

SCOPE

These General Conditions form a part of the Contract with The Corporation of the City of Brampton (the “City”) for the provision of consulting services and apply as provided herein.

Where Supplementary Conditions are contained herein, it should be noted that these Supplementary Conditions shall govern in the case of inconsistency or conflict with the General Conditions.

GC1 DEFINITIONS

- (a) “City” means The Corporation of the City of Brampton;

- (b) “Confidential Information” means all confidential or proprietary information, intellectual property (including trade secrets) and confidential facts relating to the business or affairs of the City of Brampton;

- (c) “Contract” means the Contract documents referred to in GC2;

- (d) “Personal Information” means any personal information which is required to be protected pursuant to MFIPPA or any laws (including regulations and common law) pertaining to the protection of personal, healthcare or insurance information;

- (e) “Services” unless otherwise expressed in the Contract, means everything that is necessary to be done, furnished or delivered by the Consultant to perform the Consultant’s obligations under the Contract;

- (f) “Standard” means the highest of: (a) the standard implied or imposed by law, (b) the standard prescribed by the professional and regulatory bodies in the applicable profession, field or discipline; (c) the standard prescribed or contemplated by this Contract; or (d) the degree of care and skill at least equal to that which qualified and experienced Consultants would expect of a competent Consultant in a like situation performing work for a similar first class project of the nature contemplated by this Contract.

GC2 CONTRACT AND ORDER OF PRECEDENCE

The following documents and any amendments relating thereto form the Contract between the City and the Consultant:

- (a) City-authorized Change Orders;
- (b) The City's Purchase Order;
- (c) Scope of Work / Terms of Reference;
- (d) The City's Supplementary Conditions;
- (e) The City's General Conditions;
- (f) Consultant's Bid/Proposal.

Where a conflict arises among the terms of any of the above documents, the documents shall prevail as listed in descending order.

GC3 PROFESSIONAL SERVICES AND ASSOCIATED COSTS

The City is required to pay the Harmonized Sales Tax (HST) on all goods, materials, labour, services and equipment. This tax must be shown separately and is not to be included in the unit prices.

The Consultant shall not be entitled to claim to have performed any additional work or services under this Contract that would cause the total contract price to be exceeded unless an increase is authorized by the City and effected and evidenced by a written amendment or change order.

The total contract price tendered herein include and cover custom duties, transportation, overhead, profit and all other charges, excluding the Harmonized Sales Tax (HST).

GC4 SERVICES

This Contract specifies the services that the Consultant will be required to provide in accordance with the Consultant's Proposal.

The Consultant understands and agrees that all additional services shall be requested on an as and when requested basis and that nothing in this Contract obliges the City to authorize or order any additional services whatsoever or to spend more than the estimated expenditures for disbursements. The basic scope of the services authorized by this Contract is identified in the Consultant's Proposal and is to be performed within the period of the Contract.

GC5 CONSULTANT COVENANTS

The Consultant hereby covenants, warrants and agrees:

- To perform the services in accordance with the terms, provisions, and conditions of the Contract, all specifications and requirements of the City and any supplemental change orders issued by the City.
- That each of the Consultant and all its agents are competent to perform the services required under the Contract in that they each have the necessary qualifications including the knowledge, skill, experience and ability to perform the services to the Standard.
- To provide all the necessary expertise, supervision, equipment, supplies and materials necessary in connection with providing and performing the services as described in the scope of work/terms of reference to the satisfaction of the City at the quoted prices.
- The Consultant may be requested to apply for any requisite permits. The City will pay for all permits and fees.
- To abide by the provisions of all legislative enactments, statutes, by-laws and regulations in regard to safety in the Province of Ontario.
- That, throughout the term of this agreement, it will not be a non-resident of Canada for purposes of the Income Tax Act (Canada).

GC6 SERVICE STANDARD REQUIREMENTS

The Consultant is responsible for ensuring that the recommended solutions are in compliance with all applicable current Federal, Provincial and Municipal Regulations, Codes, Standards, Policies, By-Laws and Orders.

GC7 CHANGES TO SERVICES

The City may at any time give notice to the Consultant, in writing, to delete, extend, increase, vary or otherwise alter the services forming the subject of the agreement. If such action by the City necessitates additional expenses, the Consultant shall be paid accordingly. In the case of a reduction in the requirement of services, any reduction in the Consultant's fee will be in accordance with the rates as set out in the Consultant's Proposal.

GC8 INDEPENDENT CONSULTANT

The Consultant is engaged under the Contract as an independent Consultant for the sole purpose of providing a service. Neither the Consultant nor any of the Consultant's employees or agents shall be construed as City employees. The Consultant agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada Pension Plan, Employment Insurance, Workplace Safety Insurance Board or Income Tax.

GC9 SUB-CONSULTANTS

The Consultant shall not sub-consult any portion of the Contract work without prior written approval by an authorized representative of the City.

The Consultant shall be solely responsible for the payment of every sub-consultant employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the Contract. The Consultant shall coordinate the provision of the goods and services by its sub-consultants in a manner acceptable to the City, and ensure that they comply with all the relevant requirements of the Contract.

The Consultant shall be liable to the City for all costs or damages arising from acts, omissions, negligence or willful misconduct of its sub-consultants, suppliers and of persons directly or indirectly employed by them.

GC10 INSPECTION

The City or persons authorized by the City, shall have the right, at all reasonable times, to inspect or otherwise review the services performed, or being performed under the Contract and the premises where they are being performed.

GC11 TIMING

Time is of the essence for the delivery or provision of the services requested herein. Any delay by the Consultant in performing the Consultant's obligations under the Contract which is caused by an event beyond the control of the Consultant, and which could not have been avoided by the Consultant without incurring unreasonable cost through the use of work-around plans including alternative sources or other means, constitutes an excusable delay.

The Consultant shall give notice to the City immediately after the occurrence of the event stating the cause and circumstance of the delay, and any available remedies to overcome or work-around the delay.

Notwithstanding that the Consultant has complied with the above requirements, the City may exercise any right of termination.

GC12 PAYMENT

Subject to the Consultant providing the deliverables as outlined in the Consultant's Proposal, the City shall make the payments in accordance with the quoted prices in the Consultant's Proposal, as compensation for the work performed.

The City's method of payment is by electronic payment only. The Consultant shall be required to complete the Accounts Payable Direct Deposit Set-Up Form.

Invoices can be emailed to apinvoices@brampton.ca or mailed to the City's Accounts Payable Department.

All payments will be made within thirty (30) days from receipt of an approved invoice. All invoices must be approved by the City.

Except only where expressly provided otherwise, all prices are stated and shall be paid in Canadian currency.

GC13 CONSTRUCTION ACT

Where work under this Contract may be subject to the *Construction Act, R.S.O. 1990 c. C-30*, payment for work completed shall be on a monthly basis at the rate of 90%, providing for a 10% holdback. After acceptance of the work, and in accordance with the *Construction Act*, the holdback will be paid to the Consultant in accordance with the *Construction Act*.

GC14 CONSULTANT EVALUATION

The Consultant's performance may be evaluated in accordance with the City's Vendor Performance Evaluation Process as set out in the Vendor Performance Standard Operating Procedure. The performance evaluation will be used to provide feedback to the Consultant; to provide the Consultant with the opportunity to implement performance improvements during the duration of the Contract; and, where it is in the City's best interests as the result of a poor performance rating, suspend the Consultant from participating in the City's procurement process, in accordance with the Vendor Suspension Administrative Directive.

GC15 ACCESS TO INFORMATION AND PROTECTION OF PRIVACY

Information contained in a Proposal submitted by the Consultant shall be subject to disclosure as may be required under the provisions of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.

All information obtained by the Consultant in connection with this Contract is the property of the City and shall be treated as confidential and not used for any purpose other than the fulfillment of this Contract.

The Consultant will comply with any laws pertaining to Privacy Protection to which the City is subject (including MFIPPA, regulations and common law). In addition, the Consultant will provide the City with information, cooperation and assistance, as requested by the City from time to time, in order to enable the City to comply with any and all requirements to which the City is subject under any laws pertaining to the Privacy Protection (including MFIPPA, regulations and common law).

GC16 CONFIDENTIALITY

Any information, in any format and of any kind, regarding the Contract, the City, its processes, programs, policies and procedures shall be considered confidential and shall not be disclosed or provided to any third party, in any manner.

GC17 NON-DISCLOSURE

Neither the City nor the Consultant shall at any time divulge any matters relating to the business of the other party or any customers, agents of the other party which may become known to it by reason of its services or otherwise and shall be true to the other party in all dealings and transactions relating to the services contemplated by the Contract. Furthermore, neither the City nor the Consultant shall use at any time, during the Contract, or after its termination, for its own benefit or purpose of any other person, firm, corporation, association or other business entity, any trade secrets, data or plans belonging to or relating to the affairs of the other party, including knowledge relating to customers, clients, or employees of the other party.

GC18 OWNERSHIP AND DELIVERY OF MATERIALS

The Consultant agrees that all information and material of any kind whatsoever acquired or prepared by or for the Consultant pursuant to the Contract shall, both during and following the termination of the Contract, be the sole property of the City, including all information and material provided by the City to the Consultant for the purposes of the Contract. The Consultant is however permitted to retain copies of all reports.

Upon the request of the City, the Consultant agrees to deliver forthwith to the City all materials and information specified in the request that is/are the property of the City and in the possession or under the control of the Consultant. No copy or duplicate of any such material or information delivered to the City shall be retained by the Consultant without the prior written approval of the City. The Consultant further agrees not to destroy any material or information which is the property of the City without the City's prior written approval. This provision survives the expiration or termination of the Contract.

GC19 CONFLICTS OF INTEREST

The Consultant, its partners, directors, officers, employees, agents and volunteers shall not engage in any business or other transaction or have any financial or other personal interest which, actually or potentially, creates a conflict of interest with the provision of service pursuant to this Contract, without the Consultant first disclosing to the City the actual or potential conflict of interest with the City.

GC20 ETHICAL CONDUCT

In addition to being in compliance with all applicable federal, provincial and municipal laws and regulations, Consultants shall behave in an ethical manner having regard for and demonstrating care for, the condition of or well-being and fair treatment of all persons, places and things.

GC21 PUBLICITY/USE OF NAMES

Except as provided for in the Contract, any news release, public announcement, advertisement, or publicity released by the parties concerning the Contract or the initiative will be subject to the prior written approval of the other party and any third parties as required. Any such publicity shall give due credit to the contributions of each party.

Neither party has the right to use the other's name, logo, trademark, insignia or other intellectual property without the prior written consent of the other.

The Consultant agrees to obtain the written consent of the City before publishing or issuing any information regarding the City or the Contract.

GC22 INCLUSIVE CUSTOMER SERVICE

The Consultant shall comply with the requirements of O. Reg. 429/07 under the *Accessibility for Ontarians with Disabilities Act, 2005*, and the City's Inclusive Customer Service Policy which affirms the principles therein and which outlines the City's commitment to inclusive customer service by providing barrier-free access to all goods, services, information and resources.

The Consultant shall be responsible for carrying out each service interaction in a manner that positively reinforces customer service excellence by treating each customer with dignity and respect, and by exercising care and attention to individual needs.

The Consultant shall comply with the requirements of O. Reg. 429/07 and the City Inclusive Customer Service Policy, and shall ensure that training, record keeping and reporting take place as required, including:

- (a) providing training to all personnel who will be delivering goods or services to the City, at a minimum, by providing a copy of the “Inclusive Customer Service resource manual for Vendors” as provided by the City on its Website at <http://www.brampton.ca/en/City-Hall/Accessibility/Pages/Vendors.aspx>, to all such personnel and requiring them to review the same before commencing any work for the City;
- (b) maintaining a record of all training provided;
- (c) furnishing to the City upon request, within ten business days, information regarding the method of training provided, the date on which training was provided, and the number of personnel trained; and
- (d) providing further training as may be required from time to time should the City Inclusive Customer Service Policy be amended.

GC23 RIGHT TO AUDIT

The Consultant shall maintain complete, true and correct records, together with such supporting or underlying documents and materials, for the duration of this Contract. All such records shall be in an organized and accessible manner to the City and its authorized representatives. The Consultant will retain these records for a period which is the greatest of (i) seven (7) years following the completion, expiry or termination of this Contract, including any and all renewals thereof; or (ii) such period that any such records are required to be retained under any applicable laws and regulations; and (iii) in the case of any matter which is the subject of dispute under the Contract, the date on which a final resolution of the dispute is achieved. No provision of this Contract will be construed so as to give the City any control whatsoever over the Vendor’s records.

The City and its authorized representatives shall have the right to audit, to examine and make copies of or extracts from all financial and related records relating to or pertaining to the Contract kept by or under the control of the Consultant, including, but not limited to those kept by the Consultant, its employees, agents, assigns, successors, and subconsultants. Such records shall include, but are not limited to, accounting records; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); related payroll documents (timesheets, etc.); bank statements and journals. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies or discloses overpricing or overcharges (of any nature) by the Consultant to the City in excess of 0.5 percent (.5%) of the total Contract billings. In this case, in addition to the Consultant making prompt adjustments for the overcharges, the Consultant shall also promptly reimburse the City for the actual cost of the City’s audit.

During the Term and for seven (7) years following the expiry or termination of this Contract, the City or any authorized representative of the City will be entitled, upon at least five (5) business days' prior notice to the Consultant, to review or audit any of these records. When requested by the City, the Consultant will provide the City and any authorized representatives referred to in this section with access to and copies of these records as well as any further information that may be required with reference to these records. The City and its authorized representatives referred to in this section will have the right to remove all such documents for the purpose of making copies and will return them to the place from which they were removed.

The Consultant shall ensure that the City has these audit rights with the Consultant's employees, agents, assigns, successors and subconsultants and the obligations of these rights shall be explicitly included in any subcontract or agreement formed between the Consultant and any subconsultants to the extent that those subcontracts or agreements relate to fulfillment of the Consultant's obligations to the City.

This right to audit shall not be construed to limit, revoke, or abridge any other rights, powers, remedies or obligations relating to audit which the City may have by municipal, provincial, or federal statute, ordinance or regulation, whether those rights, remedies powers, or obligations are express or implied.

This right to audit section shall survive the completion, expiry or termination of this Contract.

GC24 NON-PERFORMANCE

If the quality of work and the rate of progress is not in accordance with the provisions of the Contract, the City shall notify the Consultant of the deficiencies and, following the delivery of such notice, afford the Consultant an opportunity to rectify the deficiencies. Should the Consultant fail to rectify the deficiencies in the time allowed, then the City shall be at liberty to cancel the Contract, and in so doing, shall be under no obligation whatsoever to the Consultant. In addition, in the event of non-performance, payment in whole, or in part, may be withheld.

GC25 TERMINATION

Termination for Convenience: The City may terminate the Contract, in whole or in part, whenever the City determines that such termination is in the best interest of the City without showing cause, upon giving written notice to the Consultant. The City shall pay all reasonable costs incurred by the Consultant up to the date of termination. However, in no event shall the Consultant be paid an amount which exceeds the price bid for the work performed. The Consultant will not be

reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

Termination for Default: When the Consultant has not performed or has unsatisfactorily performed the Contract, the City may terminate the Contract for default. Upon termination for default, payment may be withheld at the discretion of the City. Failure on the part of a Consultant to fulfill contractual obligations shall be considered just cause for termination of the Contract. The Consultant will be paid for work satisfactorily performed prior to termination, less any excess costs incurred by the City in reprocurring and completing the work.

GC26 FORCE MAJEURE

The Parties shall not be liable to each other for any loss, damage or other claim whatsoever arising out of a delay, failure or inability to perform any obligation(s) contained in the Contract for any cause which is beyond the Parties reasonable control. Without fault or negligence, such causes may include, but are not limited to, any act of God, fire, flood, earthquake, tornado, labour disputes, war, revolution, riot, sabotage, terrorism, act of the public enemy, explosion, act or failure to act of any government, agency, board or commission. Lack of finances shall in no event be deemed to be a cause beyond a Party's control.

In the event that performance of the Contract, in the reasonable opinion of either Party, is made impossible by force majeure, then such Party shall so notify the other in writing. At the request of the City, the Consultant shall:

- a) complete the provision of the Deliverables with such adjustments as are required by the existence of the force majeure and are agreed upon by both Parties;
- b) suspend all Deliverables to be provided pursuant to the Contract for the duration of an emergency work stoppage resulting from, for example, a labour dispute. Upon resolution of such an emergency work stoppage both Parties shall advise in writing, that work can be resumed and Consultant shall use commercially reasonable efforts to restaff the Project. Any adjustments to be made to the work schedules due to the suspension of Deliverables shall be agreed upon by both Parties; or
- c) terminate the agreement as a last option.

GC27 ASSIGNMENT

It is agreed and understood that the Consultant shall not assign this Contract without the written consent of the City which may be arbitrarily and unreasonably withheld.

GC28 INSOLVENCY, WINDING UP

In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency, winding up or other creditors' proceeding by or against the Consultant, or in the event of the appointment, with or without Vendor's consent, of a receiver, a receiver and manager, agent liquidator or other similar administrator, or an assignee for the benefit of creditors, the City shall be entitled to cancel any unfilled part of the Contract without any liability whatsoever.

GC29 INSURANCE REQUIREMENTS

The Consultant hereby agrees to put into effect and maintain for the duration of this Contract and throughout the warranty period, at its own cost and expense, all the necessary and appropriate insurance that a prudent person in the business of the Consultant would maintain, including, but not limited to, the following:

- .1 (a) Commercial General Liability (CGL) insurance including bodily injury and death, personal injury, property damage including loss of use thereof, contractual liability, non-owned automobile liability, Citys' and Consultants' protective, products and completed operations and employers' liability, with coverage including the activities and operations conducted by the Consultant. This policy will be written on an occurrence basis with coverage for any one occurrence or claim of at least three million dollars (\$3,000,000.00). The City will accept a combination of primary liability limits and umbrella or excess liability limits which meet the CGL limit noted.

Such policies of insurance listed above shall:

- .1 contain severability of interests and cross liability clauses;
- .2 be non-contributing with, and will apply only as primary and not excess to any other insurance available to the Consultant;
- .3 be endorsed to add the City of Brampton as an additional insured;
- .4 contain an undertaking by the insurers to notify the City in writing, not less than thirty (30) days before any material change (so as to affect this risk), cancellation, lapse or termination of the policies; and

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.5 be with an insurer that has a rating which meets the requirements of the City's policy on insurance and be with an insurer licensed to do business in the Province of Ontario.

(b) Auto Liability Insurance with an inclusive third party liability limit of not less than One Million (\$1,000,000.00) per occurrence for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property. This policy must cover all vehicles owned, leased or operated by or on behalf of the insured.

The Consultant shall deposit with the City, prior to entering into this contract, a Certificate of Insurance, evidencing the above coverage, on a form provided by the City. A sample Certificate of Insurance form is available at the City's website www.brampton.ca/EN/Business/insurance/Pages/welcome.aspx.

.2 Professional Liability Insurance for errors and omissions covering services or activities that are professional in nature and thereby excluded under the CGL policy, in the amount of not less than two million dollars (\$2,000,000) per claim, with an aggregate limit of not less than two million (\$2,000,000).

The Consultant shall provide the City with proof of the insurance required above by this contract in the form of valid certificates of insurance that reference this contract and confirm the required coverage, on or before the commencement of this contract, and renewal certificates upon renewal of such insurance.

.3 The Consultant shall strictly require each of its subconsultants to comply with the insurance requirements set out in this contract by obtaining similar types of insurance as the Consultant and providing the Consultant with proof of the acquisition and maintenance of such insurance.

Note: Insurance requirements are subject to change based on the scope of work.

GC30 WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)

A valid Workplace Safety and Insurance Board (WSIB) Clearance Certificate from the Ontario Workplace Safety and Insurance Board shall be required to perform the work.

If WSIB Insurance is not required, proof of such status from the WSIB shall be provided to the City. Any changes to the WSIB status during the term of the Contract, such that coverage is required, a valid WSIB Clearance Certificate shall immediately be provided to the City.

GC31 INDEMNIFICATION

The Consultant will be required to agree to the following respecting liability and indemnity. The Consultant agrees that the Corporation of the City of Brampton (referred hereinafter as the City) shall not be liable for any injury or damage (including death) to any employees, officer or agent of the Consultant, unless the injury loss or damage is caused by the negligence of an officer or employee of the City while acting within the scope of his/her employment.

The Consultant agrees that it shall, at all times, indemnify and save harmless the City, each of its elected officials, officers, employees and agents from and against all claims, demands, losses, costs, damages, action, suits or other proceedings made, sustained, brought or made upon the City in respect of any costs, expenses, loss, damage or injury, including death, and reasonable legal fees, arising out of any cause, whether direct or indirect, by reason of or in connection with negligent acts or omissions of the Consultant or any of its officers, directors, employees or agents in connection with the services performed, purportedly performed or required to be performed by the Consultant under this contractual agreement.

The Consultant agrees that it shall, at all times, indemnify and save harmless the City, each of its elected officials, officers, employees and agents from and against all claims arising out of the Consultant's professional duties as contracted including demands, losses, costs, damages, action, suits or other proceedings made, sustained, brought or made upon the City in respect of any costs, expenses, loss, and reasonable legal fees, arising out of the Consultant's professional duties whether direct or indirect, by reason of or in connection with negligent acts or omissions of the Consultant or any of its officers, directors, employees or agents in connection with the services performed, purportedly performed or required to be performed by the Consultant under this contractual agreement.

GC32 AMENDMENTS TO CONTRACT

No amendment of the Contract nor waiver of any terms and provisions shall be deemed valid unless effected by a written amendment executed by each of the parties hereto.

GC33 APPLICABLE LAW

This Contract shall be governed and construed in accordance with the laws in force in the Province of Ontario and the laws of Canada in force therein.

GC34 WAIVER

Any failure by either party to enforce at any time any of the provisions, including the termination provisions of the Contract shall not be construed to be a waiver of such provision or of the right of either party to enforce such provision or exercise any other rights available to it under the Contract or at law at any time.

GC35 NOTICE

Where any notice, direction or other communication is required to be or may be given or made by one of the parties hereto to the other or to the City's Contract Administrator, it shall be deemed sufficiently given or made if mailed by prepaid first class mail or delivered in writing to such party or to the City's Contract Administrator at the address set out on the City's Purchase Order.

GC36 SURVIVAL

Upon the termination of the Contract for any reason including normal expiration, clauses pertaining to indemnity and limitation of liability, confidential and proprietary information, and publicity, in addition to any other clauses which survive by operation of law, shall survive the expiration or other termination of the Contract.

End of General Conditions.