

**CEMETERY GROUNDS MAINTENANCE CONTRACT**

This Contract dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF ENDERBY** having an office located at 619 Cliff Avenue, Enderby, B.C. V0E 1V0

(hereinafter called the "City")

AND:

XXX

(hereinafter called the "Contractor")

**WHEREAS** the City owns and operates the Cliffside Cemetery located at 169 Enderby-Grindrod Road ("the Cemetery");

**AND WHEREAS** the City wishes to retain the services of a maintenance contractor for the Cemetery;

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

1. The term of this contract shall be for a period of six (6) months, commencing on the 1<sup>st</sup> day of April and ending on the 1<sup>st</sup> day of October, with the option to extend by up to one month at the City's discretion, in each of the years 2024, 2025 and 2026. Upon mutual agreement, this contract may be extended for an additional two years at a rate agreed upon by both parties. Note that for each year of the term of this Contract, the Contractor shall be responsible for the grounds clean-up immediately prior to Remembrance Day of that same year and payment for this service will have deemed to have been paid in previous contract payments in accordance with Section 9 of this Contract.
2. The Contractor covenants and agrees to provide cemetery grounds maintenance services throughout the term of this contract in accordance with Schedules "A" and "B" attached and forming a part of this contract.
3. The Contractor shall not assign or sublet this Contract without the prior written agreement of the City.

4. The Contractor shall at their expense, throughout the term of the Contract secure and maintain a comprehensive general liability insurance policy with a limit of no less than \$5,000,000 per occurrence against claims for death, bodily injury and property damage. The Contractor shall provide evidence of coverage at or before the time the contract comes into effect and to provide timely evidence of renewal thereafter. The Contractor agrees to provide the City with thirty (30) days written notice of cancellation or material change resulting in reduction of coverage. The policy must contain a cross liability clause naming the local government as an “additional insured” and a waiver of subrogation in favour of the City whereby the insurer, upon payment of any claim(s), waives its right to subrogate against the City for any property loss or damage claim(s). The policy must be primary in respect to the operation of the City. Any insurance or self-insurance maintained by the local government will be in excess of such insurance policy and will not contribute to it.
5. The Contractor shall be in good standing and provide WorkSafeBC coverage for all of its employees throughout the term of this Contract. The Contractor shall serve as the Prime Contractor while working at the Cemetery and shall do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Workers Compensation Act and its regulations, as required to ensure the health and safety of all persons at the Cemetery.
6. The Contractor shall indemnify and save harmless the City and its officers, employees, elected officials, servants and agents from and against any and all liabilities, damages, losses, costs, expenses, (including lawyer’s fees and litigation expenses) incurred in any actions, claims, suits and other proceedings in connection with or arising from:
  - a. any breach or non-performance by the Contractor of any obligation contained in this Contract;
  - b. any loss, damage, or injury to property or any loss or injury to any person, including death, occurring in or about the Cemetery and resulting from the negligence or wilful misconduct of the Contractor, its employees, agents and contractors; and
  - c. any other wrongful act or neglect of the Contractor, its employees, agents and contractors, in or about the Cemetery, including loss caused by the dishonesty of the Contractor’s employees.
7. The Contractor’s obligations under Section 6 shall survive any expiration or termination of this Contract.
8. The Contractor shall carry out and provide the services and requirements outlined in this Contract to the satisfaction of the Cemetery Administrator.

9. In consideration of the performance of the Contractor in accordance with this contract, the City agrees to pay the Contractor the sum of \$XXX in 2024, \$XXX in 2025 and \$XXX in 2026, excluding GST. Payments will be made on the XX day of April, May, June, July, August and September.
10. This Contract may be terminated by the City in any of the following situations:
  - a. Immediately, without notice or penalty, upon the dissolution or insolvency of the Contractor's business or the failure of the Contractor to make payments to its suppliers, workers, subcontractors, or others; or
  - b. Immediately, without notice or penalty, in the event that the Contractor is unable to provide the cemetery grounds maintenance services for a period of seven (7) days in any calendar year; or
  - c. Immediately, without notice or penalty, in the event that the Contractor breaches a substantial term of this Contract such that the Contract may be terminated with cause; or
  - d. Immediately, without notice or penalty, following ten (10) days written notice of any other breach of this Contract by the Contractor that has not been corrected or for which the Contractor has not taken all reasonable actions in good faith towards correcting a breach that reasonably requires more than ten (10) days to correct, time being of the essence.
11. Notwithstanding the provisions contained in Section 10, the City may terminate this Contract without cause upon providing 30 days' notice of termination, for which no termination penalty or other damages shall be owed by the City as a result. The City may opt to pay a pro-rated value in lieu of notice under this section.
12. In the event that the City elects to terminate this Contract under the provisions of Section 10 or 11 above, the obligations of the City under this Contract shall cease, save and except that the Contractor shall be entitled to payment of all monies owed to them or accrued to the date that the termination takes effect.
13. 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.
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. 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.
16. 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.
17. 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.
18. Notice shall be deemed to be validly given to the Contractor if delivered to their office, mailed postage prepaid to their current place of business, faxed, or emailed. Any notice mailed to the Contractor shall be deemed received on the second business day following the date of mailing. Any notice delivered, faxed, or emailed shall be deemed received one business day following delivery or sending.
19. 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.
20. 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.
21. 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.
22. 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.

23. The provisions of this Contract shall inure to the benefit and be binding upon the heirs, executors, administrators, and assigns of the parties.

**IN WITNESS WHEREOF** the parties hereto have executed this Contract by their duly authorized officers at Enderby, British Columbia.

THE CORPORATE SEAL of the **CORPORATION OF THE CITY OF ENDERBY** was hereto affixed in the presence of:

\_\_\_\_\_  
Corporate Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

## **CEMETERY MAINTENANCE CONTRACT**

### **Schedule "A"**

#### **Operational Specifications**

1. The Contractor shall, in a good and workmanlike manner, provide all aspects of Cemetery grounds maintenance in areas listed in this Contract in conformity with and to the standards set out in this Contract and under the general direction of the Cemetery Administrator.
2. The Contractor and its employees and agents shall at all times exercise tact and diplomacy and good public relations in the performance of duties outlined in this Contract.
3. 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. The Contractor shall ensure that its vehicles are clearly marked identifying the name of the Contractor.
4. The Contractor shall supply, at its sole expense, all safety equipment and clothing for use of its employees and/or agents in the performance of their duties under this Contract.
5. The Contractor shall ensure that all its employees and/or agents are trained in the safe use of all equipment and tools employed in the performance of their duties, in a manner consistent with WorkSafeBC occupational health and safety regulations and guidelines.
6. The Contractor shall at all times during the course of this Contract be responsible for the safety of its employees and the public in the work and the service provided, and for the safety, adequacy, efficiency and sufficiency of its machinery, equipment and the methods of completing the work and providing the service.
7. The Contractor is to take note that there may be considerable variation in the total quantity of services required from month to month or for special events. At those times, the Contractor shall adjust resources and schedules accordingly.
8. Damage to any City or private properties caused by the Contractor, or the Contractor's employees or agents, during the course of its duties is the sole responsibility of the Contractor.
9. The Contractor will perform any reasonable duties requested by the City in a reasonable time. Any requests outside the scope of this Contract will be negotiated between the City and the Contractor at a rate agreed upon by both parties.

10. The Contractor shall provide recommendations to the Cemetery Administrator for weed control, major tree management, fertilizing, pest control and any other related grounds maintenance service which are outside the scope of this Contract.
11. The Contractor shall obtain approval from the Cemetery Administrator prior to the purchase of unanticipated materials and products that are within the scope of the City's responsibility to supply.
12. The Contractor shall document and report to the Cemetery Administrator any acts of vandalism at the Cemetery.
13. The Contractor shall provide weekly updates to the City, either verbally or in writing at the discretion of the City.

## **CEMETERY MAINTENANCE CONTRACT**

### **Schedule “B”**

#### **Specific Duties**

##### **General Maintenance**

The following duties shall be carried out regularly, and in a timely manner, during the course of the Contract:

- Cut grass as required
- Weed grounds as required (note: the City shall pay for the cost of a weed control application at the start of the season, which the Contractor shall arrange)
- Rake or remove debris from grounds, including branches (note: large branches may be piled in designated spots at the Cemetery, for removal by Public Works, with advance notice to be provided by the Contractor)
- Prune and maintain vegetation around perimeter
- Prune and maintain vegetation at cemetery entrance and along entry drive
- Prune any low-hanging tree branches which are unhealthy or interfering with maintenance (note: the City shall pay the costs of any major tree maintenance, such as removing and disposing of trees and high branches)
- Collect and dispose of any litter on the grounds
- Empty garbage containers and dispose of contents (note: the Contractor may dispose of refuse at the Public Works Yard)
- Sweep and clean walkways around cremation areas
- Remove weeds and debris from cremation areas
- Remove artificial flowers and other prohibited items in accordance with the Cemetery bylaw, with approach to be specified by the Cemetery Administrator
- Remove and dispose of fresh flowers upon deterioration
- Notify the City of sunken graves or headstones requiring leveling
- Report vandalism, damage, or suspected unlawful activities to Cemetery Administrator immediately

##### **Specific Events**

- Notify the City at start and end of season to request water turn-on and turn-off
- Perform an extra check of grounds following windstorms and perform additional clean-up and groundskeeping as required
- Perform an extra check of grounds prior to Mother’s Day, Father’s Day, and Remembrance Day and perform additional clean-up and groundskeeping as required