

City of Kamloops Construction Terms and Conditions

1. APPLICATION:

- a. The following Terms and Conditions shall govern any Agreement entered into by the City and the Contractor unless otherwise agreed to in writing by the City.

2. DEFINITIONS:

The definitions will mean the following otherwise agreed to in writing by the City:

- a. "City" means the City of Kamloops.
- b. "City Representative" may include but not limited to:
 - i. Parks Supervisor,
 - ii. Capital Projects Supervisor,
 - iii. Trades Supervisor,
 - iv. Streets Supervisor, or
 - v. Designate.
- c. "Contractor" means an individual, corporation, or partnership contracted with the purposes of supplying the labour, materials, or both for the performance of the Work.
- d. "Work" means the whole of the goods, services, or materials required to be done, furnished, delivered, and/or performed by the Contractor in order to oversee the completion of the Project.

3. PERFORMANCE OF WORK:

- a. The Contractor shall diligently and carefully perform the Work required hereunder in a manner consistent with prudent industry standards.
- b. The Contractor shall furnish all skills, labour, supervision, materials, equipment, and supplies necessary thereof and, if permitted to subcontract, shall be fully responsible for all work and services performed by subcontractors.
- c. The Contractor shall ensure that all Work is performed or overseen by a journeyman with the appropriate experience to provide the portion of Work required.
- d. The Contractor shall perform all Work in substantial compliance with Contractor's safety procedures and those of the particular City site safety procedures that the Contractor has been instructed to follow, provided the same do not conflict with applicable law.
- e. The Contractor shall interfere minimally with the City's operations or that of other consultants or contractors. Upon completion of the Work, the Contractor shall leave the work site clear of all tools, equipment, and garbage relating to the Contractor's presence.
- f. The Contractor shall not, without prior written authorization of the City, make any alterations or substitutions in the Work or the Project, or perform extra work. The Contractor is not entitled to any payment for unauthorized work.
- g. The Contractor shall comply with all City bylaws, ordinances, legal requirements, rules, regulations, codes, and orders during the performance of the Work.
- h. The City reserves the right to source and/or supply goods, services, trades, sub-contractors, or materials in whole or in part. What ever the City deems best value for the Project.

4. PERMITS AND LICENCES:

- a. The Contractor shall obtain and maintain all permits and licences required to authorize it to perform the Work.

5. TERMS OF SHIPMENT:

- a. The Contractor will ensure that in the Contractor's administration of the Project all goods will be shipped F.O.B. City, unless otherwise specified.

6. DELIVERY ON SITE:

- a. No goods or services shall be delivered to any site within the City without an Official City of Kamloops Purchase Order document.

7. TIME OF THE ESSENCE:

- a. Time is of the essence for this agreement and all Work performed relative to this Agreement.
- b. The Contractor must advise immediately of its discovery of any shortage or delay of any kind in relation to the Work or the Project. If delivery of goods and services is not completed by the delivery date, the City reserves the right to terminate this purchase order in whole or in part and to purchase substitute goods and services elsewhere and charge the Contractor with any incidental or consequential damages that might be incurred.

8. QUALITY AND INSPECTION OF WORK:

- a. The Work and any and all parts thereof shall be subject to inspection and acceptance by the City, notwithstanding prior payment to obtain cash discount.
- b. Before advancing any payment to the Contractor, the City reserves the right to determine, in its sole and absolute discretion, whether the Work was performed to the satisfaction of the City. Where applicable, A material bid must meet City specifications and be on the approved materials list as detailed in the City's specification document.
- c. In the event that the Work was not performed to the satisfaction of the City, the City may take such action as it deems necessary to correct the Contractor's default, including, without limitation, the following:
 - i. direct Contractor to re-perform the Work in whole or in part for the Work that was not completed to the City's satisfaction;
 - ii. withhold payment due or accrued due to the Contractor for the Work performed pursuant to the Agreement;
 - iii. set off any expenses incurred by the City against payment due or accrued due to the Contractor;
 - iv. require the Contractor pay all transportation charges both ways on rejected materials;
 - v. right to purchase in the open market and hold the Contractor responsible for any excess cost occasioned thereby;
 - vi. terminate or cancel the Agreement and/or seek indemnification from the Contractor for losses suffered by the City as a result of such default; and/or
 - vii. remove the Contractor from any future bidding list.
- d. No payment or acceptance by City shall constitute a waiver of the foregoing, nor shall any provision herein be construed to exclude or limit the effect of this provision.

9. WARRANTY:

- a. Without limitation to any additional warranties provided by the Contractor, whether indicated on the face of the purchase order or otherwise provided, the Contractor warrants that:
 - i. all Work shall be of merchantable quality and free from defects in workmanship and materials;
 - ii. all Work shall strictly conform to applicable samples, specifications and drawings;
 - iii. all Work shall be fit for the purpose intended by the City;
 - iv. all Work be free and clear of all liens, charges and encumbrances;
 - v. the Work shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies;
 - vi. the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and
 - vii. the Work shall comply with all applicable environmental protection laws and regulations.
- b. Unless a longer warranty period is specified on the face of the purchase order or is otherwise provided, the foregoing warranty shall be valid for one year from the date of acceptance of the Work by the City. If at any time prior to the expiration of any applicable warranty period, any weakness, deficiency, failure, breakdown, or deterioration in workmanship or material should appear or be discovered in the Work performed by the Contractor, or if the Work does not conform to the terms and conditions of this agreement, the City may at its option:
 - i. require the Contractor to promptly replace, redesign or correct the defective and non-conforming Work at no expense to the City, or
 - ii. the City may replace or correct the defective Work and charge the Contractor with all expenses incurred by the City.

- iii. The Contractor agrees to indemnify and save harmless the City, its members, officers, employees, assigns, agents, clients, and the public from any liability, loss, cost, and expense arising either directly or indirectly, from breach of any warranty given by the Contractor hereunder.

10. PASSAGE OF TITLE/RISK:

- a. Title to all supplies, materials, and equipment to be furnished by the Contractor hereunder shall remain with the Contractor upon arrival at any one of the City's sites, and the Contractor shall be responsible for all loss, damage, or destruction thereof and of the work in progress until the Work is performed to the City's satisfaction, and replacement of items so lost, damaged, or destroyed shall be accomplished promptly by the Contractor at its sole expense, provided that the City will be responsible for the risks normally covered by standard fire and extended coverage insurance on the work in progress and the said supplies, material, and equipment and Contractor will not be liable to City for damage to such property arising out of such risks, but City will not be responsible for tools, equipment, or personal property of Contractor or any subcontractor or employee that is not to be incorporated in the project.

11. DISPUTE RESOLUTION PROCEDURES:

- a. The Contractor and City agree to resolve any differences through the City's dispute resolution procedure outlined below, provided; however, in the event of conflict among the documentation, the documents shall govern in the following order:
 - i. the executed agreement between the City and Contractor;
 - ii. the General Terms and Conditions;
 - iii. any procurement documents; and
 - iv. the Contractor's bid submissions.

- b. **Stage One:** The City and the Contractor acknowledge and agree to utilize all reasonable efforts to resolve any and all disputes in connection with this Contract in a professional and amicable manner. It is understood that the disputing parties shall ensure continuity of communication and resources toward the resolve of any and all disputes.

Stage Two: Should dispute not be resolved after ten (10) business days of negotiation the City shall serve notice to the Chief Executive Officer of the Contractor outlining the dispute with recommendations for resolve. The Contractor shall have ten (10) business days to resolve the dispute to the satisfaction of the City.

Stage Three: If conflict remains unresolved, the City, at its sole discretion, may serve the Contractor with written notice of termination of this Agreement to take effect thirty (30) days after delivery; or, have a third party assign an arbitrator to resolve the dispute. All disputes resolved by an arbitrator shall be final.

- c. Contractors who choose to use a public forum to air any differences may be eliminated from participating in future business opportunities with the City.

12. CHANGES/MODIFICATIONS/TERMINATION:

- a. The City reserves the right to cancel this Agreement if the Work has not been executed within a reasonable time.
- b. The City reserves the right to cancel or terminate this Agreement, in whole or in part, by 30 days written notice, without cost or penalty.
- c. The City reserves the right at any time to make changes, in whole in or in part, by written or verbal notice confirmed in writing to make changes in any one or more of the following: quantity, specifications, methods of shipment or packing, and place or timing of delivery. If any such change causes a change in the cost of or the time required for performance of this contract and/or purchase order, an equitable adjustment shall be made in the price or delivery schedule, or both.
- d. No agreement or understanding to modify the Agreement shall be binding on the City unless in writing and authorized by the City's Representative.

13. ACCESS AND RESPONSIBILITY:

- a. The Contractor's authorized representatives and the City shall have access at all times to the installation site. The City shall use all reasonable precautions to prevent all other persons from entering the designated site where equipment is operating and shall not permit any persons other than authorized employees or representatives of the Contractor to operate, use, alter, repair, relocate, adjust, or tamper with any equipment owned by Contractor unless agreed to in writing by the Contractor. While the equipment is on a City site, the City shall defend Contractor's right, title, and interest in said equipment and keep them free of all liens and encumbrances.

- b. The Contractor shall have the right to remove, with a reasonable period of time after expiration or other termination of this agreement, all of the Contractor's owned supplies, material, and equipment installed or located at the City site.

14. STATUS OF CONTRACTOR:

- a. The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work and shall conduct all operations in Contractor's own name and not in the name of, or as agent for City.
- b. Neither the Contractor nor any of its personnel is engaged as an employee of the City or shall be deemed an employee City and the Contractor will indemnify the City against all claims arising out of or in connection with the Contractor's personnel.

15. PRICE/COST/RATE ADJUSTMENTS:

- a. Price, cost and/or rate adjustments will be:
 - i. Escalated up to the British Columbia Consumer Price Index (BCCPI) that is reported by BCStats;
 - ii. Not exceed the twelve month average percent change; and
 - iii. Adjusted on the anniversary of the Agreement commencement date.
- b. The Supplier shall provide the City, in writing, thirty (30) days prior to any price or rate adjustments and must include supporting and valid information to reinforce and justify any price adjustments. The City has the right to reject any unsubstantiated price adjustments.

16. ENVIRONMENTAL PURCHASING:

- a. The City will consider products and services that are environmentally preferred. The City recognizes that procurement decisions by its employees can make a difference in pursuit of improving environmental performance and as such support the purchase of products, projects, and services that will minimize the negative impact on the environment when they are practical and can be obtained at a reasonable cost. The entire statement can be viewed at www.kamloops.ca/purchasing.

17. NO PROMOTION OF RELATIONSHIP:

- a. The Contractor must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing, or other literature, letters, client lists, press releases, brochures, or other written materials without the express prior written consent of the City, except as may be necessary for the Contractor to perform the Contractor's obligations under the terms of the Agreement.

18. CONFIDENTIALITY:

- a. The Contractor must keep confidential all information provided to the Contractor by or on behalf of the City in connection with the Work or the Project, including any information that is confidential or proprietary to third parties and all information conceived, developed, or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to the City under the Contract. The Contractor must not disclose any such information without the written permission of the City. The Contractor may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract

19. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT:

- a. The City is subject to the provisions of the Freedom of Information and Protection of Privacy Act of BC. As a result, while the Act offers some protection for third party business interests, the City cannot guarantee that any information provided to the City can be held in confidence.

20. INSURANCE:

- a. All Contractors providing services to the City are required at a minimum to carry insurance as outlined on the City's Risk Management Division Insurance Matrix, which can be found on the City website at www.kamloops.ca under BUSINESS - Insurance Certificates. If you wish to be provided with a copy of the Insurance Matrix or a copy of the Insurance Certificates please contact the Purchasing and Inventory Control Division.
- b. Any Deductible or Reimbursable Clause contained in the policy shall not apply to the City and shall be the sole responsibility of the Contractor.

21. WORKSAFEBC:

- a. The Contractor will strictly comply with all rules and regulations under the *Workers Compensation Act* or any successor legislation and will provide a letter of good standing from WorkSafeBC prior to commencement of Work at the designated site(s). The Contractor agrees that it is the "Prime Contractor" for the purposes of the *Workers Compensation Act* and Regulations, unless otherwise advised and accepted in writing by an authorized officer, employee, or agent of the City.

22. CONTRACTORS COORDINATION PROGRAM:

- a. The City Contractors Coordination Program requires that before a Contractor can be hired to do the Work for the City, the following information must be on file:
 - i. a copy of your current WorkSafeBC clearance letter.
 - ii. a copy of your current City Business Licence.
 - iii. a copy of your insurance acceptable to the City.
 - iv. an up-to-date copy of your Occupational Health and Safety Program acceptable to the City.
 - v. for companies with more than 20 employees the City will require a copy of the Contractor's Occupational Health and Safety Program for review to ensure that it meets the criteria set by the WorkSafeBC Regulation 3.3. The manual must also contain safe work procedures regarding the type of work the Contractor is being hired to do.
 - vi. for companies with less than 20 employees there must be proof that employees have been properly trained in the work they have been hired to do and evidence there is a commitment to safety by the Contractor.

23. CANADIAN STANDARDS ASSOCIATION AND ELECTRICAL SAFETY:

- a. All electrical or mechanical equipment must bear Canadian Standards Association or such local approval as required under provincial and municipal laws and regulations governing the sale and usage of such equipment.

24. INDEMNITY:

- a. The Contractor hereby indemnifies and saves harmless the City, including all of its, agencies, organizations, and municipal corporations, at all times from all loss, damages, actions, suits, claims, demands, costs, expenses, fines, and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which any such indemnities shall or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss:
 - i. arising directly or indirectly from a breach or non-performance of this Agreement by the Contractor, its directors, officers, employees, shareholders, agents, contractors, licensees, invitees, or any other persons for whom the Contractor is responsible at law;
 - ii. arising directly or indirectly from the Contractor fulfilling its obligations pursuant to this Agreement;
 - iii. arising directly or indirectly from any act or omission of the Contractor, its directors, officers, employees, shareholders, agents, contractors, invitees, or any other persons for whom the Contractor is responsible at law in the use of the any of the City's lands or premises which form part of, or are referenced in, this Agreement; and
 - iv. arising from any infringement or alleged infringement of third-party intellectual property rights, including any patent, copyright, industrial design, trademark, or trade secret with respect to goods and services and their process of manufacture.
- b. This provision shall survive expiry or termination of this Agreement.

25. INTELLECTUAL PROPERTY:

- a. The Contractor shall pay all royalties and license fees relating to any intellectual property rights in Work performed by the Contractor and shall ensure that the City is entitled to enjoy the benefits of services, free from any claims by any third party.

26. APPLICABLE LAWS:

- a. This agreement shall be governed in all respects by the laws of British Columbia. The Contractor and City agree that any suit, action or legal proceedings arising directly or indirectly in connection with, out of, relating to, or from this Agreement or the Contractor's responsibilities there under, shall be commenced in a court of appropriate jurisdiction in the Province of British Columbia.

27. ACCOUNTS AND LIENS:

- a. The Contractor shall promptly pay all debts incurred by the Contractor for labour, services, equipment, materials, and supplies used in the performance of the Work. If any lien or charge is registered in respect of the Work, the Contractor at its sole expense shall promptly effect its discharge and shall hold the City harmless for all loss, cost, damage, or expense incidental thereto.

28. WAIVER:

- a. No party will be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

29. ASSIGNMENT:

- a. The Agreement, or the right to receive payment hereunder, shall not be assigned or subcontracted, in whole or in part, by the Contractor without the City's prior written consent.
- b. Assignment or subcontracting of the Agreement shall not relieve the Contractor from any obligations under the Agreement or impose any liability upon the City, unless otherwise agreed to in writing by the City.

30. SURVIVAL:

- a. All Contractor obligations under this Agreement that necessarily extend beyond termination of this Agreement in order to fully achieve its intended purpose shall survive termination of this Agreement, including, without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, and confidentiality provisions.

31. PROJECT THRESHOLDS

- a. Projects valued less than twenty-five thousand dollars (<\$25,000), at the City's discretion, the City may or may not use the Contractors listed in '31. Call-Out list'.
- b. Projects valued between twenty-five thousand dollars and one-hundred and twenty-five thousand dollars (\$ 25,000 - \$ 125,000) is applicable under this Agreement.
- c. Projects valued greater than one-hundred and twenty-five thousand dollars and one cent (>\$ 125,000.01) is not applicable under this Agreement.

32. CALLOUT LIST:

- a. Subject to the City's Work requirements, the City may contact the Contractors on the call-out list in the following order; however, the City reserves the unfettered right to conduct a Request for Quote between the Contractors to determine which Contractor will be awarded the Work:

- i. _____,
- ii. _____,
- iii. _____,

- b. Should the City not agree with the first ranked Contractor, the City reserves right to negotiate with the next Contractor and so forth without cost or penalty to the City.
- c. The City reserves the right to forgo the Call-out list if:
 - i. the Contractors are unavailable,
 - ii. the Contractors are non-responsive, or
 - iii. the City deems the Contractors' skill set is not suitable for the Work.

- d. There are no guarantees of call-out hours and no exclusivity to any one contractor is offered but the City anticipates ninety percent (90%) of required work will be undertaken utilizing the Contractors on the Call-out list.

33. GENERAL:

- a. Where the Contractor consists of more than one person, the liability to perform the Work herein by the Contractor shall be joint and several. The Agreement shall be binding on the parties hereto and their respective successors and assigns.

- b. Wherever the singular, plural, masculine, feminine, or neuter is used throughout this agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter, or body corporate where the context so requires.
- c. The headings, titles, and margin notes in this agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of the Agreement.