

## Purchase Order - Standard Terms and Conditions

### Index

#### **Article 1 – Interpretation**

1.01 Defined Terms

#### **Article 2 – General Provisions**

2.01 No Indemnities from City

2.02 Entire Contract

2.03 Severability

2.04 Failure to Enforce Not a Waiver

2.05 Changes by Written Amendment Only

2.06 Force Majeure

2.07 Notices by Prescribed Means

2.08 Governing Law

#### **Article 3 – Nature of Relationship**

3.01 Consultant Power to Contract

3.02 Representatives May Bind Parties

3.03 Consultant Not a Partner, Agent or Employee

3.04 Non-Exclusive Contract, Work Volumes

3.05 Responsibility of the Consultant

3.06 No Subcontracting or Assignment

3.07 Duty to Disclose Change of Control

3.08 Contract Binding

#### **Article 4 – Performance by Consultant**

4.01 Commencement of Performance

4.02 Warranty

4.03 Health and Safety

4.04 Shipment of Goods

4.05 Use and Access Restrictions

4.06 Notification by Consultant of Discrepancies

4.07 Change Requests

4.08 Pricing for Requested Changes

4.09 Performance by Specified Individuals Only

4.10 Time

4.11 Rights & Remedies Not Limited to Contract

#### **Article 5 – Payment for Performance**

5.01 Payment According to Contract Rates

5.02 Hold Back or Set Off

5.03 No Expenses or Additional Charges

5.04 Payment of Taxes and Duties

5.05 Withholding Tax

5.06 Interest on Late Payment

#### **Article 6 – Indemnity and Insurance**

6.01 Consultant Indemnity

6.02 Insurance

6.03 Proof of Insurance

6.04 Workplace Safety and Insurance

#### **Article 7 – Termination, Expiry and Extension**

7.01 Immediate Termination of Contract

7.02 Dispute Resolution by Rectification Notice

7.03 Termination on Notice

7.04 Consultant Obligations on Termination

7.05 Consultant Payment Upon Termination

7.06 Termination in Addition to other Rights

7.07 Expiry and Extension of Contract

7.08 Evaluation of Performance

## ARTICLE 1 – INTERPRETATION

### 1.01 Defined Terms

When used below or in the Purchase Order, the following words or expressions have the following meanings:

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

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

**“City Representative”** means the individual contact for the City on this matter;

**“Consultant”** means the party name on the Purchase order and responsible for the named Deliverables;

**“Consultant Representative”** is as set out in the Purchase Order or quote received from the Consultant;

**“Contract”** means the Purchase Order and these terms and conditions;

**“Deliverables”** means everything developed for or provided to the City in the course of performing under the Contract or agreed to be provided to the City under the Contract by the Consultant or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, the Purchase Order, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**“Effective Date”** is as set out in Purchase Order;

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

**“Industry or Professional Standards”** include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Consultant establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the City;

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

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

**“Purchase Order”** means the cover page to this Contract that sets out the parties and the Deliverables;

**“Rates”** means the applicable price, in Canadian funds unless otherwise specified, to be charged for the applicable Deliverables, as set out in the Purchase Order;

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

**“Term”** is as set out in the Purchase Order.

## **ARTICLE 2 – GENERAL TERMS**

### **2.01 No Indemnities from the City**

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

### **2.02 Entire Contract**

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

### **2.03 Severability**

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

### **2.04 Failure to Enforce Not a Waiver**

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

### **2.05 Changes by Written Amendment Only**

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

### **2.06 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business

person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

**2.07 Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the City Representative and the Consultant Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

**2.08 Governing Law**

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

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

**3.01 Consultant's Power to Contract**

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

**3.02 Representatives May Bind the Parties**

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

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

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

**3.04 Non-Exclusive Contract, Work Volumes**

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

those provided by the Consultant and reserves the right to obtain the same or similar goods and services internally.

**3.05 Responsibility of the Consultant**

The Consultant agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Consultant's liabilities under the Contract and under the general application of law. The Consultant shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Consultant pursuant to the Contract or otherwise at law or in equity, the Consultant shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above-mentioned individuals and entities. This paragraph shall survive the termination or expiry of the Contract.

**3.06 No Subcontracting or Assignment**

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

**3.07 Duty to Disclose Change of Control**

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

**3.08 Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

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

**4.01 Commencement of Performance**

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

**4.02 Deliverables Warranty**

The Consultant hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry or Professional Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the Consultant shall forthwith make the necessary corrections at its own expense as specified by the City in a rectification notice.

#### **4.03    Health and Safety**

Without limiting the generality of section 4.02, the Consultant warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, *The Saskatchewan Employment Act (S-15.1)* and regulations, as well as any other applicable occupational health and safety laws, regulations and standards in relation to the performance of the Consultant's obligations under the Contract. The Consultant shall provide the City with evidence of the Consultant's compliance with this section upon request by the City.

#### **4.04    Shipment of Goods**

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

#### **4.05    Use and Access Restrictions**

The Consultant acknowledges that unless it obtains specific written preauthorization from the City, any access to or use of the City property, technology or information that is not necessary for the performance of its contractual obligations with the City is strictly prohibited. The Consultant further acknowledges that the City may monitor the Consultant to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Consultant.

#### **4.06    Notification by Consultant of Discrepancies**

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

#### **4.07    Change Requests**

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

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

Where a City change request includes an increase in the scope of the previously contemplated Deliverables, the City shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Consultant shall not unreasonably

refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the City and the Consultant within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

**4.09 Performance by Specified Individuals Only**

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

**4.10 Time**

Time is of the essence of the Contract.

**4.11 Rights and Remedies Not Limited to Contract**

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

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

**5.01 Payment According to Contract Rates**

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

**5.02 Hold Back or Set Off**

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

**5.03 No Expenses or Additional Charges**

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

**5.04 Payment of Taxes and Duties**

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

**5.05 Withholding Tax**

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

## 5.06 **Interest on Late Payment**

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

# ARTICLE 6 – INDEMNITIES AND INSURANCE

## 6.01 **Consultant Indemnity**

The Consultant hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Consultant, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent Consultants in the course of performance of the Consultant's obligations under, or otherwise in connection with, the Contract.

## 6.02 **Insurance**

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

(a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$2,000,000** per occurrence and including products and completed operations liability. The policy is to include the following:

- the City as an additional named insured, when required to do so and which shall be set out in the Purchase Order as a requirement, with respect to liability arising in the course of performance of the Consultant's obligations under, or otherwise in connection with, the Contract
- contractual liability coverage
- cross-liability and severability of interests clause
- employers liability coverage
- non-owned automobile coverage with blanket contractual coverage for hired automobiles

## 6.03 **Proof of Insurance**

When requested to do so, the Consultant shall provide the City with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage. The Consultant shall provide the City with renewal replacements on or before the expiry of any such insurance. Upon the request of the City, a copy of each insurance policy shall be made available to it. The Consultant shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the City and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

#### **6.04 Workplace Safety and Insurance**

The Consultant warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable will provide proof of valid coverage by means of a current clearance certificate to the City upon request. The Consultant covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractor under all applicable workplace safety and insurance laws and regulations during the Term. The Consultant further agrees to indemnify the City for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Consultant's failure to comply with any applicable workplace safety and insurance laws or related to the Consultant's status with any workplace safety and insurance board or body.

### **ARTICLE 7 – TERMINATION, EXPIRY AND EXTENSION**

#### **7.01 Immediate Termination of Contract**

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

#### **7.02 Dispute Resolution by Rectification Notice**

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

#### **7.03 Termination on Notice**

The City reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Consultant.

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

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

facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

**7.05 Consultant's Payment Upon Termination**

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

**7.06 Termination in Addition to Other Rights**

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

**7.07 Expiry and Extension of Contract**

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

**7.08 Evaluation of Performance**

The Consultant shall be subject to a performance evaluation during the course of, and/or at the conclusion of the assignment.

In the event that the Consultant fails to perform its obligations under the Contract, the City may, in addition to any and all legal and equitable remedies available to it suspend the Consultant from participating in future procurement opportunities.