

MEMORANDUM OF AGREEMENT (MOA)

MEMORANDUM OF AGREEMENT made as of the [Day of Month] day [Month], A.D. [Year].

BETWEEN:

THE CITY OF CALGARY, a Municipal Corporation
of the Province of Alberta,

(hereinafter called "the City")

OF THE FIRST PART

- and -

[Contractor], a body corporate with an office
in the City of Calgary, in the Province of Alberta,

(hereinafter called "the Contractor")

OF THE SECOND PART

WHEREAS the City called under Request for Proposal No. [Tender No.] (the "RFP") for the supply of all labour, supervision, technical skill and knowledge, material, equipment together with all work and incidentals necessary and required to perform all the work and furnish the results as more fully appear and are described in the Contract Documents for the [Project Description] (hereinafter referred to as "the Project");

AND WHEREAS the Contractor submitted a Proposal in response to the RFP and was selected as the successful Proposer;

AND WHEREAS the City issued to the Contractor Purchase Order No. [Purchase Order Number] dated [Date of Purchase Order];

AND WHEREAS the parties wish to provide terms and conditions for the carrying out of the Project;

NOW, THEREFORE, IN CONSIDERATION of the hereinbefore recited premise, the acceptance by The City of the offer in the Contractor's Proposal and the mutual covenants of the parties hereto **THIS AGREEMENT WITNESSETH THAT THE PARTIES HERETO AGREE AS FOLLOWS:**

ARTICLE I - DOCUMENTS MAKING UP THE CONTRACT

1.1 The following documents and drawings (hereinafter together called "the Contract Documents") make up the contract between the parties:

This Memorandum of Agreement
Purchase Order No. [Purchase Order Number] dated [Date of Purchase Order], as well as

any further or revised purchase orders as may be issued from time to time

Letter of Award dated [Date of Award]

Letter of Clarification from [Type/fill in] to [Type/fill in] dated [Type/fill in date of Letter of Clarification]

Addendum No. [Addendum Number] dated [Date of Addendum]

Contractor's Proposal dated [Date of Contractor's Proposal]

City's Request for Proposal No. [Tender No.]

- 1.2 The Contract Documents are complementary and what is called for in one is called for by all.
- 1.3 Where the words "Tender"/"Proposer" and "successful Tender"/"successful Proposer" are contained in any of the Contract Documents they shall be deemed to refer to the Contractor, the party of the second part. Where there is a reference to any Statute of the Province of Alberta or regulation made thereunder it shall be deemed to be a reference to the said Statute or regulation as amended to the time that the reference is to be applied to the rights and obligations of the parties under the provisions of this Agreement. When a provision of the Contract Documents, including this Memorandum of Agreement, requires the Contractor to perform the Agreement to a certain standard, whether or not the performance meets the standard shall be determined by the judgement of the Manager, Supply Management.
- 1.4 In the event of inconsistency or conflict between the provisions of any of the Contract Documents priority and precedence will be given by the following order or means:
 - (a) Order of precedence as follows:
 - (i) This Memorandum of Agreement;
 - (ii) Purchase Order No. [Purchase Order Number] dated [Date of Purchase Order]
 - (iii) Any Letters of Clarification agreed to in chronological order with the most recent having highest precedence;
 - (iv) The City's Request for Proposal No. [Tender No.]
 - (v) The Contractor's Response dated [Date of Contractor's Proposal]
 - (vi) All other Contract Documents

or if the above order is not sufficient to resolve the inconsistency or conflict, then the following means may be used in the order listed:

- (b) the most recent provision; or
- (c) the most specific provision.

In addition and in any event the parties will endeavor to interpret the Contract Documents, both individually and collectively, so as to give effect to the intentions of the parties and the carrying out of the Project in a timely, effective, and cost effective manner.

ARTICLE II - SERVICES TO BE PROVIDED

- 2.1 The Contractor shall furnish all labour, supervision, technical skill and knowledge, material, equipment together with all work and incidentals necessary and do and perform all things required or implied by the provisions of the Contract Documents.
- 2.2 The Contractor shall commence performance of the Contract promptly upon receipt of both the Contract Purchase Order aforesaid and instructions from The City to proceed, and continue with performance thereof so as to complete the Project to the satisfaction of the Director, of

the City's Client Department or business unit, (hereinafter called "the Director") or his designated representative by the completion date provided in the Contract Documents.

ARTICLE III - PAYMENT TERMS

- 3.1 The City shall pay the Contractor in connection with services provided under this Agreement as follows:
- Net 30 days following receipt and approval of invoices.
- 3.2 The total amount payable under Article III shall not, in the aggregate, exceed [Amount of Award – Words] [Amount of Award – Numbers], unless The City has provided prior written approval.
- 3.3 Goods and Services Tax (GST) is excluded from the prices herein. GST, to the extent applicable, shall be shown separately on all invoices and shall be paid by the City to the Contractor. The Contractor agrees to include its Business Number on all invoices and remit to Canada Revenue Agency (hereinafter called "CRA"), pursuant to the provisions of the Excise Tax Act, any GST paid or due. If the Contractor is an unregistered supplier or "small supplier" as defined in Sec. 148 of the Excise Tax Act, it shall indicate this status on its invoices.
- 3.4 The parties acknowledge The City will be obligated to deduct a percentage specified by the CRA, from certain payments to any non-resident as defined in the Income Tax Act (Canada) as amended from time to time, unless The City is provided with a waiver letter from CRA. For further information, the Contractor should contact CRA.
- 3.5 The Contract Purchase Order Number issued by Supply Management for this Project must be quoted on all invoices.

ARTICLE IV - INSURANCE AND INDEMNIFICATION

- 4.1 The Contractor shall, during the term of this Agreement and at its own expense, maintain with Insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta, and in forms satisfactory to the City Solicitor, the following insurance policies:
- (a) a Commercial General Liability insurance policy for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence and such policy shall include:
- i. The City as an Additional Insured;
 - ii. Cross Liability Clause;
 - iii. Contractual Liability coverage;
 - iv. Non-Owned Automobile Liability Clause;
- (b) an appropriate Professional Liability/Errors or Omissions Liability insurance policy in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00), and such insurance shall remain in operation for at least twelve (12) months after completion of the Project.
- 4.2 The said insurance policies shall include provision for the City Solicitor to be given THIRTY (30) days written notice prior to cancellation, and thirty (30) days prior written notice of any material change requested by the Contractor, of said insurance policies.

- 4.3 The Contractor shall furnish documentary evidence satisfactory to the City Solicitor of such insurances and of the renewal or continuance thereof within ten (10) business days of any expiry date(s) thereof.
- 4.4 The Contractor and not the City shall be responsible for any deductible that may apply in any of the said insurance policies.
- 4.5 The Contractor hereby indemnifies and shall hold harmless the City and all its employees and authorized representatives from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, legal fees, costs and expenses of whatsoever kind or nature, including loss caused by a software virus, whether arising before, during or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any wrongful act, omission, fault or negligence whether active or passive of the Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Agreement.

ARTICLE V – CONFIDENTIALITY

- 5.1 Except as required under this Agreement, the Contractor will not at any time or in any manner make or cause to be made any copies, pictures, duplicates, facsimiles or other reproduction or recordings of any type, or any abstracts or summaries of any reports, studies, memoranda, correspondence, manuals, records, plans or other written, printed or otherwise recorded material of The City, or which relate in any manner to the present or prospective business of The City. The Consultant will have no interest in any of this material and agrees to surrender any of this material which may be in its possession to The City immediately upon the termination of this Agreement or at any time prior to the termination upon the request of The City.
- 5.2 The Contractor will not at any time (except under legal process) divulge any matters relating to the business of The City or any business of The City's customer which matters may become known to it by reason of its Services performed under this Agreement and will be true to The City in all dealings and transactions relating to the Services contemplated by this Agreement. Furthermore, the Contractor will not use at any time for its own benefit or purposes or of any other person, firm, corporation, association or other business entity, any trade secrets, business development programs, or plans belonging to or relating to the affairs of The City, including but not limited to knowledge relating to customers, clients, or employees of The City.

ARTICLE VI - GOVERNING LAW

- 6.1 This Agreement will be subject to and construed in accordance with the laws in force in the Province of Alberta. No action at law or in equity will be commenced or continued on any matter arising out of or connected with this Agreement in any court other than a court of competent jurisdiction in the Province of Alberta or on appeal to the Supreme Court of Canada from the appropriate court located in the Province of Alberta.

ARTICLE VII - DISPUTE RESOLUTION

7.1 Any dispute between the parties as to the interpretation of, subject matter of, or in any way related to, this Agreement, is to be resolved by the two parties attempting to reach a fair and equitable resolution by using, in good faith, one or more of the following means, in the order listed, until a resolution is arrived at. The means to be used are:

- (a) negotiation;
- (b) mediation;
- (c) arbitration; or
- (d) legal proceedings in a court of competent jurisdiction.

Except for the purposes of preserving a limitation period or obtaining an appropriate interim order or remedy where reasonably necessary, unless otherwise agreed to in writing by the two parties, it will be a condition precedent to the bringing of any legal proceedings that the means or procedures in this clause will have been used and followed in good faith. With respect to mediation, unless otherwise agreed to in writing by both parties, mediation will be in accordance with the procedures of the ADR Institute of Canada, Inc. (hereinafter sometimes referred to as the "Institute"), using as mediator a third party neutral person either as mutually agreed to by the parties, or if the parties are unable to agree as selected by the Institute. With respect to arbitration, unless otherwise agreed to in writing by both parties, arbitration is to be by way of a single arbitrator pursuant to the *Arbitration Act* of Alberta, in accordance with the rules and procedures of the Institute.

ARTICLE VIII - GENERAL CLAUSES

- 8.1 If required in the Contract Documents, prior to any representatives of or on behalf of the Contractor commencing services or entering upon City offices or premises, the Contractor shall for specific individuals working on this Project, without cost to the City, obtain a security clearance from the Calgary Police Service and provide proof thereof.
- 8.2 The services provided pursuant to this Agreement shall be performed in a proper professional manner in accordance with generally accepted standards.
- 8.3 The Contractor represents that it is fully experienced and properly qualified to perform the work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. The Contractor shall act as an independent contractor and not as the agent of The City in performing this Agreement, maintaining complete control over its employees and all of its subcontractors. Nothing in this Agreement or any subcontract awarded by the Contractor shall create any contractual relationship between any such subcontractor and The City. The Contractor shall perform all work in accordance with its own methods subject to compliance with this Agreement.
- 8.4 All work shall be done in accordance with the laws of the Province of Alberta, and the laws of Canada and international treaties and conventions as appropriate. No action at law or in equity shall be commenced or continued on any matter arising out of or connected with this Contract in any other court than a court of competent jurisdiction of the Province of Alberta or on appeal to the Supreme Court of Canada from the appropriate court of the Province of Alberta.

- 8.5 The Contractor shall not, without the written consent of the City, which consent the City may in its discretion withhold, assign the benefit of or delegate its obligations under this Agreement in whole or in part.
- 8.6 This Agreement shall endure to the benefit of and be binding upon the parties hereto, their heirs, executors, successors and permitted assigns.
- 8.7 If the Contractor defaults in the performance of any of the material provisions of this Agreement, The City may give notice of the default to The Contractor. If the Contractor fails to remedy the default within fifteen (15) days after receiving notice of the default or take substantial and meaningful steps within such period to demonstrate that the default will be cured in a timely manner, then The City may either: (a) take reasonable steps to remedy the default and the Contractor shall pay The City all the costs and expenses incurred by The City in doing so; or (b) terminate, repudiate or avoid this Agreement.
- 8.8 Time is of the essence of this Agreement.
- 8.9 This Agreement embodies the entire Agreement between the Contractor and the City. The parties shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No additional changes, amendments or modifications of any of the terms or conditions of the Agreement shall be valid unless reduced to writing and signed by both parties.

ARTICLE IX - NOTICE

- 9.1 If any notice is desired or required to be given pursuant to the provisions of this Agreement, it shall be adequately given:
- (a) by the City to the Contractor if the same is delivered or sent by postage prepaid mail to the Contractor at the following location, address, or number:
- [Contractor's Address]
- Attention: [Type/fill in]
- Fax: [Contractor's Facsimile]
- or sent by facsimile to the Contractor at the fax number shown above.
- (b) by the Contractor to The City if delivered to the Manager, Supply Management, 2nd Floor, 677 – 25th Avenue SE, Calgary Alberta or if mailed postage prepaid and addressed:
- The City of Calgary
P.O. Box 2100, Postal Station "M"
Calgary, Alberta T2P 2M5
- Attention: Manager, Supply Management #8140
- Fax: (403) 268-5523
- or sent by facsimile to the City at the fax number shown above.

9.2 Either party may change its address for notices by giving notice as herein provided. A notice which is mailed shall be considered as having been given four (4) days after mailing, except in the event of a disruption of postal services, in which event the date of actual receipt by the addressee shall govern.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED

APPROVED	
<i>As to Content</i>	
Supply	
ITS	
<i>As to Form</i> Solicitors	

THE CITY OF CALGARY

Per: _____
Manager, Supply Management

[Contractor]

Per: _____

Per: _____

Dated: [Date of Award]

BETWEEN:

THE CITY OF CALGARY

OF THE FIRST PART

- and -

[Contractor]

OF THE SECOND PART

=====

MEMORANDUM OF AGREEMENT

=====

PAUL L. TOLLEY, Q.C.
CITY SOLICITOR
The City of Calgary
Law Department
P.O. Box 2100
Postal Station "M"
Calgary, Alberta
T2P 2M5

Solicitor: [Responsible Lawyer]

Law Department File No: [File No.]