

Terms and Conditions

Edmonton

- 1. Interpretation.** Unless there is something in the context inconsistent therewith, in this Contract: **City** means The City of Edmonton; **Contract** means the Requirements, these Terms and Conditions, and the Purchase Order or Outline Agreement (as applicable); **Contractor** means the supplier of the Goods and Services named in the Purchase Order or Outline Agreement as the Contractor; **Goods** means goods to be delivered by the Contractor under this Contract, as described in the Requirements, and without limiting the foregoing may include intellectual property rights; and **Services** means services to be performed by the Contractor under this Contract, as described in the Requirements. This Contract constitutes the entire agreement between the parties with respect to its subject matter. This Contract is made under the laws of the Province of Alberta, and for all purposes is to be construed in accordance with those laws. Unless otherwise indicated in the Purchase Order or Outline Agreement, all dollar amounts referred to in this Contract are in Canadian Dollars.
- 2. Goods and Services.** In accordance with this Contract, the City agrees to purchase and the Contractor agrees to provide any Goods and Services required under this Contract in the time stated in this Contract for delivery.
- 3. Payment.** As the City receives Goods, Services, or both as required under this Contract and to the City's satisfaction, the City agrees to pay the Contractor in accordance with this section. Pricing for Goods and Services to be provided under this Contract shall be as set out in Purchase Order or Outline Agreement. If the Goods, Services, or both received are to the City's satisfaction, the City shall pay the amount required for those Goods, Services, or both within 30 days of the City's receipt of the Goods, Services, or both (as applicable). If the City and the Contractor dispute the receipt of any Goods, Services, or both, that dispute shall be resolved in accordance with Section 20. The City may set off any overdue amounts owed by the Contractor to the City against any amounts payable to the Contractor pursuant to this Contract. No payment shall relieve the Contractor from liability if the Contractor fails to comply with any of the terms of this Contract. The Contractor agrees that, unless otherwise indicated in the Purchase Order or Outline Agreement, the pricing includes all of the Contractor's costs, including but not limited to storage, labour, overhead, equipment, transportation, fuel, shipping, delivery, brokerage costs, customs fees, import duties, taxes (with GST noted separately), supplies, permits, licences, and any other fees related to the Goods and Services, and transportation and shipping of the Goods is DDP (City Facility) Incoterms® 2010. The Contractor shall deliver to the City any documentation which the City may reasonably require to evidence the transfer of title in and to the Goods, free and clear of all liens, charges, and encumbrances.
- 4. Warranty.** The Contractor represents and warrants that Goods and Services provided under this Contract will be in compliance with the Requirements. All Goods provided under this Contract must be free from defects and imperfections in material, workmanship and design. The Contractor shall perform all Services in a competent, diligent, professional and workmanlike manner consistent with standards in accordance with generally accepted industry practice or trade custom observed in the industry for similar services, with all due skill, diligence, prudence, efficiency and foresight which would be reasonably expected from a contractor skilled and experienced in similar services. If any warranties with regard to the Goods, Services, or both are issued to the Contractor and not the City, the Contractor will take all such further steps and actions as may be required to assign the benefit of such warranties to the City and will supply copies of all applicable warranties and terms. Without limiting the foregoing, if the Goods are subject to a manufacturer's warranty, the Contractor shall deliver to the City all such documentation as the City may reasonably require to evidence that the Goods are subject to such warranty. The Contractor warrants that none of the Goods or Services being provided under this Contract infringe any intellectual property rights of any other person. Except as otherwise specified in this Contract, the Contractor makes no express or implied representations, warranties, or conditions of any kind in respect of the Goods or Services, including but not limited to implied or statutory warranties or conditions of merchantability or fitness for a particular purpose.
- 5. Insurance.** Throughout the term of this Contract, the Contractor shall maintain in full force and effect the following: General Liability Insurance in an amount not less than \$2,000,000 per occurrence for personal injury and/or property damage. Such policy shall be endorsed to include the following: (a) Contractual Liability (including this Contract); (b) Non-Owned Automobiles; (c) Independent Contractors; (d) Products and Completed Operations; (e) Broad Form Property Damage; (f) Employees as Additional Insureds; (g) Cross Liability; (h) Contingent Employers Liability as applicable; (i) Garage Liability as applicable; and (j) City as an Additional Insured. The insurance coverage shall be in a form acceptable to the City's Director of Risk Management. The Contractor shall submit evidence of such policy to the City upon the City's request.
- 6. Contractor Default.** The City may notify the Contractor in writing that the Contractor is in default of its obligations under this Contract if the Contractor: (a) refuses or fails to supply Goods or provide Services in compliance with this Contract; (b) refuses or fails to supply a sufficient number of properly skilled workers for the performance of any Services; (c) fails to make payments due to its suppliers, subcontractors, or employees; (d) disregards any federal, provincial, and municipal legislation, codes, bylaws, standards, or regulations; or (e) is otherwise in breach of a provision of this Contract. If the City notifies the Contractor in writing that the Contractor is in default, the Contractor shall cure the default within 10 business days of receiving the default notice.

7. **Termination.** The City may terminate the Contract immediately without prejudice to any other right or remedy the City may have by giving the Contractor notice in writing if the Contractor: (a) Fails to cure a default in accordance with Section 6; (b) Is adjudged bankrupt, commits an act of bankruptcy, makes a general assignment for the benefit of creditors, becomes insolvent, or if a receiver is appointed on account of the Contractor's insolvency; (c) Abandons the performance of this Contract; or (d) Assigns this Contract without the required written consent. The Contractor may terminate the Contract upon 7 days written notice to the City if the City fails to pay any undisputed invoice amounts within 90 days of the City receiving the invoice.
8. **Assignment.** This Contract is not assignable by either of the parties without the prior written consent of the other party. Any attempt to assign any of the rights, duties, or obligations of this Contract without written consent is void.
9. **Sustainable Purchasing Policy and Supplier Code of Conduct.** The Contractor acknowledges that it has reviewed and it understands the City's Sustainable Purchasing Policy and shall adhere to the City's Supplier Code of Conduct. Both documents are located at:
https://www.edmonton.ca/business_economy/selling_to_the_city/sustainable-purchasing-policy.aspx.
10. **Compliance with laws and City policies.** The Contractor shall comply with all relevant federal, provincial, and municipal legislation, codes, bylaws, standards, and regulations as well as City policies, directives and procedures. The Contractor shall obtain and pay for all necessary permissions or licenses required for the provision of the Goods and Services. If the Contractor, in performing or failing to perform this Contract, violates any laws, bylaws, regulations, codes, or orders of any authority having jurisdiction, the Contractor shall be responsible for and shall correct any violations thereof, bear all resulting costs, expenses, penalties, and damages, and fully indemnify the City for any costs, expenses, penalties, and damages which the City may incur as a result of the violations.
11. **Workers' Compensation.** Without limiting anything in Section 10 above, the Contractor shall provide to the City evidence of compliance with the *Workers' Compensation Act*, R.S.A. 2000, c. W-15 (the "WC Act") within two (2) days of receiving notice by the City to provide such information. In the event that the Contractor is exempt from the WC Act, the Contractor shall provide evidence of such exemption. If the Contractor is from a jurisdiction other than Alberta whose workers are not eligible to receive benefits under the WC Act and a subcontractor or other company is not carrying such coverage on the Contractor's behalf, then the Contractor will provide written verification that the workers' compensation plan of its jurisdiction will provide comparable workers' compensation benefits to its workers while working in Alberta within two (2) days of receiving notice by the City to provide such information. Alternatively, at the City's sole discretion, the Contractor will provide evidence that the General Liability Insurance requirement contained in Section 5 has been endorsed to provide employers' liability coverage for the duration of the Agreement.
12. **Confidentiality.** The Contractor agrees that all data, information and material (excluding that which is publicly available) provided to the Contractor by the City or obtained by the Contractor in providing any Goods or Services, will be confidential, both during and after the term of this Contract. The Contractor agrees that neither it, nor its employees, agents, subcontractors, suppliers, or volunteers shall disclose or otherwise communicate any confidential information that was gained by them during the course of providing any Goods or Services under this Contract, unless so required by or in accordance with the law.
13. **Freedom of Information and Protection of Privacy Act.** The Contractor agrees that for the purposes of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ("FOIP Act"), the City's employees include any person who performs a service for the City including an appointee, volunteer, student, or under a contract or agency relationship with the City, and the Contractor is therefore, pursuant to the FOIP Act, deemed to be a City employee for the purposes of the FOIP Act. The Contractor agrees that the FOIP Act applies to all information or records within the Contractor's custody or control that is collected or created for the purposes of this Contract.
14. **Persons Under the Age of 18.** The Contractor agrees that neither it nor any subcontractors will not collect, use, share, or disclose any personal information whatsoever regarding a person under the age of 18 unless the Contractor or its subcontractors, as applicable, are authorized to do so under applicable laws. In addition, prior to any collection, use, sharing, or disclosure of personal information of persons under the age of 18, the Contractor, whether it or its subcontractors will be collecting the information, must seek City approval for the collection, use, sharing, or disclosure of the information. Neither the Contractor, nor its subcontractor, may proceed with the collection, use, sharing, or disclosure without the City's explicit written approval. For the avoidance of doubt, this section applies to all personal information regarding persons under the age of 18, including aggregate data, whether or not the individual to which the information refers is identifiable as a result of the information. The Contractor further agrees that "use" of personal information for the purposes of this section includes, but is not limited to data analytics and other analyses of information provided by or about persons under the age of 18. For greater certainty, the Contractor agrees that it shall not make any video or audio recordings or collect any images of persons under the age of 18. For the avoidance of doubt, video recordings include, but are not limited to, recordings of video conferences and meetings. The Contractor agrees and acknowledges that persons under the age of 18 do not have capacity to give consent for the purposes of privacy legislation, and therefore the Contractor agrees that this section applies regardless of whether the person under the age of 18 in question has attempted to or has otherwise expressed a willingness to provide consent to the Contractor or subcontractor for the collection, use, sharing, or disclosure in question.
15. **Intellectual property rights.** All base materials, research results, computer programs, drawings, documents and notes or materials of any type whatsoever developed or prepared by the Contractor (the "Documents") in performance of the Services shall vest in and become the absolute property of the City, including assignment of all copyright. The Contractor agrees that this transfer of property and assignment of copyright applies to the Documents notwithstanding that the Documents may contain wording to the contrary. Except with respect to any third party intellectual property rights, the Contractor warrants that the Contractor is the only person who has or will have moral rights in the Documents and the

Contractor waives in favour of the City, all of the Contractor's moral rights, as provided for in the law of copyright, in the Documents. For greater certainty, Documents as defined in this section do not include the Contractor's pre-existing intellectual property or derivatives thereof, owned by the Contractor and used in the performance of the Services (the "Materials"), which remains the Contractor's intellectual property. Notwithstanding the foregoing, the Contractor agrees that any of the Materials used in the performance of the Services or incorporated into the Documents may be used by the City for its business purposes and may be shared with the City's other contractors. To the extent that the Materials are included in the deliverables to the City, the City shall receive a perpetual, royalty-free, non-transferable, non-exclusive license to use the deliverables for the purpose for which they were intended. The Contractor hereby warrants that if incorporating any third party intellectual property into the Documents, Materials or Services, it has the requisite permission of the third party to do so and that it has secured the City a perpetual, royalty-free, non-transferable, non-exclusive license to use such intellectual property. Upon completion of the Services or termination of this Contract, the Contractor shall deliver all of the Documents to the City on demand by the City. The Contractor may keep copies of the Documents. Once the City has possession of the Documents, the City is solely responsible for the use that the City makes of the Documents in other projects.

16. **Notices.** Any notice, demand, or other communication to be given to any party to this Contract is to be in writing and either: (a) Personally delivered to such party; or (b) Sent by registered mail, postage prepaid. Any aforementioned notice is to be delivered or sent to the intended recipient at its address as set out in the Purchase Order or Outline Agreement. Any party may from time to time changes its address by written notice to the other party given in accordance with this section.
17. **Time.** Time is of the essence with respect to the delivery of all Goods and Services under this Contract.
18. **Liability.** Each party shall be liable for all damage, loss, and injury of any kind and nature whatsoever caused by, resulting from, or arising out of any willful or negligent act, error, or omission by that party or any person for whom that party is responsible at law or pursuant to the terms of this Contract. Without limiting anything else in this Contract, each party shall indemnify and hold the other party and its agents, employees, and volunteers harmless from and against all losses, claims, demands, payments, suits, judgments, costs, or expenses of every nature and description arising out of or in consequence of this Contract.
19. **Force majeure.** Neither party is liable for any loss, detention, default, damage or delay in fulfilling the obligations under this Contract caused by or resulting from causes beyond its reasonable control, including, but not limited to, any act of God, fire, flood, acts of any government authority, enemy or hostile actions, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, civil disturbances, explosions, or other casualty.
20. **Dispute resolution.** The parties shall seek to resolve any disputes with regard to this Contract expeditiously and in good faith through negotiation. If a dispute cannot be resolved within a reasonable amount of time through negotiation, the parties shall refer the dispute to arbitration of a single arbitrator. The award and determination of the arbitrator is binding upon the parties and their respective heirs and assigns, with no right of appeal. The arbitration shall be conducted in accordance with the City's Rules of Arbitral Procedure, which can be found on the City's website at: www.edmonton.ca/consultant.
21. **Remedies.** The rights, powers and remedies of the City in this Contract are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to the City in law or equity.
22. **City's right to audit.** The City may audit all financial and related records associated with the Goods, Services, or both provided pursuant to this Contract including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Contractor. The Contractor shall at all times during the term of this agreement and for a period of six (6) years after the Contractor has completed its work under this Contract, keep and maintain in accordance with generally accepted accounting standards, all records in any form, that relate to this Contract, including without limitation, all quotations, correspondence, invoices, vouchers, timesheets, receipts, ledgers, electronic mail or electronic records, spreadsheets, faxes, reports, tests or inspections.
23. **Waiver.** Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so does not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy does not prevent its subsequent exercise or the exercise of any other right, power or remedy.
24. **Amendments.** Any amendments to this Contract must be in writing and signed by both parties.
25. **Survival.** The following provisions survive the termination or expiry of this Contract and continue in full force and effect: Section 12, Section 13, Section 14, Section 15, Section 18, and Section 22.