

## **GENERAL PROVISIONS**

- GC1 DEFINITIONS
- GC2 PRIME CONSULTANT ACTIONS AND DECISIONS
- GC3 INFORMATION SUPPLIED BY THE CLIENT / ACCESS TO FACILITIES
- GC4 CONFIDENTIALITY, MATERIALS AND COPYRIGHT
- GC5 RESPONSIBILITIES OF THE PARTIES
- GC6 ASSIGNMENT
- GC7 CONFLICT OF INTEREST
- GC8 STATUS OF CONSULTANT
- GC9 ENTIRE AGREEMENT
- GC10 TAXES
- GC11 JOINT AND SEVERAL LIABILITY
- GC12 COMPLIANCE WITH LAW
- GC13 GENERAL

## **ADMINISTRATION OF THE CONTRACT**

- GC14 NOTICES
- GC15 TIME AND COST RECORDS TO BE KEPT BY THE CONSULTANT
- GC16 HARASSMENT IN THE WORKPLACE

## **CONSULTANT SERVICES**

- GC17 DECLARATION BY CONSULTANT
- GC18 SERVICES
- GC19 STANDARD OF CARE
- GC20 TIME SCHEDULE
- GC21 PROJECT INFORMATION, DECISIONS, ACCEPTANCES, APPROVALS
- GC22 CHANGES IN SERVICES
- GC23 CODES, BY-LAWS, LICENCES, PERMITS
- GC24 PROVISION OF STAFF
- GC25 SUB-CONSULTANTS
- GC26 CHANGES IN THE CONSULTANT TEAM
- GC27 COST CONTROL
- GC28 CHANGES IN THE WORK
- GC29 DISPUTE RESOLUTION

## **TERMS OF PAYMENT**

- GC30 FEES
- GC31 FEE ARRANGEMENT(S) FOR SERVICES
- GC32 PAYMENTS TO THE CONSULTANT
- GC33 PAYMENT SCHEDULE FOR SERVICES

- GC34 DELAYED PAYMENT
- GC35 CLAIMS AGAINST, AND OBLIGATIONS OF, THE CONSULTANT
- GC36 NO PAYMENT FOR ERRORS AND OMISSIONS
- GC37 PAYMENT FOR CHANGES AND REVISIONS
- GC38 EXTENSION OF TIME
- GC39 SUSPENSION COSTS
- GC40 TERMINATION COSTS
- GC41 DISBURSEMENTS

**TAKING THE SERVICES OUT OF THE CONSULTANT'S HANDS, SUSPENSION OR TERMINATION**

- GC42 TAKING THE SERVICES OUT OF THE CONSULTANT'S HANDS
- GC43 SUSPENSION
- GC44 TERMINATION

**INDEMNIFICATION AND INSURANCE**

- GC45 INDEMNIFICATION
- GC46 INSURANCE REQUIREMENTS

## **GENERAL PROVISIONS**

---

### **GC1 DEFINITIONS**

- 1.1 Additional Services: means Consulting Services provided that are additional to the Basic Services as set out in Schedules I and II.
- 1.2 Applicable Taxes: means the Harmonized Sales Tax (HST) and any tax payable by the Client.
- 1.3 Authorities Having Jurisdiction (AHJ): means a person or persons representing there agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
- 1.4 Basic Services: means Consulting Services as outlined in the scope of work defined in Schedules I and II.
- 1.5 Client: means the City of St. John's
- 1.6 Construction Budget Forecast: means the Client's estimated Construction Cost including contingencies for cost increases and taxes (HST).
- 1.7 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.
- 1.8 Construction Documents: consist of drawings, specifications and other documents appropriate to the size and complexity of the Project, to describe the size and character of the entire Project including architectural, structural, mechanical, and electrical systems, materials and such other elements setting forth in detail the requirements for the construction, enlargement or alteration of the building or buildings of the Project.
- 1.9 Contract – means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.
- 1.10 Contractor – means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.
- 1.11 Cost Control Services – means a service to advise and monitor on Project Budget and Construction Budget Forecasts.
- 1.12 Master Specifications – means City of St. John's Specifications (a manual developed

by the City of St. John's). Unless otherwise agreed between the parties, the version published on the date of the contract shall be the version applicable to the contract.

- 1.13 Partial Services – means reduced Basic Services as negotiated by the Client with the Prime Consultant.
- 1.14 Prime Consultant: means the party which submitted a responsive proposal which was accepted by the Client to perform the Services under the Agreement, and includes the officer or employee of the Prime Consultant identified in writing by the Prime Consultant.
- 1.15 Program Advisory Services – means Consulting Services provided by the Prime Consultant prior to start of Basic Services.
- 1.16 Project: means the the total enterprise or endeavour contemplated of which the Work may be the whole or a part.
- 1.17 Project Brief or Terms of Reference: means a document describing in sufficient detail the Services to be provided by the Prime Consultant to permit the Prime Consultant to proceed with the Services and may include general project information, scope of the work, site and design data, and time plan, specifically related to the Project.
- 1.18 Project Budget Forecast – means the Client's estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees, taxes (HST) and acquisition costs.
- 1.19 Project Schedule: means a time plan, including the sequence of tasks, milestone dates and critical dates which must be met for the implementation of the planning, design and construction phases of the Project.
- 1.20 Services: means the professional services provided by the Prime Consultant and the services required for the project as set forth in the Agreement.
- 1.21 Sub-Consultant – means Registered Professional Engineer, Architect or other specialist engaged by the Prime Consultant in connection with the project.
- 1.21 Work: means the total construction and related services required by the construction contract documents.

## **GC2 PRIME CONSULTANT ACTIONS AND DECISIONS**

- 2.1 The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

- 2.2 The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.
- 2.3 Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client that is implied shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.
- 2.4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

### **GC3 INFORMATION SUPPLIED BY THE CLIENT / ACCESS TO FACILITIES**

- 3.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work. The Client makes no guarantee either expressed or implied as to the accuracy of the information supplied. The Prime Consultant shall review the information for accuracy and applicability.
- 3.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.
- 3.3 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.
- 3.4 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client's facilities.

### **GC4 CONFIDENTIALITY, MATERIALS AND COPYRIGHT**

- 4.1 For the purposes of this Article "Confidential Information" means:
  - (a) all communications and instructions from the Client respecting the Services, including the fact of this Agreement.
  - (b) all information acquired by the Prime Consultant, the Prime Consultant's employees, Sub-Consultants, servants and/or agents respecting policy

consideration and development, business decisions, internal deliberations, discussions and considerations and any other aspect of the decision-making process of the Client;

(c) all oral, written, electronic, and machine readable information and data and any accompanying supporting materials and documentation, including without limitation, materials, documents, reports, databases, information and data of whatever nature and kind concerning the affairs of the Client, disclosed directly or indirectly to the Prime Consultant, the Prime Consultant's employees, Sub-Consultants, servants and/or agents during the performance of the services or in any way related thereto;

(d) all personal information, as defined from time to time under the *Access to Information and Protection of Privacy Act*, SNL 2002 cA-1.1, to mean recorded information about an identifiable individual, including,

- (i) the individual's name, address or telephone number,
- (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
- (iii) the individual's age, sex, sexual orientation, marital status or family status,
- (iv) an identifying number, symbol or other particular assigned to the individual,
- (v) the individual's fingerprints, blood type or inheritable characteristics,
- (vi) information about the individual's health care status or history, including a physical or mental disability,
- (vii) information about the individual's educational, financial, criminal or employment status or history,
- (viii) the opinions of a person about the individual, and
- (ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's employees, Sub-Consultants, servants and/or agents during the performance of the Services or in any way related thereto;

(e) all information that is developed based upon Confidential Information including the work product of the Prime Consultant, the Prime Consultant's employees, Sub-Consultants, servants and/or agents; and

- (f) Confidential Information shall not include any information which:
  - (i) at the time such information was provided to the Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or
  - (ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

4.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

4.3 The Prime Consultant shall only use the Confidential Information acquired in the performance of the Services for the purposes specified in the Scope of Work and this Agreement, and shall not permit the use of the Confidential Information for any other purposes.

4.4 All materials, data, designs, plans, drawings, specifications, research, reports, notes, estimates, summaries, calculations, surveys, papers, completed work, and work in progress and such other information and materials or parts thereof as are compiled, drawn and produced by the Prime Consultant in performing the Services, including without limitation computer printouts and computer models and all copyrights thereto and all patents, trademarks and industrial designs arising therefrom are the sole and exclusive property of the Client and the contents thereof are privileged and confidential. Nothing in this Agreement shall give the Prime Consultant a right, however arising, to assert any lien, claim, demand, property right, remedy or security right of any kind over the information provided to the Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime Consultant's remedies against the Client for the Client's breaches under this Agreement do not include the right to deprive the Client of access to the Client's information in the Prime Consultant's possession.

4.5 The Prime Consultant shall provide to the Client and solely to the Client upon completion of the Services or upon earlier termination of this Agreement all

Confidential Information acquired during the performance of the Services, or shall, at the request of the Client, destroy any and all copies and versions of the Confidential Information in the possession of the Prime Consultant, the Prime Consultant's employees, Sub-Consultants, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

- 4.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, Sub-Consultants, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the *Access to Information and Protection of Privacy Act*, the *Management of Information Act*, SNL 2005, cM-1.01, and the *Privacy Act*, RSNL 1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Prime Consultant, and the Prime Consultant's employees, Sub-Consultants, servants and/or agents.
- 4.7 The Prime Consultant shall ensure that it and the Prime Consultant's employees, Sub-Consultants, servants and/or agents have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential information, including but not restricted to the following:
- a) at a minimum, using the same level of physical and electronic security as the Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, Sub-Consultants, servants or agents other than those who are required to have access to the same to properly perform the services under this Agreement;
  - b) establish and maintain security policies, standards, and safeguards to prevent unauthorized access, collection, use, disclosure or disposal of the Confidential Information;
  - c) ensure all employees, servants and/or agents of the Prime Consultant comply with all policies, standards and safeguards established under this Article;
  - d) advise the Client of any changes in the Prime Consultant's security systems, procedures, standards and practices that may affect the Confidential Information and seek the Client's consent prior to such changes; and



- e) satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in Schedule “D”, unless otherwise advised by the Client, and this includes:
    - i. complying with all alterations or updates of Schedule “D” as may be provided to the Prime Consultant from time to time; and
    - ii. adhering to any additional instructions (including oral instructions) from the Client as they relate to the subject matter contained in Schedule “D” and this Article.
- 4.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant’s employees, Sub-Consultants, servants and/or agents with the prior written consent of the Client, and then only to those persons who need to know the information in order to carry out the duties associated with this Agreement and only after confirming that such persons agree to comply with the provisions of this Article including the requirements set out in Schedule “D”.
- 4.9 The Prime Consultant shall:
- a) notify the Client promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the Client’s information in the possession of the Prime Consultant, including but not limited to data processing files, transmission messages or other confidential information by any person or entity which may become known to the Prime Consultant;
  - b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;
  - c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;
  - d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and
  - e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: <http://www.justice.gov.nl.ca/just/info/privacybreach.html>.
- 4.10 The Client shall have the right to use the Work or variations thereof in other operations of the Client.
- 4.11 With respect to 4.10 the Prime Consultant’s liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

## **GC5 RESPONSIBILITIES OF THE PARTIES**

- 5.1 The Prime Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work as outlined in Schedules I, II and III.
- 5.2 The Prime Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and Sub-Consultant's work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in Schedules I and IV.
- 5.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The City of St. John's tendering and contract procedures and administrative practices will be followed in the performance of this phase.
- 5.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant's service shall be based upon the scope of work as outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.
- 5.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of Substantial Completion until expiry of the one year Project warranty period. This service includes the provision of record drawings and advice concerning issues arising during this period.
- 5.6 The Prime Consultant should be aware of its responsibilities under the Occupational Health and Safety Act & Regulations. Notwithstanding any obligation imposed by the Occupational Health and Safety Act & Regulations, the Prime Consultant shall:
  - a) Verify, prior to issuing approval to proceed with the work, that a Contractor(s) has executed the Client's Occupational, Health and Safety Declaration .
  - b) Ensure that key onsite personnel under the employ of the prime Consultant have a reasonable understanding of industry accepted construction practices, including the Occupational Health and Safety Act & Regulations pertaining to the type of work being undertaken.
  - c) Through regular project progress meetings obtain copies of Contractor documented safety plan activities at the site, including but not necessarily limited to reporting of events/incidents, minutes of toolbox meetings, and any required actions to be taken as a result of these activities.
  - d) Identify unsafe work conditions to the Contractor that on site personnel may become aware of, and if necessary report same to the Occupational Health &

Safety regulators.

5.7 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant.

5.8 The following schedules apply:

Schedule I – Project Description

Schedule II – Basic and Other Additional Services Fees

Schedule III – Additional Reimbursable Allowances

Schedule IV – Project Schedule

Schedule V – Other General Requirements

5.9 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client's decisions, in a reasonable and timely manner.

5.10 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

5.11 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

5.12 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

5.13 The Client will provide the Prime Consultant with a Project Budget Forecast.

5.14 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, and hazardous material surveys.

5.15 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect or defect in the information supplied to it by the Client, the Prime Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

5.16 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the Sub-Consultant(s) performing the work under the direction of the Prime Consultant.

- 5.17 The Client will reimburse the Prime Consultant for other specialist Sub-Consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

## **GC6 ASSIGNMENT**

- 6.1 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
- 6.2 An assignment of the Agreement without such consent shall not relieve the Prime Consultant or the assignee from any obligation under the Agreement, or impose any liability upon the Client.

## **GC7 CONFLICT OF INTEREST**

- 7.1 No member of St. John's City Council shall be admitted to any part of the payments made pursuant to this Agreement or to any benefits arising therefrom. Further, all members of St. John's City Council and staff of the City of St. John's shall at all times comply with the provisions of the Code of Ethics By-Law enacted September 11, 1995 and the Conflict of Interest By-Law enacted April 26, 1993.
- 7.2 If this project is funded in part or in whole by the Government of Newfoundland and Labrador then no member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.
- 7.3 The Prime Consultant and the Prime Consultant's Representatives:
- a) shall conduct all duties related to this Agreement with impartiality and shall, if they exercise inspection or other discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring their impartiality into question;
  - b) shall not influence, seek to influence, or otherwise take part in a decision of the Client, knowing that the decision might further their private interests;
  - c) shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of any duties related to this Agreement, that causes, or would appear to cause, a conflict of interest;
  - d) shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of any duties related to this Agreement; and
  - e) shall not have any tests or investigations carried out by any persons, firms, or corporations,

that may have a direct or indirect financial interest in the results of those tests or investigations without the prior written approval of the Client.

- 7.4 The Prime Consultant shall not be eligible to compete as a consultant or sub-consultant for a project which may result from the provision of the Services if the Prime Consultant is involved in the development of a Project Brief or Terms of Reference, a Request for Proposal or similar documents for such project.

#### **GC8 STATUS OF CONSULTANT**

- 8.1 The Prime Consultant is an independent contractor engaged by the Client to perform the Services. Nothing in the Agreement is intended to create a partnership, a joint venture or an agency between the Client and the other party or parties. The Prime Consultant must not represent itself as an agent or representative of the Client to anyone. Neither the Prime Consultant nor any of its personnel is engaged as an employee or agent of the Client. The Prime Consultant is responsible for all deductions and remittances required by law in relation to its employees.

#### **GC9 ENTIRE AGREEMENT**

- 9.1 The Agreement constitutes the entire arrangement between the parties with respect to the subject matter of the Agreement, and supersedes all previous negotiations, communications and other arrangements relating to it, unless incorporated by reference herein.

#### **GC10 TAXES**

- 10.1 The Client is required to pay Applicable Taxes.
- 10.2 Applicable Taxes will be paid by the Client as provided in the invoice submission. Applicable Taxes must be specified on all invoices as a separate item along with corresponding registration numbers from the tax authorities. All items that are zero-rated, exempt or to which Applicable Taxes do not apply, must be identified as such on all invoices. It is the sole responsibility of the Prime Consultant to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Prime Consultant agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
- 10.3 The Prime Consultant must pay applicable provincial sales tax, ancillary taxes, and any commodity tax, on taxable goods or services used or consumed in the performance of the Agreement (in accordance with applicable legislation), including for material incorporated into real property.
- 10.4 In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Price, the Contract Price will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Price if public notice of the change was given before bid

submission date in sufficient detail to have permitted the Prime Consultant to calculate the effect of the change.

## **GC11 JOINT AND SEVERAL LIABILITY**

11.1 If at any time there is more than one legal entity constituting the Prime Consultant, their covenants under the Agreement shall be considered to be joint and several and apply to each and every entity. If the Prime Consultant is or becomes a partnership or joint venture, each legal entity who is a member or becomes a member of the partnership or joint venture or its successors is and continues to be jointly and severally liable for the performance of the services and all the covenants of the Prime Consultant pursuant to this Agreement, whether or not that entity ceases to be a member of the partnership, joint venture or its successor.

## **GC12 COMPLIANCE WITH LAW**

12.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime Consultant shall provide (where requested by the Client) evidence of compliance with all requirements of the Province of Newfoundland and Labrador with respect to Worker's Compensation and or Occupational Health and Safety, including without limitation, any payments or compliance orders due or issued thereunder.

12.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any given federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant's Representatives in the performance of the Work.

12.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and all actions, suits or proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in Newfoundland and Labrador subject to any right of appeal.

## **GC13 GENERAL**

13.1 GCs 4, 11 and 45 of this Agreement shall survive the termination or expiration of this Agreement

13.2 Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.

13.3 Time shall be of the essence of this Agreement

13.4 The failure of the Client to insist upon or enforce in any instance strict performance by

the Prime Consultant of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or a relinquishment to any extent of the Client's right to assert or rely upon any such terms or rights on any future occasion.

- 13.5 If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, and all other provisions hereof shall continue in full force and effect.
- 13.6 The division of this Agreement into Articles and Clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 13.7 This Agreement shall ensure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.
- 13.8 Words importing the singular only also include the plural, and vice versa, where the context requires.
- 13.9 Headings or notes in the Agreement shall not be deemed to be part thereof, or be taken into consideration in its interpretation.
- 13.10 "*Herein*", "*hereby*", "*hereof*", "*hereunder*" and similar expressions refer to the Agreement as a whole and not to any particular subdivision or part thereof.

## **ADMINISTRATION OF THE CONTRACT**

---

### **GC14 NOTICES**

- 14.1 All notices, claims, payments, reports and other communications required under this Agreement shall be in writing. The address for service are as follows:

**For the Client:**

City of St. John's

Department of Planning, Development and Engineering

10 New Gower St, P.O. Box 908

St. John's, NL

A1C 5M2

Fax: (709) 576-8625

Email: [XXXX@stjohns.ca](mailto:XXXX@stjohns.ca)

- 14.2 Notices, requests or documents shall be deemed to have been received by the addressee as follows:
- a) As of the date on which they are delivered where delivery is by a party or by messenger or special courier service;

- b) As of the date on which they are sent where delivery is by facsimile, e-mail or other means of electronic communication; and
  - c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.
- 14.3 The address of either party, or the person authorized to receive notices, may be changed by notice in the manner set out in this provision.

#### **GC15 TIME AND COST RECORDS TO BE KEPT BY THE CONSULTANT**

- 15.1 The Prime Consultant shall keep records of expenses, additional services, invoices, payments to Sub-Consultants and all related project expenditures, books of account and supporting documents in accordance with accepted accounting procedures and practices as well as applicable statutes, codes, regulations and bylaws. The records shall be made available to the Client or its authorized representative for observation or audit at mutually convenient times and up to one year after discharge of this Agreement.
- 15.2 Time charged and the accuracy of the Prime Consultant's time recording system may be verified by the Client before or after payment is made to the Prime Consultant under the terms and conditions of the Agreement.
- 15.3 The Prime Consultant shall keep accurate time and cost records and, if required for the purposes of the Agreement, shall make these documents available to the Client who may make copies and take extracts therefrom.
- 15.4 The Prime Consultant shall afford facilities for audit and inspection upon request and shall provide the Client with such information as may be required from time to time with reference to the documents referred to in 15.3 above.
- 15.5 The Prime Consultant shall, unless otherwise specified, keep the time and cost records available for audit and inspection for a period of at least six (6) years following completion of the Services.
- 15.6 If the verification is done after payment by the Client, the Prime Consultant agrees to repay any overpayment immediately upon demand.

#### **GC16 HARASSMENT IN THE WORKPLACE**

- 16.1 The Prime Consultant must not, either as an individual, or as a corporate or unincorporated entity, through its employees or Sub-Consultants, harass, abuse, threaten, discriminate against or intimidate any employee, consultant or other individual employed by, or under contract with the Client. The Prime Consultant will be advised in writing of any complaint and will have the right to respond in writing. Upon receipt of the Prime Consultant's response, the Client will, at its entire discretion, determine if the complaint is founded and decide on any action to be taken.



## **CONSULTANT SERVICES**

---

### **GC17 DECLARATION BY PRIME CONSULTANT**

- 17.1 The Prime Consultant declares that based on the information provided pertaining to the Services required under the Agreement, the Prime Consultant has been provided sufficient information to enable the Services required under the Agreement to proceed and is competent to perform the Services and has the necessary licences and qualifications including the knowledge, skill and ability to perform the Services.

### **GC18 SERVICES**

- 18.1 The Prime Consultant shall perform the Services described herein, in accordance with the terms and conditions of the Agreement.
- 18.2 The Client may undertake work with its own forces or enter into separate agreements with other consultants for projects which require coordination with the Prime Consultant's project. In that case The Prime Consultant shall:
- (a) cooperate and coordinate its work with that of other consultants as reasonably required by the Client; and the Client shall:
  - (b) provide for the co-ordination of the work of its own forces with that of the Prime Consultant; and
  - (c) require reciprocal coordination of work and cooperation from other consultants.
- 18.3 Should there be a change in the scope of Work required for the planning and performance of this co-ordination and connection, the changes must be authorized by a Change Order.
- 18.4 The Prime Consultant shall report any deficiencies in the other architects' or consultants' work to the Client in writing. Failure of the Prime Consultant to report any deficiencies shall invalidate any claims against the Client by reason of the deficiencies of other consultants' work except to those of which the Prime Consultant was not made reasonably aware.

### **GC19 STANDARD OF CARE**

- 19.1 In performing the services, the Prime Consultant shall provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices and procedures developed by professional bodies in the performance of similar services at the time when and at the location in which the services are provided.

19.2 The Prime Consultant will, at his expense, promptly and duly execute and deliver to Client such further documents and assurances, and take such further action as the Client may from time to time request, in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights, interest and remedies intended to be created in favour of the Client.

## **GC20 TIME SCHEDULE**

20.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule IV hereto.)

20.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

20.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

## **GC21 PROJECT INFORMATION, DECISIONS, ACCEPTANCES, APPROVALS**

21.1 The Client shall provide, in a timely manner, project information, written decisions and instructions, including acceptances and approvals relating to the Services provided by the Prime Consultant.

21.2 No acceptance or approval by the Client, whether expressed or implied, shall be deemed to relieve the Prime Consultant of the professional or technical responsibility for the Services provided by the Prime Consultant.

21.3 Before proceeding with each phase of the services, the Prime Consultant shall obtain the Client's written approval of the Prime Consultant's deliverables from the preceding phase.

## **GC22 CHANGES IN SERVICES**

22.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.

22.2 The Prime Consultant shall:

- a) make changes in the Services to be provided for the Project, including changes which may increase or decrease the original scope of Services, when requested in writing by the Client; and
  - b) prior to commencing such changes, advise the Client of any known and anticipated effects of the changes on the Construction Cost Estimate, Prime Consultant fees, Project Schedule, and other matters concerning the Project.
- 22.3 The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.
- 22.4 Any increases in the fees payable caused by a material change or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

### **GC23 CODES, BY-LAWS, LICENCES, PERMITS**

- 23.1 The Prime Consultant shall comply with all statutes, codes, regulations and by laws applicable to the design and where necessary, shall review the design with those public authorities having jurisdiction in order that the consents, approvals, licences and permits required for the project may be applied for and obtained.

### **GC24 PROVISION OF STAFF**

- 24.1 The Prime Consultant will provide the Client with a list of its employees and those of its Sub-Consultants who will be assigned to the project. The list will include the names, addresses, qualifications, experience and proposed roles of all persons, the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.
- 24.2 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime Consultant remove from the Work any person, who by misconduct or by failure to properly perform his/her duties is considered by the Client to be unfit for employment on the Work. If the Prime Consultant fails to remove any unfit person from the Work as requested by the Client, then the Client may void this Agreement or refuse to accept subsequent Work in which the person concerned was involved and may refuse to approve payment for such Work.
- 24.3 The Prime Consultant shall not alter, remove or replace the employees or Representatives indicated in the Scope of Work without prior written approval by the Client.

## **GC25 SUB-CONSULTANTS**

- 25.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client which consent will not be unreasonably withheld.
- 25.2 The entry into any sub-contract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

## **GC26 CHANGES IN THE CONSULTANT TEAM**

- 26.1 Should an entity or person named in the Prime Consultant's proposal as an entity or person who is to perform the Services or part of the Services be unable to perform or complete the Services, the Prime Consultant shall obtain the concurrence of the Client prior to performing or completing the Services, or entering into an agreement with another equally qualified entity or person to perform or complete the Services, such concurrence not to be unreasonably withheld.
- 26.2 In seeking to obtain the concurrence of the Client referred to in 26.1 above, the Prime Consultant shall provide notice in writing to the Client containing:
- a) the reason for the inability of the entity or person to perform the Services; and
  - b) the name, qualifications and experience of the proposed replacement entity or person.
- 26.3 The Prime Consultant shall not, in any event, allow performance of any part of the Services by unauthorized replacement entities or persons, and acceptance of a replacement entity or person by the Client shall not relieve the Prime Consultant from responsibility to perform the Services.
- 26.4 The Client may order the removal from the Consultant Team of any unauthorized replacement entity or person and the Prime Consultant shall immediately remove the entity or person from the performance of the Services and shall, in accordance with 26.1 and 26.2 above, secure a further replacement.
- 26.5 The fact that the Client does not order the removal of a replacement entity or person from the performance of the Services shall not relieve the Prime Consultant from the Prime Consultant's responsibility to meet all the Prime Consultant's obligations in the performance of the Services.

## **GC27 COST CONTROL**

- 27.1 The Prime Consultant shall provide Cost Control and Reporting Services to the Client in accordance with requirements of the City of St. John's for project milestones and monthly project status reports.

- 27.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client.
- a) If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant's expense to bring the cost estimate within the approved Project Budget Forecast.
  - b) If the excess is due to factors that are not under the control of the Consultant, changes or revisions may be requested by the Client. Such changes or revisions shall be undertaken by the Consultant at the Client's expense, and the cost involved shall become an amount to be mutually agreed, prior to performance of the said changes or revisions.
- 27.3 If the preferred bidder's tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant's control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

## **GC28 CHANGES**

- 28.1 The Agreement may not be amended, or modified, nor shall any of its terms and conditions be waived, except by agreement in writing executed by both parties.

## **GC29 DISPUTE RESOLUTION**

- 29.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through negotiations conducted in good faith by a meeting between their representatives upon notice. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
- 29.2 In the event of a disagreement regarding any aspect of the Services or any instructions given under the Agreement:
- a) the Prime Consultant may give a notice of disagreement to the Client. Such notice shall be promptly given and contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the relevant clauses of the Agreement;

- b) the Prime Consultant shall continue to perform the Services in accordance with the instructions of the Client; and
  - c) the Prime Consultant and the Client shall attempt to resolve the disagreement by negotiations conducted in good faith. The negotiations shall be conducted, first, at the level of the Prime Consultant's project representative and the Client and, secondly and if necessary, at the level of a principal of the Prime Consultant firm and a senior City manager. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
- 29.3 The Prime Consultant's continued performance of the Services in accordance with the instructions of the Client shall not jeopardize the legal position of the Consultant in any disagreement.
- 29.4 If it was subsequently agreed or determined that the instructions given were in error or contrary to the Agreement, the Client shall pay the Prime Consultant those fees the Prime Consultant shall have earned as a result of the change(s) in the Services provided, together with those reasonable disbursements arising from the change(s) and which have been authorized by the Client.
- 29.5 The fees mentioned in 29.4 shall be calculated in accordance with the Terms of Payment set out in the Agreement.
- 29.6 In the case of a dispute arising between the Client and the Prime Consultant (pursuant to 29.1 or 29.2) that had not been resolved, either party may give the other notice of such dispute and request third party mediation thereof.
- 29.7 Negotiations conducted under the Agreement, including those conducted during Mediation, shall be without prejudice.
- 29.8 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 29.1 and 29.2), either party may give the other notice of such dispute and request arbitration thereof. If both parties agree, the parties shall, with respect to the particular matters then in dispute, submit the same to arbitration in accordance with the provisions of the *Arbitration Act*, RSNL 1990 cA-14, including such provisions for the appointment of arbitrators.

## **TERMS OF PAYMENT**

---

### **GC30 FEES**

- 30.1 Subject to the terms and conditions of the Agreement, and in consideration for the performance of the Services, the Client shall pay to the Prime Consultant a sum of money calculated in accordance with the provisions herein and the Agreement Particulars.

30.2 The Prime Consultant's fees are only payable when the Prime Consultant has performed the Services as determined by the Client. Payment in respect of a Service, or part of a Service, is not to be deemed a waiver of the Client's rights of set off at law or under the Agreement for costs or expenses arising from default or negligence of the Prime Consultant.

30.3 The maximum amount payable under the Agreement, including fees and disbursements, shall not exceed the sum specified in the Agreement Particulars, without the prior written authorization of the Client in accordance with the terms of the Agreement.

### **GC31 FEE ARRANGEMENT(S) FOR SERVICES**

31.1 The fee to be paid to the Prime Consultant for the Services described herein, shall be determined by one or more of the following arrangements as specified in the Agreement Particulars:

a) Percentage Fee

The calculation of the total fee recognizes the variability of the Construction Cost Estimate as the Project develops. The fee for the various Services of the Project development shall be calculated on the basis of the following formula:

An amount equal to  $F \times A$

Where  $F$  = the percentage specified in the Agreement Particulars, and  $A$  = as follows:

i. At Analysis of Project Requirements and Design Concept:

$A$  = the Construction Cost Estimate at the time of signing the Agreement.

ii. At Design Development:

$A$  = the accepted preliminary Construction Cost Estimate prepared on completion of the design concept documents.

iii. At Construction Documents:

$A$  = the accepted updated Construction Cost Estimate prepared on completion of the design development documents.

iv. At Tender Call and Tender Evaluation:

$A$  = the accepted final Construction Cost Estimate prepared on completion of the construction documents.

- v. At Construction and Contract Administration and Post Construction Warranty Review:

A = the Construction Contract Award Price.

The total fee is adjusted in accordance with the terms of any authorization pursuant to GC 22.

b) Fixed Fee

The fixed fee may be in the form of a fixed lump sum or an amount made up of fixed unit prices multiplied by a number of units of deliverables in the amount(s) specified in the Agreement Particulars.

c) Time Based Fee

- i. Principals and executives, and other personnel approved in that capacity by the Client shall be paid at the hourly rate specified in the Agreement Particulars.

- ii. Staff approved by the Client shall be paid at the hourly rate specified in the Agreement Particulars.

iii. Normal Working Hours

The normal working hours per day for principals, executives and Prime Consultant's and Sub-Consultant's employees, shall be deemed to be seven and a half (7.5) hours of any day during which they are actually engaged in the performance of the Services.

iv. Maximum Amount(s) Payable

The maximum amount(s) that applies (apply) to the Services to be carried out at time rates shall be as specified in the Agreement Particulars, which amount(s) shall not be exceeded without the prior authorization of the Client.

## **GC32 PAYMENTS TO THE CONSULTANT**

32.1 Payment will be made within 30 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

- (a) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

- (b) The Prime Consultant shall conform to any request that may be made by the



Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime Consultant agrees that each invoice shall clearly show and identify the work or service which is being charged under that invoice to the Client. The invoice shall have appended thereto any documentation required by the Client.

(c) The Client shall not be responsible to pay any amounts invoiced by the Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(d) The Prime Consultant shall submit invoices to the Client:

Department of Planning, Development and Engineering  
City of St. John's  
P.O. Box 908  
St. John's, NL  
A1C 5M2

32.2 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or at agreed per diem rates on the basis of approved level of effort.

32.3 The Client will pay for all other services at an agreed fixed fee on the basis of approved level effort. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

32.4 The fee for Basic Services and Additional Services will be apportioned to the phases of service as outlined in Schedule II – "Basic Services and Other Additional Services' Fees".

32.5 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

32.6 The Client will pay for resident services during construction, when requested, based on an agreed fixed fee amount or as outlined elsewhere in this agreement or agreed upon per-diem rates. The fee amount is to include all payroll costs.

32.7 The Client will pay for construction management services, when requested, on the basis of the level of effort required during project implementation based on an agreed fixed fee or agreed upon per-diem rates.

32.8 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation of documents and site visits to carry out commissioning activities, as outlined in Schedule I and detailed in the project specification and contract documents.

- 32.9 The Client will pay for the reimbursement of the Prime Consultant's expenses associated with the project at cost as per Schedule II. Meals, private vehicle usage, private lodgings and other incidental expenses are to be paid on the basis of negotiated rates. These rates are HST inclusive and are determined as of the date the expenses are incurred.
- 32.10 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III – "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.

### **GC33 PAYMENT SCHEDULE FOR SERVICES**

33.1 Payments in respect of the percentage or fixed fee arrangement shall be made during the performance of the Services for each of the Services equal to the amounts specified below:

- a. Payment for Analysis of Project Requirements and Design Concept:

Upon acceptance of the design concept documents, an amount equal to 10 percent of the fee;

- b. Payment for Design Development:

Upon acceptance of the design development documents, an amount equal to 15 percent of the fee;

- c. Payment for Construction Documents:

Upon acceptance of the construction documents, an amount equal to 45 percent of the fee;

- d. Payment for Tender Call, Tender Evaluation and Contract Award:

Upon award of the Construction Contract, or upon completion of tender evaluation(s) in such cases where the Client does not award a Construction Contract for reasons other than those specified in 33.2, an amount equal to 5 percent of the fee;

- e. Payment for Construction and Contract Administration:

Upon interim completion of the Construction Contract, an amount equal to 22 percent of the fee;

- f. Payment for Final Completion and Post Construction Warranty Review:

Upon reporting to the Client on the status of the defects at the end of the warranty period(s) an amount equal to 3 percent of the fee.

33.2 If, for reasons attributable to the Prime Consultant, a price cannot be obtained by a tender or negotiation within the Construction Cost Limit, or acceptable to the Client for the award of the Construction Contract, the Prime Consultant shall be entitled to receive payment for the tender call, bid evaluation and construction contract award Services, only when the requirements of GC 27.3, have been met

#### **GC34 DELAYED PAYMENT**

34.1 If the Client delays in making a payment that is due in accordance with GC 32, the Prime Consultant will be entitled to receive interest on the amount that is overdue for the period of time as defined in 34.2 including the day previous to the date of payment. Such date of payment shall be deemed to be the date on the cheque given for payment of the overdue amount. An amount is overdue when it is unpaid on the first day following the due date described in GC 32.

34.2 Interest shall be paid automatically on all amounts that are not paid by the due date or fifteen (15) days after the Consultant has delivered a Statutory Declaration, whichever is later.

34.3 The rate of interest shall be the prime lending rate of the Owner, plus one percent (1%), as is established on a quarterly basis.

#### **GC35 CLAIMS AGAINST, AND OBLIGATIONS OF, THE PRIME CONSULTANT**

35.1 The Client may, in order to discharge lawful obligations of and satisfy lawful claims against the Prime Consultant by a Sub-Consultant, with whom the Prime Consultant has a direct contract, for Services rendered to, or on behalf of, the Prime Consultant, pay an amount from money that is due and payable to the Prime Consultant directly to the claimant Sub-Consultant.

35.2 For the purposes of GC35.1 a claim shall be considered lawful when it is so determined

a) by a court of legal jurisdiction, or

b) by an arbitrator duly appointed to arbitrate the said claim, or

c) by a written notice delivered to the Client and signed by the Prime Consultant authorizing payment of the said claim or claims.

35.3 A payment made pursuant to subsection 1 is, to the extent of the payment, a discharge of the Client's liability to the Prime Consultant under the Agreement and will be deducted from any amount payable to the Prime Consultant under the Agreement.

35.4 GC35.1 shall only apply to claims and obligations

a) the notification of which has set forth the amount claimed to be owing and a full description of the Services or a part of the Services for which the claimant has not been paid. The notification must be received by the Client in writing before the final payment is made to the

Prime Consultant and within one hundred twenty (120) days of the date on which the claimant

- i. should have been paid in full under the claimant's Agreement with the Prime Consultant where the claim is for an amount that was lawfully required to be held back from the claimant; or
  - ii. performed the last of the Services pursuant to the claimant's Agreement with the Prime Consultant where the claim is not for an amount referred to in (i) above, and
- b) the proceedings to determine the right to payment of which shall have commenced within one year from the date that the notification referred to in GC35.4.(a) was received by the Client.
- 35.5 The Client may, upon receipt of a notification of claim referred to in GC35.4.(a), withhold from any amount that is due and payable to the Prime Consultant pursuant to the Agreement the full amount of the claim or any portion thereof.
- 35.6 The Client shall notify the Prime Consultant in writing of receipt of any notification of claim and of the intention of the Client to withhold funds pursuant to GC35.5. The Prime Consultant may, at any time thereafter and until payment is made to the claimant, post with the Client, security in a form acceptable to the Client in an amount equal to the value of the said claim. Upon receipt of such security the Client shall release to the Prime Consultant any funds which would be otherwise payable to the Prime Consultant, that were withheld pursuant to the provision of GC35.5.
- 35.7 The Prime Consultant shall discharge all lawful obligations and shall satisfy all lawful claims against the Prime Consultant for Services rendered to, or on behalf of, the Prime Consultant in respect of the Agreement at least as often as the Agreement requires the Client to discharge its obligations to the Prime Consultant.

### **GC36 NO PAYMENT FOR ERRORS AND OMISSIONS**

- 36.1 Any costs resulting from design errors on the part of the Prime Consultant, Sub-Consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any Sub-Consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a Sub-Consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by Sub-Consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of Sub-Consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any Sub-Consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports,

geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such Sub-Consultant.

- 36.2 Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design or omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

### **GC37 PAYMENT FOR CHANGES AND REVISIONS**

- 37.1 Payment for any additional or reduced Services authorized by the Client prior to their performance, and for which a basis of payment has not been established at the time of execution of the Agreement, shall be in an amount or amounts to be determined by the Client, acting reasonably, subject to these Terms of Payment.
- 37.2 Where it is not possible, or not appropriate, to determine a fixed price fee or percentage fee prior to the performance of the additional or reduced Services, payment shall be made on the basis of a time based fee in accordance with GC31.1.(c). Disbursements shall be paid in accordance with GC41.
- 37.3 Prior to the performance of additional or reduced Services on the basis of a time based fee, the Prime Consultant shall comply with any request made by the Client pursuant to GC24, regarding persons to be employed by the Prime Consultant or the Prime Consultant's Sub-Consultants to provide the additional or reduced Services. In addition, the Client shall determine, based on industry practice and input from the Prime Consultant, hourly rates for any of those persons for whom the relevant information does not appear in the Agreement Particulars.
- 37.4 Payment for additional Services not identified at the time of execution of the Agreement shall be made only to the extent that
- a) the additional Services are Services that are not included in stated Services in the Agreement,
  - b) the additional Services are required for reasons beyond the control of the Prime Consultant, and
  - c) any fee adjustment for Services resulting from an adjustment in the Construction Cost Estimate arising from the additional Services is not commensurate with the additional Services performed.

### **GC38 EXTENSION OF TIME**

- 38.1 If, and to the extent that, the time for completion of the Construction Contract is

exceeded or extended through no fault of the Prime Consultant in the opinion of the Client, payment for the Services required for such extended period of the contract administration shall be subject to review and equitable adjustment by the Client.

### **GC39 SUSPENSION COSTS**

- 39.1 During a period of suspension of the Services pursuant to GC 43, the Prime Consultant shall minimize all costs and expenses relating to the Services that may occur during the suspension period.
- 39.2 Within fourteen (14) days of notice of such suspension, the Prime Consultant shall submit to the Client a schedule of costs and expenses, if any, that the Prime Consultant expects to incur during the period of suspension, and for which the Prime Consultant will request reimbursement.
- 39.3 Suspension expenses are limited to expenses directly attributable to suspension of the Project by the Client for which the Prime Consultant is not otherwise compensated, including costs directly attributable to suspending the Prime Consultant's contractual and employee commitments on account of the suspension, and for which the Prime Consultant can provide proof of payment if requested by the Client.
- 39.4 Payment shall be made to the Prime Consultant for those costs and expenses that, in the opinion of the Client, are substantiated as having been reasonably incurred during the suspension period.

### **GC40 TERMINATION COSTS**

- 40.1 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime Consultant shall not be entitled to any other payment or compensation in respect of such termination, including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage, loss of opportunity or loss of profits arising directly or indirectly from termination of this Agreement or in any other way related thereto.
- 40.2 Within fourteen (14) days of notice of such termination, the Prime Consultant shall submit to the Client a schedule of costs and expenses reasonably incurred. The Prime Consultant must ensure that it has mitigated its costs to the best of its ability.
- 40.3 Payment shall be made to the Prime Consultant for those costs and expenses that in the opinion of the Client are substantiated as having been reasonably incurred after the date of termination.
- 40.4 In the event of termination by the Client due to the failure of the Prime Consultant to perform its services, the Client may recover costs additional to the remaining portion of the fee, if any, otherwise payable to the Prime Consultant which are incurred by the

Client in engaging another Prime Consultant.

- 40.5 The Client shall retain the right of set off with respect to any earned but unpaid proceeds then owing pursuant to this Agreement.

#### **GC41 DISBURSEMENTS**

- 41.1 The following costs shall be included in the fees required to deliver the Prime Consultant services and shall not be reimbursed separately;

- a) reproduction and delivery costs of drawings, CADD files, specifications and other Technical Documentation specified in the Project Brief;
- b) standard office expenses such as any photocopying, computer costs, Internet, cellular phone costs, long distance telephone and fax costs, including that between the Prime Consultant's main office and branch offices or between the Prime Consultant's offices and other team members offices;
- c) survey equipment;
- d) courier and delivery charges for deliverables specified in the Project Brief;
- e) plotting;
- f) presentation material;
- g) parking fees;
- h) taxi charges;
- i) travel time;
- j) travel expenses; and
- k) local project office.

- 41.2 The following disbursements reasonably incurred by the Prime Consultant, that are related to the Services and approved by the Client, shall be reimbursed to the Prime Consultant at actual cost without addition or mark-up:

- a. reproduction and delivery costs of drawings, CADD files, specifications and other Technical Documentation additional to that specified in the Project Brief;
- b. transportation costs for material samples and models additional to that specified in the Project Brief;
- c. project related travel and accommodation additional to that specified in the Project Brief; and
- d. other disbursements made with the prior approval and authorization of the Client.

3. Disbursements shall be Project related and shall not include expenses that are related to the normal operation of the Prime Consultant's business. The amounts payable, shall not

exceed the amount entered in the Agreement Particulars, without the prior authorization of the Client.

## **TAKING THE SERVICES OUT OF THE PRIME CONSULTANT'S HANDS, SUSPENSION OR TERMINATION**

### **GC42 TAKING THE SERVICES OUT OF THE PRIME CONSULTANT'S HANDS**

- 42.1 The Client may take all or any part of the Services out of the Prime Consultant's hands and may employ reasonable means necessary to complete such Services in the event that:
- a) the Prime Consultant has become insolvent or has committed an act of bankruptcy, and has neither made a proposal to the Prime Consultant's creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act, or
  - b) the Prime Consultant fails to perform any of the Prime Consultant's obligations under the Agreement or, in the Client's opinion, so fails to make progress as to endanger performance of the Agreement, in accordance with its terms.
- 42.2 If the Prime Consultant has become insolvent or has committed an act of bankruptcy, and has either made a proposal to the Consultant's creditors or filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act, the Prime Consultant must immediately forward a copy of the proposal or the notice of intention to the Client.
- 42.3 Before the Services or any part thereof are taken out of the Prime Consultant's hands under 42.1 (b), the Client will provide notice to the Prime Consultant, and may require such failure of performance or progress to be corrected. If within fourteen (14) days after receipt of notice the default is not corrected or corrective action is not initiated to correct such fault, the Client may, by notice, without limiting any other right or remedy, take all or any part of the Services out of the Prime Consultant's hands.
- 42.4 If the Services or any part thereof have been taken out of the Prime Consultant's hands, the Prime Consultant will be liable for, and upon demand pay to the Client, an amount equal to all loss and damage suffered by the Client by reason of the non-completion of the Services by the Prime Consultant.
- 42.5 If the Prime Consultant fails to pay on demand for the loss or damage as a result of 42.4, the Client will be entitled to deduct and withhold the same from any payments due and payable to the Prime Consultant.



42.6 The taking of the Services, or any part thereof, out of the Prime Consultant's hands does not relieve or discharge the Prime Consultant from any obligation under the Agreement, or imposed upon the Prime Consultant by law, in respect to the Services or any part thereof that the Prime Consultant has performed.

#### **GC43 SUSPENSION**

43.1 The Client may require the Prime Consultant to suspend the Services being provided, or any part thereof, for a specified or unspecified period.

43.2 If a period of suspension does not exceed sixty (60) days and when taken together with other periods of suspension does not exceed ninety (90) days, the Prime Consultant will, upon the expiration of that period, resume the performance of the Services in accordance with the terms of the Agreement, subject to any agreed adjustment of the time schedule as referred to in GC20.

43.3 If a period of suspension exceeds sixty (60) days or when taken together with other periods of suspension, the total exceeds ninety (90) days, and the Client decides:

- a) that the performance of the Services will be continued, then the Prime Consultant will resume performance of the Services, subject to any terms and conditions agreed upon by the Client and the Prime Consultant, or
- b) that the Agreement will be terminated in accordance with the terms of GC44, then the Client will give notice to the Prime Consultant.

43.4 Suspension costs related to this clause are as outlined in GC39.

#### **GC44 TERMINATION**

44.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

44.2 Notwithstanding the provisions of this Agreement, the Client may at any time by way of fourteen (14) days written notice, terminate this Agreement with costs to be paid pursuant to GC 40.

### **INDEMNIFICATION AND INSURANCE**

---

#### **GC45 INDEMNIFICATION**

45.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant's Representative shall be or be deemed to be an

officer, servant, agent or partner of the Client.

- 45.2 The Client shall not be liable for, and the Prime Consultant shall indemnify and save harmless the Client and the Client's Representatives against all losses, costs, charges, or expenses (including legal costs) incurred by the Client and its agents as a result of actions, claims, demands or awards for compensation at law, equity or under any applicable legislation, made or brought by, against, suffered by or imposed upon the Client, or its Representatives by a third party, as a result of or related to the negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any Sub-Consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, the Client may at its own discretion retain its own solicitors to defend its interests in any such suit or claim, and the legal costs of that defense shall be paid by the Prime Consultant.
- 45.3 The Prime Consultant's liability to indemnify or reimburse the Client under the Agreement shall not affect or prejudice the Client from exercising any other rights under law.

#### **GC46 INSURANCE REQUIREMENTS**

##### **46.1 General**

- a. The Prime Consultant shall ensure that appropriate liability insurance coverage is in place to cover the Prime Consultant and the members of the Consultant Team and shall maintain all required insurance policies as specified herein.
- b. The Prime Consultant shall, if requested by the Client at any time, provide to the Client an Insurer's Certificate of Insurance and/or the originals or certified true copies of all contracts of insurance maintained by the Prime Consultant pursuant to the provisions contained herein.
- c. The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Prime Consultant.
- d. Any insurance coverages additional to those required herein that the Prime Consultant and the other members of the Consultant Team may deem necessary for their own protection or to fulfill their obligations shall be at their own discretion and expense.

##### **46.2 The Prime Consultant shall supply written proof of:**

- a) Professional liability coverage equal or greater than \$2,000,000 per claim or aggregate per year with a maximum deductibility of \$100,000 per claim. The Prime

Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's insurer. This insurance shall remain in until five (5) years after the completion of Services. The following provision must be incorporated into the conditions of the Prime Consultant's Professional Liability insurance coverage: *"Notice of Cancellation of Insurance Coverage: The Insurer agrees to give the Contracting Authority at least thirty (30) days' prior written notice of any policy cancellation and before making any adverse material changes."*

- b) Commercial liability insurance acceptable to the Client with a minimum limit of \$5,000,000 per occurrence and an aggregate limit of not less than \$5,000,000 within any policy year.
  - c) Automobile insurance acceptable to the Client of at least \$5,000,000, combined single limit, on all owned, non-owned, leased or hired automobiles.
- 46.3 All insurance described in 46.2 must be primary and not require the sharing of any loss by any insurer of the Client.
- 46.4 The insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

## **SCHEDULE “D”**

### **Protocols for Security of Government Information on Technology Assets of Contractors**

The Prime Consultant should confirm with the Client and the City of St. John's whether the Prime Consultant will be required to use information technology resources, including computers, of the Client or the Government of Newfoundland and Labrador in the conduct of the work under the Contract. The following requirements apply where the Prime Consultant will not be using such assets, but will instead have access to confidential information (including personal information) (“Confidential Information”) received from the Client or Government of Newfoundland and Labrador (“Government”) and will be storing, manipulating or access that Confidential Information on the Prime Consultant’s own information technology resources.

- All portable storage devices or media (e.g. flash drives, memory sticks, portable hard drives, writable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.
- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Client or Government network.
- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.
- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the email and/or its attachments are encrypted or zipped in a secure manner.
- Where a Prime Consultant will be granted access to the Client or Government computer network during the course of the work, in addition to the requirements noted above, the Prime Consultant shall not:
  - Share personal computer drives or folders on a computer accessing the network;  
or
  - Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.

- These requirements apply to the Prime Consultant and all employees, servants and/or agents or permitted Sub-Consultants of the Prime Consultant, and it is the responsibility of the Prime Consultant to ensure that all such employees, servants and/or agents or permitted Sub-Consultants are aware of these restrictions and are in compliance herewith.
- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant's Sub-Consultants that is of a non-confidential nature need not be encrypted.