

## GENERAL TERMS AND CONDITIONS

### 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 Town.

“**Bidder**” means any individual, corporation or other person submitting a response to a Quotation issued by the Town.

“**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.

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

“**Closing Time**” means the date and time that all Bids must be received by the Town 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 Town.

“**Contract**” means the legally binding agreement between the Town and the Successful Bidder, which agreement is comprised of the Quotation, the Bid, the Purchase Order and any other written agreement between the Town 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 Town) 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 Town for the Work.

“**Council**” means the Council of The Corporation of the Town 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 Town’s *General Terms and Conditions*, as may be revised by the Town from time to time.

“**Purchase Order**” means the form of purchase order used by the Town 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 Town, 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 Town) or other document by which Bids are solicited by the Town.

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

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

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

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

“**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 Town’s *General Terms and Conditions and Purchasing By-Law #2004-341*, available at <http://www.markham.ca/Markham/Departments/FincServ/Prch/bidopp.htm> or from the Town.

**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 Town'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 inquires to the designated Town 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 Town 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 Town reserves the right, in its sole discretion, to revise the Quotation *prior to* the Closing Time. If the Town exercises this right, the revisions shall be by addendum forwarded to the address, facsimile number or email address provided when the Quotation was downloaded from Biddingo.com or obtained from the Town. The addendum shall form part of the Quotation upon issuance by the Town.
- 5.2 The Town reserves the right, in its sole discretion, to revise the Quotation *after* the Closing Time. If the Town exercises this right, the revisions shall be by addendum and shall be forwarded to all compliant Bidders (as determined by the Town in its sole discretion) to the address, facsimile

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number or email address provided in the Bid. The addendum shall form part of the Quotation upon issuance by the Town.

**6. CONFIDENTIALITY**

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

- (a) are and shall remain the property of the Town,
- (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 Town 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 Town 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 Town (as determined by the Town in its sole discretion) that the proposed Subcontractors have the qualifications, experience and resources to complete the Work.
- 7.4 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.
- 7.5 Bids shall be submitted in a sealed envelope, with a submission label clearly identifying the Bid number and project description.
- 7.6 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.
- 7.7 Bids shall be in the possession of the Town, date and time stamped no later than the Closing Time. Bids received by the Town after the Closing Time shall NOT be accepted and shall be returned unopened to the Bidder.
- 7.8 The use of mail or courier for delivery of a Bid shall be at the risk of the Bidder. Bids submitted by facsimile or other telecommunications shall not be accepted, unless otherwise specified in the Quotation.
- 7.9 Adjustments by any method including telephone, facsimile or email 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.
- 7.10 Bids shall be irrevocable and valid for acceptance by the Town for a period of NINETY (90) Business Days from the Closing Time, unless otherwise specified in the Quotation.
- 7.11 Disclosure of information submitted to the Town 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**

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- 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 Town. The Town 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 Town.
- 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 In the event of an ambiguity, discrepancy or mathematical error in the prices set out in the Bid, the Town 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 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 Town; and
    - (ii) the Town 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 Town 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 Town; and
  - (b) The Bid shall NOT be considered non-compliant or incapable of acceptance by the Town.

**9. BLACK-OUT PERIOD**

To ensure that the Town’s procurement process is fair, open and transparent to all Bidders, there shall be no communication between the Town and Bidders during a Quotation process, except as specified in the Quotation. Any communication between a Bidder and Town 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 Town 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.

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**11. WITHDRAWAL OF BIDS PRIOR TO THE CLOSING TIME**

- 11.1 A Bidder may request that their Bid be withdrawn. The withdrawal shall be allowed if the request is received by the Town 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 Town staff specified on the Quotation cover page. Telephone requests shall NOT be considered.
- 11.2 Bids confirmed by the Town as withdrawn prior to the Closing Time shall be returned unopened to the Bidder.
- 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 Town 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.

**12. WITHDRAWAL OF BIDS DURING THE 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 Town's representative. The Town'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, even if the Town subsequently awards the first Quotation to a Bidder other than the Bidder who withdrew their remaining Bids.

**13. WITHDRAWAL OF BIDS AFTER THE CLOSING TIME**

Withdrawal requests received after the Quotation Closing Time shall NOT be permitted, except as noted in Section 12.0 above.

**14. NOTICE**

- 14.1 Every notice, including any addendum, that the Town may be required to give to the Bidder *prior* to the Closing Time shall be deemed to have been properly given if forwarded to the address, facsimile number or email address provided when the Quotation is downloaded from Biddingo.com or obtained from the Town.
- 14.2 Every notice, including any addendum that the Town may be required to give to the Bidder *after* the Closing Time shall be deemed to have been properly given if forwarded by the Town to the address, facsimile number or email address provided in the Bid.

**15. ACCEPTANCE / REJECTION OF BIDS**

- 15.1 The Town 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 Town 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 Town. The Town 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 Town 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.

**16. DISQUALIFIED VENDORS**

The Town, 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 Town), or failure to accept a Contract Award. This information may be obtained from within the Town or through reference checks. A written notice of the decision shall be provided to the vendor by the Town. From and after the delivery of such notice, the disqualified vendor shall not be eligible to participate in the Quotation process, or to provide goods or services to the Town 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 Town.

**17. CONTRACT AWARD**

- 17.1 The award of a Contract is based on the best value for the Town based upon quality, service and price. The award is subject to the Town's budget restrictions, limitations and approvals.
- 17.2 The Town 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 Town in accordance with Section 17.4 below) in the event that the Bid Prices submitted by the Bidders exceed the Town's budget. If an acceptable contract cannot be concluded with such Bidder, the Town reserves the right to negotiate a contract acceptable to the Town with the next lowest priced Bidder(s) / highest ranked Bidder(s) (as applicable) in succession.
- 17.3 The Town 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 Town 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 Town (as determined by the Town 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 Town 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 Town. No other act of the Town shall constitute the acceptance of a Bid and Contract Award.
- 17.6 Upon acceptance of a Bid and Contract Award by the Town, 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 Town all documents required by the Quotation within ten (10) Business Days of notification, the Town may, in its sole discretion:
- (a) Grant additional time to fulfill the requirement; or
  - (b) Cancel the Contract Award, award to another Bidder which meets the Quotation requirements, and exercise any remedies available to the Town (including, without limitation, forfeiture of any bid deposit or enforcement of any bid bond).

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**18. NO LIABILITY**

The Town, 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 Town of any Bid, by reason of any award decision (or delay thereof) by the Town, by reason of the cancellation of the Quotation process, or by reason of the exercise by the Town of any of its rights specified in the Quotation or the Town'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 Town'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) Town 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. TERM OF CONTRACT**

The term of the Contract shall be as specified in the Contract, unless otherwise extended or amended by mutual written agreement of the Town and the Contractor.

**3. WORK – START / COMPLETION DATES**

The Work shall start and be completed as set out in the Contract, unless otherwise extended or amended by mutual written agreement of the Town 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.

**4. CONTRACTOR'S RESPONSIBILITY**

- 4.1 The Contractor shall comply with all federal, provincial and municipal laws and regulations applicable to the Work.

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- 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 Town 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 Town 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 Town, such personnel shall not be replaced with other personnel without the prior written consent of the Town, such consent not to be unreasonably withheld.

**5. HEALTH AND SAFETY**

The Contractor shall comply with the Town'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 Purchasing Management Association of Canada (PMAC) and the National Institute of Government Purchasing (NIGP) Code of Ethics shall apply to all purchases of goods and/or services by the Town. PMAC's Code of Ethics can be found at [www.pmac.ca](http://www.pmac.ca). NIGP's Code of Ethics can be found at [www.nigp.org](http://www.nigp.org).
- 6.2 The Contractor shall read, understand and conduct itself according to the Values "Honesty/Integrity, Professionalism, Responsible Management, Serving the Public Interest and Conformity to the Laws..." as outlined in the PMAC 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 Town 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 term of the Contract, and at any time thereafter, as required by the Town. The Contractor shall supply certified copies of payrolls and any other records required by the Town. The Town 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 Town and the Contractor is one of independent contractors. Nothing contained in the Contract is intended to place the Town and the Contractor in the relationship of partners, joint venturers, principal-agent, or employer-employee, and neither the Town 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 Town.
- 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 Town may, in its sole discretion, require the Contractor to replace such Subcontractor.
- 9.3 The Town 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 Town, and shall ensure that Subcontractors comply with the terms and conditions of the Contract. The Contractor shall be liable to the Town for all costs or damages arising from the acts, omissions, negligence or willful misconduct of Subcontractors.

## 10. CONFLICT OF INTEREST

If, during the term of the Contract, 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 Town. If a Conflict of Interest is deemed to exist by the Town, the Contractor shall (if required by the Town) take such steps as are necessary to remove the Conflict of Interest to the satisfaction of the Town, failing which the Town may, in its sole discretion, terminate the Contract.

## 11. PRIVACY

The Contractor agrees and acknowledges that the Town 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 term of the Contract (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 Town, without obtaining the prior written consent of the Town. "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 "Town 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 Town which is disclosed to or obtained by the Contractor in connection with the Contract, and
- (b) all information related to the operations of the Town 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 Town 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

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prior written consent of the Town, disclose Town Confidential Information to any person nor use Town Confidential Information for any purpose other than for the benefit of the Town in connection with the Work.

**13. OWNERSHIP OF DELIVERABLES**

- 13.1 Unless otherwise expressly provided in the Contract, the Town shall have all ownership rights in and to all originally developed Deliverables, vesting in the Town immediately upon their creation and at every stage of their development. The Contractor hereby assigns to the Town 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 Town in the preparation of all documents necessary to evidence the Town'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 Town 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,
  - (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 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 Town, 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 Town (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**

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- 16.1 The Contractor shall purchase and maintain in force, at their own expense (including the payment of all deductibles) and for the term of the Contract, the following policies of insurance (unless otherwise specified in the Contract):
- (a) Commercial General Liability Insurance satisfactory to the Town and underwritten by insurers licensed to conduct business in the Province of Ontario. The policy shall include coverage for Bodily Injury and Property Damage, with a minimum amount of \$2,000,000.00 for each occurrence, and including:
    - (i) an endorsement certifying that the Town is included as an additional insured,
    - (ii) a cross liability clause endorsement,
    - (iii) non-owned automobile coverage, including contractual non-owned coverage, 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 Insurance, 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.
- 16.2 The Contractor shall furnish the Town with a certificate of insurance (in a form satisfactory to the Town, 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 Town.

**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 Town.
  - (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 Town.
  - (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 Town reserves the right, in its sole discretion and upon providing ten (10) days prior written notice to the Contractor, to invoke any applicable bond(s) and/or terminate the Contract.
- 17.3 The Town 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 Town in writing) and promptly remove all Contractor and Subcontractor equipment from the Town’s property.
- 17.5 In the event of termination hereunder, the Town 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 Town 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, insurrection, terrorism, and power outages. The Contractor shall give the Town 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 Town 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 Town. 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, Town of Markham, 101 Town 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 thirty (30) calendar days after receipt of an approved invoice by the Town. Where applicable, taxes shall be shown separately.

21.2 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 shall invoice the Town monthly on a time and expense basis, charging the goods/services/actual hours/disbursements, as applicable, incurred each month up to the Contract amount. 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, payment in whole or in part may be withheld by the Town. In the event that the Town is entitled to a discount for prompt payment, the withholding of payment as provided herein shall not deprive the Town from taking such discount.

**22. SALES TAX**

The Town 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 term of the Contract, the Contractor and the Town 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 Town's attention any such changes. All Provincial and Federal taxes shall be shown separately on the applicable invoice.

**23. ACCESSIBILITY STANDARDS FOR CUSTOMER SERVICE**

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

**24. HOLDBACK PAYMENTS**

Where the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the "Act") applies, the following sections shall be applicable unless otherwise specified in the Contract:

- (a) Upon satisfactory completion of the Work, the Contractor shall be entitled to receive ninety percent (90%) of the total amount due under the Contract.
- (b) When a Contract has been substantially performed, the Contractor shall apply to the Town to certify substantial performance (as that term is defined in the Act). A "Statutory Declaration" form, indicating that all Work has been substantially completed and all payments made to persons for wages, material and subcontract Work, shall accompany the application.
- (c) If the Town is in agreement that the Work is substantially complete, a "Certificate of Substantial Performance" shall be signed and issued to the Contractor within seven (7) days of signing.
- (d) The Contractor shall publish a copy of the "Certificate of Substantial Performance" once in a construction trade newspaper to start the 45 day lien expiry period.
- (e) Upon completion of the Work, and prior to final payment being made, the Contractor shall provide to the Town a Workplace Safety and Insurance Board "Certificate of Clearance" indicating that all assessments against the Contractor and each and every Subcontractor have been paid, and that the Contractor is in good standing.
- (f) After payment of 90% of the total amount due under the Contract, the expiry of the 45 day lien period, acceptance of the Work by the Town (providing no liens have been registered against the Contract), and after all other provisions of the Contract have been satisfied, the Contractor shall be entitled to be paid the remaining ten per cent (10%) holdback.

**25. GENERAL INSTRUCTIONS FOR WORK ON TOWN PROPERTY**

- 25.1 The Contractor shall keep one copy of the Contract at the Work site.
- 25.2 The Contractor shall coordinate all Work with the Town's representatives to ensure minimum disruption of public service and inconvenience to occupants of and visitors to public buildings.

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- 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 Town. Material shall not be stored in or obstruct roadways, sidewalks or passageways without the prior written approval of the Town. 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 Town.
- 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 Town, 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 Town (in its sole discretion).
- 25.11 The Contractor shall provide and maintain adequate fire protection in accordance with the regulations and requirements of the Town'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 Town 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.
- 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.

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- 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 Town 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 Town 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 Town 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 Town of all hazardous materials delivered to the Town 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.