

City of Coquitlam

Standard Terms and Conditions – Consulting and Professional Services

1. **Agreement:** Unless expressly stated otherwise on a purchase order or purchase contract (each "PO") issued by the City of Coquitlam ("City"), these Standard Terms and Conditions – Consulting and Professional Services are incorporated into and form part of the PO and are binding upon the consultant named therein ("Consultant"). The PO, together with these Standard Terms and Conditions – Consulting and Professional Services and any other documents referenced herein or in the PO, constitutes the entire agreement ("Agreement") between the City and Consultant with respect to the subject matter of the PO and supersedes any prior understanding or agreements between the parties, whether written or oral. If the PO is not signed by Consultant, Consultant will be deemed to have agreed to be bound by this Agreement through its acceptance of the PO or the performance of services hereunder.
2. **Services:** Consultant agrees to provide the services identified in the PO, those services necessary or incidental thereto and all deliverables related thereto ("Services") in accordance with the terms and conditions of this Agreement.
3. **Amendments:** No amendment to this Agreement will be valid or binding unless made in writing and duly executed by the City.
4. **Purchase Order Number:** The PO number(s) must appear on all invoices, progress billing and correspondence.
5. **Invoices:** Consultant will submit invoices in PDF format, quoting the PO number / work order number / contract number and sent to: apinvoices@coquitlam.ca. Invoices will be submitted upon completion of the Services. Consultant must show as a separate item on the invoice any applicable sales taxes or service charges, and show on the invoice to which item it is applicable. Incorrect or incomplete invoices will be sent back to the vendor for correction and may result in delays to payment.
6. **Price:** All prices, fees and costs will be as stated in the PO and in Canadian funds, unless otherwise noted on the PO.
7. **Taxes:** If PST or GST is applicable, Consultant must provide its PST and GST registration numbers to the City with the delivery of the invoice.
8. **Payment and Discounts:** Payment terms are net thirty (30) days from the date the Services are accepted by the City or receipt of invoice, whichever is later. Early payment discounts will be calculated from the date the Services are accepted by the City, or receipt of invoice, whichever is later. Any cash discount periods will be calculated from the date the invoice is received by the City. The City will not be responsible for the payment for any services performed without a PO. Payment of any invoice prior to the provision of the Services will not be deemed to be an acceptance of the quality or sufficiency of the Services as invoiced, or at all.
9. **Payment Set Off:** The City may withhold sums due to Consultant hereunder and apply such sum against Consultant's obligations to its suppliers or sub-consultants in relation to this Agreement or as a set off for any deficient Services or Services otherwise not performed in accordance with the terms hereof.
10. **Audit:** If payment for Services, or any part thereof, is made on the basis that the price directly relates to Consultant's costs, the City has the right to audit Consultant's records relating to such costs, at any reasonable time for one year after final acceptance of the Services.
11. **Review and Acceptance:** All Services are subject to review and approval by the City. The City may refuse acceptance of Services that are deficient, do not conform to specifications or that otherwise fail to comply with this Agreement. The City may review the Services at any time, but no review, inspection or approval by the City (or the failure to do the same) relieves Consultant of its obligations hereunder and all responsibility related to the Services will be and remain with Consultant. If the City considers that any Services are deficient, fail to conform to specifications or fail to otherwise meet requirements herein, Consultant at its sole expense will promptly make the necessary corrections, including re-performing the Services. Consultant will be responsible for all costs associated with correcting any deficient or non-conforming Services.
12. **Performance:** Consultant will perform the Services with the same degree of care, skill, diligence and efficiency as would reasonably be expected from a qualified and skilled person performing similar services, and in accordance with sound current professional practices and design standards. Consultant represents and warrants that it has, and its employees and sub-consultants have, sufficient qualifications, expertise and experience to perform the Services in accordance with the requirements of this Agreement. Consultant acknowledges that its qualifications and experience were a major factor in the selection of Consultant for the Services.
13. **Warranty:** Without limiting any additional warranties provided by Consultant, Consultant warrants that all Services will be performed in a professional and workmanlike manner consistent with applicable industry standards, will be free from defects in design and materials and fit for their intended purpose, and will conform to applicable specifications, drawings or other requirements furnished by the City. Unless a longer period is specified in this Agreement, Consultant will, without cost to the City, correct or re-perform any Services which are or become deficient or that otherwise fail to conform to the requirements of this Agreement, within one year from the date of acceptance by the City. No express warranty or condition herein, nor any other term, will limit or exclude any warranty or condition otherwise imposed by statute. All warranties will

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remain in effect notwithstanding the expiry or earlier termination of this Agreement.

- 14. Deliverables:** The City will solely own all materials, drawings, concepts, specifications, reports, plans, designs, depictions, models, prototypes, computer software, photographs, calculations and other data, information and materials created, developed, produced, acquired, computed or collected by the Consultant in the performance of the Services or otherwise resulting from the Services ("Deliverables"). Consultant transfers ownership of each Deliverable to the City, free and clear of all encumbrances, and assigns all of its world-wide present and future right, title and interest in and to each Deliverable, including copyright, effective as of the date of creation, development, production or acquisition by the Consultant.
- 15. Intellectual Property:** Consultant covenants, represents and warrants that neither the Deliverables nor the provision of the Services infringe or will infringe any patent, copyright, trademark, trade secret or other intellectual property right. Consultant will indemnify and hold harmless the City against any and all loss, liability or expense attributable to any claim for alleged infringement of patent, copyright, trademark or trade secret arising out of the provision of the Services or normal use of the Deliverables, and Consultant at its sole expense will defend each such claim, provided that the City may participate in the defence without relieving Consultant of its obligations herein. This section will survive the expiry or earlier termination of this Agreement.
- 16. PCI DSS Applicable Goods and Services:** If, through the provision of the Services, Consultant will have access to or the ability to impact the City's information technology environment, will receive, possess, store, process or transmit payment cardholder data on behalf of the City or using the City's information technology, or will provide software, equipment or systems that the City will use or allow to be used to process cardholder data, Consultant agrees to comply with and be bound by the provisions set out in the [Payment Card Industry \(PCI\) Data Security Standard \(DSS\)](#) document.
- 17. Compliance with Applicable Law:** Consultant will comply with all applicable laws, bylaws, orders, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, including all laws governing occupational health and safety and protection of the environment.
- 18. Safety and Workers Compensation:** Consultant will provide all Services in strict compliance with all applicable health and safety regulations and guidelines, including the *Workers Compensation Act* and regulations thereunder and any City safety procedures that Consultant has been instructed to follow. Consultant must be registered and in good standing with WorkSafeBC if required or permitted under the *Workers Compensation Act*, must maintain such good standing during the term of this Agreement and must provide its WorkSafeBC registration numbers.
- 19. Work Site:** For Services performed at a City site, Consultant acknowledges that the Consultant has inspected the site, agrees to accept the site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by Consultant to perform the Services.
- 20. Permits:** Consultant will, at its own expense, obtain and maintain all permits, licenses and other approvals required to provide the Services.
- 21. Business License:** If Consultant carries on business in the City, Consultant must have a valid and subsisting City of Coquitlam or Tri Cities Inter-municipal business license.
- 22. Non-Exclusivity:** This Agreement does not entitle Consultant to exclusive rights for the provision of services.
- 23. Conflict of Interest:** Consultant represents and warrants that neither it nor any of its officers or directors or any employee with authority to bind Consultant has any financial or personal relationship or affiliation with any elected officials or employees of the City or their immediate families that might in any way create or be seen to create a conflict between the loyalties owed by such official or employee to the City and the loyalties owed directly or indirectly to Consultant. Consultant will take steps to mitigate any actual or perceived conflict of interest, including offering gifts and benefits, and promptly notify the City in writing of any conflict of interest.
- 24. Ethical Conduct:** Consultant will at all times conduct its business with fairness, integrity and honesty and treat its employees and subcontractors respectfully and free of discrimination and harassment. Consultant will provide employees and subcontractors with a safe and healthy workplace.
- 25. Confidentiality:** Consultant will keep confidential all non-public information provided or obtained during performance of this Agreement.
- 26. Freedom of Information and Protection of Privacy Act:** Consultant acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* and that disclosure of information may be required pursuant thereto.
- 27. Disputes:** In the event of a dispute, the City and Consultant will make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 28. Termination:** The City may terminate this Agreement at any time by giving notice to Consultant, and thereupon the City will be relieved of all further obligations hereunder except for the payment of the balance outstanding for Services properly provided prior to the time of termination. Termination will be without prejudice to any other rights or remedies the City may have against Consultant.

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- 29. LIMITATION OF LIABILITY:** IN NO EVENT WILL THE CITY BE LIABLE TO CONSULTANT FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.
- 30. Liability Insurance:** Consultant will maintain at its own expense: (a) Automobile Liability Insurance covering both owned and non-owned automotive vehicles; (b) Comprehensive or Commercial General Liability (CGL) Insurance in an amount not less than \$2,000,000 inclusive per occurrence against bodily injury and property damage, and (c) Professional Errors and Omissions Liability in an amount not less than \$500,000 per claim and \$1,000,000 aggregate.
- 31. Indemnity:** Notwithstanding any insurance requirements in this Agreement, Consultant will indemnify and hold harmless the City, its elected officials, employees, agents and other representatives from and against any and all losses, claims, demands, damages, causes of action, costs and expenses, including legal fees and expenses, of any kind whatsoever that the City may sustain, incur, suffer, or be put to at any time in connection with the performance of this Agreement, including any claim of infringement of intellectual property rights, where the same are based upon, arise out of or occur, directly or indirectly, in relation to any act or omission of Consultant or of any agent, employee, officer or director of Consultant, or any other person for whom it is responsible at law, in respect of this Agreement or a breach of this Agreement by Consultant, excepting liability arising out of, and to the extent of, the independent acts of the City. Consultant at its sole expense will defend all claims or suits in respect of the foregoing, but the City may participate in the defence thereof without relieving Consultant of any obligations hereunder. This section will survive the expiry or earlier termination of this Agreement.
- 32. Notices:** Notices under this Agreement will be in writing, and may be delivered by electronic mail, courier or registered mail to the Office of the Procurement Manager.
- 33. Assignment:** Consultant may not, without the City's prior written consent, assign this Agreement, any monies due hereunder, or any claim arising in connection herewith, or subcontract all or any portion of the Services to be provided. The City's consent to any assignment or subcontract will not relieve Consultant from its obligations under this Agreement.
- 34. Relationship:** Nothing in this Agreement will have the effect of creating an employment, partnership, joint venture or agency relationship between the City and Consultant.
- 35. Governing Law:** This Agreement is governed by and will be construed in accordance with the laws of the Province of British Columbia.
- 36. Priority:** In the event of a conflict or inconsistency between these Standard Terms and Conditions – Consulting and Professional Services and a provision of another document that is part of this Agreement, the provisions of these Standard Terms and Conditions – Consulting and Professional Services will govern unless otherwise expressly stated in the other document.
- 37. Waiver:** Any failure of the City to enforce or require the strict keeping or performance of any of provision of this Agreement will not constitute a waiver and will not affect or impair the City's right at any time to avail itself of such remedies as the City may have for any breach or breaches of such provisions.
- 38. Time:** Time is of the essence of this Agreement.
- 39. Enurement:** This Agreement will enure to the benefit of and be binding upon the parties and their respective successors, executors, administrators and permitted assigns.

Contact

Office of the Procurement Manager
T: 604.927.3037
E: bid@coquitlam.ca

Mailing Address

City of Coquitlam
Attn: Procurement Manager
3000 Guildford Way
Coquitlam, BC V3B 7N2