

THE CORPORATION OF THE CITY OF ENDERBY
GARDENS AND GROUNDS MAINTENANCE CONTRACT

This agreement dated for reference this ____ day of _____, 2015.

BETWEEN:

CITY OF ENDERBY, a municipality duly incorporated and having its address at 619 Cliff Avenue, Box 400, Enderby, B. C. V0E 1V0

(hereinafter called "the City")

AND:

(hereinafter called "the Contractor")

WHEREAS the City is desirous of retaining the services of a gardens and grounds maintenance contractor;

AND WHEREAS for the purpose aforesaid the City and the Contractor are desirous of entering into this Agreement;

NOW THEREFORE WITNESSETH that in consideration of the covenants and agreements hereinafter set out the parties hereto agree as follows:

Term

1. This contract shall commence on the 1st day of April and shall terminate on the 15th day of October in each of the years 2015, 2016, and 2017.

Obligations

2. The Contractor covenants and agrees to provide gardens and grounds maintenance services throughout the term of this contract in accordance with Schedules "A" and "B" attached hereto and forming part of this contract.
3. The Contractor shall not assign or sublet this Agreement without the prior express written agreement of the City.

4. The Contractor shall abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent government authority in any way affecting this Agreement.
5. The Contractor shall be in good standing with WorkSafeBC and provide coverage for all of its employees.
6. The Contractor shall give priority to this Agreement over other contracts held by the Contractor.
7. In consideration of the performance of the Contractor of the covenants herein contained, the City covenants and agrees to pay the Contractor the sum of _____ in 2015, _____ in 2016 and _____ in 2017. Payments will be made on the 15th and 30th days of April, May, June, July, August, and September and on the 15th day of October.
8. This Agreement is not a contract of employment. The Contractor is an independent contractor and nothing herein shall be construed to create a partnership, joint venture or agency and neither party shall be responsible for the debts or obligations of the other. It is understood that this Agreement is strictly between the City and the Contractor and in no way shall be interpreted as creating an employment relationship between the City and the Contractor, its employees, agents or sub-contractors (if any). Should any differences arise between the Contractor and its employees, agents or sub-contractors, they shall be resolved directly between them.
9. The parties hereby acknowledge and agree that the Contractor is the "Prime Contractor", in respect of the services to be performed hereunder, and the Contractor agrees to indemnify and save the City harmless from and against any and all claims, assessments or costs that they may incur as a result of the City being deemed to be the "Prime Contractor", pursuant to a finding or determination by WorkSafeBC, or otherwise.
10. The City shall not be responsible for payment of any of the following:
 - (a) Employment Insurance
 - (b) Workers' Compensation
 - (c) Canada Pension Plan
 - (d) Income Tax
 - (e) Health and Welfare benefits
 - (f) Overtime
 - (g) Vacation pay
 - (h) Licences
 - (i) Permits
 - (j) Operation, maintenance or repair of any equipment whatsoever used, rented, leased or owned by the Contractor in its business and the

effective carrying out of this Agreement other than specified in Schedules "A" and "B".

- (k) Any other Federal, Provincial or municipal tariffs or taxes
- 11. The City shall have the right from time to time to unilaterally amend the provisions of Schedules "A" and/or "B" in response to changing environmental practices, legislation or regulations. Upon receipt of notice of such amendments, the Contractor shall thereafter operate in accordance with Schedules "A" and/or "B" as amended.
- 12. The City has a unilateral right to amend the provisions of Schedules "A" and/or "B" which shall include the right to increase or decrease the locations and/or frequency of work.
- 13. If as a result of amendments to Schedules "A" and/or "B" the Contractor's costs increase or decrease, the Contractor and the City shall negotiate an amendment to the remuneration payable under this Agreement to reflect such amendments. If no agreement concerning such remuneration is reached within a period of thirty (30) days after notice of the amendments have been given by the City to the Contractor, the matter of changes to such compensation shall be referred to arbitration pursuant to Section 29 of this Agreement.
- 14. The Contractor shall and does hereby release, indemnify and save harmless the City and its elected officials, officers, employees, servants and agents from and against all claims, suits, actions, causes of action, demands, damages, costs, expenses, losses and other harm suffered, directly or indirectly, by the City or any other person, whether by reason of death, bodily injury, property loss, property damage or other cause, arising from or related to the Contractor's action, failure to act, negligence or default under this Agreement. This provision shall survive the expiry or other termination of this Agreement.
- 15. The Contractor shall obtain and keep in force a policy of comprehensive general liability insurance in a minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence against claims for death, bodily injury, property damage and property loss.
- 16. The Contractor shall provide the City with evidence of insurance at the time of execution of this Agreement and along with a WorksafeBC Clearance Letter prior to the start of contract seasons. The Contractor shall at all times during the term of this Contract be in possession of a valid and subsisting City of Enderby Business License or Intermunicipal Business.

17. All policies of insurance required to be taken out by the Contractor shall:
- (a) include that the City is protected notwithstanding any act, neglect or misrepresentation by the Contractor 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 insured by way of naming the City as insured directly within the policy;
 - (b) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
 - (c) be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is in excess coverage;
 - (d) not be cancelled without the insurer providing the City with 30 days clear written notice stating when such cancellation is to be effective;
 - (e) preclude subrogation against the City;
 - (f) include a cross liability clause.

Termination

18. The City may terminate this Agreement without notice or payment in lieu of notice upon breach by the Contractor, his employees or agents of any of the terms of this Agreement.
19. Either party may terminate this Agreement for any reason upon 60 days written notice to the other party.
20. If the Contract hereby granted is taken in execution or attachment by any person or the Contractor commits an act of bankruptcy, becomes insolvent or is petitioned into bankruptcy or voluntarily enters into an arrangement with his creditors, the City may, in addition to any other remedy which may be available to it in law or equity, terminate this contract upon twenty-four (24) hours notice given in accordance with this Contract.
21. If the Contractor:
- (a) fails to operate in strict compliance with the provisions of the Operational Specifications outlined in Schedule "A" and "B" of this Contract, as determined by the City in its sole and unfettered discretion; or
 - (b) fails to make payments due to its suppliers or its operators; or
 - (c) disregards applicable legislation or regulations or reasonable directions of the City or its servants or agents,

then the City may notify the Contractor (such notice being referred to herein as a "Notice of Default") in writing that it is in default of the Contract.

22. Upon receipt of a Notice of Default, the Contractor shall immediately take all such actions as are reasonably required to rectify the default within three (3) business days of receipt of the Notice of Default. Thereafter the City may correct the problem by any method at its disposal and deduct the total costs thereof from any monies owing the Contractor.
23. Where the Default would reasonably take more than three (3) business days to rectify and the Contractor has commenced within three (3) days all of the steps reasonably required to rectify the default, then the Contractor shall be permitted such time to remedy the default as is reasonably necessary, provided the Contractor does not abate its efforts to remedy the default.
24. If the Contractor fails, neglects or refuses to remedy or commence to remedy a default within three (3) business days of receipt of a Notice of Default, then the City may, in addition to and without prejudice to any other remedy available to the City, terminate this Contract.
25. In the event that the City terminates this Agreement pursuant this Section, the Contractor shall be liable for all of the costs of the City enforcing or attempting to enforce the Contract including, without limiting the foregoing, legal costs of the City or a Solicitor and client basis. The City shall be entitled to set off any such claim against any sum due by the City to the Contractor.

Notice

26. Where service of a notice or a document is required under this Contract the notice or document shall be in writing and shall be deemed to have been delivered:
 - (a) to the City to the offices of the City of Enderby during regular business hours and left in the possession of an employee of the City, or if sent by mail, addressed to the City at the address specified in this Contract;
 - (b) to the Contractor to the offices of the Contractor during regular business hours and left in the possession of an Officer or Director of the Contractor, or if sent by mail, addressed to the Contractor at the address specified in this Contract.
27. Where service is by mail the notice or document shall be conclusively deemed to have been received on the fifth (5th) day after its deposit in a Canada Post Office at any place in Canada. Where service is by hand delivery, email, or fax, the notice or document shall be deemed to have been received one (1) working day after delivery.

General

28. This contract shall supersede all communications, negotiations and agreements, either written or verbal, made between the parties in respect of matters pertaining to this contract prior to its execution and delivery.
29. Any dispute arising from time to time between the parties hereto with respect to the interpretation or affect of any of the provisions of this Agreement shall be referred to arbitration pursuant to the Commercial Arbitration Act (British Columbia) except that the venue of the arbitration shall be Vernon, British Columbia and the British Columbia International Commercial Arbitration Centre Rules for Domestic Commercial Arbitration Proceedings shall not apply.
30. The terms and provisions of this contract shall extend to, be binding upon and inure to the benefit of the parties hereto and their successors, heirs, and permitted assigns.
31. If any section of this Contract or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections, shall not be affected and shall be enforceable to the fullest extent permitted by law.
32. In this Contract, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a Corporation.
33. The captions and headings contained in this Contract are for convenience only and are not to be construed as defining or in any way limiting the scope or the intent of the provisions hereof.
34. All Schedules attached to this Contract form an integral part of this Contract.
35. The Contractor acknowledges having received and read a copy of this Contract executed by the City at the time of signing said Contract.
36. No remedy conferred upon or reserved to the City is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.
37. Upon mutual agreement, the Contract in its entirety can be extended for an additional two years with an increase of the 2017 Contract price adjusted by a percentage increase equal to the percentage increase in British Columbia's annual average all-items Consumer Price Index (CPI), as published by Statistics Canada.

SIGNED, SEALED AND DELIVERED
by the **CITY OF ENDERBY** in the presence of

Mayor

Administrator

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SIGNED IN THE PRESENCE OF:

Witness

Contractor

GROUNDS MAINTENANCE CONTRACT

Schedule "A"

Operational Specifications

1. The Contractor shall in a good and workmanlike manner provide all aspects of gardens and grounds maintenance in areas listed in this Agreement in conformity with and to the standards set out in this Agreement.
2. The Contractor and his employees and agents shall at all times exercise tact and diplomacy and good public relations in the performance of duties outlined in this Agreement.
3. The Contractor shall perform requirements of Schedule "A" and "B" at times that will have the least amount of impact on pedestrians, park users, downtown merchants and customers. This may require some work to be carried out in early mornings or early evenings. The Contractor shall also take into consideration the applicable by-laws including the Good Neighbour Bylaw when performing the duties of this contract.
4. The Contractor shall supply and maintain in good working condition, at his sole cost, all vehicles, equipment and tools necessary to carry out the obligations of this Agreement.
5. The Contractor shall supply, at his sole expense, all safety equipment and clothing for use of his employees and/or agents in the performance of their duties under this Agreement.
6. The Contractor shall ensure that all his employees and/or agents are trained in the safe use of all equipment and tools employed in the performance of their duties.
7. The Contractor shall at all times in the course of this Contract be responsible for the safety of his employees in the work and the service provided, and for the safety, adequacy, efficiency and sufficiency of his machinery, equipment apparatus and his method of completing the work and providing the service under this Contract.
8. The Contractor shall ensure that his employees and/or agents comply with regulations of the WorkSafeBC and other regulatory agencies.

9. The Contractor shall ensure proper warning lights are installed on all vehicles, equipment and machinery to adequately warn of his presence at all times.
10. The Contractor shall ensure that the contractor vehicle is properly identified with signage stating the name of the Contractor.
11. The Contractor shall ensure that proper vehicle and pedestrian traffic control is used.
12. The Contractor is to take note that there may be considerable variation in the total quantity of services required from season to season or events. At those times the Contractor shall adjust manpower and schedules accordingly.
13. Damage to any City properties or private properties by the Contractor, his employees or agents will be the responsibility of the Contractor.
14. The Contractor will perform any reasonable duties requested by the City of Enderby Chief Administrative Officer (CAO) or designate in a reasonable time, subject to the other provisions of this contract.
15. The Contractor shall provide weekly updates to the CAO or designate of the City of Enderby.
16. The Contractor shall provide recommendations to the CAO for weed control, fertilizing, tree pruning and any other related grounds maintenance service (not including gardens) that may require the services of a contractor other than the Contractor. The Contractor shall arrange for and manage these services upon direction of the CAO or designate. Weed control and fertilizing are part of the regular gardens component of the contract as described in Schedule B.
19. The Contractor shall conform to the City of Enderby watering regulations.
20. The Contractor shall document and report to the CAO any acts of vandalism to City property.
21. The Contractor shall coordinate and cooperate with businesses and organizations who receive express written permission from the City of Enderby for the care and maintenance of a particular City-owned bed or planter in order to ensure reasonable design consistency and standard of care. Departures from the standard shall be reported to the CAO.

GARDENS AND GROUNDS MAINTENANCE CONTRACT

Schedule “B”

Sites and Locations and Duties

General Duties

The Contractor shall perform gardens and grounds maintenance services at the following sites and locations within the City of Enderby:

- City Hall gardens
- City-owned parking lots beds and grounds (north side of Russell Avenue, behind City Hall, and east side of Maud Street)
- City entrance signs
- City of Enderby Water Treatment Plant Grounds
- Cliff Avenue, Belvedere Street, George Street planters and beds
- Drill Hall beds and planters
- City of Enderby Fire Department grounds and beds
- Belvedere Park beds and grounds, including those surrounding the Visitor Centre
- Grounds and beds northwest of Sutherland’s Bakery
- Library breezeway
- Cenotaph Park. Additionally, Cenotaph Park grounds are to be done no more than three days prior to Remembrance Day.
- Pioneer Place walkthrough
- Planters (approx. 80) located at various locations throughout city
- Jim Watt Heritage Riverwalk, including southern garden and stairwell garden adjacent to campground
- Salmon Arm Drive walking path
- Highway pullout at North end of City (within Area F).
- Norleen Lane Trail

Specific Duties

1. Notwithstanding the above general duties, the following duties shall be carried out in a timely manner as required:

- Pick up and dispose of garbage and litter daily
- Empty public garbage containers daily
- Sweep and clean Cliff Avenue and Belvedere Street sidewalks within the commercial section – wash when required
- Sweep and clean entrance to City Hall – wash when required
- Weed control between the decorative sidewalk bricks along Cliff Avenue as needed
- Report and remove any vandalism from City Hall

- Prune branches impeding or obscuring pedestrian traffic on Riverwalk and other walkways
- Ensure benches and picnic tables are kept clean along Riverwalk
- Cut and water grass. Grass is to be cut on a weekly basis, subject to weather conditions. Grass clippings are to be picked up immediately after cutting.
- Weed-eat road shoulders on George Street
- Weed-eat road shoulder and walking path on Salmon Arm Drive
- Weed-eat Norleen Lane trail
- Arrange fertilizing and pest control in conjunction with City Hall
- Plant, water, weed, and deadhead flower beds / planters (replace over mature perennials and damaged or dead flowers when necessary)
- Water trees and shrubs as needed
- Remove unauthorized signage from poles along George Street

2. Notwithstanding the above duties, the following duties shall be carried out in the Spring:

- Provide recommendations, including costs, to the CAO of the City of Enderby for the purchase of flowers, plants and shrubs and other related materials. The initial purchase will be based on a budget to be determined by a Council Committee. The payment for the purchase will be negotiated within the budget amount and will be paid in addition to the contract amounts stated in section 7 of the Contract. Costs for flower replacement due to poor care will be at the responsibility of the Contractor.
- Arrange to have water turned on
- General spring clean up
- Prepare beds/planters for planting
- Identify any damaged planters for repair or replacement by Public Works
- Soil replacement or amendment.

3. Notwithstanding the above duties, the following duties shall be carried out in the Fall:

- Rake leaves
- Arrange to have water system winterized
- General fall clean up
- Prepare beds/planters for winter/spring
- Clean-up and mow lawns at Cenotaph Park no more than three days before Remembrance Day.

All garbage/grass clippings/leaves, etc. are to be disposed of at the City of Enderby Public Works yard.

Performance Objectives

The City has set the following performance objectives for the contract:

- its floral focal areas are bright, attractive, and highly visible;
- flora is consistent in design and selected with consideration given to the soil, shade, and moisture conditions;
- flora in planters should consider cascading, blooming foliage in order to soften exteriors;
- inconsistent design of perennials in beds is rectified through replacement or transplantation;
- beds are strategically designed to provide textural interest and colour drama from the early spring until mid-autumn;
- overmature perennials are replaced;
- soil is being replaced or amended as needed;
- during planting, young plants are given adequate water, fertilizer, and organic material to promote health and aesthetics;
- fertilizer is being applied as needed and in accordance with the particular health and aesthetic requirements of the flora at any given location;
- weeding, deadheading, thinning, and mulching are occurring on a regular basis;
- pruning is occurring regularly and in accordance with the particular health and aesthetic requirements of a given shrub, bush, or tree;
- debris and garbage is being removed from beds, planters, and areas of dense foliage on a regular basis;
- potential efficiencies are identified and discussed with the Chief Administrative Officer, particularly as this relates to reducing the costs associated with low-visibility flora locations, such as by substituting drought-resistant perennials with colourful foliage; and
- identified problems are observed and rectified immediately.