



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) **“Business Day”** means any day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;
- c) **“City”** means the municipal corporation generally known as the City of Richmond, British Columbia;
- d) **“Change Order”** means a written direction for a change in the Work delivered by the City to Contractor;
- e) **“Contract Documents”** means, collectively:
 - i) these General Terms and Conditions of Contract for Construction / Supply and Installation;
 - 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 Work;
 - vii) the Notice of Award, if applicable; and
 - viii) any other documents expressly included in the Agreement;
- f) **“Contract Price”** means the fees as set out in the City’s purchase order for the Work, or in Schedule C – Schedule of Fees, or in Schedule D – Quotation Extracts, as applicable;
- g) **“Contractor”** means the entity who or which is awarded the Agreement;
- h) **“Dangerous Goods”** has the meaning given to that term in the *Transportation of Dangerous Goods Act, 1992* (S.C. 1992, c. 34);
- i) **“Delivery Point(s)”** means the locations set out or described in the Contract Documents, or as otherwise directed by the City in writing, where the Goods are to be delivered;
- j) **“FOIPPA”** means the *Freedom of Information and Protection of Privacy Act* (British Columbia), [RSBC 1996] Chapter 165;
- k) **“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;
- l) **“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;
- m) **“Goods”** means the goods (including all components) as expressly identified in the Contract Documents, plus all other ancillary equipment, articles, goods, consumables, products, materials, supplies, commodities, machinery and fixtures, if any, required by necessary inference;
- n) **“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;
- o) **“GST”** means the federal goods and services tax administered under the *Excise Tax Act* (Canada);
- p) **“Hazardous Substance”** means any contaminant, pollutant or substance which may cause, immediately, or at some future time, harm or degradation to the environment or risk to property, human life, health or safety, including, without limitation, any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous goods which is defined or identified in any environmental Laws or which is present in the environment in such quantity or concentration as to be regulated by any environmental Laws;
- q) **“Indemnitees”** means, collectively, the City and all of its elected and appointed officials, employees, officers, volunteers, servants, representatives and agents;
- r) **“Key Personnel”** means those individuals expressly identified in the Contract Documents, if any;
- s) **“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, the transportation and handling of Dangerous Goods, 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 Work;
- t) **“Notice of Award”** means the written notice given by the City to the Contractor awarding the contract for the performance of the Services;
- u) **“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 Work in accordance with the Contract Documents;
- v) **“Professional Engineer”** means a person holding a professional engineer designation from the Engineers and Geoscientists British Columbia, or holding such other designation acceptable to the City;
- w) **“Progress Payment Estimate”** means a payment estimate submitted by the Contractor to the City in accordance with subsection 5.1a);
- x) **“PST”** means the British Columbia provincial sales tax administered under the *Provincial Sales Tax Act* (British Columbia);
- y) **“Site”** means the location, as directed by the City in writing, where the constructed Work is to be finally or permanently located or installed;
- z) **“Subcontractor”** means all subcontractors, sub-consultants, suppliers, manufacturers and vendors engaged to perform a portion of the Work, and the term “Subcontractor” will be deemed to include all further subcontractors, sub-consultants, suppliers, manufacturers and vendors engaged below a Subcontractor;
- aa) **“Submittal”** means drawings or documents the Contractor is required to submit to the City under the Contract Documents;
- bb) **“Substantial Completion”** means the time at which all Work, as certified pursuant to subsection 10.2, is capable of completion or correction at a cost of not more than:
- (i) 3% of the first \$500,000 of the Contract Price (after any adjustments, including payments on account of Change Orders);
- (ii) 2% of the next \$500,000 of the Contract Price (after any adjustments, including payments on account of Change Orders); and
- (iii) 1% of the balance of the Contract Price (after any adjustments, including payments on account of Change Orders); and
- the Work, or a substantial part of it, is ready for use or is being used for the purpose intended;
- cc) **“Total Completion”** means the time at which all Work is complete in accordance with the requirements of the Contract Documents;
- dd) **“Warranty Period”** means the warranty period for the Work described in subsection 20.2;
- ee) **“Work”** means and includes anything and everything required to be done for the fulfilment and completion of the Agreement, and includes the Goods and anything else identified in Schedule B – Scope of Work; and
- ff) **“Work Program and Schedule”** means the schedule for the Work submitted to the City by the Contractor.
- 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 Terms and Conditions, if applicable;
- ii) these General Terms and Conditions of Contract for Construction / Supply and Installation;
- 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) any purchase order issued by the City in respect of the Work;
- 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 Work, 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 Work. The Contractor will perform the Work in accordance with the Contract Documents, including Schedule B – Scope of Work, if applicable.

For certainty, the Contractor will, as part of the Work 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 Work, which the Contractor will perform as if those services, tasks or activities had been expressly described in the Contract Documents.

3. Execution of the Work

3.1 If the Contract Documents require the supply and installation of Goods, then the Contractor will:

- a) supply and deliver the Goods;

- b) install the Goods, including any other equipment and materials supplied by the City or third parties and which are to be incorporated into the Goods; and
- c) test and commission the Goods, including any other equipment and materials supplied by City or third parties and which are to be incorporated into the Goods.

3.2 In accordance with the Contract Documents, the following will apply:

- a) except only, and to the extent, as may be expressly provided otherwise in Schedule A – Supplementary Terms and Conditions, if applicable, the Contractor will perform and be responsible for the complete design of the Goods;
- b) the Contractor will deliver the Goods to the Delivery Point(s) or to the Site, as applicable, Delivery Duty Paid as per Incoterms 2010 ICC Publication No. 715, as may be amended by the Contract Documents;
- c) notwithstanding the transfer of title pursuant to subsection 3.2e) or the transfer of risk of loss pursuant to subsection 3.2f), the City may reject any Goods that are not in accordance with the Agreement, including because the Goods do not meet the requirements of the Contract Documents, including Schedule B – Scope of Work, if applicable, or because of damage to the Goods resulting from improper packing, transportation or otherwise. The City will notify the Contractor in writing of the rejection of any of the Goods, and the Contractor will promptly remove or cause to be removed the rejected Goods. The Contractor will be responsible for all costs of the removal and disposition of any rejected Goods. Any costs or expenses incurred by the City on account of any rejected Goods will, upon written demand by the City, be immediately due and payable by the Contractor, and the City may set-off such costs and expenses against any payment owing by the City to the Contractor;
- d) the Contractor warrants that it has or will at the time of the transfer of title as described in subsection 3.2e) have good and marketable title to the Goods, free and clear of any and all liens, encumbrances, restrictions, reservations or claims of any kind and that it will defend the City's title to the Goods;
- e) title and all other property rights in and to any Goods, but not the risk for such Goods which will remain with the Contractor until such time as specified in subsection 3.2f), will pass to the City free and clear of all encumbrances at the earlier of the following:
 - i) the time, if any, when full payment (less holdbacks, if applicable) is made by the City for such Goods; and

- ii) the time when the Goods are delivered to the Delivery Point(s) or to the Site, as applicable;
- f) notwithstanding the transfer of title pursuant to subsection 3.2e), risk of loss with respect to the Goods will remain with the Contractor and will not transfer to the City unless and until the certificate of Substantial Completion has been issued pursuant to subsection 10.2;
- g) the Contractor will provide all training and related services as required under the Agreement, including as may be set out in Schedule B – Scope of Work, if applicable. The City will determine which of its staff will receive such training; and
- h) the Contractor will provide all manuals and specifications as required under the Agreement, including as may be set out in Schedule B – Scope of Work, if applicable.

3.3 Except as expressly set out otherwise in the Contract Documents, including subsection 3.24, the Contractor will:

- a) have complete control of the Work and will effectively direct and supervise the Work so that it conforms to the Contract Documents; and
- b) be solely responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work.

3.4 The Contractor will perform the Work:

- 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 Work, then the strictest of such will apply.

3.5 Without limiting the generality of subsection 3.4, the Contractor 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 Work.

3.6 The Contractor is deemed to have examined the Site and the local conditions related to the Work and to be knowledgeable of the Site and of all such conditions as would be apparent to a qualified and experienced contractor upon review of the Contract Documents and inspection of the Site, including, as applicable, geotechnical and subsurface conditions, Site drainage, Site access, local

weather, availability of labour, equipment and materials and any other relevant matters. Except as provided by Section 3.7, the Contractor will not be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on the basis that the actual Site or actual local conditions related to the Work are different than anticipated by the Contractor.

3.7 To the extent the actual Site or actual local conditions related to the Work or both would not be apparent to a qualified and experienced contractor upon review of the Contract Documents and inspection of the Site as of the date the Contractor submitted its quotation or bid for the Work to the City, such conditions will be a change to which Section 6 will apply.

3.8 The Contractor will, at all times, keep and maintain one (1) copy of a complete set of the current Contract Documents and all Issued for Construction drawings, record drawings, accepted shop drawings, revised or supplementary drawings or specifications and other design details, that have been issued by the City, the Contractor or any Subcontractor, at the Site and, to the extent as required by Good Industry Practice, at all other locations other than the Site where the Work or its components are being fabricated or manufactured, in good order and available for review by the City.

3.9 The Contractor will protect and preserve all survey monuments and control points, if any, installed by or on behalf of the City at the Site and will, at the Contractor's sole cost and expense, replace or re-establish any such monument or control point as may be destroyed or disturbed by the Contractor or any Subcontractor.

3.10 Except as expressly set out otherwise in the Contract Documents, the Contractor will, as part of the Work, obtain all Permits required for the performance of the Work.

3.11 The City reserves the right to engage other contractors and to use the City's own forces to perform work at the Delivery Point(s) or the Site, as applicable, during the time for the performance of the Work. With respect to any work performed, or to be performed, at the Delivery Point(s) or the Site by other contractors or the City's own forces:

- a) the Contractor will coordinate the performance of the Work with the work of all other contractors and the City's own forces, and perform the Work to connect to such other work as specified or shown in the Contract Documents. If such coordination and connection directly causes the Contractor to incur costs or delays or both that could not have been reasonably anticipated by the Contractor, then such costs or delays or both will be a change to which Section 6 will apply; and
- b) if the Contractor discovers any deficiencies in the work of an another contractor or the City's own forces that may affect the Work, then the Contractor will immediately, and before proceeding with the affected Work, report such deficiencies to the City and then confirm such

report in writing if the initial report was not in writing.

3.12 Except as may be expressly provided otherwise in the Contract Documents, the Contractor will, as part of the performance of the Work, remove, dispose of and replace any existing City facilities and property necessary for the Contractor to perform the Work in accordance with the Contract Documents and to fulfill the Contractor's obligations under the Agreement.

3.13 The Contractor will have the sole responsibility for the design, erection, operation, use, maintenance and removal of temporary supports, structures, facilities, services and other temporary items required by the Contractor for the performance of the Work. The Contractor will, as part of the Work, engage and pay for registered Professional Engineers skilled and knowledgeable in the appropriate disciplines to provide professional engineering services with respect to such temporary supports, structures, facilities, services and other temporary items where required by Law or by the Contract Documents and, in any event, in all cases where such temporary supports, structures, facilities, services and other temporary items are of such a nature, including with respect to their method of construction, that safety or Good Industry Practice requires the skill and knowledge of a qualified Professional Engineer.

3.14 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 Work affected by such error, inconsistency or omission without first receiving directions or clarifications from the City.

3.15 If Schedule D – Quotation Extracts includes a schedule for the performance of the Work, then such schedule will be the initial schedule for the performance of the Work. If Schedule D – Quotation Extracts is not included in the Contract Documents or does not include a schedule for the performance of the Work, then the schedule set out in Schedule B – Scope of Work, if applicable, will be the initial schedule for the performance of the Work. If neither of Schedule D – Quotation Extracts or Schedule B – Scope of Work includes an initial schedule, then the initial schedule for the Work will be as directed by the City.

3.16 The Contractor will:

- a) within seven (7) days of the date of the Agreement, or by such later date as the City may agree to in writing, prepare and submit to the City a revised and expanded Work Program and Schedule, satisfactory to the City that is based on the initial schedule for the performance of the Work and complies with the milestone dates, if any, as set out in the Contract Documents, and that includes:
 - i) the planned order and duration of the major activities of the Work, including all critical path activities; and

- ii) resource (manpower and equipment) loading that will be utilized by the Contractor for the performance of the Work.

The Work Program and Schedule will contain sufficient detail to permit the City to be able to understand and monitor the progress of the Work;

- b) update the Work Program and Schedule to the satisfaction of the City on no less than a monthly basis so as to incorporate any time adjustments as permitted under the Contract Documents; and
- c) perform the Work in compliance with the then current Work Program and Schedule, as may be updated under subsection 3.16b). If, for any reason, the performance of the Work falls behind the schedule for the Work set out in the then current Work Program and Schedule, then:
 - i) if, in accordance with the Contract Documents, the delay entitles the Contractor to an extension of the time for the performance of the Work, then the Contractor will, as part of the Work, include such extension in the next update to the Work Program and Schedule as provided under subsection 3.16b); or
 - ii) if, in accordance with the Contract Documents, the delay does not entitle the Contractor to an extension of the time for the performance of the Work, then the Contractor will, as part of the Work, take all such steps as are required to bring the Work back into conformity with the then current Work Program and Schedule.

Failure to comply with the requirements of this subsection 3.16 will be deemed to be a default under the Agreement to which the provisions of subsection 19.1 will apply.

3.17 The Contractor will provide all necessary supervision on the Site and appoint a competent representative(s) who will be in attendance on the Site while Work is being performed.

3.18 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 Work 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 Work 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 Work 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.

3.19 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 Work sufficient priority over other work, tasks and assignments that they may otherwise have assigned to them in order to ensure performance of the Work 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 3.19 will be at no extra cost or expense to the City.

3.20 The City may, by written notice to the Contractor, object to any person engaged by the Contractor or any Subcontractor for the performance of the Work who, as determined by the City in its sole discretion:

- a) has engaged in misconduct, including being intoxicated at the Site or during the performance of any part of the Work, using foul, profane, vulgar

or obscene language or gestures, or soliciting gratuities or tips from any person for any Work performed under the Agreement;

- b) is incompetent;
- c) does not have adequate working knowledge of the safety rules and procedures applicable to the Site, or any other rules or procedures applicable to the Site;
- d) lacks or has failed to obtain any security clearance required under the Contract Documents, if any; or
- e) has done anything which may constitute a public nuisance or disorderly conduct at the Site or during the performance of any part of the Work.

Upon receipt of any such notice, the Contractor will immediately cause such person to be removed from the Site and the performance of the Work and promptly replaced by a person(s) with suitable qualifications and experience, at no extra cost or expense to the City. Notwithstanding any other provision in this subsection 3.20, the Contractor and the Subcontractors will retain all authority and control over their respective employees, agents and Subcontractors.

3.21 The City and its delegates will have access to the Work at all times, including Work being performed at a location other than the Site, for the purpose of testing and inspecting the Work so as to remain familiar with the progress and quality of all aspects of the Work, and to be able to determine that the Work is proceeding in conformance with the requirements of the Contract Documents. With respect to all such tests and inspections:

- a) the Contractor will incorporate or cause to be incorporated all such testing and inspection rights in all applicable agreements with Subcontractors;
- b) if testing or inspections of the Work is required by the Contract Documents to be conducted by the City or required by Law to be conducted by a Governmental Authority, the Contractor will give the City and the applicable Governmental Authority no less than fourteen (14) days' notice in writing of the date and place at which such testing or inspections can be conducted;
- c) the City will be entitled to observe all quality tests and inspections pertaining to the Work and the Contractor will give written notice to the City of such tests and inspections, results and data;
- d) the Contractor will promptly submit to the City copies of all certificates, inspection reports, test reports and quality documentation relating to the Work;
- e) the City has the authority to reject any Work that does not conform to the requirements of the Contract Documents, and the Contractor will, at its sole cost and expense, correct such non-compliant Work;
- f) the City has the authority to stop Work where such Work is not being performed in accordance with

the Contract Documents, or where there is a threat, whether or not imminent, to the safety of anyone or anything at the affected area or to the environment;

- g) the City’s authority to order testing, inspect, reject, or otherwise review the Work is for the benefit of the City, and will not give rise to any duty or responsibility on the City to order testing, inspect, reject, or otherwise review the Work;
- h) the Contractor will pay for the cost of making any test or inspection, including the cost of samples, if the test or inspection is designated in the Contract Documents to be performed by the Contractor or is required by Law; and
- i) if the Contractor covers or permits to be covered Work that has been designated in the Contract Documents or by Law for tests, inspections or approvals, before such tests, inspections or approvals are made, given or completed, then the City may direct the Contractor to uncover such Work, as required, so that such tests, inspections or approvals may be completed or given to the satisfaction of the City. The Contractor will uncover and make good such Work and any other removed or damaged property at the Contractor’s sole cost and expense.

3.22 The Contractor will perform or cause to be performed all tests and inspections as are called for or required under the Contract Documents, including any tests and inspections required by Law, for the performance of the Work. The tests and inspections required by the Contract Documents or by Law 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 Work and to correct defects or deficiencies in the Work in accordance with the requirements of the Contract Documents.

3.23 If the Contractor is required under the Agreement to submit any Submittals, then:

- a) the Contractor will provide for reasonable times for review and comment on all Submittals by the City, such review times to be no less than fourteen (14) days after the City receives a Submittal;
- b) the City will review a Submittal within the fourteen (14) day review period or such other period of time as reasonably required in the circumstances and return the Submittal to the Contractor noted as follows:
 - i) “Acceptable” – deemed to mean that the City did not observe any aspect of the Submittal that did not comply with the Contract Documents;
 - ii) “Acceptable with Modifications” – deemed to mean that, subject to the amendments or corrections as noted in writing by the City, the Submittal is

Acceptable, as defined in subsection 3.23b)i); or

- iii) “Not Acceptable” – deemed to mean that the City is of the opinion that the Submittal does not comply with the Contract Documents.

If a Submittal is noted as “Acceptable with Modifications” or “Not Acceptable”, then the City will provide written justification for such notation;

- c) if a Submittal is returned to the Contractor with the notation “Acceptable with Modifications” or “Not Acceptable”, then, subject to the Contractor’s rights under Section 22, the Contractor will promptly revise such Submittal, taking into account the comments provided by the City, and resubmit the revised Submittal to the City for further review;
- d) any revised Submittal submitted to the City pursuant to subsection 3.23c) will be reviewed by the City in accordance with subsection 3.23 within a further period of time equal to the original time the City had for review and comment of the initial Submittal;
- e) if the City, for any reason, fails to return a Submittal to the Contractor within the times described in subsection 3.23b) or 3.23d), as applicable, then such Submittal will be deemed to have been given the notation “Acceptable”;
- f) if the Submittal is, in accordance with applicable Law or Good Industry Practice, required to be prepared by or under the supervision of a qualified Professional Engineer, then the City may require the Submittal be stamped by a qualified Professional Engineer indicating that the Submittal has been prepared in compliance with Laws, Permits, applicable design standards and Good Industry Practice;
- g) except as expressly set out otherwise in the Contract Documents, the City’s authority to review a Submittal will be for the benefit of the City, and will not give rise to any duty or responsibility on the City to review the Work, and no such review, or authority to perform such review, will relieve the Contractor of any of its duties, obligations or responsibilities under the Agreement to perform the Work and to correct any defects or deficiencies in the Work in accordance with the requirements of the Contract Documents; and
- h) the Contractor will not proceed with the performance of any Work for which a Submittal was made unless and until the Submittal is returned to the Contractor with the notation “Acceptable” or the Submittal is deemed to have been given the notation “Acceptable”. If the Contractor proceeds with such Work prior to receiving the “Acceptable” notation and such Work is covered, then the City may direct the Contractor to uncover and make good such Work at the

Contractor's sole cost and expense and the provisions of subsection 3.21i) will apply.

3.24 Without limiting the Contractor's obligations under subsection 3.23 to permit the City the opportunity to review all Submittals, the Contractor will perform Work which will form part of the permanent construction in accordance with drawings which have been stamped "Issued for Construction" by the party (the Contractor, or the City, or third party) that is primarily responsible for such construction and for which the relevant Submittal(s) have been returned to the Contractor with the notation "Acceptable" or the Submittal(s) are deemed to have been given the notation "Acceptable".

3.25 The Contractor will not proceed with any such Work for which the Contractor has not received Issued for Construction drawings. If the Contractor proceeds with such Work prior to receiving Issued for Construction drawings and such construction and related Work is covered, then the City may direct the Contractor to uncover and make good such construction and related Work at the Contractor's sole cost and expense and the provisions of subsection 3.21i) will apply.

3.26 During the course of the Work, the Contractor will prepare a complete set of "record" drawings of the execution of the Work showing the actual as-built locations, sizes and details of the Work as performed. These record drawings will not be mark-ups of the Issued for Construction drawings or other construction documents, but will be complete revisions of such drawings or documents. As part of the Work, the Contractor will deliver to the City two (2) copies of a complete set of record drawings current as of the date of Substantial Completion. Failure to provide such record drawings with the application for Substantial Completion will be deemed a deficiency.

3.27 The Contractor will maintain the Site in a tidy condition, free from the accumulation of waste products and debris generated by the performance of the Work.

4. Compensation

4.1 As payment for the performance of the Work, 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 Work 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 Work.

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.

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).

4.7 The City and Contractor agree that the Contract Price does not include cost or time impacts resulting from tariffs, duties or levies that were not in effect on the effective date of this Agreement (each, a "Tariff"). In the event of a Tariff coming into effect, the Contract Price shall be increased by the cost by which the Tariff increases the Contractor's cost of delivering the Work. As a condition for the foregoing, the Contractor shall provide reasonable documentation to substantiate the application of the Tariff and the resulting cost impact.

4.8 To the extent there is a decrease in pricing due to the reduction, elimination, or postponement of:

- a) a Tariff that previously resulted in a corresponding increase in the Contract Price; or
- b) a tariff, duty or levy that was in effect as of the effective date of this Agreement,

such event shall be addressed in a deductive change order reducing the Contract Price by the amount of the reduced cost.

4.9 The Contractor agrees to make reasonable efforts to work with the City to mitigate the adverse effects of any Tariff, which efforts shall include providing the City with written notice when the Contractor becomes aware of materials which will be affected by any such Tariff, and providing the City with the opportunity to consider and approve alternate options.

5. Application for Payment

5.1 The Contractor will make application for payment as follows:

- a) upon achieving a payment milestone if the Contract Documents define a milestone payment regime, or otherwise within ten (10) days before the end of a month, the Contractor will submit to the City a Progress Payment Estimate with:
 - i) all supporting documents as expressly required by the Contract Documents;
 - ii) a copy of the updated Work Program and Schedule prepared in accordance with subsection 3.16b);
 - iii) if required by the City, a WorkSafeBC clearance letter;
 - iv) if required by the City, a statutory declaration attesting that all amounts due and owing on account of the Work to the end of the previous payment period including for labour, suppliers,

Subcontractors and consultants, have been paid in full; and

- v) other documents required by the City;
- b) within seven (7) days after receipt of such material, the City will, in consultation with the Contractor, review the Progress Payment Estimate and either:
- i) if the City agrees with the amount claimed by the Contractor on a Progress Payment Estimate, then the City will return the Progress Payment Estimate to the Contractor with a written notice confirming such agreement; or
 - ii) if the City disagrees with any amount claimed by the Contractor on a Progress Payment Estimate, then the City will return the Progress Payment Estimate to the Contractor with a written notice setting out:
 - A) the amount, if any, the City agrees is payable; and
 - B) the reasons for the disagreement and, if available, the amount disputed; and
- c) within ten (10) days after receipt of the Progress Payment Estimate under subsection 5.1b)i) or 5.1b)ii), as the case may be, the Contractor will submit to the City an original invoice in the amount that the City has indicated under subsection 5.1b) is payable dated the date the Progress Payment Estimate was returned by the City under subsection 5.1b). 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) the title and reference dates or numbers for the Agreement, if any, as may be set out in the Contract Documents;
 - ii) the City's purchase order number in respect of the Agreement;
 - iii) the amount of GST and the amount of PST charged in respect of the fees set out in the invoice, as separate line items; and
 - iv) the Contractor's GST number.

5.2 Unless otherwise specifically agreed in writing by the City, the Contractor will not be entitled to apply for payment for material or Goods delivered to the Site but not yet incorporated into the Work.

5.3 The Contractor's application for payment under subsection 5.1 will be without prejudice to the Contractor's rights to dispute under Section 22.

5.4 The City will pay the Contractor the amount of each invoice prepared and submitted in accordance with

subsection 5.1c), less any holdbacks, thirty (30) days after receipt of the invoice.

5.5 In addition to the other rights and remedies of the City under this Agreement, the City may withhold, on written notice to the Contractor stating the basis and amount of deduction, the whole or any part of any amount payable under this Agreement to the extent necessary, in the City's sole discretion, to protect the City from any actual or anticipated liabilities arising from any deficiency in the Work, Contractor default or other failure of the Contractor to observe or perform this Agreement.

5.6 No payment made to the Contractor by the City will at any time constitute approval or acceptance of any Work 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 Work in accordance with the requirements of the Contract Documents.

6. Changes

6.1 The City may, without invalidating the Agreement, by Change Order delivered to the Contractor, change the Work by revising, deleting from or adding to the Work, with reasonable adjustments, if any, to the Contract Price or the time for performance of the Work 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 Work may be made without a Change Order.

6.2 Unless expressly provided otherwise in the Contract Documents, the correction of a defect or deficiency in the Work will not be considered a change in the Work.

6.3 The adjustment to the Contract Price on account of any Change Order will be determined by one or more of the following methods:

- a) as set out in a quotation from the Contractor and accepted by the City;
- b) by a lump sum as agreed by the parties;
- c) by applicable unit prices, if any, as may be set out in Schedule D – Quotation Extracts, if applicable; or
- d) to the extent not agreed by the parties, on a time and materials basis, being the Contractor's reasonable and substantiated direct costs arising from the performance of the change (having regard to the applicable unit prices, if any, as may be set out in Schedule D – Quotation Extracts, if applicable) plus markups, if any, as may be set out in Schedule D – Quotation Extracts, if applicable.

7. Delays and Acceleration

7.1 If the Contractor is delayed in the performance of the Work by an act or omission of the City or a person for whom the City is in law responsible (other than the

Contractor and those engaged by or through the Contractor, including Subcontractors), contrary to the provisions of the Contract Documents, then, on written notice as required by subsection 7.4, the Contractor will be entitled to an extension of the time for the performance of the Work equal to the impact of such delay.

7.2 If the Contractor is delayed in the performance of the Work by its own acts or omissions, or by a person for whom the Contractor is in law responsible, or those engaged by or through the Contractor, including Subcontractors, then the Contractor will not be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work, in either case, on account of such delay.

7.3 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 in accordance with subsection 7.4 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.

7.4 With respect to any event of delay:

- a) regardless of the cause of a delay, the party claiming delay will give written notice of the delay to the other party's representative with sufficient detail to permit the other party's representative to be able to understand the basis for the claim as well as the anticipated impact on the time for the performance of the Work, if any; and
- b) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the time for the performance of the Work on account of any delay or portion of a delay:
 - i) that occurs more than seven (7) days prior to the notice delivered by the Contractor to the City as provided by subsection 7.4a); or
 - ii) notwithstanding subsection 7.4b)i), to the extent the City is materially prejudiced by any delay in the Contractor complying with its obligations under subsection 7.4a).

7.5 If, at any time, the City determines that the then current Work Program and Schedule is not being met due to an act, error or omission of the Contractor or any Subcontractor, then the City may deliver written notice to the Contractor directing the Contractor to accelerate the performance of the Work, at the Contractor's sole cost and expense, so as to bring the Work back into conformity with the then current Work Program and Schedule.

7.6 The City may, at any time, deliver written notice to the Contractor to accelerate the performance of the Work at the City's convenience and any such acceleration will be a change to which Section 6 will apply.

8. Builders Liens

8.1 The City will retain a holdback of 10% as required under the *Builders Lien Act* (British Columbia), and hold such amount in accordance with the terms of that Act.

8.2 The Contractor will, at its sole risk and expense, do everything necessary, including through the institution, prosecution or defence of legal proceedings, to promptly discharge from title to the Site any claim of lien, certificates of pending litigation or lien.

8.3 If at any time the City becomes aware that a claim of lien, certificate of pending litigation or lien is threatened or has been registered against title to the Site, the City may, in its sole discretion, withhold out of any monies payable to the Contractor, a holdback in the amount set out in the applicable filing plus an additional reasonable amount as security for related costs. The City may, on five (5) days written notice to the Contractor, make application to court pursuant to the provisions of the *Builders Lien Act* (British Columbia) to obtain a court order whereby any holdback monies or other security such as a lien bond or letter of credit can be paid into or deposited with the court and the claim of lien, certificate of pending litigation or lien be discharged. The Contractor will reimburse the City for any legal and other costs actually incurred by the City relating to such application to court immediately upon receipt of an invoice from the City of such costs. If the Contractor fails to so reimburse the City, the City may, on five (5) days written notice to the Contractor, withhold and set-off such amounts from any payment then or thereafter due to the Contractor. If the claim of lien, certificate of pending litigation or lien is discharged without payment of the holdback into court, then the City will pay such holdback to the Contractor, without interest.

9. Right of Set-off

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

10. Substantial Completion

10.1 When the Contractor judges that the Work is sufficiently complete, the Contractor may apply to the City for a certificate of Substantial Completion. The application will be in writing and will include the following:

- a) a comprehensive list of all items of Work to be completed or corrected, including an estimated cost to complete or correct each item, and a schedule for completion and correction of all such items through to Total Completion, prepared in consultation with the City;
- b) all manufacturer's inspections, certifications, guarantees and warranties specified in the

Contract Documents or otherwise applicable to the Work;

- c) evidence that all required Permits and approvals from testing or inspection agencies, if any, have been obtained;
- d) evidence from the Worksafe BC that the Contractor is in good standing; and
- e) a statement as to the status of amounts owing to first tier Subcontractors and as to any unresolved claims made by Subcontractors against the Contractor or another Subcontractor.

10.2 The City will, no later than ten (10) Business Days after the receipt of a written application from the Contractor for a certificate of Substantial Completion, inspect the Work to verify the validity and accuracy of the application. The City will, no later than a further five (5) Business Days after the inspection, notify the Contractor in writing of approval, or the reasons for refusal, of the application. If the application is refused, then the Contractor will continue with the performance of the Work and may re-apply for a certificate of Substantial Completion pursuant to subsection 10.1. The provisions of this subsection 10.2 will apply to any such subsequent application.

10.3 When the City determines that the requirements for Substantial Completion have been achieved, then the City will issue a certificate of Substantial Completion that includes the date of Substantial Completion. Concurrently with the issuance of such certificate, the City will prepare a written list of items of the Work to be completed or corrected that were apparent to the City in the inspection of the Work. The issuance of such list will not relieve the Contractor of its obligation to complete the Work and correct all defects and deficiencies in the Work, all in accordance with the Contract Documents.

10.4 The City may retain, out of the amount due and owing to the Contractor upon Substantial Completion, an amount equal to two (2) times the value of the estimated cost to complete or correct the items set out in the list provided pursuant to subsection 10.1a). If the total amount due and owing to the Contractor upon Substantial Completion is less than two (2) times the value of the estimated cost to complete or correct the items set out in the list provided pursuant to subsection 10.1a), then such difference will be immediately due and owing by the Contractor to the City upon receipt of an invoice from the City for such difference.

11. Total Completion

11.1 When the Contractor judges that all deficiencies in the Work have been corrected and that the Work is fully complete, the Contractor may apply to the City for a certificate of Total Completion. The application will be in writing and will include the following:

- a) evidence that all deficiencies have been corrected and approved by the City;
- b) evidence from Worksafe BC that the Contractor is in good standing; and

- c) a statement as to the status of amounts owing to first tier Subcontractors and as to any unresolved claims made by Subcontractors against the Contractor or another Subcontractor.

11.2 The City will, as soon as practicable after receipt of an application under subsection 11.1, inspect the Work to verify the validity of the application and, when Total Completion has been achieved, issue the certificate of Total Completion.

11.3 The City, by issuing any certificate, including a certificate of Substantial Completion or Total Completion, does not guarantee, or otherwise become liable or responsible in any way for, the completeness or correctness of the Work, and no certificate will make the City in any way responsible or liable for the performance of the Work.

12. Waiver of Claims

12.1 As of the dates of the Contractor's application for Substantial Completion and Total Completion, the Contractor expressly waives and releases the Indemnitees from any and all claims which, as of the date of the applicable application, the Contractor has or reasonably ought to have known the Contractor has against the Indemnitees, or any one of them, with respect to the Work or with respect to the Agreement, including those arising from the negligence of or breach of the Agreement by an Indemnitee, or any other representative of the City, except for claims set out in writing and delivered to the City prior to the delivery by the Contractor of the applicable application and still unsettled.

13. Indemnity

13.1 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 and costs, liabilities, expenses and judgments, including legal fees 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) the Contractor's performance of the Work or purported performance of the Work;
- b) any failure of the Contractor to fulfill its obligations under this Agreement;
- c) any breach of any representation or warranty given by the Contractor in this Agreement; and
- d) 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 Work 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.

13.2 Without limiting the Contractor's obligations under subsection 13.1d), if any part of the Work 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 Work or any part of the Work;
- 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.

13.3 The provisions of Section 13 survive and apply after the expiry or earlier termination of the Agreement.

14. Exclusion of Consequential Damages

14.1 Notwithstanding any other provision 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.

14.2 The provisions of Section 14 survive and apply after the expiry or earlier termination of the Agreement.

15. Insurance

15.1 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; and
 - vii) voluntary medical payments; and
 - viii) waiver of subrogation;
- b) "Course of Construction" Property Damage Insurance covering all risks of physical loss or damage on an occurrence basis, including loss of use of property, and including losses or damage from flood or earthquake. The coverage provided will amount to no less than 80% of the total value of the work done and material delivered to the Site, or under the control of the Contractor, payable to the City and the Contractor as their interests may appear, and protecting each in such terms as will preclude subrogation claims by the insurer against anyone insured under the policy;
 - c) Automobile Liability Insurance 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 Work, and the Contractor will ensure that all Subcontractors obtain and maintain such coverage;
 - d) Contractor's Equipment Insurance, where applicable, in an all risks form covering construction machinery and equipment used for the performance of the Work;
 - e) such additional coverage, Subcontractor coverage, or amendments to the above policies as the City may reasonably require; and
 - f) such additional coverage as may be required by Laws.

15.2 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.

15.3 Prior to the performance of any of the Work 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. The City's failure to

request proof of insurance does not relieve the Contractor of its obligation to obtain and maintain the insurance policies required to be carried and kept in force by the Contractor pursuant to this Agreement.

15.4 All policy limits and types of insurance specified in subsection 15.1 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.

15.5 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 15, 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.

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

16. Site Safety

16.1 Without limiting subsection 3.4, 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).

16.2 With respect to Site safety:

- a) prior to commencing performance of the Work under the Contract, and at any time on the City's request, the Contractor will deliver to the City a statement from Worksafe BC that:
 - i) the Contractor is registered and in good standing; and
 - ii) all persons who will be performing Work at the Site who are not covered by the *Workers Compensation Act* (British Columbia) are covered under personal optional protection coverage available through the Workers' Compensation Board of British Columbia;
- b) except as expressly set out otherwise in the Contract Documents, the Contractor will be the

"prime contractor" for the purposes of the *Workers Compensation Act* (British Columbia), and, accordingly, the Contractor will diligently discharge the obligations and duties of prime contractor under that Act. If an entity other than the Contractor, including, as the case may be, the City or a third party contractor, is identified as the "prime contractor" in the Contract Documents, then the Contractor will perform the Work in accordance with the safety requirements as required by such entity;

- c) in addition to complying with all Laws, the Contractor will include provisions in its agreements with all Subcontractors who will be on the Site that they will similarly comply with all Laws.

16.3 With respect to protection of the Work, other work and property:

- a) except as expressly set out otherwise in the Contract Documents, in performing the Work, the Contractor will be responsible:
 - i) for the care, custody, control and security of all parts of the Work until Substantial Completion, and the Contractor will, at the Contractor's sole cost and expense, make good any loss or damage to any part of the Work until Substantial Completion;
 - ii) to protect the City's and other person's work and property, from loss or damage, and the Contractor will, at the Contractor's sole cost and expense, make good any such loss or damage to the City's or other person's work and property; and
 - iii) for the care, custody, control, maintenance and security of the Work and all equipment, materials and other items used or provided to or by the Contractor or any Subcontractor in connection with the Work, whether in transit to or from the Site or in storage on or off the Site by the Contractor or any Subcontractor, and the Contractor will, at the Contractor's sole cost and expense, make good any loss or damage to any such Work, equipment, materials and other items;
- b) notwithstanding subsection 16.3a), the Contractor will not be responsible for loss or damage described in subsection 16.3a):
 - i) to the extent the Contractor, in the performance of the Work, could not reasonably have avoided such loss or damage; or
 - ii) to the extent the City, other contractors or others for whom the City is in law responsible (other than the Contractor

and those engaged by or through the Contractor, including Subcontractors) contributed in causing such loss or damage; and

- c) for certainty, if the loss or damage described in subsection 16.3a) would have been covered by or recoverable against the insurance required to be obtained and maintained under the Agreement but for subsection 16.3b), then subsection 16.3b) will be inoperative and considered as deleted from the Agreement so as to permit the recovery under such insurance. In such event, the City will pay the applicable deductible or reimburse the Contractor for the payment of the applicable deductible and the insurance proceeds will be used by the parties to make good the loss or damage.

17. Representation

17.1 Subject to subsection 17.2, 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 Work.

17.2 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.

17.3 Notwithstanding subsection 17.2, 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.

18. Confidential Information and FOIPPA

18.1 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.

18.2 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; or
- 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.

18.3 Upon request by the City, the Contractor will, within the time frame stipulated by the City in its request, 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.

18.4 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.

18.5 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.

18.6 The Contractor acknowledges that the City may disclose all or portions of the Contract Documents, and any quotes, proposals or bids from the Contractor, to City Council, or the provincial or federal governments in association with any grant funding requests or agreements.

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

19. Default and Termination Rights

19.1 If the Contractor should fail or neglect to undertake the performance of the Work in accordance with the terms of this Agreement or otherwise be in breach or default of any of its obligations under this Agreement, then the City may, by written notice to the Contractor, require such breach or default to be corrected. If within seven (7) days after receipt of such notice, the breach or default has not been corrected or reasonable steps to correct the breach or default have not been taken to the satisfaction of the City, then the City may, without prejudice to any other right or remedy it may have at law or in equity, give a further written notice to the Contractor to terminate the Agreement.

19.2 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 other right or remedy it may have at law or in equity, terminate the Agreement by giving written notice to the Contractor.

19.3 If the City terminates the Agreement under subsection 19.1 or subsection 19.2, 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.

19.4 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.

19.5 If the Agreement is terminated for any reason, including pursuant to subsection 19.4, 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 Work performed by the Contractor up to the date of termination.

20. Warranty

20.1 The Contractor warrants that:

- a) all Work 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; and
- b) all Goods, equipment, products and materials furnished by or on behalf of the Contractor for the Work will be new and of recent manufacture, fit for their intended purposes, free from design defects or faulty operation, and compliant with the Contract Documents and all Laws and Permits.

20.2 The Warranty Period for the warranty set out in subsection 20.1 will expire twelve (12) months after the date the City issues a certificate of Substantial Completion or earlier termination of the Agreement, except with respect to any matters for which a warranty claim has been made during such period. If any warranty claim is made pursuant to Section 19.1 and any part of the Work is re-performed, repaired or replaced, a new Warranty Period will commence for such re-performed, repaired or replaced Work from the date such re-performed, repaired or replaced Work is completed, unless such warranty work required only minor adjustment to and not replacement of a piece of equipment or a component.

20.3 Without limiting the generalities of subsections 20.1 or 20.2, the Contractor will assign to the City the guarantees and warranties (such that they may be enforceable directly by the City) provided by Subcontractors and other persons performing work for or on behalf of the Contractor with respect to the Work.

20.4 If defects, including latent defects, are discovered in the Work, including in any equipment and materials incorporated into the Work, then the Contractor will correct the defect or replace the equipment and materials promptly upon written notification from the City. The Contractor will be responsible for all costs associated with such corrections, including all costs incurred by the City in relation to such corrections and replacements. 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.

20.5 If the Contractor fails to remedy any defect or damage in the Work 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.

20.6 The provisions of Section 20 survive and apply after the expiry or earlier termination of the Agreement.

21. Notices

21.1 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, or the 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.

21.2 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.

22. Disputes

22.1 All disputes arising out of the Agreement will be resolved in accordance with Section 22.

22.2 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 17.1, as applicable, describing the dispute.

22.3 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.

22.4 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.

22.5 Any dispute which is not settled after the settlement meeting described in subsection 22.4, may, with the prior written consent of both parties, be submitted to mediation or arbitration.

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

23. General

23.1 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) unless stated otherwise, 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) where reference is made to a time or date, the reference is to the local time and date in Richmond, British Columbia;
- i) the words in the Contract Documents will bear their natural or defined meaning;
- j) the word "including" is deemed to be followed by "without limitation";
- k) 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
- l) 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.

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

23.3 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.

23.4 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.

23.5 This Agreement constitutes the entire agreement of the parties, expressly superseding all prior agreements and communications (both oral and written) between the parties with respect to the subject matter of this Agreement, 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.

23.6 No waiver by either party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or different character.

23.7 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.

23.8 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.

23.9 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.

23.10 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.

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

23.12 Time is of the essence of the Agreement.

23.13 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).