



PROCUREMENT

City Standard Terms and Conditions

OFFER AND ACCEPTANCE:

Where a formal agreement has not been negotiated, the Supplier/Contractor and/or Consultant, by accepting an assignment with the City of West Kelowna (the City), enters into an agreement of purchase and sale with the City for the supply of goods and services, subject to the following terms and conditions.

1. NECESSARY DOCUMENTATION AND REQUIREMENTS

Failure to comply with any of the following requirements may result in the return of goods/and or invoices at the Suppliers expense.

- i) Ensure the purchase order number is displayed on all invoices, packing slips and other related documentation.
- ii) Provide a separate invoice for each delivery of goods
- iii) Provide an itemized packing slip with each delivery
- iv) The Supplier shall provide all necessary training to its employees, agents and representatives on any product classified as a “controlled product” under WHIMIS and shall provide to the City any and all up to date materials safety data sheets (MSDS) and any required labels, with each delivery. The Supplier shall also comply with the Transportation of Dangerous Goods Act (T.D.G.) when shipping goods to the City.

2. INVOICES AND PAYMENT

Invoices shall be sent to: Accounts Payable 2760 Cameron Road West Kelowna BC V1Z 2T6

*Unless instructed otherwise.

3. DELIVERY

All shipments are Free on Board (F.O.B. Destination) Prepaid to West Kelowna, unless alternate freight terms have been negotiated.

4. CUSTOMS & DUTIES

For any shipments originating outside of Canada, the Supplier shall include any necessary customs documentation with the shipment. Any duties payable shall refer back to the purchase order, tender and/ or contract. The City's Custom Broker is:

Summit Custom Brokers 1621 Bertram Street Kelowna, BC V1Y 2G5 P. 250-762-0414 F. 250-762-2436

5. WARRANTY

All goods shall be new and of the latest production design, unless agreed to otherwise. All goods shall be free of defects All goods and services shall conform to the specifications, brands, models and/or drawings provided by the City and shall be fit for use by the City as intended. All goods and services shall meet or exceed all standards required in Canada and the Province of British Columbia—including, but not limited to C.S.A., W.C.B, Weights and Measures and O.S.H.A. All goods supplied to the City—in particular, electrical and lifting materials and equipment— shall be approved and labeled by a safety authority acceptable to the City. All costs associated with obtaining any necessary approvals shall be borne solely by the Supplier. All goods and services shall comply with all necessary environmental regulations and protective laws.

6. SOFTWARE

The Supplier shall ensure that the City receives all necessary licenses required to use software supplied to the City.

7. PERMITS AND LICENSES

The Supplier, their employees, agents and vehicles shall have and maintain valid permits and licenses as required by Federal and Provincial Laws and/ or Local Bylaws, ordinances and regulations, to perform the services as detailed in the contract and/or purchase order.

8. INSURANCE

The Supplier/Contractor/Consultant shall obtain and maintain during the currency of this Agreement commercial general liability insurance providing coverage for death, bodily injury, property loss and damage and all other losses arising out of or in connection with the provision

of the Services in an amount not less than \$2,000,000.00 per occurrence, or in such a greater amount as may be required by the City Representative from time to time, acting reasonably.

The Contractor/Consultant shall cause all policies of insurance required to be taken out by it under this Agreement to be with insurance companies satisfactory to the City and to:

(a) name the City as additional insured;

(b) include that the City is protected notwithstanding any act, neglect or misrepresentation by the Contractor/Consultant which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;

(c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;

- (d) be primary and non-contributing with respect to any policies carried by the City and shall provide that any coverage carried by the City is in excess coverage;
- (e) not be cancelled or materially changed without the insurer providing the City with 30 days written notice stating when such cancellation or change is to be effective;
- (f) be maintained for a period of 12 months per occurrence;
- (g) not include a deductible greater than \$5,000.00 per occurrence;
- (h) include a cross liability clause; and
- (i) be on other terms acceptable to the City Representative, acting reasonably.

9. WORKERS COMPENSTATION

The Contractor/Consultant shall, at all times, in providing the Services and otherwise performing its obligations under this Agreement, comply with the Workers Compensation Act (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulation, and, upon request from the City, provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments.

10. INDEMNIFICATION

The Contractor/Consultant shall indemnify, and save harmless, the City, and its elected and appointed officials, employees, Contractor/Consultants and agents, from and against all claims, losses, damages, costs, expenses (including legal fees and disbursements), liabilities, actions and proceedings, suffered, made, incurred, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner caused by, based upon, occasioned by or attributable to, any wilful or negligent act or omission, or other actionable wrong, on the part of the Contractor/Consultant, its employees, Contractor/Consultants or agents, connected with the performance or breach of this Agreement by the Contractor/Consultant. The

Contractor/Consultant's obligations under this section shall survive the expiry or earlier termination of this Agreement.

11. BUSINESS REGISTRATION

All Vendors conducting business within the City shall possess a current West Kelowna business license or City of West Kelowna Inter Community business license if required as per City of West Kelowna Business License and Regulation Bylaw No. 0081.

12. SUPPLIERS EMPLOYEES

The Supplier's representatives shall be under the exclusive supervision of the Supplier. All responsibility and authority for hiring, training, supervision, direction, compensation, discipline, termination, and administration of the Supplier's representatives, and any and all cost or expenses related thereto, rest exclusively with the Supplier.

13. WAIVER AND LIMITATIONS OF LIABILITY

The Supplier hereby waives and disclaims any right of action or claim against the City (other than for payment of the purchase price set forth on the face of the purchase order) for any

liability, loss, cost and expense arising directly or indirectly from its supply of the goods and services listed on the face of the contract and/or purchase order.

If, regardless of the foregoing, the City becomes liable on any basis to the Supplier its liability shall not in the aggregate exceed the purchase price set forth on the face of the purchase order.

14. CONFIDENTIALITY

Technical information, specifications, drawings, designs, building and floor plans and other documentation relating to the business or activities of the City disclosed by the City to the Supplier pursuant to this contract and/or purchase order shall be held in strict confidence by the Supplier and shall remain the exclusive property of the City and may not be copied or reproduced without the express written consent of the City.

15. CONFLICT OF INTEREST

It is the Supplier's sole responsibility to disclose to the City if any Council member for the City or any person who was a Council member for the City at any time during the previous 6 months, has or will have a direct or indirect pecuniary interest in this order and/or any contract executed with the City.

16. INTELLECTUAL PROPERTY

The Supplier shall defend, indemnify and hold harmless the City, its members, officers, employees, agents, clients, and the public from any expense, cost, loss, claim, damage, judgment or liability for infringement or alleged infringement of third party intellectual property rights including any patent, copyright, industrial design, trademark or trade secret with respect to the goods and services and their process of manufacture. The Supplier shall at its own expense defend or assist in the defence of, at the City's option, any action in which such infringement is alleged.

17. COMPLIANCE WITH LAWS

In accepting the contract and/or purchase order, the Supplier represents that it has complied and will continue during the performance of this contract and/or purchase order to comply with the provisions of all applicable third party contracts, and all applicable federal, provincial and municipal laws and regulations. The laws of British Columbia govern this agreement.

18. NO PROMOTION OF RELATIONSHIP

The Supplier 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.

19. ASSIGNMENT

No right of interest in this contract and/or purchase order shall be assigned by either party without the written consent of the other and no delegation of any obligation owed, or of the performance of any obligation by either the City or Supplier shall be made without the written consent of the other party.

20. CHANGES/MODIFICATIONS/TERMINATION

The City reserves the right at any time, to cancel or terminate this contract and/or purchase order in whole or in part by written or verbal notice confirmed in writing or 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. No agreement or understanding to modify this contract and/or purchase order shall be binding on the City unless in writing and authorized by the City's authorized agent.

21. FORCE MAJEURE

The Supplier is not liable for failure to perform the obligations as set out in the contract and/or purchase order as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, war, labour dispute, strike, lockout. If the Supplier asserts Force Majeure as an excuse for failure to perform their obligations, they must prove that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that the Supplier substantially fulfilled all non-excused obligations, and that the City was timely notified of the likelihood or actual occurrence of the event which invoked the force majeure.

Questions? Contact the City of West Kelowna - Purchasing Manager, Phone 778 797 8877

Email: mike.ummenhofer@westkelownacity.ca

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