

**THE CORPORATION OF THE CITY OF ENDERBY**

**GARDENS AND GROUNDS MAINTENANCE CONTRACT**

This agreement dated for reference this \_\_\_ day of \_\_\_\_\_, 2022.

**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:

[[Contractor name and address]]

(hereinafter called “the Contractor”)

**WHEREAS** the City wishes to retain the services of a gardens and grounds maintenance contractor;

**AND WHEREAS** the Contractor wishes to provide gardens and grounds maintenance services to the City;

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

**Term**

1. This contract shall commence on April 1, 2023 and shall terminate on December 31, 2025.
2. This contract may be extended for an additional two years upon mutual agreement, at a rate agreed upon by both parties.

**Value**

3. In consideration of the performance of the Contractor, the City shall pay the Contractor the sum of \$\_\_\_\_\_ in 2023, \$\_\_\_\_\_ in 2024 and \$\_\_\_\_\_ in 2025 plus GST.
4. Payments will be made on the following schedule: \_\_\_\_\_.

**Amendments to Scope of Service**

5. The City may amend Schedules “A” 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.

6. The City may change Schedules "A" and "B" to alter the nature, locations, or frequency of work.
7. If, as a result of a change or amendment to Schedules "A" or "B," the Contractor's costs increase or decrease, the Contractor and the City shall negotiate an adjustment to the remuneration payable under this contract, both parties acting reasonably. If no agreement is reached within thirty (30) days after notice of the amendment or change have been given by the City to the Contractor, the matter shall be referred to arbitration in accordance with this contract.

### **Requirements**

8. The Contractor shall provide gardens and grounds maintenance services in accordance with Schedules "A" and "B" attached to and forming part of this contract.
9. The Contractor shall not assign or sublet this contract without the prior written permission of the City.
10. The Contractor shall abide by and comply with all applicable laws, bylaws, orders, directions, enactments and regulations of any competent government authority or agency in any way affecting this contract.
11. The Contractor shall at all times during the term of this contract possess of a valid City of Enderby Business License or Intermunicipal Business License.
12. The Contractor shall be in good standing with WorkSafeBC and provide coverage for its workers for the duration of the contract.
13. The parties agree that the Contractor is the "Prime Contractor" for the services to be performed at various work sites throughout the City, and will do everything reasonably practicable to establish and maintain a system or process to ensure the health and safety of all persons at a work site, and the Contractor agrees to indemnify, release, and save harmless the City from and against any and all claims, assessments or costs that may be incurred by the City should it be deemed to be the "Prime Contractor" by WorkSafeBC.
14. This Contract 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 Contract 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.

15. 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. Any other Federal, Provincial or municipal fees, charges, or taxes
  - k. Operation, maintenance or repair of any equipment whatsoever used, rented, leased or owned by the Contractor for the carrying out of this Contract, unless expressly stated in the "City-Provided Materials and Reimbursable Costs" section of Schedule "B"
  
16. The Contractor shall obtain and keep in force policies of comprehensive general liability insurance and automobile liability (third party) insurance with a minimum limit of Five Million Dollars (\$5,000,000.00) per occurrence against claims for death, bodily injury, property damage and property loss, with evidence of insurance to be provided prior to execution of this contract.
  
17. The Contractor's general liability insurance policy shall:
  - (a) be issued by an insurance company authorized to carry on the business of insurance in British Columbia;
  - (b) include the City as an additional insured;
  - (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) provide a "no subrogation" clause against the City.
  - (f) include a cross liability clause.
  
18. The Contractor agrees to defend, indemnify, and hold harmless the City and its officers, agents, and employees for any and all claims, demands, actions, damages, losses, and expenses, including attorney fees and costs of litigation, arising out of, or relating to, the Contractor's performance under this contract, including those brought by employees or subcontractors of the Contractor.

#### **Termination and Breach**

19. The City may terminate this contract upon breach by the Contractor of any of the terms of this Contract, without notice or payment in lieu of notice.
  
20. Either party may terminate this contract for any reason upon 90 days written notice to the other party.

21. If the Contractor commits an act of bankruptcy, becomes insolvent or is petitioned into bankruptcy, or voluntarily enters into an arrangement with his or her 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.
22. If the Contractor:
  - (a) fails to operate in accordance with this contract, including Schedules "A" and "B";  
or
  - (b) fails to make payments due to its suppliers, workers, subcontractors, or others;  
or
  - (c) does not comply with applicable laws or enactments or the reasonable direction of the City;

the City may notify the Contractor in writing that it is in default of the Contract (the "Notice of Default").

23. 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. Following three (3) business days, the City may correct the problem by any method at its disposal and deduct the total costs thereof from any monies owed to the Contractor.
24. Where the Default would reasonably take more than three (3) business days to rectify and the Contractor has commenced within three (3) days all reasonable steps to rectify the default, the Contractor shall be permitted such time as is reasonably necessary, provided the Contractor does not abate its efforts to rectify the default.
25. If the Contractor fails, neglects or refuses to rectify or commence to rectify a default within three (3) business days of receipt of a Notice of Default, then the City may, in addition to, without further notice or payment in lieu of notice, and without prejudice to any other remedy or action available to the City, terminate this Contract.

#### **Notice**

26. Notifications to the City shall be as follows, unless the Contractor is advised otherwise in writing:

City of Enderby  
P.O. Box 400, 619 Cliff Avenue  
Enderby, BC V0E 1V0

Email: [info@cityofenderby.com](mailto:info@cityofenderby.com)

27. Notifications to the Contractor shall be as follows, unless the City is advised otherwise in writing:

[[Contractor mailing address and email]]

28. 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 if delivered to the offices of the City of Enderby during regular business hours and left in the possession of a Corporate Officer of the City, or if sent by mail or email, addressed to the City as specified in this contract;
  - (b) to the Contractor if delivered to the offices of the Contractor during regular business hours and left in the possession of an Owner, Officer or Director of the Contractor, or if sent by mail or email, addressed to the Contractor as specified in this Contract.
29. Where service is by mail, the notice or document shall be conclusively deemed to have been received on the fifth (5<sup>th</sup>) day after its deposit in a Canada Post Office at any place in Canada.
30. 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**

31. 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.
32. Any disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, will be finally resolved by mediation-arbitration under the Simplified Arbitration Rules of the ADR Institute of Canada, Inc. The parties agree to make their best efforts to resolve disputes through negotiation prior to seeking mediation-arbitration services. The parties agree that any dispute resolution services shall be provided virtually when available, or otherwise the Seat of Arbitration will be Vernon, BC. The language of all dispute resolution services will be English.
33. The terms and provisions of this contract shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors, heirs, and permitted assigns.
34. 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.
35. Captions or 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.

- 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. The contractor acknowledges that the City 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 may be subject to disclosure.
- 38. The Contractor represents and warrants that he or she has no business, professional, personal, or other interest including, but not limited to, the representation of other customers or clients that would conflict with the performance of the obligations under this contract. The Contractor shall immediately notify the City of any such potential or actual conflict of interest that may arise during the course of this contract.

**SIGNED, SEALED AND DELIVERED** )  
 by the **CITY OF ENDERBY** in the presence of )  
 )  
 )  
 \_\_\_\_\_ )  
 Mayor )  
 )  
 )  
 )  
 \_\_\_\_\_ )  
 Corporate Officer )

**SIGNED IN THE PRESENCE OF:**

\_\_\_\_\_  
 Witness Contractor

\_\_\_\_\_

## **Schedule "A"**

### **Operational Specifications**

1. The Contractor shall in a proficient and quality manner provide all aspects of gardens (including beds, planters, baskets, shrubs, and similar foliage) and grounds maintenance (including mowing, weedeating, general clean-up and maintenance, and other activities incidental to this contract) in conformity with and to the standards set out in this contract ("the Services").
2. The Contractor shall at all times act in a professional manner that reflects positively upon the City.
3. The Contractor shall provide the Services at times that will have the least amount of impact on users of public spaces, businesses, and residents. This may require some work to be carried out in early mornings or early evenings. The Contractor shall conform to applicable bylaws while providing the Services unless expressly exempted by the City.
4. The Contractor shall supply and maintain in good working condition, at its sole cost, all vehicles, equipment and tools necessary to carry out the obligations of this contract.
5. The Contractor shall supply, at its sole expense, all safety equipment and clothing for its workers in the performance of their duties under this contract.
6. The Contractor shall ensure that all of workers performing duties under this contract are trained in and subject to a health and safety program meeting WorksafeBC requirements, which includes training on the safe use of all equipment and tools used in the performance of their duties under this contract.
7. The Contractor shall at all times in the course of this Contract be responsible for the safety of its employees in the work and the service provided, and for the safety, adequacy, efficiency and sufficiency of its machinery, equipment apparatus and its method of completing the work and providing the service under this contract.
8. The Contractor shall ensure proper lights are installed on all vehicles, equipment and machinery to warn of its presence at all times.
9. The Contractor shall ensure that its vehicles are clearly marked identifying the name of the Contractor.
10. The Contractor shall ensure that proper traffic control is used when necessary, with such costs to be incidental to the performance of this contract.

11. 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 its resources and schedule accordingly, with such costs to be incidental to the performance of this contract.
12. Damage to any property by the Contractor, its employees or agents will be the responsibility of the Contractor.
13. The Contractor will perform any reasonable duties requested by the City in a reasonable time, subject to the other provisions of this contract.
14. The Contractor shall provide weekly updates to the City, either verbally or in writing at the discretion of the City.
15. The Contractor shall identify to the City matters related to but outside of the scope of the Services which may require a third-party contractor, such as extraordinary weed control or high-elevation tree pruning. The Contractor shall arrange for and coordinate the services of third-party contractors when required.
16. The Contractor shall conform to the City watering regulations unless expressly exempted by the City.
17. The Contractor shall document and report to the City any acts of vandalism to City property.



## Schedule "B"

### Sites and Responsibilities

#### General Duties

The Contractor is not required to provide Services in the off-season, from October 15 to April 1 of the following year, except for Cenotaph Park maintenance prior to Remembrance Day.

The Contractor shall perform the Services at all sites within the City of Enderby:

- Gardens (including beds, planters (approx. 80), baskets, shrubs, and similar foliage) at various locations throughout city, including planting, watering, weeding, deadheading, and trimming
- Grounds maintenance (including irrigating, weekly mowing and removal of grass clippings, weedeating, general clean-up and maintenance, and other activities incidental to this contract) at various locations throughout the city
- Collect and dispose of litter daily at various locations throughout the city (note: Public Works and Parks departments maintain garbage receptacles)
- Ensure benches and picnic tables are kept clean at all sites
- Fertilizing grounds
- Prune branches impeding or obscuring pedestrian or vehicle traffic
- Arranging for professional weed or pest control in conjunction with City Hall
- Document and report any vandalism or damage to City properties, including graffiti
- Remove unauthorized signs from utility poles and City property along George Street, Cliff Avenue, Mill Avenue, and Belvedere Street

#### Sites

- City Hall and Museum (garden beds; mowing and irrigating western lawn; sweep and clean entrance to City Hall and wash when required)
- City-owned parking lots (north side of Russell Avenue, behind City Hall, and east side of Maud Street)
- City entrance signs at north and south ends of the city, including surrounding gardens and grounds
- City of Enderby Water Treatment Plant area, including adjacent open space and around utility shed
- Cliff Avenue, Mill Avenue, Belvedere Street, George Street hanging baskets, planters, and garden beds
- Drill Hall garden beds, planters and grounds
- Fire Hall grounds and garden beds
- Belvedere Park garden beds and grounds, including those surrounding the Visitor Centre and the Belvedere Hand-Launch area
- Barnes Park planters and weedeat the bank to the west of the park adjacent to George Street (note: Barnes Park is maintained by Parks staff and is excluded from the scope of this contract except for what is listed herein)
- Garden bed at the intersection of Evergreen Street and George Street
- Breezeway between Cliff Avenue and Russell Avenue parking lot

- Cenotaph Park, including maintenance no more than three days prior to Remembrance Day
- Weedeat approximately 1m (this will vary so as to tie into variations in adjacent landscaping) on each side of the Riverwalk, trim back any brush or branches interfering with pedestrians, and maintain the southern garden bed and stairwell garden bed adjacent to campground
- Weed-eat road shoulders on George Street
- Salmon Arm Drive walking path, including weedeating the adjacent grounds between road and path
- Norleen Lane trail weedeating
- Sweep and clean Cliff Avenue sidewalks within the commercial section – wash when required in addition to and prior to a scheduled street sweeping or downtown event

In addition to the above duties, the following duties shall be carried out in the Spring:

- Arrange to have irrigation turned on
- General spring clean up
- Prepare gardens for planting
- Document and report any damaged City property requiring repair or replacement
- Soil replacement or amendment for all planters every year and garden beds on an as-needed basis
- Mulch for garden beds on an annual basis

In addition to the above duties, the following duties shall be carried out in the Fall:

- Rake leaves
- Winterize irrigation systems
- General fall clean up
- Prepare garden beds and planters for winter/spring
- Clean-up and mow Cenotaph Park no more than three days before Remembrance Day

All litter, grass clippings, and leaves, may be disposed at the Public Works Yard.

#### **City-Provided Materials and Reimbursable Costs**

All costs associated with the Services are incidental to the contract and shall form part of the Contractor's quote, except for the following items which will be provided or reimbursed by the City, provided such purchase is authorized in advance:

- Approved purchase of flowers, plants and shrubs and other related materials. The budget is \$8-10,000 plus GST
  - Costs for flower replacement due to inadequate care and maintenance will be the responsibility of the Contractor; costs for flower replacement due to vandalism, theft, or other matter out of the control of the Contractor will be the responsibility of the City
- Mulch
- Topsoil

- Irrigation repair (except for repairs caused by the Contractor's failure to winterize properly)
- Professional weed and pest control for extraordinary treatments or applications
- Extraordinary pruning (e.g. it cannot be reached with a ladder and pole saw) and bush or tree removal requiring heavy equipment
- Water use incidental to this contract
- Garbage disposal at Public Works Yard

### **Performance Objectives**

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

- High profile floral 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;
- Legacy perennials are replaced or transplanted to compliment annual and semi-annual plantings, and overmature perennials are replaced;
- Garden beds are designed to provide textural interest and colour drama from the early spring until mid-autumn;
- Soil is replaced or amended as needed;
- During planting, young plants are given adequate water, fertilizer, and organic material to promote health and aesthetics;
- Fertilizer is applied as needed and in accordance with the particular health and aesthetic requirements of the flora;
- Weeding, deadheading, thinning, and mulching are occurring on a regular basis;
- Grounds are top dressed as necessary;
- Pruning is occurring regularly and in accordance with the particular health and aesthetic requirements of a given shrub, bush, or tree;
- Litter is removed from beds, planters, and areas of dense foliage regularly;
- Potential efficiencies are identified and discussed with the City, particularly as this relates to reducing the costs associated with low-visibility flora or substituting for drought-resistant perennials with colourful foliage; and
- Problems involved or related to this contract are observed, reported, and rectified immediately.