (ww) “**should**” indicates a desirable action or feature which will be evaluated on a relative scale;
- (xx) “**Site**” means the lands and other places, including structures, on, under, in or through which the Service is applicable to but does not include a Consultant’s Facility;
- (yy) “**Subconsultant**” means a Person contracting with the Consultant to perform a part or parts of the Services to be provided by the Consultant pursuant to the Contract;
- (zz) “**Submission Deadline**” means the time and date set out in the Bidding Procedures for final receipt of Proposals;
- (aaa) “**Supplemental Conditions**” means the portion of the Bid Opportunity by that name which sets out terms and conditions specific to the Contract and supplements or modifies the General Conditions;
- (bbb) “**Termination Expenses**” means expenses incurred by the Consultant which are directly attributable to termination of the Services;
- (ccc) “**Time-Based Fee**” means a fee for Services charged at an Hourly Rate to an upset limit for Services where the effort to accomplish the Scope of Services cannot be specified prior to executing the Contract;
- (ddd) “**Total Performance**” means that the entire Services have been completed in accordance with the requirements of the Contract and upon determination of the Consulting Contract Administrator.

C2. INTERPRETATION

- C2.1 The provisions of this Contract shall supersede all previous agreements, arrangements or understandings, whether written or oral, between the City and the Consultant in connection with and incidental to the Services, and it is agreed that this Contract constitutes the sole and entire agreement between the City and the Consultant relating to the Services, and no other terms, conditions, representations, covenants or warranties, whether expressed or implied, shall form a part hereof.
- C2.2 Where the Consultant consists of more than one Person, the liability to perform the Services herein contained to be performed by the Consultant shall be joint and several.
- C2.3 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed, performed and enforced according to the laws of the Province of Manitoba and of Canada, as applicable. The parties hereby irrevocably and unconditionally agree to the exclusive jurisdiction of the Courts in the Province of Manitoba and all courts competent to hear appeals therefrom.
- C2.4 Wherever the singular is used, it shall be construed to mean the plural as the context may reasonably require.
- C2.5 Headings, titles and marginal notes in this Contract are inserted for convenience of reference only and shall not be used as explanatory of the clauses or paragraphs below or opposite which they appear.

- C2.6 If there is any conflict or inconsistency between portions of the Contract, the following order of precedence shall apply:
- (a) the executed agreement between the City and Consultant shall govern over all schedules or other documents forming part of the Contract;
 - (b) the award letter shall govern over the Proposal;
 - (c) the Proposal shall govern over the Supplemental Conditions;
 - (d) the Supplemental Conditions shall govern over the General Conditions;
 - (e) the General Conditions shall govern over Specifications;
 - (f) Specifications of a later date shall govern over Specifications of an earlier date.
- C2.7 The various portions of the Contract Documents are intended to be read together and complement each other, and what is called for by any one shall be deemed to be called for by all.
- C2.8 The City and the Consultant acknowledge and agree that the Consultant is an independent Consultant and neither the Consultant, nor any officer, servant or agent of the Consultant, shall be deemed to be an employee, agent, representative or servant of the City.
- C2.9 Any provision of the Contract may be waived only by express waiver in writing by the Consulting Contract Administrator. No express waiver of any provision shall imply the waiver of any other provision. The waiver by any Party of the strict observance or performance of any term of this Contract or of any breach of it on the part of any Party shall not be held or deemed to be a waiver of any subsequent failure to observe or perform the same or any other term of this Contract.
- C2.10 Except as provided for in C8 no amendment of this Contract is effective unless made in writing and signed by a duly authorized representative of each of the City and the Consultant.
- C2.11 Each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. Further, any such severed provision shall be modified only to the extent necessary to render it enforceable and shall then become binding on the parties.
- C2.12 The City may request, in its sole discretion, that this Contract or any part thereof be executed in counterparts, each of which is an original, and all of which taken together shall constitute one agreement. For greater clarity, a satisfactory facsimile or electronically scanned copy delivered in response to such a request shall be deemed a valid counterpart and original execution of same.

Survival

- C2.13 All rights and obligations under this Contract that necessarily extend beyond termination of this Contract in order to fully achieve their intended purpose shall survive termination or expiry of this Contract, including without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, confidentiality provisions and all Consultant default and City remedy provisions.

C3. DECLARATIONS

Investigation

- C3.1 The Consultant declares that it:

- (a) has investigated the nature of Services to be done and all conditions; or
- (b) has not investigated the nature of Services to be done or conditions;
that might affect its performance of the Services

and, in either event, assumes all risk for conditions now existing or arising in the course of the Services which have been or could have been determined through such investigation, and that they did not and does not rely upon information furnished by the City or any of their servants or agents other than information furnished in writing which specifically states it may be relied on for or in connection with the Contract by the Consulting Contract Administrator.

Good Faith

- C3.2 The Consultant declares that, in entering into the Contract, it:
- (a) does so in good faith and that to the best of their knowledge no member of Council or any officer or employee of the City has any pecuniary interest, direct or indirect, in the Contract which has not been disclosed to and approved by the authority having jurisdiction;
 - (b) has not participated in any collusive scheme or combine;
 - (c) shall forfeit all claims under the Contract as well as refund to the City any monies paid to them, beyond their actual proven expenses for Services done, if C3.2(a) or (b) are shown to be false.

C4. FORM AND EXECUTION OF CONTRACT DOCUMENTS

- C4.1 At the City's discretion the City will determine the form of the Contract Documents, which may be one of the following, issued by the City:
- (a) Purchase Order;
 - (b) Award Letter alone; or
 - (c) Award Letter followed by a document package comprising the Contract Documents to sign.
- C4.2 If the form of the Contract Documents is a Purchase Order, the Contract is formed upon receipt of the Purchase Order by the Consultant.
- C4.3 If the form of the Contract Documents is an Award Letter alone, the Contract is formed upon receipt of the Award Letter by the Consultant.
- C4.4 If the form of the Contract Documents is an Award Letter followed by a document package, the Contract is formed upon receipt of the Award Letter by the Consultant. Following issuance of the Award Letter a document package comprising the Contract Documents will be provided to the Consultant for execution and return to the City.
- (a) The Consultant shall execute the Contract Documents in the manner stipulated by the City Solicitor and return the Contract Documents, within seven (7) Calendar Days of receipt of the Contract Documents, to the City Solicitor at the address indicated in the Supplemental Conditions.
 - (b) Payments may be suspended or withheld by the City to the Consultant until the Consultant has executed and returned the Contract Documents as set out herein.

C5. AUTHORITY OF CONSULTING CONTRACT ADMINISTRATOR

- C5.1 The Consulting Contract Administrator shall be the City's representative throughout the duration of the Contract and shall have authority to act on behalf of the City to the extent expressly provided for in the Contract.

- C5.2 The Consulting Contract Administrator shall provide the Consultant with any information, plans and specifications regarding existing or proposed activities or works relevant to the Services to be performed, which the City has in its possession, or has reasonable access to, and documents relating to the Project, except insofar as the Consultant is expressly instructed by the Consulting Contract Administrator to furnish same under the terms hereof. The Consulting Contract Administrator shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Consultant.
- C5.3 The Consulting Contract Administrator may at any time correct errors or omissions in the Contract by issuing written decisions, instructions, Acceptances, further details modifying the Services and any other information required as soon as reasonably possible in order to enable the Consultant to comply with the agreed time schedule or clarifications. Such written instructions shall either supplement or supersede those forming part of the Contract at the time the Contract was formed.
- C5.3.1 The City does not represent or warrant the accuracy or completeness of the said information, except as specifically stated it can be relied on as set out in C3.1, and the Consultant shall so determine and rectify any errors or omissions therein.
- C5.4 The Consulting Contract Administrator shall give prompt consideration to all documents submitted by the Consultant including all sketches, Drawings, specifications, tenders, proposals, contracts, agreements, reports and correspondence and shall provide written decisions, instructions, Acceptances and any other information required as soon as reasonably possible in order to enable the Consultant to comply with the agreed time schedule.
- C5.4.1 Acceptance provided by the Consulting Contract Administrator does not relieve the Consultant of its professional responsibility for errors and omissions.
- C5.5 The Consulting Contract Administrator may give instructions or Orders to the Consultant to the extent necessary to ensure that the Services are performed in an orderly manner and meet the requirements of the Contract.
- C5.6 The Consulting Contract Administrator may order the Consultant to remove any individual employed or retained by the Consultant or a Subconsultant in the performance of the Services, who the Consulting Contract Administrator determines is incompetent, negligent or guilty of misconduct.
- C5.7 The Consulting Contract Administrator shall determine whether Total Performance is achieved and shall certify the date thereof.
- C5.8 If the Consultant disputes a Final Determination of the Consulting Contract Administrator on any of the foregoing matters, the Consultant shall act in accordance with the Consulting Contract Administrator's Final Determination. The Consultant may concurrently appeal the Final Determination of the Consulting Contract Administrator to the Chief Administrative Officer as provided for in C17.

C6. CONSULTING CONTRACT ADMINISTRATOR'S DECISION

- C6.1 Every certificate, decision or approval of the Consulting Contract Administrator in any matter or question specifically referred to their under the terms of this Contract or the schedules hereto shall not be effective unless in writing and shall be final and binding on the Consultant.

C7. CONSULTANT'S SERVICES AND RESPONSIBILITIES

- C7.1 The Consultant shall appoint a Project Supervisor or Project Supervisors for the Project. Where more than one Project Supervisor is appointed, each shall be designated for a particular stage

or stages of the Project and each Project Supervisor shall be authorized to transmit instructions to and accept information and advice from the City.

- C7.2 The Consultant shall perform, to the satisfaction of the Consulting Contract Administrator, all Services of every kind, either expressly or impliedly required for the Project, including those identified in the Scope of Services, as well as any Change in Services.
- C7.3 After giving written notice to the Consultant, the Consulting Contract Administrator may, in writing at any time after the execution of the Contract or the commencement of the Services, delete, extend, increase, vary or otherwise alter the Services, and if such action by the Consulting Contract Administrator necessitates additional staff or Services, the Consultant shall be paid in accordance with C11 for such additional staff employed directly thereon, together with such disbursements as may be allowed under C11. In the case of a reduction in the requirement for Services, the Consultant's fee shall be reduced accordingly and confirmed in writing.
- C7.4 The Consultant shall submit to the Consulting Contract Administrator for approval, a detailed time schedule for the performance of its Services for the Project. The Consultant must comply with the approved time schedule which forms an integral part of this Contract. If a change in the approved time schedule becomes necessary, the Consultant shall promptly submit a report to the Consulting Contract Administrator and obtain prior written approval for any change in the time schedule.
- C7.5 The Consultant, if requested in writing to do so by the Consulting Contract Administrator, shall make any required changes in the Project notwithstanding their previous approval and the Consultant shall advise the Consulting Contract Administrator of any effect on the time schedule, budget and other implications of the changes.
- C7.5.1 However, nothing done by the Consultant to remedy design errors or other deficiencies attributable to shortcomings of the Consultant, including persons consulted, employed or supervised by it, shall entitle them to additional fees.
- C7.6 The Consultant shall provide competent, suitably qualified personnel to perform the Services.
- C7.7 The Consultant, with respect to Services to be performed under subcontract, shall:
- (a) enter into contracts or written agreements with its Subconsultants to require them to comply with, and to perform their work in complete conformance with and subject to, the terms and conditions of the Contract; and
 - (b) be as fully responsible to the City for acts, omissions or defaults of any Subconsultants and of persons directly or indirectly employed or engaged by them as if they were the acts, omissions or defaults of the Consultant.
- C7.8 The Consultant shall incorporate the terms and conditions of the Contract into all contracts or written agreements with its Subconsultants.
- C7.9 The Consultant shall make prompt payment to its Subconsultants and employees.
- C7.10 Where required, before any additional Services are commenced, the Consultant shall submit to the Consulting Contract Administrator for approval, the name and a resume of the qualifications and experience of all personnel together with the Hourly Rate for those individuals they intend to employ to perform Services on the Project.
- C7.11 The Consultant shall remove, within ten (10) Calendar Days, any personnel performing Services on the Project upon receipt of written notice from the City. Any individual so removed shall not be re-employed on the Project.

- C7.12 No Subconsultant shall be engaged by the Consultant for the performance of Services in connection with the Project without approval by the Consulting Contract Administrator. When a Subconsultant has been identified for parts of the Services they must be used only for those parts of the Services unless the prior approval of the Consulting Contract Administrator has been obtained.
- C7.13 The Consultant shall notify and obtain the approval of the Consulting Contract Administrator for all significant additions and changes to staff.
- C7.14 The Consultant shall have the duty to coordinate the Services to be performed by the Consultant, Subconsultants, contractors, and the City's own forces throughout the Project.
- C7.15 The Consultant shall keep the Consulting Contract Administrator fully advised and informed during each stage of the Project.
- C7.16 The Consultant's status reports shall be made at the times and in the manner as required by the Consulting Contract Administrator, consistent with the Contract.
- C7.17 The Consultant shall keep and maintain accurate time sheets and cost invoice records of its Services performed under this Contract including Services performed on its behalf by any Subconsultant and, when required, shall make such material available for inspection and audit by the Consulting Contract Administrator. The Consultant shall keep and preserve the said material for a period of at least six (6) years following Total Performance or termination of its Services under this Contract.
- C7.18 The Consultant shall ensure that the Services comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction, which are or come into force during the performance of the Services and which relate to the Services. Where there are two or more laws, by-laws, ordinances, regulations or codes applicable to the Services the most restrictive shall apply. In the event a law, by-law, ordinance, regulation or code comes into force during the performance of the Services, and determined to be applicable to the Contract by the Consulting Contract Administrator, which could not have reasonably been anticipated by the Consultant, the Consultant shall be entitled to an adjustment in Contract Price pursuant to C8.4.
- C7.19 The Consultant and all professional individuals conducting Services pursuant to the Contract shall be members in good standing with the applicable professional association in the Province of Manitoba.
- C7.20 The Consultant shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Consultant does not carry on business in Manitoba, in the jurisdiction where the Consultant does carry on business, throughout the term of the Contract, and shall provide the Consulting Contract Administrator with evidence thereof upon request.
- C7.21 The Consultant shall obtain and pay for all necessary permits or licences required for the execution of the Services.
- C7.22 Any Project identification signs proposed for the Site must be approved by the Consulting Contract Administrator.
- C7.23 If the Consultant performs the Services contrary to any laws, by-laws, regulations, codes and orders of any authority having jurisdiction, the Consultant shall be responsible for and shall correct any violations thereof and shall bear all resulting costs, expenses and damages.

C7.24 In the event the Consultant fails to comply with any legislation or any regulations thereunder and the City is required to do anything or take any steps or pay any sums to rectify such non-compliance, the City may set-off the cost of such rectifications from any monies owed to the Consultant. Any such set-off is not to be construed as liquidated damages.

C7.25 Drawings and specifications shall be issued in metric notation unless directed otherwise.

Representations and Warranties

C7.26 The Consultant represents and warrants that:

- (a) it is carrying on business in compliance with all applicable law, and that if the Consultant is a corporation, it is a valid and existing corporation, duly incorporated under applicable law;
- (b) it has the full power, right and proper authority to execute, deliver and perform this Contract;
- (c) there are no actions, suits or any legal proceedings pending or, to the knowledge of the Consultant, threatened against or adversely affecting the Consultant which might materially affect the financial condition of the Consultant or which will or may adversely affect the Consultant's performance of its obligations under this Contract;
- (d) the Consultant is the owner of any intellectual property including patents, copyright, trademarks and industrial designs which they may use in carrying out its obligations under this Contract, or has the right or license to use such intellectual property from the person who is lawfully authorized to give such a right or license;
- (e) neither they nor their employees shall engage in conduct which brings the City into public disrepute, or which injures, defames, disparages, or diminishes the reputation or goodwill of the City; and
- (f) it possesses, and will continue to possess, all rights, interests, powers and expertise necessary to perform its obligations under this Contract.

C7.27 The Consultant declares that all representations and warranties set out above are true in substance and in fact and acknowledges and agrees that the City has relied on them in entering into this Contract.

C7.28 The Consultant agrees to notify the City promptly if any actions, suits or legal proceedings are brought or threatened against or adversely affect the Consultant which might materially affect the financial condition of the Consultant or which will or may adversely affect the Consultant's performance of its obligations under this Contract.

Records

C7.29 The Consultant shall maintain full records of the Consultant's estimated and actual cost of the Services together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and shall make them available on request to audit and inspection by the City or any entities providing funding relating to the Contract or by persons designated to act on behalf of any of them.

C7.30 The Consultant shall allow any of the persons referred to in paragraph.C7.32 to make copies of and take extracts from any of the records and material, and shall furnish such persons or entities with any information those persons or entities may require from time to time in connection with such records and material.

C7.31 The Consultant shall maintain and keep the records intact until the expiration of two (2) years after Total Performance has been confirmed or until the expiration of such other period of time as the City may direct.

C7.32 The Consultant shall cause all Subconsultants at any tier and all other persons directly or indirectly controlled by or affiliated with the Consultant and all persons directly or indirectly having control of the Consultant to comply with the requirements of this clause as if they were the Consultant.

C8. CHANGES IN SERVICES

General

C8.1 The City shall have the right to order a Change in Services at any time after award of the Contract.

C8.2 If, at any time after award of the Contract, the Consultant is of the opinion that a Change in Service is necessary to accomplish the result intended by the Contract, they shall promptly provide written notice thereof to the Consulting Contract Administrator, including:

- (a) the reason for the proposed Change in Services;
- (b) a detailed description of the proposed Change in Services;
- (c) the Consultant's proposed method(s) to determine the adjustment, if any, to the Contract;
- (d) the Consultant's proposed adjustment, if any, to the date of any critical stage and/or the date of Total Performance referred to in the RFP (hereafter collectively the "Contract Time").

C8.2.1 Without limiting the generality of C8.2, if the Consultant observes:

- (a) any substantial difference in the nature of the Services required from those set out in the Contract; or
- (b) that the Contract is at variance with any laws, ordinances, rules, regulations or codes of authorities having jurisdiction, or if changes are made to any laws, ordinances, rules, regulations and codes subsequent to the Submission Deadline which require modifications to the Contract;

the Consultant shall immediately notify the Consulting Contract Administrator.

C8.3 The Consulting Contract Administrator shall, within fourteen (14) Calendar Days or such other period of time as determined by the Consulting Contract Administrator given the relative complexity of the proposed change received from the Consultant:

- (a) determine whether a Change in Services is necessary or desirable and whether a corresponding adjustment to the Contract Price and Contract Time is required; or
- (b) determine that additional time and/or information is required to respond to the Consultant's request where:
 - (i) the proposed change is complex; and
 - (ii) there is a need for additional information in connection with the Consultant's request;

and communicate that determination to the Consultant in writing.

C8.3.1 If the Consulting Contract Administrator determines that no Change in Services is necessary or desirable, he/she will issue a written notice stating their determination.

C8.3.2 If the Consulting Contract Administrator determines that a Change in Services is necessary or desirable but no corresponding adjustment to the Contract Price or Contract Time is required, he/she will issue a written notice approving the Change in Services and stating their determination.

C8.3.3 If the Consulting Contract Administrator determines that a Change in Services is necessary or desirable, which requires a corresponding adjustment to the Contract Price or Contract Time, and he/she is able to determine such adjustment based on the available information,

he/she shall issue a written notice approving the Change in Services and stating their determination regarding the method(s) to be used to determine the adjustment to the Contract Price and Contract Time pursuant to C8.4.

- C8.3.4 If the Consulting Contract Administrator determines that a Change in Services is necessary or desirable, which requires a corresponding adjustment to the Contract Price or Contract Time, and he/she requires further information to determine such adjustment, he/she shall within fourteen (14) Calendar Days, issue a written notice stating their determination and requiring the Consultant to submit the Consultant's proposed method(s) to determine the adjustment to the Contract Price or Contract Time pursuant to C8.4, within fourteen (14) Calendar Days or such other period of time as determined by the Consulting Contract Administrator given the relative complexity of the proposed changed and upon receipt and evaluation of such information from the Consultant, he/she shall issue a written notice in accordance with C8.3.3.

Valuation of a Change in Services

- C8.4 The adjustment in the Contract Price resulting from a Change in Services shall be determined by one or more of the following methods:
- (a) by estimate and acceptance in a lump sum;
 - (b) by the unit prices and methods of measurement set out in the Contract or subsequently agreed upon;
 - (c) by the actual cost of the Change in Services to the Consultant plus a fixed fee;
 - (d) by the actual cost of the Change in Services to the Consultant plus a percentage; or
 - (e) as provided for in the Supplemental Conditions.
- C8.4.1 For the purposes of C8.4(c) and C8.4(d), "actual cost" on any portion of the Change in Services undertaken:
- (a) by the Consultant's own forces shall mean the Hourly Rate based on employee classification multiplied by the hours worked and any other payments made by the Consultant with the prior approval of the Consulting Contract Administrator that are necessary for the performance of the Change in Services;
 - (b) by a Subconsultant shall mean the amount invoiced by the Subconsultant and paid by the Consultant, net of any discounts and excluding any late payment interest or penalties.
- C8.5 If a Change in Services diminishes the Services, or any part thereof, resulting in costs incurred by the Consultant, directly attributable to the diminution, for which they would not be entitled to payment on a unit price basis, the Consultant shall be compensated therefor by the City in the sum or sums determined by the Consulting Contract Administrator.
- C8.5.1 No claim may be made for damages on the ground of loss of anticipated profit on Services so diminished.
- C8.6 If the method of valuation or measurement or the adjustment to the Contract cannot be promptly agreed upon within twenty-one (21) Calendar Days, or such other period of time upon which the Consulting Contract Administrator and the Consultant may agree, of the Consultant's submission to the Consulting Contract Administrator, and the Consulting Contract Administrator requires the Change in Services to proceed, then the Consulting Contract Administrator will determine the method of valuation and measurement and the adjustment to the Contract. The Consulting Contract Administrator shall issue a written notice approving the Change in Services and setting out the method of valuation, measurement, and any approved adjustments to the Contract.

- C8.7 If the Consultant disputes a determination made by the Consulting Contract Administrator, the Consultant shall act in accordance with the Consulting Contract Administrator's Order. Notwithstanding the foregoing, the Consultant may appeal a Final Determination of the Consulting Contract Administrator to the Chief Administrative Officer as provided for in C17.

Cost Records

- C8.8 If a valuation is required pursuant to C8.4 or C8.5, the Consultant shall provide the Consulting Contract Administrator with:
- (a) detailed and accurate statements showing:
 - (i) Hourly Rate of pay and hours of work for each of the persons employed by the Consultant; and
 - (ii) Allowable Disbursements.
 - (b) access to any cost records (including payroll records, time books and invoices) or other data necessary to verify the accuracy of such statements.

C9. INTELLECTUAL PROPERTY, OWNERSHIP OF INFORMATION AND RELIANCE

- C9.1 All reports, drawings, calculations, designs, plans, leading practices, specifications, and other data, information and all material utilized, collected, compiled, drawn and produced (including digital files) to carry out the Services contemplated in this Contract ("Deliverables") are solely the property of the City, with the exception of the materials and information in the possession of the Consultant prior to the commencement of this project, and the Consultant's copyright in such property, if any, is hereby assigned to the City.
- C9.1.1 For greater clarity, any disclaimer that is included in or on any Deliverable to limit the use by the City of such Deliverable, as provided for under this agreement, shall have no force and effect and will not alter the terms of this agreement, unless the terms of that disclaimer are expressly agreed to by both parties in writing as an amendment to this agreement.
- C9.2 Upon completion of the Services or termination of this Contract, all of the Deliverables shall be delivered by the Consultant to the City on demand by the City. The Consultant may retain one complete set of the Deliverables for its records and the City shall make the originals, or a reasonable reproduction thereof, available to the Consultant for all proper and reasonable purposes during the period of five (5) years following the completion or termination of the Consultant's Services under this Contract.
- C9.3 Without prejudice to any rights which may exist in the City by virtue of any prerogative rights and powers or by virtue of the Copyright Act of Canada, as amended from time to time, the Consultant assigns all present and future rights in the copyright in the Deliverables absolutely and immediately to the City. Furthermore, the City or any third party granted a right through the City, may use the Deliverables or any part thereof for, or apply it to, other studies or projects without the Consultant's consent and without any payment or compensation whatsoever. If the City or any third party granted a right through the City elects to so use or apply the Deliverables to another study or project, they do so at its own risk and the Consultant shall not be liable in any way for any adverse consequences flowing from such other use or application. For greater clarity, if the City or any third party granted rights through the City elects to use or apply the Deliverables to the study or project for which the Consultant has been engaged, the City, or any third party granted rights of use through the City pursuant to this C9.3, shall be entitled to rely upon the Deliverables to the extent that Good Industry Practice was applied in the interpretation of such Deliverables and Consultant shall be liable for any adverse consequences flowing from such use or application.
- C9.4 The Consultant expressly waives any claim to moral rights, as provided for in the law of copyright, over the Deliverables or any part thereof, created by the Consultant, and the

Consultant shall ensure that any agent or employee of the Consultant shall have waived all moral rights, as provided for in the law of copyright, over the Deliverables or any part thereof.

- C9.5 All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practise by the Consultant in the performance of Services, and which are patentable, capable of trademark or otherwise, shall be the property of the City.
- C9.6 The Consultant shall have a permanent, non-exclusive, royalty-free licence to use any concept, product or process, which is patentable, capable of trademark or otherwise, produced by or resulting from the Services rendered by the Consultant in connection with the Project, for the life of the Project, and for no other purpose or project.
- C9.7 The Consultant shall not infringe any copyright, trademark, patent, industrial design, trade secret, moral or other proprietary right of a third party and shall indemnify the City from all claims arising out of such an infringement.
- C9.8 If the City or the Consultant is served with a claim or written notice of an infringement or alleged infringement of any patent, copyright, trademark or trade name, the Party so served shall immediately give written notice thereof to the other Party.
- C9.9 The Consultant shall assist the City in every reasonable way to secure, maintain and defend for the City's benefit all copyrights, patent rights, trade secret rights and other proprietary rights in and to the Deliverables.
- C9.10 If the City or the Consultant is prevented by injunction from using any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Consultant shall, at its own cost, substitute an equally suitable design, device, material or process, all subject to the prior approval of the Consulting Contract Administrator.

Ownership of Information

- C9.11 The Consultant shall not disclose or appropriate to its own use, or to the use of any third party, at any time during or subsequent to the term of this Contract, any Confidential Information of the City of which the Consultant has been or hereafter becomes informed, whether or not developed by the Consultant, including without limitation, information pertaining to this Project and the resulting report, if any, to be provided. This clause shall not apply to information the Consultant may necessarily be required to disclose or use in connection with the Services which they are obligated to perform under this Contract or as required by law.
- C9.12 The Contract, all Deliverables produced or developed, and information provided to or acquired by the Consultant are the property of the City. The Consultant shall not disclose or appropriate to its own use or promotional material, or to the use of any third party, all or any part thereof without the prior written consent of the Consulting Contract Administrator.
- C9.12.1 Further to C9.12 and in accordance with C9.4, the Consultant expressly waives any claim to moral rights, as provided for in the law of copyright.
- C9.13 The Consultant shall not at any time make any public announcement, or press release, nor make any statement of fact or opinion regarding the Contract, the Project, the Services or the Deliverables without the prior written authorization of the Consulting Contract Administrator.
- C9.14 The Consultant hereby agrees to execute such other documentation as may be reasonably requested by the City to evidence their respective intellectual property rights in and to the Deliverables.

C10. CONFIDENTIALITY

- C10.1 During the course of the Contract, the Consultant may acquire Confidential Information. The Consultant shall not, except in accordance with the Contract, disclose Confidential Information to any other Person without the prior written consent of the Consulting Contract Administrator.
- C10.2 The Consultant's obligations under C10.1 shall not apply, or shall cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:
- (a) was in the public domain when it is received by or becomes known to the Consultant or which subsequently enters the public domain through no fault of the Consultant (but only after it enters the public domain);
 - (b) was already known to the Consultant at the time of its disclosure to the Consultant and is not known by the Consultant to be the subject of an obligation of confidence of any kind;
 - (c) is independently developed by the Consultant without any use of or reference to the Confidential Information and which such independent development can be established by evidence that would be acceptable to a court of competent jurisdiction; or
 - (d) is received by the Consultant in good faith without an obligation of confidence of any kind from a third party who the Consultant had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Consultant subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received.
- C10.2.1 Confidential Information shall not be deemed to be in the public domain merely because any part(s) of the Confidential Information is embodied in general disclosures or because individual features, components or combinations of Confidential Information are now or become known to the public.
- C10.3 In the event that the Consultant receives written notice indicating they may or shall be legally compelled to disclose any of the Confidential Information by reason of a duly authorized administrative or court order, they shall provide the City Solicitor with prompt written notice so that the City may at the City's sole discretion seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, or in cases where a subpoena or other court order requires the Consultant to immediately comply, the Consultant shall furnish only that portion of the Confidential Information in respect of which the Consultant is legally required and compelled to disclose.
- C10.4 The Consultant may disclose Confidential Information to its employee or Subconsultant who has a need to know for the purposes of the Services, provided first that prior to such disclosure each such Person shall have been made aware of the requirements of C10. The Consultant shall be responsible for any violation of C10 by any such Person.
- C10.5 The Consultant shall:
- (a) take reasonable steps (including those steps that the Consultant takes to protect their own information that they regard as confidential) to keep the Confidential Information confidential.
 - (b) use the Confidential Information only for the purpose of performing the Services and for no other purpose whatsoever;
 - (c) at the Consulting Contract Administrator's request and option, immediately return Confidential Information to the City, or certify in writing that it has been destroyed;
- C10.6 In the event of a breach or threatened breach of C10, the parties agree that the harm suffered by the City would not be compensable by monetary damages alone and, accordingly, that the City shall, in addition to any other available legal or equitable remedies, be entitled to an injunction against such breach or threatened breach.

C10.7 A Consultant who violates any provision of C9 and C10 may be determined to be in breach of Contract.

C11. TERMS OF PAYMENT

C11.1 The City shall pay the Consultant, as consideration for the execution of the Services as follows:

- (a) Fixed Fees shall be paid in accordance with the Contract;
- (b) Time Based Fees shall be paid for Services actually performed and based on the Hourly Rate and the hours actually worked to a maximum of the amount stipulated in the Contract;
- (c) Percentage Based Fees shall be calculated by multiplying the appropriate percentage stipulated in the Contract with the applicable Final Total Construction Cost. Where Services are reimbursed on a Percentage Based Fee basis, the Percentage Fee should be all-inclusive except as specifically excluded as an Allowable Disbursement;
- (d) Cost Plus Fees.

C11.1.1 The Goods and Services Tax shall be applied to all Services.

C11.2 Additional Services shall be paid in accordance with the method described for those Services authorized in writing by the Consulting Contract Administrator.

C11.3 The City shall pay the Consultant, as consideration for Allowable Disbursements described herein, the actual cost of the disbursement to the Consultant, with no administrative mark-ups.

C11.4 Consultant shall be responsible for its own income taxes, Canada Pension Plan contributions, Workers' Compensation assessments, Employment Insurance premiums and all other taxes, levies or charges payable to any governmental or public authority with respect to the consideration paid by the City to the Consultant under this Contract.

C11.5 The Consultant shall indemnify the City, against all costs and expenses incurred by the City as a result of them not withholding income tax, Canada Pension Plan contributions, Workers' Compensation assessments and Employment Insurance premiums from the consideration paid by the City to the Consultant including, without limiting the generality of the foregoing, any income tax, interest or penalties that may be assessed against the City for failure to withhold tax or for any other amounts whatsoever which may be charged to them, levied against them or otherwise claimed from them on account of Canada Pension Plan contributions, Workers' Compensation assessments or Employment Insurance premiums in respect of such consideration.

C11.6 The City shall withhold from any and all payments of fees such amounts in respect of non-resident withholding taxes as it may be required to withhold under the terms of the Income Tax Act (Canada) or the terms of any International Tax Convention and shall remit same as required pursuant thereto.

Payment of Fees and Allowable Disbursements

C11.7 Invoices shall clearly identify:

- (a) the billing period;
- (b) Fixed Fees - statement of fees for Services rendered in accordance with the Contract;
- (c) Time Based Fees - personnel names, hours charged, Hourly Rate and total cost for time based Services for the billing period;
- (d) Percentage Based Fees - percentage of Services completed for the billing period based on the estimated Final Total Construction Cost;
- (e) Cost Plus Fees

- (f) tabulation of Allowable Disbursements by category with proof of purchase or expenditure for Allowable Disbursements within the billing period; and
- (g) a summary table identifying approved budgets, billing period charges and total cumulative charges for each category of Services consistent with the Proposal.

- C11.8 Invoices shall be submitted and paid in Canadian Funds.
- C11.9 Invoices from non-Canadian Consultants must clearly identify labour and expenses for Services performed in Canada separate from Services performed outside of Canada. Labour performed in Canada and unsupported expenses (expenses with no receipts) will be assessed Non Resident Withholding Tax unless a Waiver has been obtained from Canada Revenue.
- C11.10 No payment will be made for charges exceeding an agreed to budget or resulting from a revision to the method of payment for any category of Services unless approved in writing by the Consulting Contract Administrator.
- C11.11 The Consultant agrees that Allowable Disbursements shall not exceed the maximums stated within the Contract unless approved in writing by the Consulting Contract Administrator. The Consultant shall obtain the written consent of the Consulting Contract Administrator prior to incurring any disbursements not previously identified in the Contract.
- C11.12 The City shall endeavour to make payment in Canadian funds to the Consultant within thirty (30) Calendar Days after receipt and approval of the Consultant's invoice.
- C11.13 It is understood by the City and agreed by the Consultant that the fees are only payable when the Services have been performed to the satisfaction of the Consulting Contract Administrator and any partial payment in respect of a phase or part of a phase is not to be deemed a waiver of the City's rights of set-off at law under this Contract for costs or expenses arising from default or the negligence of the Consultant.
- C11.14 The City will pay the Consultant by direct deposit to the Consultant's banking institution.

C12. FORCE MAJEURE/SUSPENSION

- C12.1 Either Party shall not be liable to the other Party for any loss, damage or other claim whatsoever, including direct or indirect losses, loss of profits, or compensation for any inconvenience, nuisance or discomfort, arising out of a force majeure as defined below, or if either Party is prevented from having access to and/or from the premises arising out of a force majeure as defined below, provided that the Party claiming a force majeure hereunder shall promptly notify the other specifying the cause and probable duration of the delay. In the case of a continuing delay, only one claim for an extension shall be necessary.
- C12.2 No extension for delay shall be approved unless a notice of the claim is received by the other Party within seven (7) Calendar Days of the date on which the cause of delay arose.
- C12.3 "Force majeure" means any circumstances beyond the reasonable control of the affected Party and not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by such Party. Without restricting the generality of the foregoing, force majeure shall include any one or more of the following: any act of God; embargo, confiscation, acts or restraints of governments or public authorities; wars, sabotage, act of public enemy or riot; strikes, slow-downs, lockouts or other labour or employee interruptions or disturbances, whether involving employees of that Party or of any other person over which that Party has no reasonable control; explosion, fire, radioactive contamination, flood or natural disaster. Lack of finances shall in no event be deemed to be a cause beyond a Party's reasonable control.

C12.4 The performance of any obligation suspended or delayed due to force majeure shall resume as soon as reasonably possible after the force majeure ends and the work schedule shall be adjusted by a period of time equal to the time lost due to such delays.

C13. INDEMNITY

C13.1 The Consultant shall use due care in the performance of the obligations under this Contract to ensure no person is injured, no property is damaged or lost, and no rights are infringed.

C13.2 The Consultant shall indemnify and save harmless the City from and against all claims, losses, damages, costs, expenses and fees, actions and other proceedings made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement or damage arising from any negligent act, defect, error or omission of the Consultant, its servants or agents or persons for whom they have assumed responsibility, including Subconsultants, in the performance or purported performance of this Contract to a maximum of the Contract Price or two million dollars, whichever is greater.

C13.3 Subject to C13.4, the City has the right, acting reasonably and upon written notice to the Consultant, to settle any such action, proceeding, claim or demand and charge the Consultant with the amount so paid or to be paid in effecting a settlement.

C13.4 The City and the Consultant agree that the applicable insurer will have a priority right to defend insured claims. Within fourteen (14) Calendar Days after the date on which the insurer is provided with a copy of the written notice of claim, the insurer must advise the City and the Consultant if they intend to exercise its priority right to defend the claim.

C13.5 In the event that the claim is settled by the insurer, all costs incurred in effecting the settlement are the responsibility of the Consultant and not the City.

C13.6 In the event that the claim is unsuccessfully defended, either in whole or in part, then the City may charge the Consultant with the amount to be paid to satisfy the judgment or order.

C13.7 The Consultant shall pay to the City the value of all reasonable legal fees and disbursements required to settle any such claim or to defend the City against any such action, proceeding, claim or demand, notwithstanding that the settlement or defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.

C13.8 If the Consultant fails to make any payment required to be made to the City pursuant to the foregoing, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Consultant under the Contract and/or take whatever other remedies against the Consultant that the City may have at law.

C14. DEFAULT, SUSPENSION AND TERMINATION

C14.1 An event of default will be deemed to have occurred if the Consultant:

- (a) discontinues providing the Services; or
- (b) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of its creditors, or has a receiver or liquidator appointed in respect of its assets; or
- (c) is not performing or has not been performing the Services, or any part thereof in the City's best interests, in a competent and workmanlike manner and in all respects in strict conformity with the Contract; or
- (d) is not progressing continuously with the Services or any part thereof, and in such a manner as to ensure the completion of the Services or any part thereof, in accordance with the time schedule referred to herein; or

- (e) fails to make prompt payment to its Subconsultants, its employees, or for contracts for the purchase or rental of material or equipment; or
- (f) fails to comply with any laws, by-laws or statutory regulations; or
- (g) fails to provide competent supervision; or
- (h) fails to submit any schedules, documents or information required by the Consulting Contract Administrator; or
- (i) refuses or neglects to comply with an Order given by the Consulting Contract Administrator; or
- (j) commits any other breach of this Contract.

City's Rights and Remedies

- C14.2 If in the opinion of the Consulting Contract Administrator an event of default has occurred, the City may by written notice require the default to be corrected. If within thirty (30) Calendar Days after receipt of such written notice by the Consultant, such default has not been corrected, the City may do any one or more of the following:
- (a) withhold or retain the whole or part of any payment;
 - (b) take the whole of the Services, or any part or parts thereof out of the hands of the Consultant;
 - (c) demand payment for any amount owed to the City, including amounts paid or costs incurred by the City in connection with the event of default;
 - (d) terminate this Contract.
- C14.3 In the event of an emergency, as a result of the default, the City reserves the right to remedy the default as necessary.
- C14.3.1 Additional costs incurred as a result of such remedy, shall be considered as set out in C14.10.
- C14.4 The duties and obligations imposed upon the Consultant by the Contract and the rights and remedies available to the City hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Consultant or available to the City at law.
- C14.5 In addition, the City shall have the right to terminate this Contract due to a lengthy suspension or interruption of the Project as a consequence of a Force Majeure.
- C14.6 In addition, the City shall have the right to terminate this Contract for any reason whatsoever upon giving thirty (30) Calendar Days prior written notice to the Consultant.
- C14.7 Upon receipt of written notice of termination of this Contract, the Consultant shall perform no further services other than those reasonably necessary to close out its Services and pursuant to instructions provided by the Consulting Contract Administrator.
- C14.8 In the event that the City terminates this Contract as provided in C14.2, the City shall, upon completion of close out Services pursuant to C14.7, pay the Consultant only for the cost of the Services rendered and disbursements incurred by the Consultant in accordance with the terms of this Contract and remaining unpaid as of the effective date of such termination.
- C14.9 In the event that the City terminates this Contract as provided in C14.5 and C14.6, the City shall, upon completion of close out Services pursuant to C14.7, pay the Consultant for the cost of the Services rendered and disbursements incurred by the Consultant pursuant to the terms of this Contract and remaining unpaid as of the effective date of such termination, plus the Consultant's reasonable Termination Expenses as defined in C1.1(bbb).

Set-Off

- C14.10 It is expressly understood and agreed that the City shall reserve a right of set-off for any default by the Consultant arising from the termination of this Contract, in addition to any other remedies that it may have at law.

C15. SUCCESSORS AND ASSIGNMENT

- C15.1 This Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, successors and assigns of the City and the Consultant.
- C15.2 The Consultant shall not assign this Contract or any payments thereunder without the prior consent of the City.
- C15.3 Further to C7.12, if the Consultant proposes to engage a Subconsultant for any portion(s) of the Project, then the following information must be provided to the Consulting Contract Administrator, for their prior approval:
- (a) the name and address of the Subconsultant;
 - (b) the services to be undertaken by the Subconsultant and how these relate to the Services of the Consultant;
 - (c) the personnel of the Subconsultant along with their qualifications who will perform the Services; and
 - (d) the fee of the Subconsultant for performing the Services.
- C15.4 Should the Consultant, upon obtaining the written consent of the Consulting Contract Administrator, enter into any Sub-Contract, the Consultant shall ensure that the new Subconsultant agrees in writing that all Services done by the Subconsultant shall be subject in all respects to the provisions of this Contract.
- C15.5 The Consultant shall obtain the written approval of the City before changing any Subconsultant previously approved by the City, or performing Services with its own forces, and must provide the Consulting Contract Administrator with the information detailed in C15.3 as well as outlining the reason(s) for the change.

C16. NOTICES

- C16.1 A notice or other communication required or permitted to be given under the Contract shall be in writing and delivered by mail, hand, facsimile transmission (fax) or electronic method such as email that provides a paper record of the text of the notice or communication..
- C16.2 A notice or other communication shall be sent to the Consulting Contract Administrator, except as provided in C17.
- C16.3 Either party may, by giving notice, designate another address at which it will accept notices or other communications.
- C16.4 Delivery by hand to the Consultant's designated supervisor at the Site shall constitute delivery to the Consultant.
- C16.5 A notice or other communication shall:
- (a) if delivered by mail, be deemed to have been received on the second Business Day on which mail is delivered by Canada Post following the date of mailing;
 - (b) if delivered by hand, be deemed to have been received on the day of delivery;

- (c) if delivered by fax, be deemed to have been received on the day of transmission, if a Business Day, and if not a Business Day, on the next Business Day after the day of transmission; and
- (d) if delivered by email, be deemed to have been received on the day the sender receives an email 'read' receipt confirming receipt of the notice at the recipient's email address.

C17. DISPUTE RESOLUTION

Appeals & Requests for Appeals

- C17.1 If the Consultant disagrees with a Final Determination of the Consulting Contract Administrator they may, within seven (7) Calendar Days after receiving notice of the Consulting Contract Administrator's Final Determination, submit a properly completed Dispute Resolution Process Application Form ("Application Form"), as set out on the City's Materials Management Website, to the City of Winnipeg Legal Services Department ("Legal Services") at the address specified therein.
- C17.2 The Appeal Process detailed in C17.3 through C17.10 ("Appeal Process") will only be available to Consultants where the disagreement under C17.1 is with respect to factual matters. There will be no access to the Appeal Process for disagreements with respect to legal matters. Legal Services is the sole and final authority to determine whether an Application Form raises a Disputed Matter that is a factual dispute and suitable for the Appeal Process, and no appeal is available to the Consultant from such a determination. If the Consultant neglects or fails to observe fully and faithfully the above and following conditions for participation in the Appeal Process, they shall be deemed to have waived any ability to participate in the Appeal Process with respect to the Disputed Matter.
- C17.3 Within ten (10) Business Days of the receipt by Legal Services of the Application Form pursuant to the above C17.1, Legal Services shall:
- (a) review the Application Form to determine if the matter(s) contained therein ("Disputed Matter") are permitted under the Appeal Process with respect to factual matters as provided in the above C17.2, and;
 - (b) issue a letter to the Consultant identifying Legal Services' determination ("Legal Services Response Letter").
- C17.4 If Legal Services has determined that the Disputed Matter may proceed in the Appeal Process, the Consultant and Consulting Contract Administrator's management level representatives (including the applicable Department head) must, within fifteen (15) Business Days of the date of the Legal Services Response Letter, begin negotiations in good faith on the Disputed Matter. Both the Consultant and Consulting Contract Administrator's representatives must make all reasonable good faith efforts to resolve the Disputed Matter. As these negotiations are not an adjudicative hearing, neither party may have legal counsel present during the negotiations.
- C17.5 If the negotiations required by C17.4 do not successfully resolve the Disputed Matter within thirty (30) Business Days of the date of the Legal Services Response Letter, the Consultant must, within ten (10) Business Days of the end of the period provided in this C17.5 for negotiations, or of the date the parties otherwise agree negotiations have failed, submit their written Appeal Form, in the manner and format set out on the City's Materials Management Website, to the Chief Administrative Officer, and to the Consulting Contract Administrator. The Consultant may not raise any other disputes other than the Disputed Matter in their Appeal Form.
- C17.6 The Consulting Contract Administrator shall submit an Appeal Form identifying their Department's position to the Chief Administrative Officer and to the Consultant within ten (10)

Business Days of the Consulting Contract Administrator's receipt of the Consultant's Appeal Form submitted pursuant to C17.5.

- C17.7 The Consultant and Consulting Contract Administrator's respective Appeal Forms, and documents appended by reference, must contain all information, known to that party to be relevant to the Disputed Matter, including relevant excerpts of the Contract. For the avoidance of doubt, sections of the Contract which are not relevant to the Disputed Matter, or any other irrelevant information or documents, should not be submitted in either Appeal Form.
- C17.8 The City's Chief Administrative Officer shall review the Appeal Forms submitted by the Consultant and Consulting Contract Administrator, and shall issue a written decision on the Disputed Matter contained therein ("CAO's Determination") within thirty (30) Business Days of their receipt of the Consulting Contract Administrator's Appeal Form ("CAO Review Period"). The Chief Administrative Officer may request additional documents or information once from either party at any time during the CAO Review Period, and may extend the CAO Review Period by up to thirty (30) Business Days following receipt of new information or documents, up to a maximum period of sixty (60) Business Days after the Chief Administrative Officer's receipt of the Consulting Contract Administrator's Appeal Form. If the Chief Administrative Officer has requested additional information or documentation from one party during the CAO Review Period, the other party shall also receive such additional information or documentation, and may issue a response thereto; however, each party is limited to one (1) additional response during the CAO Review Period.
- C17.9 There is no opportunity for the parties to appear in person, or to present oral submissions to the Chief Administrative Officer.
- C17.10 The CAO's Determination may not be further appealed. If the Consultant disagrees with the CAO's Determination they may request that the Disputed Matter be referred to arbitration in accordance with C17.11, by providing notice to the Chief Administrative Officer within seven (7) Calendar Days after receiving notice of the Chief Administrative Officer's determination.

Arbitration & Requests for Arbitration

- C17.11 If, at any time before the termination or expiration of the Contract (except as limited by the above C17.10), any dispute, difference or question shall arise between the City and the Consultant regarding the Services, then every such dispute, difference or question may, with the consent of the Chief Administrative Officer, on behalf of the City, and the Consultant, be referred to arbitration. Notwithstanding that the parties may have consented to arbitration, no arbitration shall proceed before the date of Total Performance.
- C17.12 The party desiring arbitration (the "Requesting Party") shall request the consent of the other party (the "Other Party") to refer a particular dispute, difference or question to arbitration.
- C17.13 The Other Party shall reply to the request within seven (7) Calendar Days of receiving same.

Referral to a Single Arbitrator

- C17.14 If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the "Requesting Party's Nominee") within seven (7) Calendar Days of receiving the reply. The Other Party shall have seven (7) Calendar Days after receiving notice of the nomination to accept or reject the Requesting Party's Nominee.
- C17.15 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to them.

Referral to a Panel of Arbitrators

- C17.16 If the Other Party rejects the Requesting Party's Nominee, they shall, within seven (7) Calendar Days of rejection, appoint its own arbitrator.
- C17.17 The Requesting Party shall, within seven (7) Calendar Days of receiving the Other Party's rejection, appoint its own arbitrator.
- C17.18 The arbitrators appointed under C17.16 and C17.17 shall, within seven (7) Calendar Days of the date on which the last of them was appointed, appoint a third arbitrator (the "Panel Chair") who will act as chair of the arbitration panel.

General

- C17.19 The Arbitration Act (Manitoba) or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions.
- C17.20 The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with The Arbitration Act (Manitoba) or any successor legislation thereto.
- C17.21 Where the matter proceeds with a single arbitrator, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.
- C17.22 Where the matter proceeds with an arbitration panel, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.