

PROFESSIONAL SERVICES TERMS AND CONDITIONS

DATED: _____
(Year/Month/Day)

BETWEEN:

THE CITY OF CALGARY, a Municipal Corporation
of the Province of Alberta,

(hereinafter referred to as "The City")

OF THE FIRST PART

- and -

(hereinafter referred to as the "Consultant")

OF THE SECOND PART

WHEREAS the parties wish to provide general terms and conditions under which the Consultant will perform professional services from time to time for The City or an affiliate thereof, pursuant to written or verbal work orders or requests for services, which must be confirmed in writing by purchase orders issued by The City;

NOW THEREFORE the parties agree that these Professional Services Terms and Conditions will form part of each engagement of the Consultant to provide professional services to The City, along with a project specific scope of work and purchase order.

1.0 Purpose and Relevant Documents

1.1 The purpose of this document is to:

- (a) provide general terms and conditions for the Consultant to provide professional services from time to time; and
- (b) identify the Consultant as being eligible for providing professional services to The City.

1.2 The document by itself does not obligate The City to order any services from the Consultant, or for the Consultant to accept any order for services from The City.

- 1.3 Each project that is to be carried out by the Consultant on behalf of The City will require and be governed by:
- (a) a request for services or work order that confirms the scope of services required,
 - (b) a purchase order (“P.O.” or “Purchase Order”), and
 - (c) these Professional Services Terms and Conditions (which may also be referred to as “PSTC’s”).
- 1.4 Without limiting the generality of the foregoing, but for greater clarity, the following documents (collectively called the “Contract Documents” or “Agreement”) will constitute and contain the terms of agreement between the parties for the performance of professional services (“Services”) in respect of a particular project:
- (a) Request for Proposal (“RFP”), or other written work order or request for services;
 - (b) Written proposal or response of Consultant (“Proposal”) to request described in (a);
 - (c) If a Proposal or response has been provided under (b), then a mutually agreed document confirming the scope of services;
 - (d) The applicable Purchase Order;
 - (e) These Professional Services Terms and Conditions, and
 - (f) Any other document as is specifically identified or incorporated by reference in the applicable Purchase Order.

2.0 Term of PSTC’s

- 2.1 These PSTC’s will be in effect for a period of one (1) year commencing as of the effective date set out at the beginning of this document (hereinafter referred to as “Term”).
- 2.2 When mutually agreeable between The City and the Consultant, the term of these PSTC’s may be extended or renewed under the same terms and conditions for one (1) year periods, not to exceed four (4) additional years. Unless or until either party gives at least thirty (30) days written notice of termination prior to any of the first four (4) anniversary dates of the commencement date, the extension or renewal will be automatic without any further documentation or confirmation being required.

3.0 Performance

- 3.1 Upon Consultant agreeing to perform the Services and upon The City issuing a Purchase Order therefore, Consultant will undertake the performance of the Services as scheduled by The City and thereafter carry them on to completion with due diligence and in a proper professional manner in accordance with generally accepted professional standards. The City may, at its absolute discretion, stop or suspend the performance of the Services at any time, but when Consultant is not in default, The City shall reimburse Consultant in accordance with its schedule of rates referred to below for the reasonable costs occasioned by such stoppage or suspension. Consultant shall make no change or alteration in the Services or perform any additional Services without The City's written authorization, which authorization will not be unreasonably withheld or conditioned.
- 3.2 The City may request that Consultant provide Services to affiliates of The City from time to time. The phrase "affiliate of The City" includes but is not limited to any corporation or partnership in which The City holds a controlling interest. Consultant agrees that in the event of the Consultant and an affiliate of The City mutually agreeing to have the Consultant provide services, the terms and conditions herein will apply to the provision of Services to the affiliate of The City. References hereinafter to "The City" are deemed to refer to or include any affiliate for whom the Consultant is providing Services, when appropriate.
- 3.3 Consultant agrees to immediately report all notifications, advice or other contact, whether verbal or written, received from governmental officials (whether federal, provincial or local) relating to the provision of Services to The City.
- 3.4 The Consultant may be evaluated on its performance at any time during the Term as well as on contract completion. If an evaluation is done, The City's project manager shall provide a copy of the completed vendor performance evaluation form to the Consultant. Information contained in the form will be used for future proposal evaluations and award recommendations. Should the Consultant view any of the information contained therein to be at variance with its own evaluation of performance, the Consultant shall, within ten (10) days of receipt of the vendor performance evaluation form, give notice in writing to The City setting out the items in question which the Consultant feels to be incorrect. The City will then arrange a meeting including the project manager for The City and the Consultant to review the differences.

4.0 Acquaintance with Conditions

- 4.1 Consultant shall acquaint itself with the job site and with all conditions pertaining to the performance of the Services. The City accepts no responsibility for the failure of Consultant to familiarize itself as required, and is not prepared to allow any claim for an increase in fees or compensation arising from any failure of Consultant to reasonably anticipate difficulties.

5.1 Consultant's Obligations

5.1 In the performance of the Services, Consultant, where applicable, shall:

- (a) Before starting the Services, appoint a competent, authorized representative acceptable to The City to represent and act for the Consultant, inform The City in writing of the name and address of such representative together with a clear statement of the scope of authority to represent and act for the Consultant, and specify any and all limitations of such authority.
- (b) Furnish at its own expense and cost any and all necessary labour, machinery, equipment, tools, transportation, permits, materials, and whatever else is necessary in the performance and completion of the Services other than such items therefore as The City specifically agrees to furnish.
- (c) Comply with all applicable legislation, regulations, codes and rules of any governmental body having jurisdiction, including without limitation the Government of Alberta (Alberta). In addition to the foregoing and not in substitution, Consultant must fully comply with all applicable safety legislation, regulations, codes and bylaws, whether Federal, Provincial, or local. In case of any overlap the more stringent will apply. It is the responsibility of Consultant to ensure that all subconsultants, contractors, suppliers, agents, and employees employed by Consultant in the performance of its obligations herein are aware of and conform to all applicable Federal, Provincial and local safety legislation, regulations, codes and rules.
- (d) Cause a minimum of interference with The City's operations and the operations of other contractors on the premises, take all necessary precautions to protect the premises and all persons and property thereon from damage, and, on completion of the Services, leave the premises clean and free of all tools, equipment, waste material, and rubbish.
- (e) Pay and discharge all valid taxes, lienable claims, charges or other impositions imposed or to be imposed by law on Consultant or The City arising out of, in connection with, or resulting from the Services performed. Consultant agrees to indemnify The City against any liability for any such taxes, lienable claims, charges or impositions except taxes imposed on Services that The City has specifically agreed to pay for.

6.1 Fee Structure

6.1 Unless a fixed fee consultant contract is in place, the following fee structure will apply to all work:

- (a) The City will pay the Consultant for its fees and disbursements in connection with Services performed under the applicable Purchase Order. The method of billing fees and disbursements will be as agreed between The City and the Consultant, confirmed in writing.

- (b) The fees payable must not exceed a total agreed amount, unless The City has provided prior written approval. If there is to be a contingency amount in addition to the above-described total amount payable, no amount of such contingency may be paid to the Consultant as fees or otherwise without prior approval in writing from the duly authorized representative of The City, acting reasonably.
- (c) Disbursements will be in addition to the fees payable, and be billed to a maximum of eight (8%) percent of fees, unless otherwise agreed by The City and the Consultant and confirmed in writing.
- (d) Invoices will be payable by The City for work completed hereunder to the satisfaction of The City, within forty-five (45) days of receipt of an invoice detailing hours worked and disbursements included. If the parties so agree fees may be made payable at regular intervals during the currency of this Agreement for work in progress completed to the satisfaction of The City.
- (e) Goods and Services Tax (GST) is excluded from the prices herein. GST, to the extent applicable, will be shown separately on all invoices and will be paid by The City to the Consultant. If GST is applicable, the Consultant agrees to include its Business Number on all invoices and remit to the Canada Revenue Agency ("CRA"), pursuant to the provision of the *Excise Tax Act* (Canada), as amended from time to time, any GST paid or due. If the provision regarding unregistered suppliers and "small suppliers" as defined in Section 148 of the *Excise Tax Act* applies, the Consultant should indicate this status on its invoices.
- (f) The Consultant acknowledges that The City is obligated to deduct a percentage specified by the CRA from certain taxable payments to non-residents, as defined in the *Income Tax Act* (Canada), as amended from time to time, unless the Consultant provides The City with a waiver letter from the CRA.

Taxable payment includes but is not restricted to Services performed in Canada, computer software license fees, repairs and equipment rentals. For further information, the Consultant must contact the CRA.

- (g) All invoices submitted by the Consultant to The City require the Purchase Order Number as assigned by The City to be included.

6.2 Limitations on Work and Fee

- (a) Where during the performance of any Agreement that incorporates these Professional Services Terms and Conditions it appears to the Consultant that the aggregate of the fees to be paid to the Consultant by The City will exceed the maximum limit of fees permitted to be paid pursuant to the applicable Purchase Order, the Consultant must forthwith advise The City in writing of:
 - (i) the amount by which the aggregate of the fees and disbursements will exceed the limit or limits applicable thereto; and

- (ii) the reason or reasons why the limit or limits applicable thereto will be exceeded.
- (b) Unless the Consultant gives the required notice in writing as soon as practicable after the Consultant discovered or reasonably ought to have discovered that the initial limit or limits will or may be exceeded, and in any event not later than fourteen (14) days after such time, The City may refuse to pay additional fees, or disbursements, or both.
- (c) The Consultant must not proceed to perform any altered or additional services which if performed would cause the limits of the fees and disbursements as set out to be exceeded unless notice has been given and until the written approval of The City Project Manager, has been obtained.

7.0 Time

- 7.1 Time is of the essence for each Agreement and all Services performed relative to each Agreement incorporating these Professional Services Terms and Conditions.
- 7.2 In the event of any Force Majeure, reasonable time extensions or adjustments will be allowed by The City.
- 7.3 “Force Majeure” means an event that results in either party being delayed or unable to perform any part of its obligations under this Agreement due to labor disputes, strikes, walkouts, fire, unusual delay by common carriers, unavoidable catastrophe, or circumstances of any kind beyond the control of such party including without restricting the generality of the foregoing, acts of God, fire, war, provincial or federal governmental regulations in the case of The City and all governmental regulations in the case of the Consultant. In such an event the affected party will be excused from the performance of any obligation to the extent that performance is prevented, hindered or delayed by such causes. Upon the occurrence of any such event, the affected party shall notify the other party and use reasonable efforts to remedy or correct the delay or failure to perform as soon as possible. The party delayed, hindered or prevented from performing any part of its obligations will not be liable to the other party for any damages, however sustained by the other party, or for any failure to perform any act, or nonperformance of any obligations due to any of these circumstances.

8.0 Insurance

- 8.1 Consultant, during the term of every Agreement incorporating these Professional Services Terms and Conditions and at its own expense, must maintain, with Insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta and in forms satisfactory to the City Solicitor, the following insurance policy:
 - (a) a Commercial General Liability (“CGL”) insurance policy for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence and such policy is to include:

- (i) The City identified as an Additional Insured;
- (ii) a Cross Liability clause;
- (iii) contractual liability coverage;
- (iv) non-owned Automobile liability clause.

- 8.2 The said insurance policy is to include provision for the insurers to endeavour to provide The City with thirty (30) days written notice prior to cancellation, and thirty (30) days prior notice of any material change restricting coverage of said insurance policies.
- 8.3 Consultant shall furnish documentary evidence satisfactory to the City Solicitor of evidence of such policies and of the renewal or continuance of such insurances within ten (10) business days of any expiry date or dates thereof.
- 8.4 Consultant, and not The City, shall be responsible for any deductible that may apply in any of the said insurance policies.
- 8.5 The Consultant covenants and agrees that The City's insurance requirements mentioned above are not to be construed to limit or restrict, and in no manner will limit or restrict the liability of the Consultant.

9.0 Indemnity

- 9.1 Consultant agrees to indemnify and hold harmless The City from any loss or damage, any and all third party claims, demands, or actions, for which Consultant is legally responsible, including those arising out of negligence, wilful harm, or crimes by Consultant or Consultant's employees, agents, or sub-consultants. In the event of any claim against The City covered by CGL coverage described in subsection 8.1(a), the Consultant agrees to defend The City.
- 9.2 This hold harmless will survive completion or termination of the relevant Agreement for the balance of the relevant limitation period under the *Limitations Act* (Alberta), as modified by section 10, below
- 9.3 The City will not be liable nor responsible for any bodily or personal injury or property damage of any nature that may be suffered by Consultant, its employees, agents or sub-consultants in the performance of any Agreement, except to the extent of any negligence or misconduct on the part of The City.

10.0 Limitations

- 10.1 The parties hereby acknowledge and agree that any limitation period connected with the subject matter of an Agreement incorporating these Professional Services Terms and Conditions, or the particular Purchase Order, will be extended for a period of two (2) years in addition to the two (2) years provided in the *Limitations Act* (Alberta).

11.0 Independent Contractor

11.0 Consultant is an independent contractor with respect to all Services performed under an Agreement incorporating these Professional Services Terms and Conditions, and neither Consultant nor anyone used or employed by Consultant may be deemed for any purpose to be the agent, servant or representative of The City in performance of such Services or in any matter dealt with herein. The City will have no direction or control of Consultant or its employees, agents and subcontractors, except in the results to be obtained. Neither party will assume any liability for the actions or omissions of the other party except as stated in the applicable Agreement, including these terms and conditions.

12.0 Conflict of Interest

- 12.1 During the term of each Agreement, the Consultant must not engage in or provide, to any other person or company or entity, any service or act which would be reasonably perceived to be in conflict with the interest of The City in respect of the Services being provided by the Consultant to The City.
- 12.2 The Consultant must provide timely disclosure of any actual or potential conflict of interest for this project, including any arising from any common ownership or association with any party that has worked on or is working on any part of the project.
- 12.3 Any failure to provide timely disclosure of any potential conflict of interest, or failure to avoid engaging in or providing to any other company or entity any service or act which could be reasonably perceived to be in conflict with the interest of The City in respect of the services being provided by the Consultant to The City or in violation with any legislation regarding fair competition, will be grounds for terminating any engagement of the Consultant. Any such failure may also be noted on the performance record maintained by The City for the Consultant.

13.0 Security

13.1 The City may require the Consultant to obtain a security clearance, without cost to The City, from the Calgary Police Service for each Consultant representative, and provide reasonable proof thereof prior to commencement of Services under an Agreement.

14.0 Confidentiality and FOIP

14.1 All information including, without limitation, any technology of a proprietary or novel nature, disclosed to Consultant by The City or by a third party to Consultant as a representative on behalf of The City (which, in addition to the confidentiality requirements hereunder will be kept confidential by Consultant in accordance with the terms of its disclosure by such third party) or obtained or developed by Consultant in the performance of Services under an Agreement, other than that which is common knowledge or within the public domain, will be the confidential property of The City and must not be divulged by Consultant, except to duly authorized representatives of The City. Such confidential information or property is not to be employed other than in the performance of Services for The City unless otherwise duly authorized by The City in

writing. These provisions will remain binding obligations on Consultant after the completion, expiration or termination of the applicable Agreement until The City reasonably determines that the confidential information referred to herein has become part of the public domain other than by the divulgence or use prohibited herein. This requirement does not prohibit the Consultant from complying with an order to provide information or data issued by a court or other authority with proper jurisdiction, or to act to correct or report a situation which the Consultant may reasonably believe to endanger the safety or welfare of the public.

- 14.2 All documents submitted to The City of Calgary are subject to the protection and disclosure provisions of the *Freedom of Information and Protection of Privacy Act* (Alberta) as amended, revised or substituted from time-to-time. While this Act allows any person a right of access to records in The City's custody or control, it also prohibits The City from disclosing personal or business information where disclosure would be harmful to business interests or would be an unreasonable invasion of personal privacy as defined in Section 16 and 17 of the Act.
- 14.3 The Consultant should identify appropriate parts of any proposal or submission as confidential, since this will clearly establish its expectations towards the document, both to The City as a public body and to the Information and Privacy Commissioner in any review of or refusal of access. The City, however, may not be able to meet these expectations in every instance.

15.0 Reporting

- 15.1 Consultant shall provide to The City on a timely basis such deliverable or deliverables, or written confirmation of delivery thereof, in respect of the Services as is agreed to by the parties and confirmed in writing. A deliverable may be in any form that is mutually agreed to, including without limitation a design, plan, set of record drawings, or report.

16.0 Intellectual Property

- 16.1 Unless otherwise agreed and confirmed in writing:
- (a) All material, including but not limited to programs, reports, notes, maps, drawings, photographs, data, forms and other records prepared, created, written or recorded by: (a) the Consultant, or (b) The City or (c) the Consultant and The City jointly, in connection with the Services under an Agreement incorporating these Professional Services Terms and Conditions or as a deliverable under such Agreement, will be the property of The City; accordingly, the Consultant hereby assigns to The City all rights, title and interest it may have from time to time in such material and copyright therein will vest in The City.
 - (b) During the term of the relevant Agreement, the Consultant shall have a non-exclusive, non-transferable license to use such material for the sole purpose of providing and completing the Services. Upon the termination or completion of a specific project or Agreement, the Consultant will promptly return such material to The City whether completed or not. Notwithstanding the preceding sentence,

the Consultant may retain for archival purposes a single copy of each item of such material; and

- (c) Every invention, discovery or improvement developed by the Consultant in the course of, or in connection with, performing the Services under an Agreement where the invention, discovery or improvement has been initiated or directed or specifically requested by The City, will be the property of The City, accordingly, the Consultant hereby assigns any intellectual property right to any such invention, discovery or improvement developed to The City.

- 16.2 The parties acknowledge and confirm that any intellectual property that was developed prior to the relevant Agreement, or that was developed by the Consultant independently from such Agreement with The City, or that was developed at the sole initiative of the Consultant without any prior initiation or direction or request from The City, will be outside the scope of section 16.1.
- 16.3 In the event Consultant's documents are subsequently reused or modified in any material respect without the prior written consent of the Consultant, The City agrees to indemnify the Consultant from any claims resulting from such unauthorized reuse or modification.
- 16.4 The parties acknowledge that any electronic files provided by Consultant are largely for ease of use and convenience. However, as the Consultant is not able to ensure the authenticity or integrity or completeness of information provided in electronic format, the parties agree that in the event of any inconsistency between information provided by way of hard copies that have been stamped or sealed or both and information in electronic files, the information in hard copy that has been stamped or sealed or both will govern.
- 16.5 If the Consultant needs access to data of The City in order to carry out a specific project described in detail in an Agreement incorporating these Professional Services Terms and Conditions, The City will grant a non-exclusive, non-assignable license to have access to and to use the data in accordance with Article 32.0.

17.0 Records and Audit

- 17.1 To support all charges invoiced to The City with respect to Services performed hereunder, Consultant, for a period of seven (7) years after the performance of such Services, shall maintain a true and correct set of records pertaining thereto including, without limiting the generality of the foregoing the date and time worked, the location of the Services and the type of Services and invoices issued to The City. Consultant shall allow The City to audit such records upon reasonable request PROVIDED HOWEVER, that Consultant shall have the right to exclude any trade secrets, formulas, or processes from any such audit. Consultant must require each of its subconsultants to keep such records which similarly are to be open to inspection and audit by or on behalf of The City.

- 17.2 No officer, employee or agent of Consultant or its subconsultants may give to, or receive from, any official, officer, employee or agent of The City, or a spouse or relative of any such person, any commission, fee, rebate or gift, other than courtesies of a nominal value, in connection with any Agreement for the performance of Services. Further, no director, employee or agent of Consultant or its subconsultants may enter into any business arrangement with any official, officer, employee or agent of The City that is not related to The City's business. Without limiting the general audit rights under this clause, The City may audit any and all records of Consultant and its subconsultants in connection with an Agreement and the Services performed, and all transactions related thereto, for the purpose of determining whether there has been compliance with this clause.

18.0 Termination of an Agreement

- 18.1 Each Agreement, comprised of each work order or request for services together with the applicable Purchase Order and these Professional Services Terms and Conditions, will continue in full force and effect from the date it is effective until terminated by either party on at least thirty (30) days written notice to the other. The termination of an Agreement, or of a particular work order or request for services and the applicable Purchase Order, will not relieve either party of its respective obligations and liabilities arising from or incidental to Services performed prior to the time of such termination. An Agreement, or the particular work order or request for services and the applicable Purchase Order will continue in force for so long as is required to complete Services agreed to prior to the receipt of the notice of cancellation and to allow The City to exercise its rights with respect to such Services.

19.0 Credit Checks

- 19.1 In circumstances where The City feels a credit check is required, the Consultant agrees to authorize credit checks, in accordance with standard City policy. To enable The City to initiate such credit checks, a "Request for Authorization" form, when received, is to be completed and returned to The City within twenty-four (24) hours of receipt by the Consultant.

20.0 Insolvency

- 20.1 Should Consultant become insolvent or make an assignment for the benefit of creditors or be adjudicated bankrupt or admit in writing its inability to pay its debts generally as the same became due or should any proceedings be instituted by Consultant under any provincial, territorial or federal law for relief of debtors or for the appointment of a receiver, trustee or liquidator of Consultant, or should a voluntary petition in bankruptcy or for a reorganization or for an adjudication of Consultant as an insolvent or a bankrupt be filed, or should an attachment be levied upon Consultant's equipment, then upon the occurrence of any such event The City will have the right to cancel any Agreement and to terminate immediately all Services then being performed by Consultant.

21.0 Assignment or Subcontracting

- 21.1 Consultant must not assign any obligations under any Agreement, or any part thereof, including any remuneration due to it, to any third party without the prior written consent of The City, which consent will not be unreasonably withheld or conditioned. The assignment of any Agreement, if so permitted by The City, or the subcontracting of any Services to be performed under the Agreement, will not relieve Consultant of its obligations. Consultant shall make commercially reasonable efforts to have its subconsultants, if any, comply with the terms and conditions of each Agreement.

22.0 Successors and Assigns

- 22.1 Each Agreement will be binding upon and endure to the benefit of the parties and their respective heirs, executors, administrators, receivers, trustees, successors, and approved assigns.

23.0 Legislation and Jurisdiction

- 23.1 Each Agreement and the Services contemplated under each work order or request for services and the applicable Purchase Order, will be subject to all relevant legislation, regulations, codes, and rules, whether federal, provincial or municipal pertaining to the location or locations where the Services are performed or furnished. In the event any provision of any Agreement incorporating these Professional Services Terms and Conditions is found to be contrary to, or inconsistent with, any such legislation, regulation, code or rule, such provision will be conclusively deemed to be modified accordingly, but in all other respects the remainder of the Agreement will continue in full force and effect. It is agreed that any legal interpretation given to an Agreement will be governed by the laws in force in the Province of Alberta.
- 23.2 No action at law or in equity may be commenced or continued on any matter arising out of or connected with an Agreement other than in a court of competent jurisdiction in the Province of Alberta or on appeal to the Federal Court of Appeal or the Supreme Court of Canada.

24.0 Waiver

- 24.1 No previous waiver or course of dealing will affect either party's right to strict performance of any Agreement, or any work order or request for services and the applicable Purchaser Order.

25.0 Work Site Safety

- 25.1 Work site safety is of paramount concern to The City of Calgary. Therefore, for those projects where the Consultant carries out on-site work, the Consultant, prior to conducting any such work, should schedule a meeting with the project manager for The City to discuss and be briefed on safety issues, such as the Certificate of Recognition Program ("COR") or equivalent safety accreditation, the assignment of prime contractor program and any other such issues as the project manager for The City deems necessary for the safe completion of the project.

25.2 Failure of the Consultant to comply with any and all relevant safety legislation may result in the immediate suspension or termination of any Agreement.

26.0 Notices

26.1 All communications and notices required or permitted to be given under an Agreement, unless otherwise specifically provided for, must be given in writing, and provided to a party at a number set out below, by facsimile or other electronic means of communication, mailed (postage prepaid), or delivered to that party at its address as follows:

The City: The City of Calgary
Finance and Supply #8140
P.O. Box 2100, Station "M"
Calgary, AB T2P 2M5

Attention: Manager, Supply Management
Fax No.: 403-268-5523
Email: supplyconsulting@calgary.ca

Consultant:

Attention:
Fax No.:

Any notice or other communication given by fax or delivery will be deemed to have been given as at the commencement of the next following business day, and any notice or other communication given by prepaid mail will be deemed to have been received on the fifth (5th) business day following deposit in the mail. In times of labour strikes or slow-downs affecting the mail delivery, notice will be effective only if delivered or given by other effective means or upon actual receipt. Any party may change its address for service by notice served as set out above.

27.0 Supersession

27.1 The Agreement between the parties for a particular project supersedes any other agreement between the parties, whether written or oral.

28.0 Alteration of Terms

28.1 The parties hereto may at any time, and from time to time, alter or vary the terms of any Agreement, or of any work order or request for services and Purchase Order, including the obligations of Consultant, by mutual agreement confirmed in writing subject to the approval of the Manager, Supply Management.

29.0 Interpretation

29.1 Whenever in this document or the relevant Agreement the singular or masculine is to be construed as meaning plural or feminine or body politic or corporate or vice versa, as the context so requires.

30.0 Execution of Agreement

30.1 If the Consultant has a seal, the Consultant should include affixing its seal along with the signing of the Agreement by its duly authorized representatives.

30.2 If the Consultant does not have a seal, or if the seal is not available, the Consultant should provide reasonable documentation to confirm that the person or persons signing on its behalf has or have the authority to bind the Consultant as a legal entity. An affidavit of authority together with an affidavit of execution will normally constitute reasonable confirming documentation.

31.0 Dispute Resolution

31.1 Any dispute between the parties as to the interpretation of, subject matter of, or in any way related to, any Agreement or Contract Documents incorporating these Professional Services Terms and Conditions, is to be resolved by the two parties attempting to reach a fair and equitable resolution by using, in good faith, one or more of the following means, in the order listed, until a resolution is arrived at. The means to be used are:

- (a) negotiation;
- (b) mediation;
- (c) arbitration; or
- (d) legal proceedings in a court of competent jurisdiction.

Except for the purposes of preserving a limitation period or obtaining an appropriate interim order or remedy where reasonably necessary, unless otherwise agreed to in writing by the two parties, it will be a condition precedent to the bringing of any legal proceedings that the means or procedures in this clause have been used and followed in good faith. With respect to mediation, unless otherwise agreed to in writing by both parties, mediation will be in accordance with the procedures of the ADR Institute of Canada, Inc. (hereinafter sometimes referred to as the "Institute"), using as mediator a third party neutral person either as mutually agreed to by the parties, or if the parties are unable to agree as selected by the Institute. With respect to arbitration, unless otherwise agreed to in writing by both parties, arbitration is to be by way of a single arbitrator pursuant to the *Arbitration Act (Alberta)*, in accordance with the rules and procedures of the Institute.

32.0 Licensing of City Data

- 32.1 If the Consultant needs access to data of The City in order to carry out a specific project described in detail in an Agreement incorporating these Professional Services Terms and Conditions, The City will grant a non-exclusive, non-assignable license to have access to and to use the data in accordance with one or the other of the following subsections, at the sole discretion of The City:
- (a) the sections that follow in this Article 32.0, or
 - (b) a detailed Data Licence Agreement Schedule that is attached and incorporated as part of the Agreement for a specific project.
- 32.2 The scope of work in the Agreement for each project should specify which of the following applies for that project:
- (a) no data of The City is needed;
 - (b) data of The City is needed, and it will be licensed in accordance with this Article 32.0, or
 - (c) data of The City is needed, and it will be licensed in accordance with a Data License Agreement to be attached as a schedule to the Agreement for the project.
- 32.3 Subject to the terms of the Agreement, The City grants and the Consultant accepts a non-exclusive, non-assignable licence for access to and use of data of The City for the project identified in the Agreement, in accordance with the terms and conditions set out in the Agreement, including the scope of work and these Professional Services Terms and Conditions.
- 32.4 The Consultant may only use the data of The City necessary for the project identified in the Agreement (the “Data”), and only for the purpose of the project. Any documentation provided by The City may be used only as needed in accordance with the authorized use of the Data.
- 32.5 The Consultant acknowledges that there are no limits to the number of licenses or rights that The City may grant to third parties in respect of the Data.
- 32.6 Title to and ownership of the Data and any modifications made to the Data will at all times remain with The City.
- 32.7 The Consultant does not have any right or interest in the Data except as specifically provided in the Agreement.
- 32.8 The Consultant is entitled to make one copy of the Data for back-up, disaster recovery, or archival purposes, so long as each copy remains under the Consultant’s control and is used only to replace an operating copy if the operating copy is destroyed or becomes unusable or inaccessible for any legitimate reason. The Consultant shall

maintain and place a suitable copyright notice in favour of The City on any report or other document that contains a complete copy of, or substantially all of, the Data. The Consultant shall not remove such copyright notice, or any other copyright notice, from the Data.

- 32.9 (a) Warranty regarding Data – The City does not represent or warrant that the Data will be correct or that use of the Data will be uninterrupted or error free.
- (b) The City disclaims any and all warranties and conditions concerning the Data, including any and all warranties and conditions of merchantability and fitness for any particular purpose, performance, and any and all warranties or implied warranties that might arise during the use of the Data. This section 32.9 sets out the entire extent of all warranties and conditions in respect of the Data.
- 32.10 On termination of the Agreement for cause or upon the expiry of the Agreement, the Licensee must promptly discontinue use of the product and documentation, and return the same to The City or in the alternative certify to The City in writing as to such destruction of the product and documentation.

IN WITNESS WHEREOF the parties hereto have executed this document as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

THE CITY OF CALGARY

Per: _____
Print Name: _____
Print Title: _____

Per: _____
Print Name: _____
Print Title: _____

COMPANY NAME

WITNESS (if consultant executes otherwise than as a corporation under seal)

_____ **Print Name of Witness**

Per: _____ **(seal)**
Print Name: _____
Print Title: _____

Per: _____
Print Name: _____
Print Title: _____

COMPANY NAME: (please print)	COMPANY ADDRESS:
CONTACT NAME FOR FURTHER INFORMATION NAME: TELEPHONE: FAX: E-MAIL:	COMPANY TELEPHONE: FAX: EMAIL: