



**ADDITIONAL TERMS AND CONDITIONS  
FOR ENGINEERING AND  
ARCHITECTURAL  
CONSULTING ENGAGEMENTS**

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**1. DEFINITIONS**

All defined terms set out in the Agreement Letter will have the same meaning when used in the Agreement. In addition, when used in the Agreement:

**“As-Built Drawings”** means drawings prepared by the Consultant based on the contractor’s red-line mark-ups or other modifications on “Issued for Construction” drawings to demonstrate changes or adjustments that arose during construction. The Consultant adds this information from the contractor to the Record Documents and provides in non-authenticated PDF and CAD format to The City.

**“Builders’ Lien Fund”** means the amount of money required to be held back from all payments due to the Consultant under the Agreement in accordance with the requirements of the *Prompt Payment and Construction Lien Act*.

**“Certificate of Substantial Performance”** means a certificate issued by the Consultant affirming that, in the opinion of the Consultant, Substantial Performance of the Agreement has been achieved.

**“Consolidated Period Invoice”** means an invoice issued by the Consultant for services performed by the Consultant during a Payment Period and includes an invoice for the Builders’ Lien Fund.

**“Consolidated Period Payment”** means a payment made by The City to the Consultant for services performed by the Consultant during a Payment Period.

**“Contract Completion Certificate”** means the document issued by The City certifying that performance of all services, including all Deliverables, is completed in accordance with the Agreement including the remedy or correction of Deficiencies.

**“Deficiency”** means an inadequacy in the Deliverables caused by a failure of any part of the Deliverables to meet all requirements of the Agreement.

**“Holdback Bond”** means a bond issued by a surety company licensed to issue surety bonds in Alberta that guarantees the Consultant’s obligations under the Agreement for the purpose of allowing The City to release funds to the Consultant that have been held back by The City in accordance with the requirements of the *Prompt Payment and Construction Lien Act*.

**“Lien Letter of Credit”** means an irrevocable letter of credit provided to The City, in a form satisfactory to The City and from a financial institution acceptable to The City, in lieu of withholding the ten percent holdback on payments to the Consultant as required under the *Prompt Payment and Construction Lien Act*.

**“Lien Period”** means, for the purposes of Sections 9(b)(i) and 9(c), the period of time set out in section 18(1) of the *Prompt Payment and Construction Lien Act* and, for the purposes of Section 9(b)(ii), the period of time set out in section 23(1) of the *Prompt Payment and Construction Lien Act*.

**“Notice of Dispute”** means a notice specifying the amount of a Consolidated Period Invoice that is not being paid and detailing all reasons for non-payment in the form of Form 1 as set out in the *Prompt Payment and Construction Lien Forms (Alberta) Regulation 22/2022* made pursuant to the *Prompt Payment and Construction Lien Act*.

**“Payment Period”** means a period of thirty (30) Days during the Term.

**“Prompt Payment and Construction Lien Act”** means the *Prompt Payment and Construction Lien Act*, R.S.A. 2000, c. P-26.4.

**“Record Documents”** means final authenticated drawings and specifications that include all changes and revisions to the issued-for-construction documents approved or overseen by the Consultant, during the construction period.

**“Substantial Performance”** has the meaning given to that phrase in the *Prompt Payment and Construction Lien Act*, but will not be deemed to have been achieved for the purpose of this Agreement until the Consultant has issued a Certificate of Substantial Performance.

**“Workers’ Compensation Board Clearance Certificate”** means a letter from the Workers’ Compensation Board stating that the Consultant’s account is in good standing.

## 2. PROFESSIONAL LIABILITY INSURANCE

In addition to the insurance requirements set out in Article 8 of the Consulting General Conditions, the Consultant shall have in effect and maintain professional insurance for the Term, at its own expense, in a form that is satisfactory to The City and with insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta, the following insurance:

- (a) A professional liability insurance policy for damages arising out of errors, omissions, or negligent acts by or on behalf of the Consultant in providing professional services under this Agreement, such insurance policy to be in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) for any one claim, and in the annual aggregate, or such other amount as agreed to by The City and the Consultant and confirmed in writing, and such insurance must remain in operation for at least twelve (12) months after termination of the Agreement; and
- (b) A provision for The City to be given thirty (30) Days written notice prior to cancellation, and thirty (30) Days prior notice of any material change requested by the Consultant of the insurance policies that would restrict the coverage required as set out in (a) above.

The Consultant will be responsible for all deductibles that may apply in any of the required insurance policies.

The Consultant covenants and agrees that the insurance requirements in this Agreement will not be construed to and will not, in any manner, limit or restrict the liability of the Consultant.

If requested by The City, the Consultant will provide proof of professional liability insurance in the manner set out in Section 8.04 of the Consulting General Conditions.

### 3. AUTHENTICATION

Final documents of a professional nature are defined by the APEGA Practice Standard [Authenticating Professional Work Products](#) and the AAA Practice Bulletin [PB-15 Documents Authentication](#) and include but are not limited to: technical reports, “Issued for Procurement” (drawings and specifications), “Issued for Construction” (drawings and specifications) and “Record Documents” (drawings and specifications). Such documents require authentication:

- (a) in accordance with the requirements of the Alberta Engineering and Geoscience Professions Act for all final engineering or geoscience documents (see also APEGA Practice Standard [Authenticating Professional Documents](#)); or
- (b) in accordance with the requirements of the Alberta Architect’s Act for all final architecture documents (see also AAA Practice Bulletin [PB-15 Documents Authentication](#)); and
- (c) for engineering documents, the permit holder’s signature is required adjacent to the permit to practice number.

As-Built Drawings will be authenticated only when requested by The City and the Consultant is retained by The City to be resident on site throughout the construction phase of the project. Otherwise, the Consultant will provide The City with non-authenticated “As-Built Drawings” that include the contractor’s red-lined mark ups, only after The City accepts authenticated “Record Documents.”

### 4. POLICIES, PROCEDURES AND LEGISLATION

In addition to Section 2.06 of the Consulting General Conditions, the Consultant must adhere to the Alberta *Engineering and Geoscience Professions Act* and the Alberta *Architects Act*, Regulations and By-laws, as applicable. The Consultant is required to have applicable permits to practice in the Province of Alberta and must be licensed in Alberta if practicing engineering or architecture in Alberta. If requested by The City, the Consultant will provide proof of registration.

### 5. DISBURSEMENTS

Disbursements may be billed as a percentage surcharge as agreed by The City and the Consultant and confirmed in writing, up to a maximum of seven (7%) percent of professional fees. For purposes of calculating the Rates, disbursement costs billed as a percentage will be deemed to include all the following:

- (a) Photocopying;
- (b) All printing and reproduction costs, including sets of plans, and outside print shop costs (excludes Issued for Construction and Issued for Procurement document reproduction, printing of report documents which exceed normal job-related printing, or other items specified in the Scope and Fee Schedule as having separate charges attached);
- (c) Transportation within Calgary corporate city limits – including mileage, rental vehicles, all non-specialty site vehicles (that is, all vehicles not specifically required by site conditions to

- complete the Deliverables while on site), parking and any paid fare (such as transit, taxis, and ride-share services);
- (d) Communication including data and long-distance charges, conference calls and webinars for project meetings, facsimile transmission;
  - (e) All postage and courier charges;
  - (f) Meeting supplies and refreshments not specifically requested by The City; and
  - (g) Industry standard computers and software (as required to provide the Deliverables), project 'download sites' for project document transfer and security software.

All other special costs for items not listed above that are specific to the project must be included in the Agreement to qualify for separate payment. Such items may include, for example: travel outside of Calgary corporate city limits, specialty site vehicles, or unique pre-approved project specific printing and reproductions or pre-approved project specific software requirements.

## 6. CONSTRUCTION AND PROCUREMENT DOCUMENTS

If the Scope and Fee Schedule includes the preparation of construction procurement documents and/or construction contract administration services, the following requirements apply:

- (a) The Consultant is required to become familiar with and use The City's most current version of the construction procurement documents, [Standard General Conditions](#) ("SGCs") and contracts, as provided by the City Representative, both for preparation of documents, alignment of technical content to avoid any overlap of specifications with the SGCs, and contract administration procedures. The Consultant must always obtain the most recent template documents from The City at the time of use, however samples for information purposes only are located and periodically updated at:

<https://www.calgary.ca/ca/fs/bid-and-vendor-information/preparing-construction-tenders.html>

- (b) With respect to completion of certain schedules to the "Sample Contract Letter", when prepared by the Consultant to be attached for construction procurement:
  - (i) Special Conditions (construction template): The City has created standard customizable special conditions. No additional special conditions may be added without prior approval from The City's Law and Supply Management departments. The Consultant or procuring entity will need to provide written justification for any such addition, showing that the subject matter is not already covered by The City's Standard General Conditions or Delivery Method Requirements. If, in The City's sole discretion, the subject matter is covered in The City's documents, the Consultant will be required to revise the construction procurement documents at no extra cost to The City.
  - (ii) Technical Specifications (construction template): The Technical Specifications should contain technical information only. The priority of contract documents, in the event of any inconsistency between them, is set out in the "Sample Contract Letter" and is not negotiable. The Consultant must not include;
    - A. any topic dealt with under The City's Standard General Conditions, Delivery Method Requirements or Special Conditions;
    - B. any general or special conditions; or
    - C. any information related to the procurement process.

If, in The City's sole discretion, the Consultant is found to have included any of the above, the Consultant will be required to revise the construction procurement documents, in a timely manner at no extra cost to The City.

- (c) All construction procurement documents including plans, drawings, and price detail sheets are to be prepared and submitted according to the format stipulated in the procurement template provided by the City Representative.
- (d) The Consultant is required to provide The City with a payment certificate for all construction invoices that are not in dispute within a maximum of ten (10) Days of receipt from The City for review.
- (e) The Consultant is required to provide written feedback to The City on construction invoices that are in dispute, including details of any sums that are not in dispute and justification for sums that are in dispute.
- (f) All construction administration forms required to administer The City's construction contract, will be filled out by the Consultant on City forms. This includes but is not limited to the applicable X 700 series forms, such as Change Orders, Change Directives, Notice of Proposed Change and completion certificates which can be found at:

<https://www.calgary.ca/ca/fs/bid-and-vendor-information/preparing-construction-tenders.html>

## 7. CAD STANDARDS

The Consultant must comply with the current edition (as at issuance of the procurement) of The City's CAD Standard, located at:

<https://www.calgary.ca/cs/iis/cad/cad-standards.html>

## 8. PAYMENT FOR PERFORMANCE

Delete Article 5 of the Consulting General Conditions in its entirety and replace it with the following:

### ARTICLE 5 - PAYMENT FOR PERFORMANCE

#### 5.01 Payment according to Agreement Rates

The City will, subject to the Consultant's compliance with the provisions of the Agreement, pay the Consultant for the Deliverables provided at the Rates and intervals set out in the Agreement Letter in accordance with this Article 5.

#### 5.02 Submission of invoice

The Consultant shall, within fifteen (15) Business Days following the end of a Payment Period, submit a Consolidated Period Invoice that complies with the requirements of Section 5.03 in respect of Deliverables that have been performed by the Consultant, to the satisfaction of The City, during the most recent Payment Period. The Consultant will cooperate with the reasonable requirements of The City's finance department and will submit Consolidated Period Invoices and all other documentation relating to the Agreement, with the structure and content as is reasonably required to be compatible with The City's information systems. The Consultant shall ensure the City Representative receives a copy of every Consolidated Period Invoice it submits to The City. The date of the Consolidated Period Invoice shall be the date it is received by The City.

### 5.03 Invoice preparation and requirements

To obtain timely payment, the Consultant shall prepare a Consolidated Period Invoice in respect of Deliverables that have been performed by the Consultant, to the satisfaction of The City, during the most recent Payment Period, including for amounts invoiced to the Consultant by Subcontractors during the Payment Period, that includes the following information:

- (a) all of the information required for a “proper invoice” as set out in section 32.1(1) of the *Prompt Payment and Construction Lien Act* and the following identifying and administrative information:
  - (i) project name and file number;
  - (ii) invoice number and date; and
  - (iii) the purchase order issued by The City to authorize payment to the Consultant;
- (b) a confirmation that a draft invoice was submitted in accordance with Section 5.05;
- (c) hours worked or percentage of Deliverables completed, fees, disbursements, and any other relevant items according to the payment schedule set out in the Agreement Letter;
- (d) all documentation, invoices, timesheets, quotations, and other evidence necessary to substantiate the amounts claimed;
- (e) Subcontractor invoices which shall include all information required of a Consolidated Period Invoice in accordance with this Section 5.03
- (f) a separate line item setting out the amount held back in the Builders’ Lien Fund;
- (g) other than in respect of the first draft Consolidated Period Invoice:
  - (i) an executed statutory declaration in The City’s standard form, as set out in Appendix A, stating that any amounts due to all Subcontractors have been paid in full up to and including to the end of the previous Payment Period for which the Consultant has submitted the Consolidated Period Invoice; and
  - (ii) if applicable, a Workers’ Compensation Board Clearance Certificate;
- (h) the Consultant’s GST/HST number, business registration number, and list the total amount of taxes payable separate from the total amount payable and list the total amount due (total amount of taxes plus the amount payable for the Deliverables completed in the current Payment Period); and
- (i) any other information required by the Agreement or as The City may direct.

### 5.04 Proper invoice requirements

To be considered a “proper invoice” for the purposes of the *Prompt Payment and Construction Lien Act* and this Agreement (a “Proper Invoice” for the purposes of this Article 5), a Consolidated Period Invoice,

- (i) must include all information required by Section 5.03;
- (ii) must be submitted in accordance with Section 5.02; and
- (iii) all the required confirmations made by the Consultant in the Consolidated Period Invoice must be true.



The City shall have no obligation to review a Consolidated Period Invoice that purports to be a Proper Invoice but which does not meet the requirements of this Article 5. For clarity, The City shall have no obligation to make a payment and the time periods set out in this Article 5 and in section 32.2 of the *Prompt Payment and Construction Lien Act* shall not apply until the Consultant has submitted a Consolidated Period Invoice that constitutes a Proper Invoice.

#### **5.05 Draft invoice and review meeting**

The Consultant shall submit a draft Consolidated Period Invoice to The City no later than five (5) Business Days after the end of a Payment Period as set out in the Agreement Letter, containing all the documents listed in Section 5.03. If requested by The City, the parties shall attend a meeting to discuss the draft Consolidated Period Invoice no later than five (5) Business Days after submission of the draft Consolidated Period Invoice, or at such other time agreed to by the parties in writing.

#### **5.06 Review and payment**

After The City receives a Consolidated Period Invoice that constitutes a Proper Invoice from the Consultant in accordance with the requirements of Section 5.04,

- (a) The City shall review the Consolidated Period Invoice and issue a Notice of Dispute to the Consultant to advise of any disputed amounts no later than fourteen (14) Days after receipt of the Consolidated Period Invoice; and
- (b) subject to funds held back by The City in the Builders' Lien Fund pursuant to Section 9 of the Additional Terms and Conditions for Engineering and Architectural Consulting Engagements, The City shall issue a Consolidated Period Payment to the Consultant for the undisputed amounts payable under the Consolidated Period Invoice on or before the day that is twenty-eight (28) Days after the receipt of the Consolidated Period Invoice.

Any Consolidated Period Payment by The City shall not constitute acceptance by The City of any amounts set out in a Consolidated Period Invoice. The City reserves the right to dispute any amounts set out in a Consolidated Period Invoice at any time during the Term, whether or not it has previously made a Consolidated Period Payment in respect of such amounts.

If The City, acting in good faith, disputes all or part of any Consolidated Period Invoice, it will request from the Consultant the supporting documentation that is reasonably required to justify and confirm the Consultant's claim. Unless either Party refers the matter to adjudication under the *Prompt Payment and Construction Lien Act*, the Parties will use commercially reasonable efforts to resolve the dispute in question within twenty-eight (28) Days after the Day on which the notice was sent. If the Parties fail to resolve the dispute within such period, the dispute may be referred for resolution in accordance with Section 11 of the Additional Terms and Conditions for Engineering and Architectural Consulting Engagements. Following resolution of the dispute, any amount that has been paid by The City, and is determined not to have been payable, will be paid by the Consultant to The City and any amount that has been withheld by The City, and is determined to have been payable, will be paid by The City to the Consultant.

#### **5.07 Hold back or set off**

The City may hold back payment or set off against payment for other contracts between The City and the Consultant if, in the opinion of The City acting reasonably, the Consultant has failed to comply with any requirements of the Agreement and has not rectified such failure seven (7) Days after written notice of the failure has been given by The City to the Consultant.



If The City exercises its right to hold back payment or set off against payment, The City shall provide notice to the Consultant advising of the amount held back or set off.

#### **5.08 No expenses or additional charges**

There will be no other charges payable by The City under the Agreement to the Consultant other than the Rates established under the Agreement.

#### **5.09 Payment of taxes and duties**

Unless otherwise stated, the Consultant will pay all applicable taxes, including excise taxes incurred by or on the Consultant's behalf with respect to the Agreement.

#### **5.10 Withholding tax**

The City will withhold any applicable withholding tax from amounts due and owing to the Consultant under the Agreement and will remit it to the appropriate government in accordance with applicable tax laws. If the Consultant is a non-resident of Canada as that term is interpreted under the tax laws of Canada, or if The City has reasonable grounds to believe that the Consultant is a non-resident of Canada, the Consultant agrees that The City may deduct income, withholding or other taxes from any payment to the Consultant in compliance or intended compliance with applicable laws. Any such deductions, taken together with payment of the balance of the amount owed, will be deemed to constitute full payment of amounts owed to the Consultant. The City will account to the Consultant for all tax deductions by providing the Consultant with a copy of the applicable tax remittance form or other government document. If a non-resident Consultant wishes to distinguish between services rendered within Canada and from outside of Canada, this must be set out in each Consolidated Period Invoice.

#### **5.11 Limitations on work and fee**

- (a) Where during the performance of the Agreement it appears to the Consultant that the aggregate of the Rates to be paid to the Consultant by The City will exceed the maximum limit of Rates permitted to be paid pursuant to the applicable Purchase Order, the Consultant must forthwith advise The City in writing of:
  - (i) the amount by which the aggregate of the Rates will exceed the limit or limits applicable thereto; and
  - (ii) the reason or reasons why the limit or limits applicable thereto will be exceeded.
- (b) The Consultant must not proceed to perform any altered or additional Deliverables which if performed would cause the limits of the Rates as set out to be exceeded unless notice has been given and until the written approval of the Director, Supply Management, has been obtained.
- (c) Unless the Consultant gives the required notice in writing as soon as practicable after the Consultant discovered or reasonably ought to have discovered that the initial limit or limits will or may be exceeded, and in any event not later than fourteen (14) Days after such time, The City may refuse to pay additional fees, or disbursements, or both.

### **9. LIENS AND HOLDBACKS**

- (a) In accordance with the *Prompt Payment and Construction Lien Act*, The City will hold back a Builders' Lien Fund from all payments due and payable to the Consultant under this Agreement. The City will not pay any interest to the Consultant on the Builders' Lien Fund.
- (b) Subject to the *Prompt Payment and Construction Lien Act*, The City will release:

- (i) the major Builders' Lien Fund in accordance with this Section 9, if:
  - A. a Certificate of Substantial Performance is issued for the Deliverables and is provided electronically to the Consultant's employees and all Subcontractors within three (3) Days of being issued;
  - B. the Lien Period has expired measured from the date the Certificate of Substantial Performance was issued;
  - C. the Consultant has provided, if requested by The City, confirmation from a Subcontractor that payment has been made in full to such Subcontractor, other than applicable holdbacks or amounts in dispute and disclosed to The City;
  - D. the Consultant has provided confirmation to The City that no liens have been registered or filed in respect of the Deliverables;
  - E. the Consultant has provided to The City an executed statutory declaration in The City's standard form evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to The City, to the Consultant's employees and Subcontractors for all services relating to the Deliverables;
  - F. the Consultant has provided an invoice to The City for the amount of the Builders' Lien Fund to be released by The City;
  - G. where applicable, the Consultant has provided to The City a current Workers' Compensation Board Clearance Certificate; and
  - H. any other applicable requirements under the *Prompt Payment and Construction Lien Act* have been satisfied;
- (ii) the minor Builders' Lien Fund, if:
  - A. The City has issued a Contract Completion Certificate or a conditional Contract Completion Certificate for the Deliverables;
  - B. the Lien Period has expired measured from the date on which the Contract Completion Certificate or conditional Contract Completion Certificate (as referenced in Section 12(b)) was issued;
  - C. the Consultant has provided to The City an executed statutory declaration in The City's standard form, evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to The City, to the Consultant's employees and Subcontractors for all services relating to the Deliverables;
  - D. the Consultant has provided, if requested by The City, confirmation from a Subcontractor that payment has been made in full to such Subcontractor, other than applicable holdbacks or amounts in dispute and disclosed to The City;
  - E. the Consultant has provided confirmation to The City that no liens have been registered or filed in respect of the Deliverables;
  - F. the Consultant has provided an invoice to The City for the amount of the Builders' Lien Fund to be released by The City;

- G. where applicable, the Consultant has provided to The City a current Workers' Compensation Board Clearance Certificate; and
  - H. any other applicable requirements under the *Prompt Payment and Construction Lien Act* have been satisfied.
- (c) When a Subcontractor has reached Substantial Performance of the Deliverables for its portion of the Deliverables under a subcontract, the Consultant may obtain from the Subcontractor, and the Consultant may deliver to the City Representative, a Certificate of Substantial Performance of those Deliverables. At the sole discretion of the City Representative, The City may agree to release a portion of the Builders' Lien Fund to the Consultant for the value of the Deliverables actually performed by the Subcontractor under the subcontract if:
- (i) the Certificate of Substantial Performance is provided electronically to all Sub-Subcontractors within three (3) Days of being issued;
  - (ii) the Lien Period has expired measured from the date on which the Certificate of Substantial Performance was issued;
  - (iii) the Consultant has provided to The City satisfactory evidence that payment has been made in full, other than applicable holdbacks, for all services relating to all the Deliverables actually performed under the Subcontractor's subcontract;
  - (iv) the Consultant has provided confirmation to The City that no liens have been registered or filed in respect of the Deliverables;
  - (v) the Consultant has provided an invoice to The City for the amount of the Builders' Lien Fund to be released by The City;
  - (vi) where applicable, the Consultant has provided to The City a current Workers' Compensation Board Clearance Certificate;
  - (vii) the Consultant has provided any other information or documentation, or performance security as may be required by The City as a condition of the release of the portion of the Builders' Lien Fund; and
  - (viii) the Consultant has complied with any other applicable requirements under the *Prompt Payment and Construction Lien Act*.
- (d) Notwithstanding the above, the Consultant must protect all Deliverables throughout the Term, and is responsible for remedy or correction of any Deficiencies and for any Deliverables not performed, regardless of whether the Deficiencies or incomplete Deliverables were apparent when a Certificate of Substantial Performance for that portion of Deliverables performed under a subcontract was issued.
- (e) The Consultant must issue a Certificate of Substantial Performance when Substantial Performance of all Deliverables described in the Agreement is achieved unless the Consultant receives written approval from the City Representative waiving this requirement.
- (f) In the event the City Representative waives the requirement for the Consultant to issue a Certificate of Substantial Performance when Substantial Performance of all Deliverables described in the Agreement is achieved, the requirements for release of the minor Builders' Lien Fund must be satisfied prior to The City's release of the Builders' Lien Fund. When all

the requirements for release of the minor Builders' Lien Fund have been satisfied, The City will release funds from either:

- (i) the entire Builders' Lien Fund (if a Certificate of Substantial Performance was not issued); or,
  - (ii) the minor Builders' Lien Fund (as described in the *Prompt Payment and Construction Lien Act*) (if a Certificate of Substantial Performance was issued).
- (g) If the Rates exceed \$10,000,000 and the Term is scheduled to be period of longer than one (1) year, The City will release the major Builders' Lien Fund or the minor Builders' Lien Fund, as applicable, on an annual basis provided the following requirements are satisfied:
- (i) the Consultant has provided to The City an executed statutory declaration in The City's standard form evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to The City, to the Consultant's employees and Subcontractors for all services relating to the Deliverables;
  - (ii) the Consultant has provided, if requested by The City, confirmation from a Subcontractor that payment has been made in full to such Subcontractor, other than applicable holdbacks or amounts in dispute and disclosed to The City;
  - (iii) the Consultant has provided confirmation to The City that no liens have been registered or filed in respect of the Deliverables;
  - (iv) the Consultant has provided an invoice to The City for the amount of the Builders' Lien Fund to be released by The City;
  - (v) the Consultant has provided to The City a current Workers' Compensation Board Clearance Certificate; and
  - (vi) any other applicable requirements under the *Prompt Payment and Construction Lien Act* have been satisfied.
- (h) The Consultant must, at its own cost and expense, promptly take all steps required to discharge any lien or deal with any claim that is filed or registered against The City by a Subcontractor by reason of services supplied or claimed to have been supplied by the Subcontractor. The City will advise the Consultant within ten (10) Days following receipt by The City of a notice of a lien or claim filed or registered under Requirements of Law against The City relating to the Deliverables.
- (i) If the Consultant fails to promptly take all steps required to discharge any lien or deal with any claim filed or registered against The City, The City, without limiting any other rights or remedies it may have, will take any steps it deems necessary and appropriate to remove, vacate or discharge the lien or claim and seek immediate recovery from the Consultant of the amount of payment and any associated costs, including legal costs (on a full indemnity basis), all of which will be payable on demand or set off against any amounts owing under the Agreement or otherwise due to the Consultant by The City.

## 10. LIEN LETTER OF CREDIT OR HOLDBACK BOND

- (a) The City will accept a Lien Letter of Credit or a Holdback Bond in lieu of retaining a Builders' Lien Fund. The Lien Letter of Credit or Holdback Bond must be in an amount of ten (10%) percent of the maximum amount to be paid to the Consultant under the Agreement (including GST, if applicable).

- (b) The Lien Letter of Credit or Holdback Bond must be valid for seventy-five (75) Days beyond the scheduled completion date of the Deliverables. If the scheduled completion date of the Deliverables is extended or delayed, or the value of the Agreement is increased, or both, or if in the opinion of The City the completion of the Deliverables will be delayed, the Lien Letter of Credit or Holdback Bond, as may be provided, must be extended or increased accordingly. Failure to extend or increase the Lien Letter of Credit or Holdback Bond may result in The City realizing upon the Lien Letter of Credit or Holdback Bond, or taking other action under the Agreement, including termination of the Agreement.
- (c) The Lien Letter of Credit or Holdback Bond and any additions to them or substitutions of them must be forwarded to The City within seven (7) Days of the effective date of the Agreement, failing which The City will act in accordance with Section 9 of these Additional Terms and Conditions for Engineering and Architectural Consulting Engagements.
- (d) Any reduction of the amount of the Lien Letter of Credit or Holdback Bond must, prior to any such reduction, be authorized by The City.
- (e) If requested in writing by either the Consultant or the issuing company of the Lien Letter of Credit or Holdback Bond, the Lien Letter of Credit or Holdback Bond will be returned to the Consultant or issuing company after all requirements for release of the Builders' Lien Fund upon completion of the Deliverables as described in Section 9 of these Additional Terms and Conditions for Engineering and Architectural Consulting Engagements have been met.

## 11. DISPUTE RESOLUTION

- (a) Either party may refer a dispute regarding interpretation and application of the Agreement, or any part of it, to arbitration at any time following the time periods for negotiation between the parties set out above by delivering to the other party a written notice to arbitrate which shall include a brief description of the dispute to be arbitrated and a summary of the relief claimed. The number of arbitrators shall be one (1), the seat of arbitration shall be Calgary, Alberta, and the language of the arbitration shall be English. Unless otherwise agreed between the parties, the arbitration shall be conducted in accordance with the Arbitration Rules of the ADR Institute of Canada, Inc.
- (b) The party commencing the arbitration shall include in the notice to arbitrate the names of three (3) individuals who are acceptable to it to serve as a sole arbitrator. Within ten (10) Days of the receipt of the written notice to arbitrate, the other party shall give written notice that it accepts the appointment of one (1) of the three (3) individuals or shall name three (3) other individuals who are acceptable to it to serve as sole arbitrator. If the parties are unable to agree upon a sole arbitrator within a further ten (10) Days, either party may apply to the ADR Institute of Canada, Inc. to have the appointment of a sole arbitrator made in accordance with that institution's rules and procedures.
- (c) Either party may refer a matter set out in section 19 of the *Prompt Payment and Adjudication Regulation* made pursuant to the Prompt Payment and Construction Lien Act to adjudication pursuant to Part 5 of the Prompt Payment and Construction Lien Act at any time. The parties agree that:
  - (i) no other matter may be referred to adjudication;
  - (ii) pursuant to section 33.6(5) of the Prompt Payment and Construction Lien Act, a determination of an adjudicator with respect to this Agreement shall not be binding on the parties as this Agreement constitutes a written agreement to appoint an arbitrator under the Arbitration Act; and

- (iii) a determination by an adjudicator shall not limit either party's rights to refer a dispute to arbitration in accordance with this Section 11.

## 12. ISSUING OF CONTRACT COMPLETION CERTIFICATE

- (a) The City will issue a Contract Completion Certificate only when all of the following have occurred:
  - (i) the Deliverables are completed in accordance with the Agreement;
  - (ii) the Deliverables are free from Deficiencies;
  - (iii) the Consultant has provided to The City an executed statutory declaration in The City's standard form evidencing that payment has been made in full, other than applicable holdbacks or amounts in dispute and disclosed to The City, to the Consultant's employees and Subcontractors for all services relating to the Deliverables;
  - (iv) the Consultant has provided confirmation to The City that no liens have been registered or filed in respect of the Deliverables;
  - (v) where applicable, the Consultant has provided to The City a current Workers' Compensation Board Clearance Certificate; and
  - (vi) any other requirements of The City relating to the Deliverables are satisfied.
- (b) The City may issue a conditional Contract Completion Certificate only if:
  - (i) in the sole discretion and opinion of The City, the remaining Deficiencies are considered minor; and
  - (ii) all other requirements of the Contract Completion Certificate specified above have been satisfied.

## 13. IMMEDIATE TERMINATION OF AGREEMENT

Section 9.01 of the Consulting General Conditions is amended by adding the following new Section 9.01 (h):

- “(h) the Consultant fails to extend or increase the Lien Letter of Credit or Holdback Bond in accordance with the Additional Terms and Conditions for Engineering and Architectural Consulting Engagements.”