



SHORT FORM CONSTRUCTION TERMS AND CONDITIONS

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“Change Order” has the meaning given in section 11.01;

“City” means the City of Nanaimo;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where the Contractor’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Contract;

“Construction Schedule” has the meaning given in section 8.01 (a);

“Contract” means the undertaking by the parties to perform their respective duties, responsibilities and obligations as provided in the Contract Documents;

“Contract Documents” means the following documents:

- (a) the Purchase Order;
- (b) the Short Form Construction Terms and Conditions;
- (c) the drawings; and
- (d) the specifications.

“Contract Price” has the meaning given in section 5.01;

“Contract Time” has the meaning given in section 4.02;

“Contractor” means the person or entity identified as the contractor in the Purchase Order;

“Deficiencies Holdback” has the meaning given in section 5.03 (d);

“Indemnified Parties” means the City, its elected and appointed officials, directors, officers, agents, employees, and volunteers;

“Industry Standards” apply to, but are not limited to: (a) the provision of all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by parties providing goods or services similar to the Work in similar situations in British Columbia; and (b) adherence to commonly accepted norms of ethical business practices, which shall include the Contractor establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the City;

“Notice” has the meaning given in section 2.02;

“Purchase Order” means the purchase order issued by the City to which these Short Form Construction Terms and Conditions are attached;

“Related Entities” include directors, officers, employees, agents, partners, affiliates, volunteers and Subcontractors.

“Requirements of Law” means any and all laws, enactments, statutes, codes, building codes, acts, ordinances, orders, decrees, injunctions, bylaws, rules, regulations, official plans, permits, licences, authorizations, directions, professional standards and specifications applicable to the performance of the Work, as they are in force from time to time or in the latest current version, as the case may be;

“Subcontractor” means a person or entity having a direct contract with the Contractor to perform a part or parts of the Work;

“Substantial Performance of the Work” has the meaning given in section 4.02;

“Work” means the total construction and related services required by the Contract Documents;

ARTICLE 2 – GENERAL TERMS

2.01 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

2.02 Notices

Any notice, direction, demand, approval, certificate or waiver (a **“Notice”**) shall be in writing and shall be delivered by mail, personal delivery or email address to the applicable address identified on the Purchase Order, or to such other address or e-mail address of which notice has been given as provided in this section, to the attention of the applicable contact person identified on the Purchase Order.

A Notice, if delivered personally or by mail, shall be considered given on the day that it is delivered or, if sent by email, shall be considered given on the day that it is sent, provided that if in either case the day of delivery or sending is not a business day, then the Notice shall be considered given on the next following business day after delivery or sending, as the case may be. In this section, business day means a day other than a Saturday, Sunday or B.C. statutory holiday.

2.03 Time is of the Essence

Time shall be of the essence of this Contract.

2.04 Entire Agreement

This Contract is the entire agreement between the parties, and it terminates and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Contract.

2.05 Waiver

Waiver of any default by either party shall be express and in writing to be effective, and a waiver of a particular default does not waive any other default.

2.06 Severability

If any term or condition of the Contract, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), shall not be affected.

2.07 Survival

All obligations of each of the parties which expressly or by their nature survive termination or expiration of this Contract, will continue in full force and effect subsequent to and notwithstanding such termination or expiration and until they are satisfied or by their nature expire.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN CITY AND CONTRACTOR

3.01 Contractor’s Power to Contract

The Contractor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any

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other party that would in any way interfere with the rights of the City under this Contract. The Contractor represents and warrants that all known existing or imminently arising Conflicts of Interest have been disclosed to the City, in writing.

3.02 Contractor Not a Partner, Agent or Employee

The Contractor shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The Contractor shall not hold itself out as an agent, partner or employee of the City. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the City and the Contractor or any of the Contractor's Related Entities.

3.03 Responsibility of Contractor

The Contractor agrees that it is liable for the acts and omissions of its Related Entities. The Contractor shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract.

3.04 No Subcontracting or Assignment

The Contractor shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. Nothing in the Contract, or in such consent, creates a contractual relationship between any Subcontractor and the City.

3.05 Conflict of Interest

The Contractor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice in writing to the City without delay of any actual or potential conflict of interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City to resolve any conflict of interest.

3.06 Contract Binding

The Contract shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY CONTRACTOR

4.01 The Work

The Contractor will perform the Work in a timely and satisfactory manner in accordance with this Contract throughout the duration of the Contract.

4.02 Commencement and Substantial Performance of the Work

The Contractor shall commence the Work on the commencement date specified in the Purchase Order and shall attain substantial performance of the Work, as this term is determined pursuant to the *Builders Lien Act* (British Columbia), (the “**Substantial Performance of the Work**”) by the date specified in the Purchase Order (the “**Contract Time**”).

4.03 Control of Work

(a) The Contractor shall have total control of the Work and effectively direct and supervise the Work to ensure that the Work is performed in accordance with the Contract.

(b) The Contractor shall solely be responsible for the means, methods, techniques, sequences and procedures for the performance of the Work and for coordinating the various parts of the Work.

4.04 Supply of Materials and Equipment

Unless otherwise specified in the Contract, the Contractor will supply and pay for all labour, materials, equipment, tools, facilities,

approvals, permits, licences, inspections and certifications necessary or advisable to perform the Work and the Contractor's obligations under the Contract.

4.05 Standard of Care

The Contractor will perform the Work with such degree of care, skill and diligence as would reasonably be expected from a contractor qualified in British Columbia to perform work similar in scope, nature and complexity as the Work.

4.06 Standards of Persons Performing the Work

The Contractor will ensure that all persons employed or retained by the Contractor to perform the Work or portions of Work are qualified and competent to perform such Work and are properly trained, instructed and supervised.

4.07 Protection of Property

The Contractor shall protect the Work, the City's property, and third-party property from damages which may result from the performance of the Work by the Contractor or its Related Entities and shall be responsible for such damages. Should the Contractor or its Related Entities, in the performance of the Work damage such property, the Contractor shall be responsible for making good such damage at the Contractor's own expense.

4.08 Clean and Safe Condition

The Contractor shall maintain the site where the Work is performed in a clean and safe condition at all times, and will remove from the site and the adjacent areas any debris resulting from the performance of the Work upon total completion of the Work.

4.09 Records

The Contractor will maintain time records and books of account, invoices, receipts and vouchers of all expenses incurred in the form and content satisfactory to the City acting reasonably and will retain all such records and books of account for seven (7) years following the earlier of termination of the Contract or total completion of the Work.

4.10 Applicable Laws

Without limiting the generality of section 4.01, and for further clarity, in performing the Work, the Contractor will comply with the Requirements of Law and Industry Standards.

ARTICLE 5 – CONTRACT PRICE AND PAYMENT

5.01 Contract Price

(a) In consideration of the Contractor performing the Work, the City will pay the Contractor in the amounts and in the manner specified in the Purchase Order (the “**Contract Price**”). The City shall also pay any GST payable by the City with respect to the Contract Price.

(b) The Contractor hereby accepts the Contract Price as payment in full for the Work performed by the Contractor, including all profit and all costs of supervision, labour, material, equipment, overhead, financing and all other costs and expenses whatsoever incurred in performing the Work.

5.02 Payment

(a) The Contractor will make applications for payment on account of the Contract Price by submitting an itemized invoice monthly, or for such other periods as may be mutually agreed, to the City.

(b) For each payment period, the Contractor shall apply for payment of an amount determined in accordance with the Purchase Order for Work completed as of the last day of the payment period.

(c) Subject to the *Builders Lien Act* (British Columbia), the City will make payments to the Contractor on receipt of the Contractor's monthly



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itemized invoice, or for such other periods as may be mutually agreed, subject to verification by the City that the Work has been satisfactorily performed. The City shall make payments to the Contractor within thirty (30) days of receipt of the invoice.

(d) All invoices submitted by the Contractor must include the Purchase Order number, the amount invoiced, exclusive of tax, and the amount of taxes shown separately.

(e) In addition to other holdbacks that the City may retain pursuant to this Contract, the City may hold back an amount equal to any lien which has been filed with respect to the Work, plus 15% security for costs. The City may, at its option, pay such amount into court to discharge the lien. If the lien is discharged without payment of the holdback into court, then the City will pay such holdback to the Contractor, without interest.

5.03 Substantial Performance of the Work

(a) The City shall, not later than ten (10) days after receipt of the written application from the Contractor for the issuance of the certificate of Substantial Performance of the Work, inspect and assess the Work to verify the validity of the application and either:

(i) issue the certificate of Substantial Performance of the Work; or

(ii) if the City determines that Substantial Performance of the Work has not been achieved, consult with the Contractor and advise the Contractor of the Work required to achieve Substantial Performance of the Work.

(b) The Contractor may, after performing the Work required under paragraph (ii) of section 5.03 (a), re-apply for the issuance of the certificate of Substantial Performance of the Work and section 5.03 (a) will apply to such reapplication.

(c) If a certificate of Substantial Performance of the Work is issued by the City, the Contractor, in consultation with the City, shall confirm the items of Work remaining to be completed or that are deficient and the timing for them to be completed or remedied to achieve total completion of the Work.

(d) In addition to other holdbacks that the City may retain pursuant to this Contract, the City may hold back from payments otherwise due to the Contractor 200% of a reasonable estimate, as determined by the City, of the items of Work remaining to be completed or that are deficient at the time of the issuance of the certificate of Substantial Performance of the Work (the “Deficiencies Holdback”). The Deficiencies Holdback may be retained, without interest, until such incomplete or deficient Work is completed or remedied.

ARTICLE 6 – INDEMNIFICATION, LIMITATION OF LIABILITY AND BUSINESS LICENCE

6.01 Contractor Indemnity

The Contractor shall indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, liabilities, causes of action, proceedings, costs and expenses (including legal fees and disbursements) that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including any claim of infringement of third-party intellectual property rights, arising, directly or indirectly, by reason of any act or omission of the Contractor or its Related Entities, or breach of this Contract by the Contractor, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

6.02 Limitation of Liability

The City’s liability to the Contractor for any loss, claims, damages, costs and expenses relating to or arising from any breach of this

Contract by the City or any act or omission in its performance of this Contract shall be limited to the amount of direct damage incurred by the Contractor. In no event shall the City be liable to the Contractor for any special, incidental, indirect, consequential or punitive damages.

6.03 Business Licence

If the Contractor conducts business within the boundaries of the City, including by performing services on City property, the Contractor shall obtain and maintain a valid City of Nanaimo business licence for the duration of the Contract.

ARTICLE 7 – TERMINATION

7.01 Termination for Contractor’s Default

The City may terminate all, or any part of, the Work, by giving written notice of termination to the Contractor, which is effective upon delivery of the notice, if:

(a) the Contractor breaches this Contract, and the Contractor has not cured the breach, within five (5) days after notice of the breach is given to the Contractor by the City; or

(b) the Contractor becomes bankrupt or insolvent, a receiving order is made against the Contractor, an assignment is made for the benefit of its creditors, an order is made or resolution is passed for the winding up or dissolution of the Contractor, or the Contractor takes the benefit of any enactment relating to bankrupt or insolvent debtors.

Without limiting any other right or remedy available to the City, if the City terminates part or all of the Work under this section, the City may arrange, upon such terms and conditions and in such manner as the City considers appropriate, for performance of all or any part of the Work remaining to be completed, and the Contractor shall be liable to the City for any expenses reasonably and necessarily incurred by the City in engaging the services of another person to perform that Work (including the amount by which the fees, disbursements and other costs payable by the City exceed those that would have been payable to the Contractor for completion of the Work under this Contract). The City may set off against, and withhold from amounts due to the Contractor, such amounts as the City estimates shall be required to cover the City’s costs of correcting any breaches of the Contractor’s obligations under this Contract and to be incurred by the City to complete all or any part of the Work.

7.02 Termination for Convenience

The City may, in its sole discretion and without reason, terminate the Contract upon fourteen (14) days’ notice to the Contractor. If the City terminates the Contract under this section, the Contractor shall be entitled to be paid for all Work satisfactorily performed by the Contractor up to the date of such termination in accordance with the Contract. The Contractor is not entitled to, and irrevocably waives and releases the City from any and all claims for, any damages or compensation for costs incurred, loss of profit or loss of opportunity, directly or indirectly arising out of termination of this Contract.

7.03 Remedies Include Set-Off

Termination by the City under sections 7.01 and 7.02 is without prejudice to the City’s rights and remedies under the Contract, at law or in equity, including the right to set off amounts owing for the Work performed against amounts that the City may claim against the Contractor.

ARTICLE 8 – CONSTRUCTION SCHEDULE

8.01 The Contractor shall:

(a) prior to the date of commencement of the Work, submit to the City a construction schedule, showing the timing, sequence and interrelationships of the major activities of the Work to demonstrate that the Work will be performed in conformity with the Contract Time (“Construction Schedule”);

(b) perform the Work in accordance with the Construction Schedule;

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(c) monitor the progress of the Work and update the Construction Schedule monthly or as otherwise required by the City, in its sole discretion; and

(d) revise the Construction Schedule as necessary to reflect any extension of the Contract Time as provided in Article 11 (Changes).

ARTICLE 9 – MINIMUM RATE OF PAY

9.01 The Contractor shall comply with the minimum rate of pay requirements, when required by the City or when such information is disclosed in the solicitation documents for this Contract.

ARTICLE 10 – SUBCONTRACTORS

10.01 The Contractor shall:

- (a) enter into contracts with the Subcontractors to require them to perform their work as required by the Contract Documents;
- (b) incorporate into each contract with the Subcontractors all applicable terms and conditions of the Contract Documents; and
- (c) manage, supervise, and coordinate the work of the Subcontractors and be fully responsible for the acts and omissions of the Subcontractors and the persons employed by the Subcontractors as for acts and omissions of persons directly employed by the Contractor.

10.02 Where the Contract Documents identify work to be performed by other contractors or the City's own forces, the Contractor shall fully cooperate with the other contractors or the City's own forces, and coordinate and schedule the Work with the work of the other contractors and the City's own forces.

ARTICLE 11 – CHANGES

11.01 The City, without invalidating the Contract, may make changes to the Work consisting of additions, deletions, substitutions or other revisions to the Work by issuing a change order (the "Change Order").

11.02 If a change in the Work proposed by the City impacts the Contract Price or Contract Time, as determined by the City in its sole discretion, the City will adjust, in consultation with the Contractor, the Contract Price and the Contract Time, as applicable, and will record the adjustments in the Change Order.

11.03 The Contractor shall not perform any changed or additional Work, nor shall the Contractor be entitled to an adjustment of the Contract Price or Contract Time, unless such change has been authorized by the City by means of a Change Order.

ARTICLE 12 – DELAY

12.01 If the Contractor is delayed in the performance of the Work by any acts or omissions of the City, or anyone employed or engaged by the City, the Contract Time shall be extended for such reasonable time as the City determines in consultation with the Contractor. In the event of such delays, the City will reimburse the Contractor for reasonable costs incurred as a direct result of such delay.

12.02 If the Contractor is delayed in the performance of the Work by an event of *force majeure*, including labour disputes, strikes, fire, unusual delay by common carrier, abnormal weather conditions, or any other cause beyond the Contractor's control other than those resulting from the Contractor's acts or omissions or breach of this Contract or financial hardship, then the Contract Time shall be extended for such reasonable time as the City determines in consultation with the Contractor. The Contractor shall not be reimbursed for any costs incurred by such delay (including for opportunity cost, lost profit, overhead or administrative cost).

12.03 No extension of the Contract Time or reimbursement of resulting costs will be made for delay unless the Contractor provides written notice of such delay to the City within ten (10) business days after the commencement of such delay.

ARTICLE 13 – WARRANTY

13.01 The Contractor shall correct all defects and deficiencies in the Work that arise or are discovered during the one-year period commencing on the date of the Substantial Performance of the Work, unless otherwise agreed to in writing by both parties.

13.02 The Contractor must, promptly after notice from the City, and within such time as is specified in that notice, rectify at the Contractor's expense any defects or deficiencies in the Work that appear prior to and during the one-year warranty period.

13.03 The Contractor shall obtain, assign and deliver to the City all warranties applicable to the Work.

ARTICLE 14 – PROTECTION OF PRIVACY AND CONFIDENTIALITY

14.01 The Contractor acknowledges and agrees that the City is subject to the provisions of British Columbia's *Freedom of Information and Protection of Privacy Act* (FOIPPA) under which the City may be obligated to provide a person with access to any record (as defined in FOIPPA) in the custody or under the control of the City and that the authority of the City to refuse to disclose a record containing third party confidential information is limited as set out in section 21 of FOIPPA.

14.02 Only the City may make or authorize any public announcement relating to this Contract, after consultation with the Contractor where reasonably practicable.

14.03 The Contractor shall not, without the prior written approval of the City, in its sole discretion, use the City's name or refer to the City, the Contract or the Work for advertising, promotional or marketing purposes.

14.04 The Contractor shall treat with confidence, and shall not disclose to anyone other than the Related Entities who are performing the Work, or provide anyone (other than such Related Entities) directly or indirectly with access to, any records, reports, studies, documentation, plans and copies thereof, and any other information whatsoever, supplied from time to time by the City or any of its employees or representatives to the Contractor, or any of the Related Entities, whether oral, written, graphic, electronic, machine readable or physical form (other than information that is already in the public domain) except:

- (a) with the prior written consent of the City, in its sole discretion; or
- (b) as required by law provided that the Contractor gives notice to the City promptly upon becoming aware of such a requirement.

ARTICLE 15 – COPYRIGHT

15.01 The Contractor hereby assigns to the City all present and future interest in the copyright of all reports, drawings, plans, maps, designs, models, specifications, computer software, concepts, products, designs or processes, figures, tables, data, calculations, logs, field notes, site records, working papers or finished copy documents or other such information of any kind prepared, produced or developed by the Contractor in connection with this Contract and hereby waives any moral rights in such records and information.

ARTICLE 16 – CONSTRUCTION SAFETY

16.01 The Contractor shall, at all times, in performing the Work and otherwise performing its obligations under this Contract, 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.

16.02 The Contractor is solely responsible for the Contractor's registration, maintenance of an account in good standing and payment of assessments for coverage as required under the *Workers Compensation Act* (British Columbia). If requested by the City, the Contractor shall immediately provide evidence of any required registration under the *Workers Compensation Act* (British Columbia) and evidence of compliance with any requirement under that Act to make any payments or pay assessments. The Contractor's account must include coverage for

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all Related Entities who are present or may have cause to be at a work site belonging to, or controlled by, the City.

- 16.03 The Contractor shall be the “prime contractor” under the *Workers Compensation Act* (British Columbia) and fulfill all the obligations of the “prime contractor” under that Act for the site of the Work, including by ensuring that the activities of any employers, workers and other persons at the site of the Work relating to occupational health and safety are coordinated and by doing everything that is reasonably possible to establish and maintain a process that will ensure compliance with that Act and regulations thereunder, including the Occupational Health and Safety Regulation.
- 16.04 The Contractor shall promptly notify the City in writing of any accident, injury, or safety incident arising out of or in connection with the Work, including all relevant details and any witness statements. Any death, serious injury or significant property damage shall be reported to the City immediately, by telephone or in person, and in any event within 24 hours, in addition to any reporting required under the *Workers Compensation Act* (British Columbia).
- 16.05 Prior to commencement of the Work, the Contractor shall complete the *Prime Contractor Preconstruction Meeting Form* provided by the City.

ARTICLE 17 – INSURANCE

- 17.01 Without restricting any obligations or liabilities under the Contract, the Contractor, shall, at its own cost, obtain and maintain in full force and at all times during the performance of the Work and this Contract, the following insurance with coverage and minimum policy limits as specified below, in forms and with insurers reasonably acceptable to the City:
- (a) Commercial General Liability Insurance with a limit not less than \$5,000,000.00, which includes coverage for:
 - 1. Bodily Injury; including Death and Property Loss or Damage for any one occurrence or series of occurrences arising out of one event;
 - 2. Contingent Employer’s Liability;
 - 3. Contractor’s Protective Liability;
 - 4. Cross Liability;
 - 5. Personal Injury Coverage;
 - (b) The Contractor shall include the City as an additional insured party on its Commercial General Liability Insurance; and
 - (c) Automobile Liability Insurance (APV47 form) in accordance with all applicable legislation, covering all vehicles owned, operated, or licenced in the name of the Contractor used in the performance of the Work.
 - (d) The Contractor shall pay all deductibles for any of the insurance policies required under the policies of coverage and insurance described under this Contract,
 - (e) Upon request by the City, the Contractor shall submit sufficient proof of any insurance policy described under this Contract to the City.

ARTICLE 18 – DISPUTE RESOLUTION

- 18.01 If a dispute arises between the parties concerning any matter relating to this Contract, the dispute shall be settled in accordance with this section as follows:
- (a) The disputing party will send to the other party a written request to begin formal negotiations to resolve the dispute. The parties’ respective representatives shall make all reasonable efforts to resolve the dispute by amicable negotiations and in a respectful manner;

(b) If the parties cannot resolve the dispute within five (5) business days, or such other period of time as mutually agreed, after they first meet, or if the parties fail to meet within ten (10) business days of the first request for a meeting, then, if the parties have agreed to submit the dispute to arbitration by subsequent agreement, the dispute shall be submitted to and finally resolved by arbitration in accordance with the provisions of the *Arbitration Act* (British Columbia). Unless the parties otherwise agree in writing, the parties shall share equally the costs of arbitration other than those relating to production of expert evidence or representation by counsel.

(c) If no agreement to submit the dispute to arbitration is made, then either party may submit the dispute to the courts at such party’s discretion.