

ScheduleD: General Terms andConditions of the Agreement

1. APPLICATION:

- a. The following Terms and Conditions shall govern any Agreement entered into by the City and the Consultant 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" means _____.
- c. "Consultant" means an individual, corporation, or partnership contracted with the purposes of supplying the labour, materials or both for the performance of the Work.
- d. "Project" means_____.
- e. "Work" means the whole of the goods, services or materials required to be done, furnished, delivered and/or performed by the Consultant in order to oversee the completion of the Project.

3. PERFORMANCE OF WORK:

- a. The Supplier shall exercise the same degree of care, skill and diligence in the provision and performance of the Goods and/or Services as is ordinarily exercised by best industry practices, adhere to procedures, policies, guidelines, laws, regulations, codes, standards and/or safety requirements in Federal, Provincial, City, Territorial authorities, and all other authorities having jurisdiction.
- b. The Supplier shall furnish all skills, labor, supervision, materials, equipment and supplies necessary thereof and, if permitted to subcontract, shall be fully responsible for all work and services performed by sub-Contractors.
- c. The Supplier shall perform all Work in substantial compliance with Supplier's safety procedures and those of the particular City site safety procedures the Supplier has been instructed to follow and been provided copies of in writing prior reasonably in advance of provision of Work to that site, where the same do not conflict with applicable law.
- d. The Supplier shall interfere minimally with the City's operations or that of other Contractors.
- e. Upon completion of the Work, the Supplier shall leave the work site clear of all tools, equipment, and rubbish.
- f. The Supplier shall not, without prior written authorization of the City, make any alterations or substitutions in the work, or perform extra

work. The Supplier is not entitled to any payment for unauthorized work.

4. PERMITS AND LICENSES:

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

5. TERMS OF SHIPMENT:

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

6. TIME OF THE ESSENCE:

- a. Time is of the essence for this agreement and all Work performed relative to this Agreement.
- b. The Consultant must advise immediately of its discovery of any shortage or delay of any kind in relation to the Work or the Project.

7. FORCE MAJEURE

- a. Neither the City nor the Consultant shall be liable to the other for any failure to perform, or delay in the performance of, its obligations hereunder, or be deemed to be in breach of this Agreement, if such failure or delay has arisen from "Force Majeure". "Force Majeure" means circumstances and conditions beyond the control of the party affected thereby which render it impossible for such party to fulfill its obligations under the Agreement or which will delay such fulfillment. "Force Majeure" shall include, but not be limited to, the following matters: war, acts of a foreign enemy, civil war, earthquake, flood, fire or other natural physical disaster, strike or lockout. Shortages of labor, materials, transportation or utilities shall not constitute "Force Majeure" unless caused by circumstances, which are themselves "Force Majeure". In the event that either party's performance is delayed by any of the foregoing causes, that party's schedule for performance shall be extended accordingly without penalty.

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.
- b. Before advancing any payment to the Consultant, the City reserves the right to determine, in its sole and absolute discretion, whether the Work was performed to the satisfaction of the City.
- 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 Consultant's default, including, without limitation, the following:
 - i. Direct Consultant to re-perform the Work in whole or in part for the Work that was

- ii. not completed to the City's satisfaction;
 - iii. Withhold payment due or accrued due to the Consultant for the Work performed pursuant to the Agreement;
 - iv. Set off any expenses incurred by the City against payment due or accrued due to the Consultant;
 - v. Terminate or cancel the Agreement and /or seek indemnification from the Consultant for losses suffered by the City as a result of such default; Remove the Consultant 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. The Consultant warrants that all services provided under this Agreement shall be fit for the purpose intended by the City and shall comply with professional standards applicable to the Consultant's profession and with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies.
- b. The foregoing warranty shall be valid for one year from the date of acceptance of the Work by the City.
- c. If at any time, any deficiency or failure should appear or be discovered in the Work, or if the Work does not conform to the terms and conditions of this Agreement, the City may at its option:
 - i. require the Consultant 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 Consultant with all expenses incurred by the City.

10. DISPUTE RESOLUTION PROCEDURES:

- a. The purpose of this paragraph is to establish a process whereby any dispute or difference of opinion under or in connection with this Agreement can be resolved in a fair, efficient and cost-effective manner.
- b. Both parties shall use their best efforts to resolve any dispute or difference of opinion under or in connection with this Agreement by good faith amicable negotiations on a "without prejudice" basis, and shall provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations
- c. If the dispute or difference of opinion is not resolved to the reasonable mutual satisfaction of the parties within 10 Business Days of the commencement of negotiations, or within such longer period as may be agreed to by the parties, the dispute or difference of opinion

shall be submitted to mediation. Both parties agree not to make a request for arbitration or to commence litigation without first seeking agreement through the mediation process.

- d. Mediation shall consist of structured, non-binding negotiations with the assistance of a mediator on a "without prejudice" basis. The mediator shall be appointed by agreement of the parties and shall be impartial and free from any actual or apparent conflict of interest. Failing such agreement, the mediator shall be appointed by the Executive Director of the Master Municipal Construction Document Association. *The costs of mediation shall be shared equally by both parties*
- e. If the dispute or difference of opinion is not resolved to the reasonable mutual satisfaction of both parties within 30 calendar days of the appointment of the mediator, or within such longer time as may be mutually agreed to by the parties, the dispute or difference of opinion may, upon the mutual written agreement of the parties, be submitted to binding arbitration in accordance with the laws of the Province of British Columbia. If the parties do not agree to arbitration, each party shall be free to commence litigation without further notice.
- f. If the dispute relates to the Consultant's fees or disbursements under this Agreement, the City shall be entitled to withhold the amount of fees and/or disbursements which are in dispute and the balance of the fees and disbursements not in dispute shall be paid by the City in accordance with this Agreement.
- g. Consultants who choose to use a public forum to air any differences may be eliminated from participating in future business opportunities with the City.

11. 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 thirty (30) days written notice, without cost or penalty.
- c. The City reserves the right at any time to make changes to the scope of the Work, in whole or in part by written notice. If any such change causes a change in the cost of or the time required for performance of this Agreement, 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.
- e. The Consultant shall have the right to remove,

with a reasonable period of time after expiration or other termination of this agreement, all of the Consultant's owned supplies, material and equipment installed or located at the City site.

12. STATUS OF CONSULTANT:

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

13. NO PROMOTION OF RELATIONSHIP:

- a. The Consultant 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 Consultant to perform the Consultant's obligations under the terms of the Agreement.

14. CONFIDENTIALITY:

- a. The Consultant must keep confidential all information provided to the Consultant 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. The Consultant must not disclose any such information without the written permission of the City. The Consultant may disclose to a sub-contractor any information necessary to perform the subcontract as long as the sub-contractor agrees to keep the information confidential and that it will be used only to perform the subcontract.
- b. The Consultant will not, on behalf of the City, make any representations or conduct any communications with any other level of government, including First Nations Bands and communities, absent the City's prior written consent.

15. INSURANCE:

- a. All Consultants providing services to the City are required at a minimum to carry insurance as outlined on the City of Kamloops Risk Management/Insurance Section (RMIS) Insurance Matrix which can be found on the City of Kamloops website at www.kamloops.ca under BUSINESS- Insurance Certificates. If you wish to be provided with a copy of the Insurance Matrix please contact the City's Representative.
- b. Any Deductible or Reimbursable Clause contained in the policy shall not apply to the

City and shall be the sole responsibility of the Consultant.

16. WORKSAFEBC:

- a. The Consultant will strictly comply with all rules and regulations under the Worker's 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).

17. CONTRACTORS COORDINATION PROGRAM:

- a. The City of Kamloops Contractors Coordination Program requires that before a Consultant 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 of Kamloops business licence.
 - iii. A copy of your insurance acceptable to the City of Kamloops
 - iv. An up-to-date copy of your Occupational Health and Safety Program acceptable to the City of Kamloops.
 - v. For companies with more than 20 employees the City will require a copy of the Consultant'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 Consultant 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 Consultant.

18. INDEMNITY:

- a. Notwithstanding the provision of any insurance coverage by the City, the Consultant shall indemnify and save harmless the City, its officers, employees, agents, successors, assigns, representatives, contractors and other consultants from and against any losses, claims, damages, actions and causes of action, costs, expenses, judgments and proceedings arising out of or in connection with any error, or negligent or malicious act or omission, by the Consultant or any of its officers, agents, representatives, employees or sub-consultants, except to the proportionate extent of any contributing negligent or or wrongful act or omission of the City, or any of its officers, agents, representatives, employees, contractors or other consultants. The terms and conditions of this indemnity provision shall survive the completion of all Work and the termination of this Agreement for any reason.

19. INTELLECTUAL PROPERTY:

- a. All concepts, plans, drawings, specifications, designs, models, reports, photographs, computer software, surveys, calculations,

construction and other data, documents, and processes produced by the Consultant in connection with the Project (the "Instruments of Service"), including all copyright and other intellectual property therein, are and shall at all times remain the property of the Consultant unless otherwise agreed in writing between the parties.

- b. Where any part of the Work is subject to the intellectual property rights of a third party the Consultant shall pay all royalties and license fees relating to any such intellectual property rights and shall ensure that the City is entitled to enjoy the benefits of the Work and the Instruments of Service, free from any claims by any third party.
- c. The City shall have the right to copy and use any of the Instruments of Service for any purpose in relation to the Project or any other projects or work undertaken by the City within the municipal boundaries of the City.
- d. In no event shall the City copy or use any of the Instruments of Service for any purpose other than those noted above without the prior written permission of the Consultant. The Consultant shall not unreasonably withhold or deny such consent but shall be entitled to receive additional equitable remuneration in connection with its grant of consent.
- e. The City shall have a permanent non-exclusive royalty-free license to use any Instruments of Service which is capable of being patented or registered as a trademark for the Project or any other projects or work of the City undertaken within the municipal boundaries of the City. The Consultant shall have full rights to any Instruments of Service arising from the Work which is capable of being patented or registered as a trademark and may use any such Instruments of Service on any other project.

20. APPLICABLE LAWS:

- a. This agreement shall be governed in all respects by the laws of British Columbia. The Consultant 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 Consultant's responsibilities there under, shall be commenced in a court of appropriate jurisdiction in the Province of British Columbia.

21. ACCOUNTS AND LIENS:

- a. The Consultant shall promptly pay all debts incurred by the Consultant 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 Consultant at its sole expense shall promptly effect its discharge and shall hold the City harmless for all loss, cost, damage, or expense incidental thereto.

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.

22. ASSIGNMENT:

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

23. SURVIVAL:

- a. All Consultant obligations under this Agreement that necessarily extend beyond termination of this Agreement in order to fully achieve their 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.

24. AUDIT:

- a. The City or any of its duly authorized representatives shall for the purpose of audit and examination have access to and be permitted to inspect such books, records, documents and any other evidence for inspection, copying and audit for a period of three years after the termination, for any reason, of the Agreement.

25. GENERAL:

- a. Where the Consultant consists of more than one person, the liability to perform the Work herein by the Consultant 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.
- d. The City may and reserves the right to purchase subsequent goods and/or services.

27. SPATIAL DATA

- a. Where spatial data is to be created and/or modified by the Consultant:

- i. The City of Kamloops Project Manager shall be the liaison between the Consultant and City of Kamloops GIS staff unless otherwise noted.
 - ii. The Consultant shall provide spatial data in digital format, as agreed upon, before the Contract shall be considered complete.

Deviations from the agreed-upon spatial data format deemed to be required as a result of discovery after commencement of the work by the Consultant, must be approved by the City of Kamloops GIS staff.

- iii. Delivery of spatial data and/or maps must be accompanied by:
 - Reference, citation and/or source documentation
 - spatial data creation algorithms and/or process descriptions (where applicable)

