

GENERAL TERMS AND CONDITIONS - CONTRACTOR

PART I – DEFINITIONS

The terms below shall have the following meanings:

“**Bid**” means the offer of a Bidder to furnish goods or services in response to a Quotation issued by the City.

“**Bidder**” means any individual, corporation or other person submitting a response to a Quotation issued by the City. “**Bid Form**” means the “Bid Form” section of the Quotation, which must be completed by the Bidder and include the Bid Price and the signature of the authorized signing representative(s) of the Bidder.

“**Bid Price**” means the total bid price for the Work as specified in the Bid, EXCLUDING all applicable taxes.

“**Bidding System**” means the City’s online web-based solution for issuing solicitations and/or receiving online bid submissions and posting bid results.

“**Business Days**” means a day other than a Saturday, Sunday, statutory holiday or other holiday that is observed by the City.

“**City**” means The Corporation of the City of Markham, and shall include any elected official, director, officer, employee or agent of the City who has been authorized to act on its behalf.

“**Closing Time**” means the date and time that all Bids must be received by the City as specified in the Quotation.

“**Competent Person**” means a person who is qualified because of knowledge, experience and training to organize the Work and its performance, is familiar with the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 and Regulations, as amended, that apply to the Work, and has knowledge of any potential or actual danger to health or safety in the workplace. “**Conflict of Interest**” means a situation in which the personal, private or commercial interests of a Bidder, Contractor or Subcontractor (or their directors, officers, employees, or agents) conflict with the interests of the City.

“**Contract**” means the legally binding agreement between the City and the Successful Bidder, which agreement is comprised of the Quotation, the Bid, the Purchase Order and any other written agreement between the City and the Successful Bidder regarding the Work, unless otherwise specified in the Quotation.

“**Contract Award**” means the notice in writing (signed by a duly authorized representative of the City) that a Bidder has been selected as the Successful Bidder for the purposes of a Quotation.

“**Contractor**” means the Successful Bidder which has been awarded the Contract by the City for the Work.

“**Council**” means the Council of The Corporation of the City of Markham.

“**Deliverables**” means all services, materials, plans, designs, drawings, data, products, equipment, devices, hardware, software or other deliverables created, developed, prepared or provided by or on behalf of the Contractor in connection with the Work or the Contractor’s obligations under the Contract.

“**General Terms and Conditions**” mean the City’s *General Terms and Conditions*, as may be revised by the City from time to time.

“**Purchase Order**” means the form of purchase order used by the City to procure goods and/or services.

“**Purchasing By-law**” means the by-law enacted by Council with respect to the procurement of goods and/or services by the City, which by-law may be revised by Council from time to time.

“**Quotation**” means a request for quotation, request for proposal, request for tender, request for pre-qualification, expression of interest (and any addenda thereto issued by the City) or other document by which Bids are solicited by the City.

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“**Successful Bidder**” means the Bidder which has been awarded the Contract by the City for the Work.

“**Subcontractor**” means the individual, corporation or other person engaged by the Contractor to complete a portion of the Work.

“**Total Bid Price**” means the total bid price for the Work as specified in the Bid, INCLUDING all applicable taxes.

“**Work**” means the labour, materials, products, equipment and/or services specified in the Quotation and, upon Contract Award, required to complete the requirements of the Contract.

PART II – INSTRUCTIONS TO BIDDERS

1. QUOTATION PROCESS

By submitting a Bid in response to a Quotation, the Bidder agrees to be bound by the terms and conditions of the Quotation and the City’s *General Terms and Conditions* and *Purchasing By-Law #2004341*, available at <http://www.markham.ca/wps/portal/Markham/BusinessDevelopment/TendersQuotes> or from the City.

2. MANDATORY REQUIREMENTS

The failure by a Bidder to comply with any requirement of a Quotation which is identified as “MANDATORY” shall result in the Bid being rejected as non-compliant.

3. MANDATORY SITE MEETING

If a Quotation indicates that a MANDATORY site meeting shall be held, all Bidders must attend the site meeting (on the date and time indicated) and register with the City's representative. Failure to attend and register shall result in the Bid being rejected as non-compliant.

4. BIDDER’S RESPONSIBILITY

4.1 It is the Bidder’s responsibility to examine all components of the Quotation, including all appendices, schedules, forms and addenda, and to seek clarification of any requirement that they consider unclear before submitting a Bid. The failure of any Bidder to examine any component of the Quotation or to seek clarification shall not relieve the Bidder of any obligation with respect to their Bid or any Contract awarded based on their Bid.

4.2 Should a Bidder find discrepancies in or omissions from the Quotation, or have any questions regarding a Quotation, the Bidder shall direct all inquiries to the designated City staff specified on the Quotation cover page. No oral interpretations shall be effective to modify any provisions of the Quotation. Only written addenda issued by the City shall modify the Quotation.

4.3 It is the Bidder’s responsibility to review the Work site and to include in their Bid any items that might have been missed from the specifications that would reasonably be considered part of the specifications. The Bidder shall take into account all obstacles that may be faced during the Work when setting prices in the Bid.

5. ADDENDA

5.1 The City reserves the right, in its sole discretion, to revise the Quotation *prior to* the Closing Time. If the City exercises this right, the revisions shall be by addendum forwarded through the Bidding

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System or to the email address provided. The addendum shall form part of the Quotation upon issuance by the City.

- 5.2 It is the responsibility of the Bidder to confirm that they have received all addendums that have been issued by the City. Bidders should check on line at <https://markham.bidsandtenders.ca> or contact the City prior to submitting their Bid.

6. CONFIDENTIALITY

All correspondence, documentation and information provided by the City to Bidders in connection with a Quotation;

- (a) are and shall remain the property of the City,
- (b) shall be treated by Bidders as confidential, and
- (c) shall not be used for any purpose other than for replying to the Quotation and completing the requirements of the Contract.

7. BID SUBMISSION

- 7.1 The City shall not be liable for, nor reimburse any Bidder for, costs incurred in the preparation and/or submission of a Bid.
- 7.2 Bidders are required to disclose in their Bid any real or potential Conflict of Interest.
- 7.3 Bidders are required to disclose in their Bid a list of all proposed Subcontractors. The City reserves the right, in its sole discretion, to accept or reject any or all Subcontractors proposed in a Bid (and any subsequent changes thereto). Upon request, Bidders shall provide evidence satisfactory to the City (as determined by the City in its sole discretion) that the proposed Subcontractors have the qualifications, experience and resources to complete the Work.
- 7.4 If a Quotation requires the submission of paper copy of the Bids:
- (a) The Bid shall be legible, written in ink or typed. Any erasures, overwriting or strike-outs should be initialed by the person(s) signing on behalf of the Bidder.
 - (b) Bids shall be submitted in a sealed envelope, with a submission label clearly identifying the Bid number and project description.
 - (c) The Bid Form shall bear the legal name and signature of the authorized signing representative(s) of the Bidder. If a joint Bid is submitted, the Bid Form shall be signed on behalf of each of the Bidders and, if the authorized signing representative for both Bidders is one individual, such individual shall sign separately on behalf of each Bidder.
 - (d) Bids shall be in the possession of the City, date and time stamped no later than the Closing Time. Bids received by the City after the Closing Time shall **NOT** be accepted and shall be returned unopened to the Bidders.
 - (e) The use of mail or courier for delivery of a Bid shall be at the risk of the Bidder. Bids submitted by email or other telecommunications shall not be accepted, unless otherwise specified in the Quotation.
- 7.5 If a Quotation requires the submission of Bids through the Bidding System:
- (a) Bids shall be received by the Bidding System, no later than the Closing Time. Bidders are cautioned that the timing of their Bid submission is based on when the Bid is

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RECEIVED by the Bidding System, **not** when a Bid is submitted by the Bidder, as Bid

transmission can be delayed by an “Internet traffic jam” due to file transfer size, transmission speed etc. Bidders should allow sufficient time to upload their Bid submission and attachment(s) and to resolve any issues that may arise. The Closing Time shall be determined by the City’s Bidding System web clock.

- (b) Where, in the sole opinion of the City, the Bidding System has experienced or is experiencing an issue affecting the receipt of Bids, or there is a failure of the underlying infrastructure, the City may extend the Closing Time without prior notice. As soon as practicable in the circumstances, the City will notify Bidders that the Closing Time has been extended. Once the issue has been resolved, the City shall notify Bidders of the new Closing Time via an addendum released through the Bidding System.
 - (c) Bidders should contact the City, at least twenty-four (24) hours prior to the Closing Time, if they encounter any problems. The Bidding System will send a confirmation email to the Bidder advising that their Bid was submitted successfully. Bidders should contact the City immediately if they do not receive a confirmation email.
 - (d) To ensure receipt of the latest information and updates via email regarding a Quotation, or if a Bidder has obtained a Quotation from a third party, the onus is on the Bidder to create a Bidding System Vendor account and register as a “Plan Taker” for the Quotation opportunity at <https://markham.bidsandtenders.ca>.
- 7.6 Adjustments by any method to a Bid already submitted shall **NOT** be considered. A Bidder desiring to make adjustments to a Bid shall submit a revised Bid prior to the Closing Time.
- 7.7 Bids shall be irrevocable and valid for acceptance by the City for a period of NINETY (90) Business Days from the Closing Time, unless otherwise specified in the Quotation.
- 7.8 Disclosure of information submitted to the City in connection with a Quotation is subject to the *Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”)*. Bidders should clearly indicate in their Bid which parts, if any, are exempt from disclosure under MFIPPA.

8. BID PRICE

- 8.1 The quantities referenced in a Quotation are estimates only and shall be used as a basis for calculating the Bid Price. These quantities are not guaranteed to be accurate and are furnished without any liability to the City. The City reserves the right, in its sole discretion, to increase or decrease quantities as required. Payment shall be based on actual quantities ordered, received and accepted for use by the City.
- 8.2 The Bid Price shall include all labour, materials, products, equipment, services, cash allowances, costs, expenses, disbursements, duties, overhead and profit required to complete the Work, with the unit price for each Work item detailed in the Bid (if required by the Quotation).
- 8.3 If a Quotation requires the submission of paper copy of the Bids and in the event of an ambiguity, discrepancy or mathematical error in the prices set out in the Bid, the City shall have the right, in its sole discretion, to resolve such ambiguity, discrepancy or mathematical error in accordance with the following:
- (a) In the event of an ambiguity or discrepancy between the lump sum price and the unit price for any Work item (“Unit Price Error”), the unit price shall prevail. Extensions, sub-totals and

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totals shall be corrected accordingly, and adjustments resulting from the correction shall be applied to the Bid Price and Total Bid Price.

- (b) In the event of an ambiguity, discrepancy or mathematical error other than described in Section 8.3(a) above:
 - (i) the Bid Price shall prevail over all other prices contained in the Bid (including, without limitation, the Total Bid Price) (collectively, the “Summary Prices”), and the Bid Price shall be capable of acceptance by the City; and
 - (ii) the City reserves the right (in its sole discretion) to seek clarification from the Successful Bidder regarding any such ambiguity, discrepancy or mathematical error in the Summary Prices, to correct such ambiguity, discrepancy or mathematical error in the Summary Prices (as confirmed by the Successful Bidder), and to require that the Successful Bidder initial such corrected ambiguity, discrepancy or mathematical error.
- 8.4 In the event that the City exercises any of its rights under Section 8.3 above:
- (a) The Bid Price shall NOT be considered uncertain, erroneous, non-compliant or incapable of acceptance by the City; and
 - (b) The Bid shall NOT be considered non-compliant or incapable of acceptance by the City.

9. BLACK-OUT PERIOD

To ensure that the City’s procurement process is fair, open and transparent to all Bidders, there shall be no communication between the City and Bidders during a Quotation process, except as specified in the Quotation. Any communication between a Bidder and City staff or Council (other than as specified in the Quotation) may result in the Bid being rejected as non-compliant.

10. BID OPENING

“Requests for Tenders” and “Requests for Proposals” shall be opened at a public meeting at the Markham Civic Centre, 101 City Centre Boulevard, Markham, Ontario. The Bid opening shall be done in public approximately fifteen (15) minutes after the Closing Time. For “Requests for Tenders”, only the Bid Price shall be read out. For “Requests for Proposals”, only the names of the Bidders shall be read out.

If a Quotation requires the submission of Bids through the Bidding System, a public Bid opening will not be held. The names of the Bidders and the unverified Bid Price shall be posted on the City’s Bidding System on the same day as the Closing Time.

All Bid prices are subject to review and verification by the City

11. WITHDRAWAL OF BIDS PRIOR TO THE CLOSING TIME

Paper copy Bid Withdrawal

11.1 A Bidder may request that their Bid be withdrawn. The withdrawal shall be allowed if the request is received by the City prior to the Closing Time. Withdrawal requests shall be made in writing by an authorized representative of the Bidder and should be directed to the designated City staff specified on the Quotation cover page. Telephone requests shall NOT be considered.

11.2 Bids confirmed by the City as withdrawn prior to the Closing Time shall be returned unopened to the Bidder.

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- 11.3 The withdrawal of a Bid does not disqualify a Bidder from submitting another Bid for the same Quotation prior to the Closing Time.
- 11.4 If more than one Bid is submitted by the same Bidder for the same Quotation and no withdrawal notice has been received by the City prior to the Closing Time, the Bid bearing the latest date and time shall be considered the intended Bid. All earlier Bids shall be considered void and shall be returned unopened to the Bidder.

Bidding System Bid Withdrawal

- 11.5 If more than one Bid is submitted by the same Bidder for the same Quotation, the Bid received by the Bidding System bearing the latest date and time shall be considered the intended Bid.

12. WITHDRAWAL OF BIDS DURING PUBLIC BID OPENING

- 12.1 In some instances, the Bids for more than one Quotation are opened at the same public meeting. At such public meeting, at the conclusion of the reading out of Bids for the first Quotation, the low Bidder on that Quotation may withdraw any of their remaining Bids relative to those other Quotations which have not yet been opened by advising the City's representative. The City's representative shall read out the Bidder's name and announce that the Bid has been withdrawn.
- 12.2 Bids withdrawn under this procedure cannot be reinstated.

13. WITHDRAWAL OF BIDS AFTER THE CLOSING TIME

Withdrawal requests received after the Quotation Closing Time shall NOT be permitted.

14. NOTICE

- 14.1 Every notice, including any addendum, that the City may be required to give to the Bidder *prior to* the Closing Time shall be deemed to have been properly given if forwarded through the Bidding System or to the email address provided when the Quotation was downloaded from Biddingo.com or obtained from the City. Bidders are requested to acknowledge receipt of addenda as indicated in the Quotation.
- 14.2 Every notice, including any addendum, that the City may be required to give to the Bidder *after* the Closing Time shall be deemed to have been properly given if forwarded by the Bidding System or by email to the address provided in the Bid.

15. ACCEPTANCE / REJECTION OF BIDS

- 15.1 The City reserves the right, in its sole discretion, and without incurring any liability whatsoever, to accept or reject any or all Bids, or to cancel the Quotation process at any time, without cause, if deemed in the best interests of the City to do so.
- 15.2 Unless otherwise specified in the Quotation, Bids which are qualified or restricted by any statement added to the Bid or a covering letter shall be rejected as non-compliant.
- 15.3 Any Bid which is incomplete, illegible, which contains alterations not called for, fails to comply with the requirements of the Quotation, or is otherwise irregular in any way (collectively, "Irregularities"), may be rejected as non-compliant by the City. The City reserves the right, in its sole discretion, to waive minor Irregularities and seek clarification from the Bidder regarding such minor Irregularities.

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15.4 The City reserves the right, in its sole discretion, to ask for clarification regarding or to solicit additional information regarding any information included in a Bid, or (except for MANDATORY requirements) to request that a Bidder provide information not included in the Bid.

15.5 If the City is unable to verify bonding requirements, upon request by the City, the Bidder shall be given five (5) business days to remedy the verification to the City's satisfaction.

16. DISQUALIFIED VENDORS

The City, in its sole discretion, may disqualify a vendor from participation in a Quotation process, or place a vendor's name on a list of disqualified vendors for a period of two (2) years on the basis of documented poor performance, non-performance, Conflict of Interest (including, without limitation, involvement in any litigation or contractual dispute with the City), or failure to accept a Contract Award. This information may be obtained from within the City or through reference checks. A written notice of the decision shall be provided to the vendor by the City. From and after the delivery of such notice, the disqualified vendor shall not be eligible to participate in any Quotation process, or to provide goods or services to the City for so long as the supplier remains on the list of disqualified vendors (as applicable). After the two (2) year period referred to above, disqualified vendors, who are otherwise in good standing, may request that their name be removed from the list. Removal of names from the list shall be at the sole discretion of the City.

17. CONTRACT AWARD

17.1 The award of a Contract is based on the best value for the City based upon quality, service and price. The award is subject to the City's budget restrictions, limitations and approvals.

17.2 The City reserves the right, in its sole discretion, to negotiate with the lowest priced Bidder / highest ranked Bidder (as applicable, and whose reference checks meet or exceed the expectation of the City in accordance with Section 17.4 below) in the event that the Bid Prices submitted by the Bidders exceed the City's budget. If an acceptable contract cannot be concluded with such Bidder, the City reserves the right to negotiate a contract acceptable to the City with the next lowest priced Bidder(s) / highest ranked Bidder(s) (as applicable) in succession.

17.3 The City reserves the right, in its sole discretion, to award in whole or in part (including, without limitation, by part, item or group of items), or to award to more than one Bidder.

17.4 The City reserves the right, in its sole discretion, not to award to the lowest priced Bidder, the highest ranked Bidder or to any Bidder whose reference checks do not meet or exceed the expectations of the City (as determined by the City in its sole discretion) regarding past performance, timely project completion, health and safety performance, experience, qualifications, financial standing, appropriate manpower, equipment and/or facilities, or any other criteria deemed necessary by the City to meet the requirements of the Quotation.

17.5 The acceptance of a Bid and Contract Award to the Successful Bidder shall be indicated by notice in writing signed by a duly authorized representative of the City. No other act of the City shall constitute the acceptance of a Bid and Contract Award.

17.6 Upon acceptance of a Bid and Contract Award by the City, and upon submission by the Successful Bidder of all documents required by the Quotation, a Purchase Order shall be issued to the Successful Bidder.

17.7 In the event that the Successful Bidder fails to accept the Contract Award or fails to submit to the City all documents required by the Quotation within ten (10) Business Days of notification, the City may, in its sole discretion:

- (a) Grant additional time to fulfill the requirement; or

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- (b) Cancel the Contract Award, award to another Bidder which meets the Quotation requirements, and exercise any remedies available to the City (including, without limitation, forfeiture of any bid deposit or enforcement of any bid bond).

18. NO LIABILITY

The City, its affiliates, elected officials, directors, officers, employees and agents shall not be liable (in contract, tort or otherwise) for any costs, expenses, losses or damages incurred, sustained or suffered by any Bidder or any third party, prior or subsequent to, or by reason of the acceptance or rejection by the City of any Bid, by reason of any award decision (or delay thereof) by the City, by reason of the cancellation of the Quotation process, or by reason of the exercise by the City of any of its rights specified in the Quotation or the City's *General Terms and Conditions*.

PART III – CONTRACT TERMS AND CONDITIONS

1. CONTRACT

- 1.1 The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 1.2 The Contract shall consist of the following (collectively, the “Contract Documents”), unless otherwise specified in the Quotation;
 - (a) Purchase Order,
 - (b) Bid,
 - (c) Quotation,
 - (d) the City's *General Terms and Conditions*, and
 - (e) any other written agreement between the parties regarding the Work.
- 1.3 In the event of a conflict or inconsistency *among* the Contract Documents, the provision in the document first listed above shall prevail, unless otherwise expressly provided in any Contract Document.
- 1.4 In the event of a conflict or inconsistency *within* the Contract Documents, the order of priority of documents, from highest to lowest, shall be:
 - (a) Supplementary Conditions;
 - (b) General Conditions of the Contract;
 - (c) Specifications;
 - (d) Contract Drawings;
 - (e) City of Markham Engineering Criteria and Standard Drawings;
 - (f) Special Provisions;
 - (g) Ontario Provincial Standard Drawings; and
 - (h) Ontario Provincial Standard – General Conditions of the Contract.

2. CONTRACT TERM

The term of the Contract shall be as specified in the Contract, unless otherwise extended or amended by mutual written agreement of the City and the Contractor (“Contract Term”). Notwithstanding the expiry of the Contract Term, the terms and conditions of the Contract shall continue to apply during the Warranty Period.

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3. WORK

- 3.1 The Work shall start and be completed as set out in the Contract, unless otherwise extended or amended by mutual written agreement of the City and the Contractor. Unless otherwise specified in the Contract, Work shall start within five (5) Business Days after issuance of a Purchase Order, and shall be carried out on a continuous basis until final completion of the Work.
- 3.2 The Contractor shall make no change or alteration to the Work, or perform any additional work without the City's prior, written approval.

4. CONTRACTOR'S RESPONSIBILITY

- 4.1 The Contractor shall comply with all federal, provincial and municipal laws and regulations applicable to the Work.
- 4.2 The Contractor shall obtain all permits and licenses required to perform the Work, and shall not do or suffer to be done anything in violation of any such permits and/or licenses.
- 4.3 The Contractor shall bear the risk and responsibility of any loss, damage or expense of any nature or kind whatsoever to the Work or to the Contractor arising from strikes or labour disputes, other than such loss, damage or expense caused by the failure of the City to meet its obligations under the Contract.
- 4.4 The Contractor shall bear the risk and responsibility of any equipment, tools, or supplies delivered to any site or facility by or on behalf of the Contractor, prior to, during or after carrying out the Work, unless otherwise expressly provided in the Contract.
- 4.5 The Contractor shall ensure that all persons employed or engaged by the Contract to perform the Work, when using any City buildings, premises, equipment, hardware or software, shall comply with all security policies, regulations or directives relating to such buildings, premises, equipment, hardware or software.
- 4.6 The Contractor shall furnish all personnel required to perform the Work, and all such personnel shall be competent and qualified to perform the Work. Where specific personnel have been proposed by the Contractor for the performance of the Work, and have been accepted by the City, such personnel shall not be replaced with other personnel without the prior written consent of the City, such consent not to be unreasonably withheld.

5. HEALTH AND SAFETY

The Contractor shall comply with the City's health and safety policies, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 and Regulations, as amended, and all applicable industry standards for the Work.

6. CODE OF ETHICS

- 6.1 The Code of Purchasing Ethics published by the Supply Chain Management Association (SCMA) and the National Institute of Government Purchasing (NIGP) Code of Ethics shall apply to all purchases of goods and/or services by the City. SMAC's Code of Ethics can be found at www.scma.com. NIGP's Code of Ethics can be found at www.nigp.org
- 6.2 The Contractor shall read, understand and conduct itself according to the Values

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“Honesty/Integrity, Professionalism, Responsible Management, Serving the Public Interest and Conformity to the Laws...” as outlined in the SMAC Code of Ethics. Failure to do so shall result in the termination of the Contract and exclusion from future Quotations.

7. RECORDS

The Contractor shall maintain at all times, detailed and accurate records of all transactions relating to the Contract. The City reserves the right, in its sole discretion, to inspect and audit the books, payrolls, accounts and records of the Contractor at any time during the Contract Term, and at any time thereafter, as required by the City. The Contractor shall supply certified copies of payrolls and any other records required by the City. The City shall provide the Contractor 48 hours prior written notice of its requirement for such audit or certified copies.

8. INDEPENDENT CONTRACTORS

The relationship of the City and the Contractor is one of independent contractors. Nothing contained in the Contract is intended to place the City and the Contractor in the relationship of partners, joint ventures, principal-agent, or employer-employee, and neither the City nor the Contractor shall have any right to obligate or bind the other party in any manner whatsoever. The Contractor is responsible for all legally required employer and employee contribution and deductions, compensation and benefits for itself and its personnel.

9. SUBCONTRACTORS

9.1 The Contractor shall not assign or sublet the Contract (or any part thereof) or subcontract any portion of the Work without the prior written consent of the City.

9.2 No Subcontractor shall, under any circumstances, relieve the Contractor of its liabilities and obligations under the Contract. Should any Subcontractor fail to perform the Work in a satisfactory manner, the City may, in its sole discretion, require the Contractor to replace such Subcontractor.

9.3 The City shall have no obligation to deal directly with any Subcontractor. The Contractor shall be solely responsible for the payment of all amounts owing to Subcontractors. The Contractor shall coordinate the provision of the products and/or services by Subcontractors in a manner acceptable to the City, and shall ensure that Subcontractors comply with the terms and conditions of the Contract. The Contractor shall be liable to the City for all costs or damages arising from the acts, omissions, negligence or willful misconduct of Subcontractors.

10. CONFLICT OF INTEREST

If, during the Contract Term, a Conflict of Interest (or the appearance of same) arises, or the Contractor is retained by another client giving rise to a potential Conflict of Interest, the Contractor shall immediately inform the City. If a Conflict of Interest is deemed to exist by the City, the Contractor shall (if required by the City) take such steps as are necessary to remove the Conflict of Interest to the satisfaction of the City, failing which the City may, in its sole discretion, terminate the Contract.

11. PRIVACY

The Contractor agrees and acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, and any other Provincial or Federal privacy legislation that may be in effect during the Contract Term (collectively “Privacy Legislation”). The Contractor agrees to be bound by the Privacy Legislation, and agrees that it shall not directly or indirectly disclose, distribute or use any Personal Information provided to it by the City, without obtaining

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the prior written consent of the City. “Personal Information” means information which relates to an individual and allows that individual to be identified, and includes any information defined from time to time as “personal information” under any Privacy Legislation.

12. CONFIDENTIALITY

12.1 “City Confidential Information” means;

- (a) Personal Information, confidential, secret or proprietary information, including data, technical information, financial information, business information (including business plans, strategies and practices) of the City which is disclosed to or obtained by the Contractor in connection with the Contract, and
- (b) all information related to the operations of the City which comes to the attention of the Contractor in the course of performing the Work, but excludes any such information which;
 - (i) is or becomes publicly available,
 - (ii) is already rightfully in the possession of the Contractor and not subject to any pre-existing obligation of confidentiality,
 - (iii) is independently developed by the Contractor outside the scope of the Contract, or (iv) is rightfully obtained by the Contractor from third parties.

12.2 The Contractor shall protect the City Confidential Information at all times and in the same manner as the Contractor protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. The Contractor shall not, without the prior written consent of the City, disclose City Confidential Information to any person nor use City Confidential Information for any purpose other than for the benefit of the City in connection with the Work.

13. OWNERSHIP OF DELIVERABLES

13.1 Unless otherwise expressly provided in the Contract, the City shall have all ownership rights in and to all originally developed Deliverables, vesting in the City immediately upon their creation and at every stage of their development. The Contractor hereby assigns to the City all right, title and interest (including, without limitation, copyright and other intellectual property rights) in and to such Deliverables, and the Contractor expressly waives the Contractor’s moral rights in respect of such Deliverables. The Contractor shall provide reasonable assistance to the City in the preparation of all documents necessary to evidence the City’s ownership rights in and to such Deliverables (including, without limitation, obtaining a waiver of moral rights from all authors).

13.2 If the Deliverables contain any pre-existing materials owned or licensed by the Contractor that are incorporated into the Deliverables (“Contractor Materials”), the Contractor hereby grants to the City a perpetual, non-transferrable, non-exclusive, royalty-free licence to use the Contractor Materials to the extent reasonably necessary or convenient to receive or enjoy the benefits of the Deliverables.

14. WARRANTY

14.1 The Contractor represents and warrants that the Work shall be performed in a professional and workmanlike manner, in accordance with applicable industry standards.

14.2 The Contractor represents and warrants that the Deliverables;

- (a) shall be in accordance with the requirements specified in the Contract and with all applicable laws, bylaws, regulations and standards,

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(b) shall function or otherwise perform in accordance with the features, functional and technical specifications provided in the Contract, and

(c) shall in no way infringe or violate the intellectual property rights of any person.

14.3 The Contractor represents and warrants that if at any time prior to one year (or such longer warranty/guarantee period specified in the Contract) after completion of the Work (the “Warranty Period”), the Deliverables or any part of the Work becomes defective or is deficient or fails due to defect in design, material or workmanship, or otherwise fails to meet the requirements of the Contract, then the Contractor, upon request by the City, shall make good every such defect, deficiency or failure at the Contractor’s cost and expense.

15. INDEMNITY

The Contractor shall indemnify and hold harmless the City (and its affiliates, elected officials, directors, officers, employees and agents) (collectively, the “Indemnified Parties”) from and against all actions, suits, claims, demands, liens, proceedings and judgments which may be brought against or made upon the Indemnified Parties, and against all liabilities, damages, losses, costs, charges and expenses (including legal expenses) which may be incurred, sustained or suffered by the Indemnified Parties, resulting from or arising out of the infringement (actual or alleged) by the Deliverables of the intellectual property rights of any person, or the acts or omissions of the Contractor (its Subcontractors, agents or employees) in connection with the Contract or the performance of the Work.

16. INSURANCE

16.1 The Contractor shall purchase and maintain in force, at their own expense (including the payment of all deductibles), during the Contract Term and the Warranty Period (unless otherwise stated), the following policies of insurance underwritten by insurers licensed to conduct business in the Province of Ontario and satisfactory to the City (unless otherwise specified in the Contract):

- (a) Commercial General Liability Insurance policy shall include coverage for but not limited to Bodily Injury, Person Injury, Property Damage and Contractual Liability with a minimum amount of \$2,000,000.00 for each occurrence, and include:
 - (i) an endorsement certifying that the **The Corporation of the City of Markham** is included as an additional insured;
 - (ii) a cross liability clause;
 - (iii) non-owned automobile coverage including legal liability for damage to hired automobiles; and,
 - (iv) an exception to the pollution liability exclusion for Hostile Fire, or an endorsement adding back in coverage for Hostile Fires where there exists an absolute pollution exclusion.
- (b) Automobile Policy for all licensed Motor Vehicles owned or leased by the Consultant in a minimum amount of \$2,000,000.00 for each occurrence.
- (c) Professional Liability Insurance, in a minimum amount of \$1,000,000.00 inclusive per claim and \$2,000,000.00 in the aggregate for each policy period. Upon completion of the Warranty Period the policy shall remain in force for twelve (12) months.

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The policies shall be endorsed to the effect that such insurance policies shall not be altered, cancelled or allowed to expire without thirty (30) days advance written notice to the City. All policies shall apply as primary and not as excess of any insurance available to the City.

Upon request by the City, the Contractor shall furnish the City with a certificate of insurance (in a form satisfactory to the City, in its sole discretion) confirming that the Contractor has in place the required insurance.

If applicable, and based upon the operations of the sub-consultant, sections 16.1 a & b. shall apply in the same manner to any sub-contractor as it would to the Contractor. Further, it is the Contractor's obligation to ensure that the sub-contractor is aware of these obligations. Upon request, the Contractor shall provide to the City confirmation of the sub-contractor's insurance.

- 16.2 The Contractor shall furnish the City with a certificate of insurance (in a form satisfactory to the City, in its sole discretion) confirming that the Contractor has in place the above-mentioned insurance policies. The certificate of insurance shall also contain an endorsement to the effect that such insurance policies shall not be altered, cancelled or allowed to expire without thirty (30) days advance written notice to the City.

17. DEFAULT AND TERMINATION

17.1 Any of the following shall be considered to be an "Act of Default" by the Contractor:

- (a) Failure to comply with the terms and conditions of the Contract, and such failure is not remedied within ten (10) calendar days after written notice of such failure by the City.
- (b) Breach of Section 11 (Privacy) or Section 12 (Confidentiality).
- (c) Assignment, transfer, conveyance, sublet, or disposition of the Contract or the Contractor's right, title, or interest therein to any person without the prior written consent of the City.
- (d) Failure to comply with all federal, provincial and municipal laws and regulations applicable to the Work.
- (e) Commencement of any proceeding under bankruptcy, creditor protection or similar law in respect of the Contractor, or appointment of a receiver, receiver-manager or liquidator in respect of the Contractor.

17.2 Where an Act of Default occurs, the City reserves the right, in its sole discretion and upon providing written notice to the Contractor, to immediately invoke any applicable bond(s) and/or terminate the Contract.

17.3 The City reserves the right, in its sole discretion, to terminate the Contract, in whole or in part, without cause, upon providing thirty (30) days prior written notice to the Contractor.

17.4 Upon receipt of a notice of termination hereunder, the Contractor shall immediately cease performance of the Work (unless otherwise directed by the City in writing) and promptly remove all Contractor and Subcontractor equipment from the City's property.

17.5. In the event of termination hereunder, the City shall not incur any liability whatsoever to the Contractor except for payment for the goods and/or services that have been satisfactorily delivered or performed by the Contractor up to the effective date of termination.

18. FORCE MAJEURE

Neither the City nor the Contractor shall be liable for default or delay in the performance of obligations under the Contract due to causes beyond the reasonable control of (and not due to the fault or negligence of) the party affected, including, without limitation, natural disasters, plagues, epidemics, war, insurgence, terrorism, and power outages. The Contractor shall give the City prompt written notice when any such cause has or appears likely to delay deliveries and/or performance of the Work, and shall take appropriate action to avoid or minimize such delay. If any such default or delay threatens to impair the Contractor's ability to meet delivery requirements for materials, supplies and/or services, the City shall have the right, without any liability to the Contractor, to terminate the portion or portions of the Contract so affected upon written notice to the Contractor.

19. TRANSPORTATION AND DELIVERY

All prices shall include transportation and delivery charges and customs duties fully prepaid by the Contractor to any specified destination within the corporate limits of the City. The F.O.B. point shall be the destination specified in the Contract.

20. PURCHASE ORDER/INVOICES

The Purchase Order number shall appear on all documentation relating to the Contract, including, but not limited to, invoices and delivery/packing slips. Invoices that do not include the applicable Purchase Order number, item number and order description shall not be processed, and shall be returned to the Contractor until the appropriate information is provided. All invoices shall be forwarded to Accounts Payable, City of Markham, 101 City Centre Boulevard, Markham, Ontario.

21. PAYMENT

21.1 Unless otherwise specified in the Contract, all prices shall be in Canadian dollars and payment shall be made to the Contractor twenty-eight (28) calendar days after Receipt of Proper Invoice by the City. Where applicable, taxes shall be shown separately.

21.2 The Contractor shall invoice the City monthly on a time and expense basis, charging the goods/services/actual hours/disbursements, as applicable, incurred each month up to the Contract amount. If the Work involves a fixed fee contract, the fees payable shall not exceed the fixed fee amount, unless the City has provided prior written approval. If the Work involves progress payments, the invoice schedule shall be based on the Work schedule and milestones as outlined in the Contract. The Contractor, when invoicing for expenses, shall provide receipt for those expenses.

21.3 Where there is a question of non-performance by the Contractor, the disputed portion of the invoice may be withheld by the City. In the event that the City is entitled to a discount for prompt payment, the withholding of payment as provided herein shall not deprive the City from taking such discount.

21.4 In the event that an invoice amount is determined to be in error by the City (or the City's payment certifier) after payment is made to the Contractor, the City shall notify the Contractor in writing, and the Contractor shall make a correction adjustment on the next invoice.

21.4 For the purposes of this Section 21, "**Proper Invoice**" means a written bill or other request for payment in respect of Work supplied under the Contract, which shall contain the following information:

- (a) Contractor's name and address, and name, title, telephone number and mailing address of the person to whom payment is to be sent.

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- (b) The date of the Proper Invoice and the period during which the Work was supplied. Payment shall be made only for Work supplied prior to the date of the Proper Invoice.
- (c) Information identifying the authority, in the Contract or otherwise, under which the Work was supplied (Contract number, or as otherwise required by the Contract).
- (d) A description, including quantity where appropriate, of the Work that was supplied.
- (e) The amount payable for the Work that was supplied, and the payment terms (sub-totals, totals, holdback and taxes to be separately shown on invoice).
- (f) Contractor HST Registration Number.
- (g) City of Markham Purchase Order Number.
- (h) City of Markham Project Manager / Department.

21.5 For the purposes of this Section 21, “**Receipt of Proper Invoice**” means the date that a Proper Invoice is received by the City, which date shall be deemed to be: (a) if sent by mail or personal delivery, the date received at the address specified by the Contract, provided that if such day is not a Business Day, then receipt shall be deemed to be the Business Day next following such day (“Delivery Date”); and (b) if sent by electronic communication, the date of transmission, provided that if such day is not a Business Day or if it is received after the end of normal business hours on the date of transmission, then it shall be deemed to have been received at the opening of business on the first Business Day next following the transmission (“Transmission Date”); and (c) the later of the date of the Proper Invoice and the Delivery Date or Transmission Date (as applicable).

22. SALES TAX

The City is subject to payment of sales and excise taxes imposed by the Federal and Provincial Governments. Should there be any approved variation in any tax or duty imposed by the Province of Ontario or the Government of Canada which becomes directly applicable to the goods/services to be purchased during the Contract Term, the Contractor and the City mutually agree to allow the appropriate increase or decrease in the prices as of the date they become effective. The onus is on the Contractor to bring to the City’s attention any such changes. All Provincial and Federal taxes shall be shown separately on the applicable invoice.

23. ACCESSIBILITY STANDARDS FOR CUSTOMER SERVICE

23.1 In accordance with Ontario Regulation 429/07, Accessibility Standards for Customer Service Sect. 6, every provider of goods and services shall ensure that every person who deals with members of the public or participates in the developing of the service providers’ policies, practices and procedures governing the provision of goods and services to members of the public, shall be trained on the following:

- (a) How to interact and communicate with persons with various types of disability.
- (b) How to interact with persons with disabilities who use assistive devices or require the assistance of a guide animal, or a support person.
- (c) How to use equipment that is available on the premises that may help in the provision of goods or services.
- (d) What to do if a person with a particular type of disability is having difficulty accessing the provider's goods or services.
- (e) Information on the policies, practices and procedures governing the provision of goods and services to people with disabilities.

23.2 Contractors that provide customer service on behalf of the City shall meet the requirements of Ontario Regulation 429/07 with regard to training. A document describing the training policy, a summary of the contents of the training and details of training dates and attendees shall be submitted to the

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City upon request. The following website may be referenced for the purposes of training:
<http://www.mcss.gov.on.ca/mcss/serve-ability/splash.html>.

24. CONSTRUCTION ACT

Where the *Construction Act*, R.S.O. 1990, c. C.30, as amended, (the “Act”) and the regulations thereto (the “Regulations”) apply to the Contract, the following sections shall be applicable unless otherwise specified in the Contract Documents:

- (a) **Labour and Material Payment Bond.** Upon Contract Award, the Contractor shall provide the City with a labour and material payment bond, in the form prescribed by the Regulations, that,
- (i) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
 - (ii) has a coverage limit of at least 50 per cent of the Bid Price, or such other percentage of the Bid Price as may be prescribed; and
 - (iii) extends protection to subcontractors and persons supplying labour or materials to the improvement.

The labour and material bond may set out the claims process applicable in respect of the bond.

- (b) **Performance Bond.** Upon Contract Award, the Contractor shall provide the City with a performance bond, in form prescribed by the Regulations, that,
- (i) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; and
 - (ii) has a coverage limit of at least 50 per cent of the Bid Price, or such other percentage of the Bid Price as may be prescribed.

The performance bond may set out the claims process applicable in respect of the bond.

- (c) **Basic Holdback.** The City shall retain a holdback (“Basic Holdback”) equal to 10 per cent of the price of the services or materials as they are actually supplied under the Contract until all liens that may be claimed against the Basic Holdback have expired or been satisfied, discharged or otherwise provided for in accordance with the Act.

- (d) **Holdback for Finishing Work.** Where the Contract is certified to be substantially performed by the City, but services or materials remain to be supplied to complete the Work, the City shall retain, from the date of the Certificate of Substantial Performance a separate holdback (“Finishing Holdback”) equal to 10 per cent of the price of the remaining services or materials as they are actually supplied under the Contract, until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for in accordance with the Act.

- (e) **Contract Substantially Performed.**

- (i) When the Contract has been substantially performed (in accordance with the Act), the Contractor shall apply to the City to certify substantial performance. A “Statutory Declaration” (in a form acceptable by the City, declaring that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred by the Contractor in the performance of the Work have been paid) and a Workplace Safety and Insurance Board “Certificate of Clearance” (in a form acceptable by the City) shall accompany the application.
- (ii) If the City is in agreement that the Work has been substantially performed, a “Certificate of Substantial Performance” (in the form required by the Regulations) shall be signed and issued to the Contractor within seven (7) days of signing.

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- (iii) The Contractor shall publish a copy of the “Certificate of Substantial Performance” in a construction trade newspaper (as that term is defined in the Regulations), and provide suitable evidence of the publication to the City.
 - (iv) The City shall retain, from the date of the Certificate of Substantial Performance, a Finishing Holdback equal to 10 per cent of the price of the services or materials that remain to be supplied to complete the Work.
- (f) **Contract Deemed Completed.** When the Contract is deemed to be completed (in accordance with the Act), the Contractor shall apply to the City to certify completion. A “Statutory Declaration” (in a form acceptable by the City, declaring that that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred by the Contractor in the performance of the Work have been paid) and a Workplace Safety and Insurance Board “Certificate of Clearance” (in a form acceptable by the City) shall accompany the application.
- (g) **Payment of Basic Holdback.** Subject to subsection 24(i) below, upon certification of substantial performance of the Contract by the City and expiration of the sixty (60) day period following publication of the Certificate of Substantial Performance, and provided there are no lien claims (or all lien claims have been satisfied, discharged or otherwise provided in accordance with the Act), the City shall make payment of the Basic Holdback, so as to discharge all claims in respect of that holdback.
- (h) **Payment of Finishing Holdback.** Subject to subsection 24(i) below, upon certification of completion of the Contract by the City and expiration of the sixty (60) day period following the date of certification, and provided there are no lien claims (or all lien claims have been satisfied, discharged or otherwise provided for in accordance with the Act), the City shall make payment of the Finishing Holdback, so as to discharge all claims in respect of that holdback.
- (i) **Non-payment of Holdback.** The City may refuse to pay some or all of the Basic Holdback or Finishing Holdback amount the City is required to pay, if,
- (i) the City publishes a notice in the prescribed form specifying the amount of the holdback that the City refuses to pay, and the notice is published in the manner set out in the Regulations no later than 40 days after the date on which,
 - (A) the applicable certification or declaration of substantial performance is published, or
 - (B) if no certification or declaration of substantial performance is published, the date on which the Contract is completed, abandoned or terminated; and
 - (ii) the City notifies, in accordance with the Regulations, if any, the Contractor of the publication of the notice.
- (j) **Contract Termination.** In the event that the Contract is terminated, for any reason, the Contractor shall publish, in the manner set out in the Regulations, a notice of the termination in the prescribed form.
- (k) **Adjudication.** Either the City or the Contractor may refer to adjudication a dispute with the other party to the Contract, in accordance with the adjudication procedure set out in the *Construction Act*, R.S.O. 1990, c. C.30, and *O.Reg.306/18*.

25. GENERAL INSTRUCTIONS FOR WORK ON CITY PROPERTY

25.1 The Contractor shall keep one copy of the Contract at the Work site.

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- 25.2 The Contractor shall coordinate all Work with the City's representatives to ensure minimum disruption of public service and inconvenience to occupants of and visitors to public buildings.
- 25.3 The Contractor shall ensure that there is no interference with the use of and safe passage to and from public buildings, public sidewalks and roads without the prior written approval of the City. Material shall not be stored in or obstruct roadways, sidewalks or passageways without the prior written approval of the City. The Contractor shall not interfere with or damage privately or publicly-owned adjacent property.
- 25.4 Prior to and during the performance of the Work, the Contractor shall establish the location of existing utility lines, and shall ensure that same are protected and maintained.
- 25.5 Where alterations are necessary, the Contractor shall ensure that new and old Work shall be joined, cut, removed, patched, repaired or finished in a professional and workmanlike manner to the satisfaction of the City.
- 25.6 The Contractor shall provide and maintain temporary facilities and services required to carry out the Work. All such temporary facilities and services shall be removed by the Contractor upon completion of the Work.
- 25.7 The Contractor shall only use new products unless otherwise specified in the Contract. The Contractor shall deliver and store material and equipment to manufacturers' instructions, with manufacturers' labels and seals intact. When material or equipment is specified by standard or performance specifications, the Contractor shall, upon request by the City, obtain from the manufacturer an independent testing laboratory report, stating that the material or equipment meets or exceeds specified requirements.
- 25.8 The Contractor shall keep the Work site clean and hazard-free throughout the Work period, and shall provide for proper storage, removal and disposal of garbage. All debris shall be transported to an authorized dump, waste treatment site or recycling facility by the Contractor, and disposed of in accordance with applicable by-laws, laws and regulations (all at the Contractor's expense).
- 25.9 The Contractor shall make such explorations and probes as are necessary to ascertain any protective measures required before proceeding with demolition and removal.
- 25.10 The Contractor shall protect existing structures, furnishings and persons by providing and maintaining adequate temporary protective coverings during the performance of the Work. The Contractor shall be responsible for any injury to persons, damage to existing structures and furnishings as a result of the Work. Any damage occurring as a result of the Work shall be repaired or replaced by the Contractor at the Contractor's expense and to the satisfaction of the City (in its sole discretion).
- 25.11 The Contractor shall provide and maintain adequate fire protection in accordance with the regulations and requirements of the City's Fire and Emergency Services Department.
- 25.12 The Contractor shall provide and arrange for traffic control where necessary for delivery of materials, removal of garbage, or any other activity related to the Work as required by applicable by-laws, laws and regulations.
- 25.13 The Contractor shall take the necessary precautions to keep dust, dirt and noise to an acceptable level, as directed by the City or as required by applicable by-laws, laws and regulations.
- 25.14 The Contractor shall provide suitable protection for all entrances and exit ways into all buildings, all fresh air intakes, telephone, hydro, and mechanical rooms, elevators shafts and all plumbing, against dust, dirt, water and fumes.

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- 25.15 The Contractor shall provide canvas tarps from ground to roof for all entrance and exit ways, floors, walls and all standing fixtures against spillage of materials and/or damage during the Work period.
- 25.16 The Contractor shall not store materials or use a truck or other equipment in a manner which would load the structure beyond its design capacity.
- 25.17 The Contractor shall ensure that all persons employed or engaged by the Contractor to perform the Work use designated existing sanitary facilities and not undress, use profane language or make coarse gestures while on City property.
- 25.18 The Contractor shall be responsible for and take every precaution reasonable in the circumstances for the protection of all workers associated with the Work (whether employed by the Contractor, the City or a third party), and for the protection of all other persons. The Contractor shall ensure that all persons employed or engaged by the Contractor to perform the Work are supervised by a Competent Person and trained to perform the specific tasks of their jobs in a healthy and safe manner, and that documentation to support such training remains current during the Work period.
- 25.19 The Contractor shall ensure that all tools, equipment and machinery brought to the Work site shall be used, stored and maintained properly in accordance with applicable laws, regulations and industry standards.
- 25.20 The Contractor shall ensure that all materials brought to the Work site shall be used, stored, handled, transported and disposed of properly in accordance with applicable laws, regulations and industry standards. All materials delivered to the City or used in conjunction with the Work shall have applicable Material Safety Data Sheets in accordance with Workplace Hazardous Materials Information Systems (“WHMIS”) regulations in the Province of Ontario. Applicable Material Safety Data Sheets shall be available for inspection at the Work site at all times while such materials are present.
- 25.21 The Contractor shall notify the City of all hazardous materials delivered to the City or used in conjunction with the Work, including without limitation, all products controlled federally and/or provincially under WHMIS or Transportation of Dangerous Goods regulations, and all designated substances as defined in the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 and Regulations.