



## Professional Services General Conditions

### 1.0 SERVICE PERFORMANCE

- 1.1 The Consultant must perform the Services:
- With that degree of care, skill and diligence normally applied in the performance of services of a similar nature;
  - In accordance with current professional practices; and
  - In conformance with the latest standards and codes applicable at the time of performance.
- 1.1 The Consultant must furnish all personnel required to perform the Services, and all personnel must be competent and qualified to perform the Services.
- 1.3 The Consultant must commence the Services in a timely manner and carry out the Services in accordance with the completion dates set out in the proposal, or as mutually amended in writing by the Consultant and the Owner from time to time.

### 2 SUBCONSULTANTS

- 2.1 Consultant may engage professional Subconsultants for the performance of specific tasks forming part of the Services, as may be indicated in Proposal. The Subconsultants may not be replaced without the prior written consent of the Owner.
- 2.2 Consultant must administer, coordinate, and manage all services of Subconsultants, and is responsible for all work performed by the Subconsultants in relation to the Service and will pay all fees and disbursements of all Subconsultants.

### 3 BASIS OF PAYMENT

- 3.1 In consideration of the Services performed by the Consultant to the satisfaction of the Owner, the Owner will pay the Consultant the fees and approved reimbursable expenses prescribed.
- 3.2 The limit on the fees to be paid by the Owner to the Consultant does not diminish the duties and obligations of the Consultant to provide the Services.
- 3.3 This agreement is limited to the work as described under Schedule "A". The Owner reserves the right to negotiate additional services. The final decision to incorporate additional services is at the sole discretion of the Owner.

3.4 The Consultant shall submit invoices for the month to the Owner in accordance with the Proposal.

3.5 On each invoice the Consultant shall list the task and percentage of the task complete for the month on the Services for the work plan.

3.6 Attached to each invoice shall be copies of invoices for all disbursements claimed (if requested by the Owner); confirmation of payments made to Subconsultants, and a brief report detailing work completed to date, work completed during the period covered by the invoice and work outstanding to complete the Services.

3.7 If the Owner does not approve of or wishes further review, audit or otherwise seek clarification concerning the Consultant's invoices, the Owner is not liable for interest charges in respect of the invoice for the period from the date the invoice is submitted until the date that the invoice is paid.

3.8 If the Owner approves the amount of an invoice, the Owner will cause the invoice to be paid within 30 days following receipt and approval of the invoice.

3.9 The Consultant must keep proper accounts and records of all costs and expenditures forming the basis of any billing to the Owner, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed.

3.10 The Owner is entitled to verify the accuracy and validity of all billing and payments made by auditing and taking extracts from the books and records of the Consultant.

### 4.0 APPROVALS

4.1 No reviews, approvals or inspections carried out or information supplied by the Owner or its employees derogate from the duties and obligations of the Consultant, with respect to the services, and all responsibility for the services is the Consultant's.



## **5.0 ASSIGNMENT**

5.1 The Consultant shall not assign, subcontract or transfer this contract in whole or in part without the written consent of the Owner. The Owner may at any time assign, transfer or subcontract this contract in whole or in part to any person, firm or corporation.

5.2 The Consultant shall advise and provide in writing to the Owner any change in controlling ownership of the company.

## **6.0 COMPLIANCE**

6.1 The Consultant covenants, as a material provision of this contract, that it will comply with all statutes, by-laws, regulations or other laws in force in British Columbia during the Term, including obtaining any permits, licenses or other authorizations necessary to enable the Consultant to perform the Services. The Consultant will further comply with policies, procedures and instructions, if any, provided by the Owner.

## **7.0 CONFIDENTIALITY & FREEDOM OF INFORMATION**

7.1 Consultant acknowledges that in performing the Services required under this Agreement, it will acquire information about certain matters, which is confidential to the Owner, and this information is the exclusive property of the Owner.

7.2 Consultant undertakes to treat as confidential all information received by reason of its position as Consultant, and agrees not to disclose it to any third party either during performance of the Services or after the Services have been rendered under this Agreement.

7.3 Consultant acknowledges that The City of Vernon is subject to the *Freedom of Information and Protection of Privacy Act (British Columbia)* and that this contract (including its schedules) and any records provided to the City of Vernon may be subject to public disclosure under that Act.

## **8.0 CONFLICT OF INTEREST**

8.1 Consultant shall not, during the term of this Agreement, perform a service for or provide advice to any person, firm or corporation where the performance of the service or provision of advice may give rise to a conflict of interest; or perceived conflict of interest by Council;

8.2 Consultant shall disclose any change in land ownership which it owns within the boundaries of the City of Vernon, directly or indirectly during the term of the Agreement.

## **9.0 GOOD BUSINESS CLAUSE**

9.1 Consultant providing Services to the Owner agree to resolve any differences or disputes within the confines of the City of Vernon. A Consultant who choose to use a public forum to air any differences run the risk of being removed from the approved Consultant list and may be prevented from doing future business with the City of Vernon.

## **10.0 ENTIRE AGREEMENT**

10.1 This contract constitutes the entire agreement between the parties with respect to the Services and supersedes all earlier understandings, communications, representations and agreements, whether oral or in writing. No modification of this contract will have any effect unless the modification is in writing and signed by the parties. The Schedules attached to this contract are an integral part of this contract. The parties may from time to time by agreement amend any of the Schedules and such amended Schedule when signed by both parties shall be substituted for the previous Schedule effective from the date set out in such amended Schedule.

## **11.0 ENUREMENT**

11.1 This contract will be binding upon and will enure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and permitted assigns.

## **12.0 GOVERNING LAW**

12.1 This contract will be governed by and construed in accordance with the laws of British Columbia and of Canada. The Parties consent to the jurisdiction of the courts of the Province of British Columbia.

## **13.0 INDEMNIFICATION**

13.1 Consultant shall at all times indemnify and save harmless the Owner and/or any of its officers, council, employees or agents from and against all claims and demands, losses, costs, damages, actions, suits, fees, or other proceedings by whomsoever made, brought or prosecuted, to the extent based upon, occasioned by or attributable to the negligent execution of the Services under this Agreement, or any other negligent or legally wrongful action taken by the Consultant. The Consultant's obligations hereunder shall not extend to claims, losses, damages and costs resulting from the negligence of the Owner or any officer, servant or agent of the Owner while acting within the scope of their duties of employment.



**13.2** Consultant is responsible for all WorkSafe BC assessments relating to the Services under this Agreement and the work of its Subconsultants.

**13.3** Consultant shall indemnify the Owner from and against all claims by its or its Subconsultants' employees related to personal injury including death, property damage, losses, costs and expenses arising out of or related to the provision of the Services including Workers' Compensation Board claims and assessments.

**13.4** This release and covenant of indemnification shall survive the termination of this Agreement.

**14.0 INDEPENDENT CONTRACTOR**

**14.1** The Consultant acknowledges that it is an independent contractor and not an employee or agent of the Owner, and will not in any manner commit or purport to commit the Owner to any obligation or undertaking, except with express written authorization of The City of Vernon.

**15.0 INSPECTION AND AUDIT**

**15.1** Consultant will preserve all books, payrolls, accounts and other records with respect to any time and expenses which the Owner is or has been required to pay, either directly or indirectly, as a result of performance of the Services and will make the same available for inspection and audit by the Owner's representatives during the Term and for two years thereafter. Any error in a claim for payment or the amount of a payment disclosed on audit will be adjusted between the parties.

**16.0 INSURANCE**

**16.1** At all times during this Agreement, Consultant must maintain public liability and property damage insurance with an insurer satisfactory to the Owner in accordance with the following terms:

- a) Comprehensive General Liability Insurance in the amount of not less than **\$2,000,000 (two million Canadian dollars)** inclusive per occurrence for bodily injury or property damage.
- b) Automobile, Public Liability Insurance in the amount of not less than **\$2,000,000 (two million Canadian dollars)** per occurrence per owned, non-owned or hired vehicle.
- c) Consultant will obtain, and ensure that all professional Subconsultants have obtained, where available, professional liability (errors & omissions) insurance in an amount not less than \$500,000.00 (five hundred thousand Canadian dollars) per claim with limit in the aggregate for all claims. Covering the Consultant

and any of its Subconsultants from the date of this contract and for five years thereafter.

**16.2** Consultant must provide to the Owner, prior to the commencement of the Services, a certificate of insurance or other evidence that satisfies the Owner that the required insurance has been acquired and is in force.

**16.3** Consultant is responsible for any deductible amounts under the policies and the cost of all insurance required by this contract shall be included in the Consultant's fees.

**16.4** Each policy of insurance shall contain a provision required the insurer and/or the Consultant to give The Owner 30 days written notice of any cancellation, refusal to renew, reduction or material change in coverage. Consultant will give notice to the Owner of any claim made against it or against a Subconsultant which may have the effect of reducing the coverage available to satisfy a claim arising out of work on the Project. This notice shall be provided at the time the Consultant has advised its insurer of a claim such that the amount of the reserve reduces the amount of available coverage to meet a later claim.

**17.0 WORKSAFEBC COMPLIANCE**

**17.1** Consultant shall ensure compliance on its part with the Workers Compensation Act and any regulations thereunder, especially provisions of said Act or of regulations under said Act having to do with the prevention of accidents, the prevention of diseases and the provision of safe working conditions, including proper sanitation and ventilation.

**17.2** In any case where pursuant to the provisions of the Workers Compensation Act, the Workers Compensation Board orders the Consultant in respect of its operations under this Agreement to cease operations because of failure to install or adopt safety devices or appliances directed by the order of the said Board, or required under said Act or regulations thereunder or because said Board is of the opinion the conditions or immediate danger exist that would be likely to result in injury to any person, or because of lack of payment of an account due to the Board, the Owner on 24 hours written notice to the Consultant may terminate the Contract.



**18.0 PROTECTION OF WORK, PROPERTY & PUBLIC**

18.1 Consultant shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

18.2 The Consultant shall protect the property adjacent to the work area from damage as the result of his operations under the Contract. The Consultant shall protect the work and the Owner's property from damage which may arise as the result of his operations under the Contracts.

**19.0 NON-WAIVER**

19.1 Payments made to the Consultant on account of the Services shall not be construed as a waiver of any right of claim The Owner may have against the Consultant arising out of the Consultant's failure to perform the Services in accordance with this Contract.

**20.0 NOTICE**

20.1 Any notice required to be given may be well and sufficiently given by personal delivery, regular mail or fax to 250-550-3523 and sent to the party at the address set out on page 1 or such other address or fax number as either party may in writing specify. In the event of a postal strike, notice must be given by personal delivery or fax. Any notice given will be deemed to be received if delivered, when delivered, if mailed by regular mail, seven (7) business days after the time of mailing at any Canada Post Office, British Columbia and if sent by fax, the next business day following the date of confirmed transmission.

**21.0 OWNERSHIP OF WORK PRODUCT & DOCUMENTS**

21.1 All right, title and interest in the Work Product shall be owned by the City of Vernon and the Consultant does hereby assign and transfer the Work Product, including the intellectual property rights herein, vested and contingent to the City of Vernon.

21.2 Any report prepared is for the sole use of the Owner. No representations of any kind are made by [Consultant] or its employees to any party with whom [Consultant] does not have a contract.

21.3 All drawings, plans, models, designs, specifications, reports and other documents produced from the Services shall become the sole property of the Owner, and the Owner shall have the right to utilize all of them for its benefit in any way it sees fit without limitation.

21.4 If required by the Owner, the Consultant will assign any copyright of the product of the Consultant's Services and will obtain similar assignments from the Subconsultants.

**22.0 RESOLUTION OF DISPUTES**

22.1 This Agreement shall be governed by the laws of the Province of British Columbia.

22.2 All matters in dispute between the parties in relation to this agreement shall be referred to the arbitration of a single arbitrator, if the parties so agree, or to three arbitrators failing such an agreement, in which case each party shall appoint one arbitrator, and the first two named shall choose the third arbitrator. Any arbitration shall be conducted in accordance with the Commercial Arbitration Act (British Columbia). The award and determination shall be binding upon the parties hereto and their successors and assigns.

**23.0 TERMINATION**

23.1 At any time, in its sole judgment, the Owner may terminate the services of Consultant in whole or in part by giving 10 days written notice to Consultant signed by the Owner's Administrator or delegate.

23.2 If termination is not for cause, Consultant shall be paid at the rate prescribed for all Services properly performed to the date of the delivery of the notice according to the terms of this Agreement.

**24.0 TIME**

24.1 Time is of the essence in carrying out the Services.

**25.0 VALIDITY OF PROVISIONS**

25.1 If any provision in this contract is found to be invalid or unenforceable, that provision shall be severed from the contract and the remainder of the contract shall remain in full force and effect.

**26.0 WAIVER**

26.1 Failure to enforce a provision of this contract is not a waiver of that provision nor does it affect any right a party may have to enforce the provision or to consider the failure a breach of this contract. A waiver must be express and in writing before it has legal effect.

**CONSULTANT:**

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AUTHORIZED SIGNATURE:

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DATE:

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