



1. Interpretation

1.1 In the Contract Documents, unless the context otherwise requires, capitalized terms have the meanings set out as follows:

- a) **“Agreement”** means the contract between the City and the Contractor, as defined and described in the Contract Documents, as may be amended, supplemented or restated from time to time;
- b) **“City”** means the municipal corporation generally known as the City of Richmond, British Columbia;
- c) **“Change Order”** means a written direction for a change in the Services delivered by the City to the Contractor;
- d) **“Contract Documents”** means, collectively:
 - i) these General Terms and Conditions of Contract for Consulting;
 - ii) Schedule A – Supplementary Terms and Conditions, if applicable;
 - iii) Schedule B – Scope of Work, if applicable, including any Appendices attached to such Schedule B – Scope of Work;
 - iv) Schedule C – Schedule of Fees, if applicable;
 - v) Schedule D – Quotation Extracts, if applicable;
 - vi) any purchase order issued by the City in respect of the Services;
 - vii) the Notice of Award, if applicable; and
 - viii) any other documents expressly included in the Agreement;
- e) **“Contract Price”** means the fees as set out in the City’s purchase order for the Services, or in Schedule C – Schedule of Fees, or in Schedule D – Quotation Extracts, as applicable;
- f) **“Contractor”** means the entity who or which is awarded the Agreement;
- g) **“Deliverables”** means all of the deliverables described in the Contract Documents;
- h) **“FOIPPA”** means the *Freedom of Information and Protection of Privacy Act* (British Columbia), [RSBC 1996] Chapter 165;
- i) **“Force Majeure”** means an event beyond the reasonable control of a party and includes any work stoppage, war, invasion, insurrection, civil or social unrest, riot, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic or pandemic (other than the Covid-19 pandemic), the imposition of any Laws enacted or adopted after the date of this Agreement relating to an epidemic or pandemic, earthquake, tidal wave or other natural calamities, that prevents, delays or interrupts the performance of any obligation under the Agreement, provided such event does not occur by reason of: (i) the negligence of the party claiming Force Majeure (or those for whom it is in law responsible); or (ii) any act or omission of the party claiming Force Majeure (or those for whom it is in law responsible) that is in breach of the provisions of the Agreement, but Force Majeure does not include: (x) a party’s lack of funds; (y) the bankruptcy or insolvency of any subcontractor of the party; or (z) a shortage or unavailability of labour (including because of a strike, lock-out, picket or other labour dispute), materials or equipment unless such shortage or unavailability is caused by a Force Majeure;
- j) **“Good Industry Practice”** means the standards, practices, methods and procedures to a good professional and commercial standard, conforming to Laws and exercising that degree of skill, 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;
- k) **“Governmental Authority”** means any national, multi-national, federal, provincial, state, municipal, local or other government, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government;
- l) **“GST”** means the federal goods and services tax administered under the *Excise Tax Act* (Canada);
- m) **“Indemnitees”** means, collectively, the City and all of its elected and appointed officials, employees, officers, volunteers, servants, representatives and agents;

- n) **“Key Personnel”** means those individuals expressly identified in the Contract Documents, if any;
 - o) **“Laws”** means all valid laws, including common law, federal, provincial, and municipal statutes, bylaws, and other local laws, orders, rules, regulations, approvals and policies of any Governmental Authority, including those related to occupational health and safety, fire, employment insurance, workers’ compensation, the transportation and handling of hazardous substances environmental protection, standards, building codes and other governmental requirements, work practices and procedures, that are applicable to the discharge of obligations set out in the Contract Documents, including the performance of the Services;
 - p) **“Notice of Award”** means the written notice given by the City to the Contractor awarding the contract for the performance of the Services;
 - q) **“Permits”** means all permissions, consents, approvals, registrations, certificates, permits, licences, statutory agreements and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Services in accordance with the Contract Documents;
 - r) **“PST”** means the British Columbia provincial sales tax administered under the *Provincial Sales Tax Act* (British Columbia);
 - s) **“Services”** means and includes anything and everything required to be done by the Contractor for the fulfillment and completion of the Agreement, and includes, without limitation, the creation and delivery of the Deliverables and anything else identified in Schedule B – Scope of Work or the Notice of Award, if applicable; and
 - t) **“Subcontractor”** means all subcontractors, sub-consultants, suppliers, manufacturers and vendors engaged to perform a portion of the Services, and the term “Subcontractor” will be deemed to include all further subcontractors, sub-consultants, suppliers, manufacturers and vendors engaged below a Subcontractor.
- 1.2 If there is any inconsistency or conflict between provisions of the Contract Documents, then:
- a) the order of priority between the Contract Documents, from highest to lowest with Schedule A – Supplementary Terms and Conditions having the highest priority, is as follows:
 - i) Schedule A – Supplementary General Conditions, if applicable;
 - ii) these General Terms and Conditions of Contract for Consulting;
 - iii) Schedule B – Scope of Work, if applicable, including any Appendices
- iv) attached to such Schedule B – Scope of Work; and
 - v) Schedule C – Schedule of Fees, if applicable;
 - v) any purchase order issued by the City in the respect of the Services;
 - vi) Schedule D – Quotation Extracts, if applicable;
 - vii) the Notice of Award, if applicable; and
 - viii) any other documents expressly included in the Agreement;
- b) drawings of a larger scale have priority over drawings of a smaller scale;
 - c) figured dimensions on a drawing will govern over scaled measurements on the same drawing; and
 - d) documents of a later date will always supersede a similar type of document of an earlier date.
- 1.3 Any forms of agreement, terms and conditions, purchase orders or other contractual-type documents prepared or submitted by the Contractor purporting to apply to the Agreement or the performance of the Services, whether or not signed by the City, are not included in the Agreement and will have no force or effect.

2. Responsibilities and Duties

2.1 Unless expressly provided otherwise in the Contract Documents, the Contractor will provide all labour, materials and equipment necessary for the complete performance of the Services. The Contractor will perform the Services in accordance with the Contract Documents, including Schedule B – Scope of Work, if applicable.

For certainty, the Contractor will, as part of the Services and at no additional cost to the City, perform any service, task or activity that is not specifically listed or described in the Contract Documents but which is required for the proper performance and provision of the Services, which the Contractor will perform as if those services, tasks or activities had been expressly described in the Contract Documents.

3. Execution of the Services

- 3.1 Without limiting subsection 2.1:
- a) the Contractor will, as part of the Services, submit at such time or times as determined by the City, a report to the City indicating:
 - i) what Deliverables have been met over the preceding reporting period; and
 - ii) the status of efforts in relation to the Deliverables set out, including any variances from the Contract Documents and the Contractor’s plan to bring the Services back into conformity with the

Contract Documents for review and acceptance by the City; and

- b) The Contractor will perform the Services in accordance with the schedule or timeline as set out in Schedule B – Scope of Work and Schedule D - Quotation Extracts, or if no schedule or timeline is set out, then in accordance with the schedule or timeline provided by the City, as may be adjusted with the written approval of the City.
- 3.2 The Contractor will perform the Services:
- a) in accordance with the Contract Documents;
 - b) in accordance with Laws and Permits;
 - c) in accordance with Good Industry Practice;
 - d) with that degree of care, skill and diligence normally provided by a qualified and experienced service provider performing services similar to the Services; and
 - e) with qualified, experienced, capable and safety-trained personnel.

If more than one standard, including building codes, other governmental requirements, work practices and procedures, and specifications, applies to the performance of the Services, then the strictest of such will apply.

3.3 Without limiting the generality of subsection 3.2, the Contractor will at all times act professionally and with integrity so as not to embarrass or discredit the City throughout, or in connection with, the performance of the Services.

3.4 The Contractor will have obtained all necessary permits and governmental permissions required to perform its obligations under this Agreement.

3.5 The Contractor will review the Contract Documents and promptly report to the City any discovered error, inconsistency or omission. If the Contractor discovers any error, inconsistency or omission in the Contract Documents, then the Contractor will not proceed with the supply of Services affected by such error, inconsistency or omission without first receiving directions or clarifications from the City. If the Contractor proceeds with such affected supply of Services after becoming aware of an error, inconsistency or omission, or, in any event, after the time when a qualified and experienced contractor should reasonably have become aware of the error, inconsistency or omission, without first receiving directions or clarifications from the City, then the Contractor will, at the Contractor's sole cost and expense, replace or make good any supply of Services which fails to meet the requirements of the Contract Documents. Subject to the above provisions of this subsection 3.5, in conducting such review, the Contractor will not be responsible or liable to the City to discover all errors, inconsistencies or omissions.

3.6 The Contractor will ensure that its obligations under this Agreement are performed by Subcontractors or personnel with the technical and other skills as may be specified in Schedule B - Scope of Work and all other

knowledge, training, experience, qualifications, skills and capabilities necessary to perform their work in a competent and efficient manner.

3.7 The Contractor will promptly remove any Subcontractor or personnel (including personnel of a Subcontractor) whom the City either:

- a) considers unsuitable for the task to which they are assigned; or
- b) considers to be detrimental to its working relationship with the Contractor.

3.8 The following will apply with respect to all Subcontractors:

- a) unless the Contract Documents identify a specific Subcontractor, the Contractor will not directly or indirectly engage or permit the engagement of a Subcontractor to perform a material portion of the Services without the prior written consent of the City, which consent may be arbitrarily withheld;
- b) if and to the extent the Contract Documents identify a specific Subcontractor, then the Contractor will not change any such specified Subcontractor without the prior written consent of the City, which consent may be arbitrarily withheld;
- c) the Contractor will make commercially reasonable efforts to incorporate the terms and conditions of the Contract Documents into agreements with Subcontractors, to the extent such terms and conditions are applicable to the Services being undertaken by such Subcontractors;
- d) the Contractor will be fully responsible for the acts, omissions, errors and defaults of a Subcontractor, its employees or other persons engaged by or through that Subcontractor as if such acts, omissions, errors and defaults were those of the Contractor, and neither the engagement of a Subcontractor by the Contractor nor the approval or consent by the City of or to a Subcontractor will in any way reduce or amend or otherwise alter the Contractor's responsibility for the performance of the Services as set out in the Contract Documents; and
- e) nothing in the Agreement will be construed as creating any contractual relationship between the City and any Subcontractor or any other persons engaged by or through a Subcontractor.

3.9 Without limiting any other provision of this Agreement, the City and its delegates will at all times have the right to review all or any part of the Services and any Deliverables, and may require the Contractor to deliver work product and other documents for review and acceptance as the City may reasonably request. The City's review of any Services or Deliverables is for the City's benefit, and acceptance of any Services or Deliverables will not relieve the Contractor of any of its duties, obligations or responsibilities under this Agreement to perform the Services and to correct defects or deficiencies in the

Services and Deliverables, all in accordance with the requirements of this Agreement.

3.10 The Contractor will, as part of the Services, perform or cause to be performed all tests and inspections as are called for or required under the Contract Documents, or as may be required by Laws, for the performance of the Services. The tests and inspections required by the Contract Documents or by Laws are for the City's benefit and acceptable test and inspection results will not relieve the Contractor of any of its duties, obligations or responsibilities under the Agreement to perform the Services and to correct defects or deficiencies in the Services, all in accordance with the requirements of the Contract Documents.

3.11 If Key Personnel are expressly identified in the Contract Documents, then:

- a) the Contractor will provide the Key Personnel;
- b) the Contractor will ensure that the Key Personnel will be available to provide the commitment specified in respect of the Key Personnel and will give the performance of the Services sufficient priority over other work, tasks and assignments that they may otherwise have assigned to them in order to ensure performance of the Services in compliance with the Agreement;
- c) none of the Key Personnel will be changed without the City's prior written consent, not to be unreasonably withheld but which consent may be subject to the Contractor satisfying the City that the proposed replacement personnel have comparable or superior qualifications and experience to the personnel whom they are proposed to replace;
- d) if any of the Key Personnel are unable to perform their role due to illness, death or their own voluntary termination of employment or engagement (not induced or requested by their employer or client), the Contractor will immediately replace such personnel with other personnel who have comparable or superior qualifications and experience and who are acceptable to the City; and
- e) any changes to Key Personnel made pursuant to subsection 3.11 will be at no extra cost or expense to the City.

4. Compensation

4.1 As payment for the performance of the Services, the City will pay the Contractor the Contract Price.

4.2 The Contract Price will be the entire amount of compensation owing to the Contractor for the complete performance of the Services and this compensation will cover and include all profit and all costs of supervision, labour, material, equipment, transportation and delivery, overhead, financing, all taxes (excluding only GST and PST), and all other costs and expenses whatsoever incurred by the Contractor in performing the Services.

4.3 The City will pay any GST and PST applicable to the Contract Price.

4.4 All payments will be in Canadian funds, unless otherwise stated in the Contract Documents.

4.5 The Contractor acknowledges and agrees that pursuant to applicable Laws, payments to non-residents for any work performed in Canada may be subject to a Non-resident Withholding Tax of fifteen (15%) percent, and that the City will withhold such amounts as are required in accordance with applicable Laws.

4.6 Neither party shall be responsible for any taxes based upon the other's net or gross income or net or gross receipts, or taxes which are capital, property, doing business, excess profits, net worth, or franchise or port fees (including any interest and penalties thereon).

5. Application for Payment

5.1 In addition to any other information as may be required in accordance with the Contract Documents, the Contractor will include in each invoice submitted to the City under the Agreement, at a minimum, the following:

- i) an invoice number;
- ii) the Contractor's name, address and telephone number;
- iii) the title and reference dates or numbers for the Agreement, if any, as may be set out in the Contract Documents;
- iv) the City's purchase order number in respect of the Agreement;
- v) the total amount due for fees;
- vi) the amount of GST and the amount of PST charged in respect of the fees set out in the invoice, as separate line items;
- vii) the Contractor's GST number; and
- viii) all supporting documents as expressly required in the Contract Documents.

5.2 Following the receipt of an invoice from the Contractor, the City will make its own determination of whether the invoice is payable in the amount indicated.

5.3 Unless otherwise set out in the Contract Documents, payment of an invoice prepared and submitted in accordance with Section 5.1, less any holdbacks as may be permitted under this Agreement or at Law, will become due thirty (30) days after receipt of the invoice.

5.4 If the City disputes any amount claimed on an invoice, the City will pay the portion of the invoice it determines is owing and will include with the payment an explanation for any such reduction or non-payment. The City may withhold payment under this Agreement for any disputed amount, without interest, until such dispute is resolved.

5.5 No payment made to the Contractor by the City will at any time constitute approval or acceptance of any

Services under the Agreement, nor be considered a waiver by the City of any of the terms of the Agreement, nor relieve the Contractor of any of its duties, obligations or responsibilities under the Agreement to perform the Services in accordance with the requirements of the Contract Documents, nor constitute a waiver by the City of any terms of this Agreement or other rights at law or in equity.

5.6 If the City believes in good faith that some portion of the Services has not been completed or is not performing satisfactorily, the City may withhold payments to the Contractor pursuant to Section 5.5 and require the Contractor to correct such work prior to the City releasing such payments. In such event, the City will provide the Contractor with an explanation of the concern and the remedy that the City expects. Subject to the foregoing, the City will release payments to the Contractor after the City:

- a) is satisfied that such work has been corrected and is in compliance with the Agreement; and
- b) accepts the deliverable provided by the Contractor, as evidenced by the City's acceptance in writing of the deliverable.

6. Changes

6.1 The City may, without invalidating the Agreement, by Change Order delivered to the Contractor, change the Services by revising, deleting from or adding to the Services, with reasonable adjustments, if any, to the Contract Price or the time for performance of the Services or both. The Contractor will not proceed with any change prior to the receipt of a Change Order. No claim for an adjustment to the Contract Price or the time for the performance of the Services may be made without a Change Order.

6.2 Should the Contractor request a change to the Services, the Contractor must provide the City sufficient information to justify the change order and sufficient time to review the change. In accordance with Section 6.1, the Contractor will only proceed with the change if the City provides written direction to proceed with the change via a Change Order.

6.3 Unless expressly provided otherwise in the Contract Documents, the correction of a defect or deficiency in the Services or in any Deliverables will not be considered a change in the Services.

7. Force Majeure

7.1 If either the Contractor or the City is delayed in the performance of any of their obligations under the Agreement as a result of an event of Force Majeure, then the party claiming the delay will be excused from performance of such obligations, provided that party gives written notice to the other party and mitigates the effect of the delay. The party delayed by an event of Force Majeure will be entitled to an extension of the time for the performance of the affected obligations equal to the impact of the delay caused by the event of Force Majeure, but will not be entitled to, nor will such party make any claim for,

reimbursement or the payment of any costs suffered by that party as a result of the event of Force Majeure.

8. Right of Set-off

8.1 The City may set-off, as against any amounts due to the Contractor, any amount owing from the Contractor to the City.

9. Indemnity

9.1 The Contractor agrees to indemnify, hold harmless and assume the defence of the Indemnitees from and against all claims, demands, causes of action, suits, losses, awards, settlements, damages, costs, liabilities, expenses and judgments, including legal costs on a solicitor and own-client basis, made against or incurred by the Indemnitees, or any one of them, arising, directly or indirectly, from or in any way connected with:

- a) any act or omission in the performance or purported performance of this Agreement, or any wrongful or negligent act or omission, by the Contractor, its employees, officers, directors, volunteers, servants, representatives and agents, or any other person for whom the Contractor is at law responsible;
- b) any breach of any representation or warranty given by the Contractor in this Agreement; and
- c) any actual or alleged unauthorized disclosure, use or infringement of a third party's patent or intellectual, proprietary or industrial property rights to the extent resulting from or caused by the performance of the Services or the actions or omissions of the Contractor, its employees, shareholders, directors, officers, agents and subcontractors, or those for whom such persons may in law be responsible, or otherwise asserted against the Indemnitees, or any one of them.

9.2 Without limiting the Contractor's obligations under subsection 9.1, if any part of the Services uses any patent or intellectual, proprietary or industrial property rights or anything else which infringes the rights of others or which is alleged to infringe the rights of others, then the Contractor will, at its own cost and expense, immediately:

- a) procure for the City an irrevocable, perpetual, nonexclusive, fee-free, royalty-free, non-assignable license for the City to use such patent or intellectual, proprietary or industrial property rights for the purpose of obtaining the whole benefit of the Services or any part of the Services;
- b) replace or alter the infringing or allegedly infringing parts with non-infringing parts of equal or better quality so as to meet or exceed the requirements of the Agreement; or
- c) if permitted by the City in writing, forthwith refund the amount paid by the City to the Contractor under the Agreement with respect to the infringing or allegedly infringing parts.

9.3 The provisions of Section 9 survive and apply after the expiry or earlier termination of the Agreement.

10. Exclusion of Consequential Damages

10.1 Notwithstanding anything else in the Agreement, neither party is liable to the other party for that other party's own:

- a) special, contingent, exemplary, punitive, indirect, incidental or consequential loss or damage;
- b) loss of anticipated revenue, overhead or profit;
- c) loss of production, business or contracts;
- d) loss by reason of shutdowns, non-operation or increased costs of construction, manufacturing or operation; or
- e) loss of business reputation or opportunities,

of any nature arising at any time or from any cause whatsoever relating to the Agreement, and whether or not such losses or damages were foreseeable even if a party was advised of the possibility of them.

10.2 The provisions of Section 10 survive and apply after the expiry or earlier termination of the Agreement.

11. Insurance

11.1 The Contractor will, at its own expense, carry and keep in force during the term of the Agreement, the following coverages underwritten by licensed Canadian Insurer(s) or brokered through licensed Canadian brokers:

- a) Comprehensive General Liability Insurance with a minimum limit of \$5,000,000 inclusive per occurrence for bodily injury and property damage and \$5,000,000 for personal injury. The City, its officers, officials and employees will be added as additional insureds under the policy. The policy or policies will cover all premises and operations necessary or incidental to the performance of the Agreement, including the following coverages/clauses:
 - i) blanket contractual liability assumed under the Agreement;
 - ii) contingent employer's liability with respect to operations of Subcontractors;
 - iii) owner's and contractor's protective liability;
 - iv) cross liability or severability of interest;
 - v) automobile liability (non-owned, hired);
 - vi) completed operations liability twenty-four (24) months after completed operations;
 - vii) voluntary medical payments; and
 - viii) waiver of subrogation;
- b) Automobile Liability Insurance, where applicable, providing liability coverage for claims of bodily

injury and property damage arising from the use of owned and hired motor vehicles in connection with the Services, and the Contractor will ensure that all Subcontractors obtain and maintain such coverage;

- c) Professional (Error and Omission) Liability Insurance, where applicable, with limits of not less than \$1,000,000 per claim and \$1,000,000 in aggregate protecting the Contractor against all claims for loss or damage arising out of any error or omission of the Contractor or the Contractor's personnel in the performance of the Services. If the policy is written on a claims-made basis, then coverage shall be maintained for a period of two years following the performance of the Services;
- d) Cyber Liability Insurance, where applicable, providing cyber liability insurance, including, without limitation, coverage for cyber related errors and omissions, media liability, network and information security liability, regulatory fines, penalties with associated forensic investigation expenses, and security breach remediation and notification, for a minimum of \$2,000,000 per occurrence for claims for first and third party costs or damages resulting from any unauthorized access or disclosure, theft, dissemination and or use of confidential information or personal information stored or transmitted in any form resulting from any cyber events (including but not limited to network security breaches, privacy events, ransomware attacks) or arising during the performance of the Services. The policy will name the City as an additional named insured, except with errors and omissions. If the policy is written on a claims-made basis, then coverage shall be maintained for a period of two years following the performance of the Services;
- e) Contractor's Equipment Insurance, where applicable, in an all risks form covering construction machinery and equipment used for the performance of the Services;
- f) such additional coverage, Subcontractor coverage, or amendments to the above policies as the City may reasonably require; and
- g) such additional coverage as may be required by Laws.

11.2 All insurance policies required to be carried and kept in force by the Contractor will provide that they cannot be cancelled, and that the policy limits cannot be materially reduced, without at least thirty (30) days' written notice to the City.

11.3 Prior to the performance of any of the Services under the Agreement, the Contractor will, for each insurance policy required to be carried and kept in force by the Contractor, submit to the City either a copy of the certified insurance policy, with all necessary endorsements attached, certificate of insurance or suitable confirmation of insurance, if requested by the City.

11.4 All policy limits and types of insurance specified in subsection 11.1 are the minimum policy limits and types of insurance that are to be provided. The Contractor will be solely responsible for determining whether the policy limits and types of insurance are adequate and for placing any excess insurance and any additional insurance which it considers necessary to protect and indemnify itself.

11.5 The Contractor will be liable to the City for all claims and claim costs excluded by, or in excess of the policy limits of, applicable insurance policies, and neither the providing of insurance by the Contractor in accordance with the requirements of Section 11, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim occurring will be held to relieve the Contractor from any other provisions of the Agreement with respect to liability of the Contractor or otherwise.

11.6 The Contractor expressly waives all rights of recourse against the City for loss or damage to the Contractor's property.

12. WorkSafeBC

12.1 Without limiting subsection 3.2b), the Contractor will comply with all applicable requirements of the *Workers Compensation Act* (British Columbia) and WorkSafeBC, and will, at its own expense, procure and carry during the term of this Agreement:

- a) Workers' Compensation coverage for itself and all workers, employees, servants and others engaged in the Services in accordance with the *Workers Compensation Act* (British Columbia); and
- b) Personal Optional Protection coverage available through the Workers' Compensation Board of British Columbia for all workers, employees, servants and others engaged in the Services who are not covered by the *Workers Compensation Act* (British Columbia).

12.2 The Contractor will provide the City with evidence of compliance with the *Workers Compensation Act* (British Columbia) and coverage under that Act within five days of request by the City, and will immediately notify the City in writing of any change with respect to such compliance or coverage.

12.3 The Contractor agrees to indemnify, hold harmless and assume the defence of the Indemnitees from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments, including reasonable attorney fees and defence costs, made against the Indemnitees, or any one of them, arising from or in any way connected with any unpaid WorkSafeBC assessments owing from any person or corporation engaged in the performance of this Agreement or arising out of or in any related to the failure by the Contractor or any person for whom the Contractor is in law responsible to observe safety rules, regulations and practices of the WorkSafeBC, including penalties levied by the WorkSafeBC. The provisions of this subsection 12.3

survive and apply after the expiry or earlier termination of this Agreement.

12.4 To the extent any of the Services are performed on City property, the Contractor will comply with any City safety requirements.

13. Representation

13.1 Subject to subsection 13.2, for all purposes hereunder:

- a) the City will be represented by the City of Richmond's Manager, Purchasing; and
- b) the Contractor will be represented by the person nominated by the Contractor in writing prior to commencement of the Services.

13.2 Either party may, at any time and from time to time, change its representative by giving prompt written notice to the other party of such replacement.

13.3 Notwithstanding subsection 13.2, if, at any time, the City's representative objects to the Contractor's representative, then the Contractor will give consideration to replacing the Contractor's representative with a person acceptable to the City's representative. The Contractor's representative may, at the Contractor's election, be an employee of the Contractor, be a Subcontractor or an employee of a Subcontractor, or be any other third party.

14. Ownership of Products

14.1 The City will take title to and ownership of all intellectual property, materials and products made, conceived, developed, acquired or first reduced to practice in whole or in part by the Contractor, its employees, shareholders, directors, officers, agents and Subcontractors pursuant to this Agreement, including all patents, trade-marks, copyrights, industrial designs, confidential information, trade secrets and know how, including but not limited to all information, data, documentation, customer lists, customer data, computer programs and systems, source code, object code, software, artistic and literary works, blueprints, schematics, inventions, concepts, ideas, designs, prototypes, models, methods, techniques, procedures, skill, experience, drawings, notes and reports. All such intellectual property, materials and products will be provided to the City upon the expiration or earlier termination of this Agreement. Without limiting the foregoing, the Contractor will take such steps as the City may reasonably require to effect the transfer title to such intellectual property, materials and products to the City.

15. Confidential Information and FOIPPA

15.1 The Contractor acknowledges and agrees that during the course of performing services for the City, the Contractor will have access to or may develop non-public information regarding the City and its business, operations and systems, and data and information regarding the City's citizens and individual users of the City's services (collectively the "**Confidential Information**"), all of which is

the confidential and proprietary information of the City and is or will be owned solely by the City. The Contractor will use the Confidential Information only in connection with the Contractor's provision of services to the City and in accordance with this Agreement. Both during and indefinitely after the term of this Agreement, the Contractor will:

- a) maintain the strict confidentiality of the Confidential Information using the same degree of care as the Contractor affords to its own confidential information of a similar nature which it desires not to be accessed, used, disclosed or disseminated, and in no event less than reasonable care, to prevent the unauthorized access to or use or disclosure of the Confidential Information;
- b) not disclose or make the Confidential Information available to any other person in any manner or form without the City's express prior written consent, except for bona fide disclosures required by Law; and
- c) ensure that all of its personnel and Subcontractors and other persons to whom the Contractor discloses the Confidential Information are legally bound to comply with the restrictions and requirements set forth in this Agreement.

15.2 The term "Confidential Information" shall not include information which:

- a) was in the public domain at the time it was received by the Contractor or which has entered the public domain after the Contractor's receipt thereof otherwise than through an act or omission of the Contractor, its Subcontractor, or any other person that the Contractor or Subcontractor has disclosed or otherwise made the information available to;
- b) was, prior to receipt thereof, lawfully in the Contractor's possession and not then subject to any obligation on the Contractor's part to maintain confidentiality; and
- c) was received by the Contractor from a third party, who was not under a duty of confidentiality to the City at the time the information was conveyed to the Contractor, and who was otherwise legally entitled to disclose such information to the Contractor.

15.3 Upon request by the City, the Contractor will either deliver to the City or permanently delete and destroy all paper and electronic documents and other records containing Confidential Information in the Contractor's possession, power or control.

15.4 The City is subject to FOIPPA and, accordingly, in order for the City to comply with the requirements of FOIPPA, the Contractor will, prior to or at the same time as providing the City with copies of, or access to copies of, any records containing personal information (as defined in FOIPPA) of the Contractor's or any Subcontractor's

employees, obtain the written consent of each affected individual to the indirect collection of his or her personal information (as defined in FOIPPA) by the City. Upon request, at any time, the Contractor will provide, within five (5) days of such request, evidence satisfactory to the City that such consent has been obtained.

15.5 The Contractor acknowledges and agrees that it is a service provider (as defined in FOIPPA) to the City and that it is subject to the provisions of FOIPPA with respect to the personal information (as defined in FOIPPA) to which the Contractor may have access pursuant to the Agreement. If the City provides any personal information to the Contractor or the Contractor otherwise obtains access to any personal information in the City's custody or control, then the Contractor will comply with all applicable provisions of FOIPPA, including those provisions regarding the collection, storage, use, protection, and disclosure of personal information.

15.6 The provisions of Section 15 survive and apply after the expiry or earlier termination of the Agreement.

16. Conflicts of Interest

16.1 The Contractor will not during the term of this Agreement, perform a service for or provide advice to any person, firm or corporation where the performance of the service or the provision of the advice may or does, in the opinion of the City, give rise to a conflict of interest between the obligations of the Contractor to the City under this Agreement and the obligations of the Contractor to such other person, firm or corporation.

17. Termination

17.1 If the Contractor should fail or neglect to undertake the performance of the Services properly and expeditiously, then the City may, by written notice to the Contractor, require such default to be corrected. If within seven (7) days after receipt of such notice, the default has not been corrected or reasonable steps to correct the default have not been taken, then the City may, without prejudice to any of its other rights or remedies, give a further written notice to the Contractor to terminate the Agreement.

17.2 If the Contractor makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent or ceases to carry on business, the City may, without prejudice to any of its other rights or remedies, terminate the Agreement by giving written notice to the Contractor.

17.3 If the City terminates the Agreement under subsection 17.1 or subsection 17.2, then the City will pay the Contractor, in full satisfaction of all claims the Contractor may have, for Services performed in accordance with the Agreement up to the effective date of the termination. Notwithstanding the preceding sentence, the City may deduct from amounts owing to the Contractor any additional costs and expenses incurred as a result of the Contractor's default, and if the amounts owing to the Contractor are not sufficient to cover such costs, then the

Contractor will immediately pay the City the shortfall upon receipt of an invoice for such amount.

17.4 The City reserves the right, at any time and for any reason, to terminate the Agreement, at which time the City will pay the Contractor, in full satisfaction of all claims the Contractor may have, for Services performed in accordance with the Agreement up to the date of termination.

17.5 If the Agreement is terminated for any reason, including pursuant to subsection 17.4, the Contractor's obligations described in the Agreement as to quality, correction and warranty will continue in full force and effect after such termination with respect to the Services performed by the Contractor up to the date of termination.

18. Warranty

18.1 The Contractor warrants that all Services will be performed in accordance with the Contract Documents, free from defects in material, workmanship and any design or engineering furnished by or on behalf of the Contractor.

18.2 If defects, including latent defects, are discovered in the Services within twelve (12) months of completion of the Services, then the Contractor will correct the defect promptly upon written notification from the City. The Contractor will be responsible for all costs associated with such corrections (such as the costs to retain other contractors or consultants, costs of materials and equipment, administrative and supervisory costs and the cost of the City's own forces), and the Contractor will indemnify and save harmless the City from any resulting damages. Other work removed or damaged due to such defects, or the corrections or making good such defects, will also be made good by the Contractor without additional payment by or cost to the City.

18.3 If the Contractor fails to remedy any defect or damage in the Services within a reasonable time, then the City may, at its sole discretion:

- a) carry out the work using the City's own forces or other contractors at the Contractor's sole cost and risk, and the Contractor will pay to the City, within thirty (30) days after receipt of an invoice, the costs incurred by the City in carrying out such work; or
- b) determine a reasonable reduction in the Contract Price.

18.4 The provisions of Section 18 survive and apply after the expiry or earlier termination of the Agreement.

19. Notices

19.1 Any notices or other communications required or permitted hereunder will be in writing and will be considered to have been sufficiently given:

- a) to the City when delivered by hand, by registered mail or by email to:

City of Richmond
Attn: Manager, Purchasing
Richmond City Hall
6911 No. 3 Road
Richmond, BC V6Y 2C1
Email: purchasing@richmond.ca

or to such other address as will have been specified by notice in writing by the City to the Contractor; and

- b) to the Contractor when delivered by hand, by registered mail or by email to the address set out in a bid or quotation submitted to the City, Schedule D – Quotation Extracts, if applicable, or to such other address as will have been specified by notice in writing by the Contractor to the City.

19.2 Notices shall be deemed to have been received: (a) if delivered, at the time of delivery; (b) if given by email, at the time of sending the message; and (c) if given by mail, on the fifth day after the mailing of the notice. If normal courier service, email service or mail service is interrupted by strike, labour slowdown or other cause beyond the control of the party providing the notice, a notice sent by the impaired service will not be deemed to be received until actually received, and the party sending the notice will send it by another service in order to ensure its prompt receipt.

20. Disputes

20.1 All disputes arising out of the Agreement will be resolved in accordance with Section 20.

20.2 A party with a dispute may, at any time, deliver written notice to the other party, with a copy to each party's representatives as described in subsection 13.1, as applicable, describing the dispute.

20.3 Without limiting the parties' rights under the Agreement, the City will encourage and support the City's representative and the Contractor will encourage and support the Contractor's representative to use good faith efforts to resolve any dispute promptly upon becoming aware of the dispute.

20.4 Any dispute which cannot be settled by good faith negotiations between the parties will be referred to a representative(s) of each of the parties who, to the extent reasonably practicable, have not been previously involved in the events leading to the dispute for a settlement meeting.

20.5 Any dispute which is not settled after the settlement meeting described in subsection 20.4, may be submitted by either party to the courts for determination, or, with the prior written consent of both parties, be submitted to mediation or arbitration.

20.6 Notwithstanding any dispute, the parties will continue to fulfill their obligations pursuant to the Agreement.

21. General

21.1 Except as expressly set out otherwise in the Contract Documents or the context otherwise requires, the following will apply to the interpretation of the Agreement:

- a) headings are for convenience and reference only and will not affect the interpretation of the Agreement;
- b) all dollar figures will mean Canadian dollars;
- c) words importing the singular include the plural, and vice versa;
- d) words importing gender include all genders;
- e) where a reference is made to a "day", "week", "month" or "year", the reference is to the calendar period;
- f) where the date for any delivery or response falls on a Saturday, Sunday or statutory holiday observed in British Columbia, the date for such delivery or response will be extended to the next following day which is not a Saturday, Sunday or statutory holiday observed in British Columbia;
- g) in the calculation of time, the first day will be excluded and the last day will be included;
- h) the words in the Contract Documents will bear their natural or defined meaning;
- i) the word "including" is deemed to be followed by "without limitation";
- j) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute's corresponding regulations; and
- k) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of the Agreement.

21.2 The Agreement may be amended upon mutual agreement of the parties in writing.

21.3 The Agreement and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the laws of British Columbia.

21.4 For the purposes of any legal actions or proceedings brought by a party against the other party, the parties hereby irrevocably accept and submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge such courts' competence and the convenience and propriety of the venue and agree to be bound by any judgment of such courts and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

21.5 The Agreement sets out the entire agreement of the parties and no representations, warranties or conditions have been made other than those expressed or implied herein. No agreement collateral hereto will be binding upon the City unless made in writing and signed by the City. In addition:

- a) no waiver of any provision of the Agreement; and
- b) no consent required pursuant to the Contract Documents,

is binding or effective unless it is in writing and signed by an authorized signatory of the party providing such waiver or consent.

21.6 The Contractor will not, without the prior written consent of the City, assign, either directly or indirectly, any right or obligation of the Contractor under the Agreement.

21.7 Each provision of the Agreement is severable. If any provision of the Agreement is to any extent invalid or unenforceable, the remainder of the Agreement will not be affected and each remaining provision of the Agreement will be separately valid and will be enforceable.

21.8 The Contractor acknowledges and agrees that it is an independent contractor and no agency, joint venture, association, partnership, or employer-employee relationship is created between the City and the Contractor. Unless otherwise agreed in writing, the Contractor is not the agent of the City in any capacity whatsoever under the Agreement, and has no authority to act as an agent of the City.

21.9 Except as expressly set out otherwise in the Contract Documents, nothing in the Agreement, expressed or implied, is intended or will be construed to confer upon or to give any person which is not a party to the Agreement any rights or remedies under or by reason of the Agreement.

21.10 All documents to be given under this Agreement will be provided in English.

21.11 Time is of the essence of the Agreement.

21.12 The Contractor will not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Contractor to perform its obligations under the terms of this Agreement).