

INSTRUCTIONS, TERMS AND CONDITIONS GENERAL

1.1 Scope of Work

The Contractor shall execute the work in a good and workmanlike manner, free from any defects, in accordance with the Form of Tender, Specifications, standards and drawings incorporated, accompanying or referred to in the Tender Documents. The Contractor shall convey title to all equipment and materials to be supplied, free and clear of all liens, charges and encumbrances.

1.2 Document Availability and Responsibility

This Tender is being issued electronically through the BC Bid website (www.bcbid.gov.bc.ca) where any interested party may download the Tender documents directly from the aforementioned website. No registration, tracking or other recording of Tender document holders will be performed by the City. All addenda, amendments or further information will be published on the BC Bid website. It is the sole responsibility of the Tenderer to monitor the website regularly to check for updates.

1.3 Interpretations

For this Contract, unless the context otherwise requires:

- a. The “Contract” means the written agreement or purchase order resulting from this Tender awarded to and/or executed by the City and the successful Tenderer;
- b. “Contract Documents” means the Tender documents, that part of the Tender which is accepted by the City, the purchase order and executed agreement, if any, and all applicable specifications and drawings including those issued by the City to the Contractor and those submitted by the Contractor during the performance of the work and accepted by the City, whether produced before or after the date of award of the Contract as the same may be modified, amended, substituted or replaced in accordance with the provisions of the Contract from time to time;

- c. “Contractor” means the person, or persons, or a company whose Tender has been accepted by the City in the form of an authorized Contract or purchase order.
- d. “City” means the City of Burnaby.
- e. “Engineer” means Kerr Wood Leidal Associates Ltd., a consulting firm, employed by and duly authorized to administrate the resulting Contract on behalf of the City.
- f. “Goods” means all materials, including fabrication, assembly, supply, delivery, start up and commissioning as required by the Specifications, Form of Tender and drawings.
- g. “Tenderer” means the company or person submitting a Tender in response to this Invitation to Tender.

1.3 Instructions

- a. All Tenders must be received at the Office of the Purchasing Manager, as noted below, up to **3:00pm, local time on Thursday, November 12, 2009**. Late submissions will be returned unopened.

By hand or courier: 6161 Deer Lake Avenue, Burnaby BC, V5G 1M2

- b. Tenders are required IN DUPLICATE including all attachments and enclosures.
- c. Emailed or faxed Tender submissions or changes will not be accepted.
- d. Tenders on forms other than the attached will not be accepted.
- e. The Tenderer, by submitting a Tender, agrees that they will not make a claim against the City, for whatever reason, relating to the Tender, the Tender Documents, or the competitive Tender process. The Tenderer, by submitting a Tender, waives any claim or recovery for loss of profits or any prospective damages whatsoever if no Contract is entered into with the Tenderer.

- f. Tenderers must submit a basic Tender but are encouraged to submit an alternate Tender that may be less costly or of equivalent or better value to the City. All alternates will be evaluated by the City along with the basic Tenders, using the same evaluation criteria. Alternate Tenders must be clearly indicated as such.
- g. A Tenderer shall submit a basic Tender which conforms strictly to the requirements of the Tender Documents and may also submit an alternative which is superior to or less costly than the basic Tender.
- h. All required materials and equipment shall be delivered to the jobsite, delivery charges included.
- i. If a Tenderer is in doubt as to the true meaning of any part of this Tender Document, or finds omissions, discrepancies or ambiguities, a request for interpretation or correction may be submitted as indicated below and, if deemed necessary by the City, an addendum will be issued to the BC Bid website. This procedure also applies should the City, of its own accord, wish to expand or delete any part of this Tender Document.

Direct All Inquiries to: Fax: 604-294-7529
Email: Purchasing@burnaby.ca

Clarification requested by Tenderers must be submitted in writing and received not less than two working days prior to the date set for receipt of Tenders. The City will not be responsible for verbal interpretation or corrections. Only Addenda issued in writing will be considered. All such Addenda shall become part of the Tender Documents.

- j. The City reserves the right to accept a Tender which is not the lowest in price, to reject any or all Tenders, to waive informalities, irregularities or other deficiencies in any Tender and to accept a Tender which does not conform strictly to the requirements of the Tender Documents, give preference to Tenders where the products, services or Work methods are considered by the City in its absolute discretion to be environmentally superior, as well as cost effective, relative to products, services or Work methods offered in other Tenders, give preference to Tenders which demonstrate products, services or Work methods which are environmentally sensitive and which protect and preserve the natural environment, accept any Tender it considers advantageous, and evaluate Tenders on the

overall costs to it in respect of the performance of Work, as estimated by it on all factors it deems relevant, including but not limited to, technical ability, commercial credibility, financial resources, environmental responsibility, the safety compliance record of the Tenderer, non-performance by the Tenderer on previous contracts with the City, increased cost anticipated by the City resulting from extra Work in respect of inspection, contract administration or dispute resolution, and any security or safety concerns which the City may have in respect of the Tenderer or its facilities or suppliers.

If the City rejects all Tenders, the City may negotiate a Contract for the whole or any part of the Work with any one or more Vendors whatsoever, or re-Tender the Work.

- k. If applicable, the successful Tenderer will be responsible for obtaining any permits and paying all fees associated with this work.
- l. The City reserves the right to add or delete items within the Form of Tender.
- m. The award of this Tender is subject to the availability of funds.

1.3 Currency of Payment

All reference to funds or money in the Contract shall refer to and mean lawful money of Canada.

1.4 Governing Law

This Tender and any Contract entered into between the successful Tenderer and the City will be governed by and be in accordance with the laws of the Province of British Columbia.

1.5 Contract Price and Changes to the Work

The Contract Price is the Lump Sum Price amount(s) from Schedule A accepted by the City and is(are) firm.

The Contractor shall not make any alteration or variation in, or addition to, or deviation or omission from the specified work without the written consent of the City's representative.

No changes to the scope of the work or price changes or additions or deletions to the Contract shall be binding on the City unless approved by means of an authorized change order issued by the City's Purchasing Department.

1.6 Interpretation of Specifications and Drawings

Should it appear that the work to be performed, or any of the matters relative thereto, are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Engineer for such further explanations as may be necessary, and shall conform thereto as part of this Contract. In the event of any doubt or question arising respecting the true meaning of the Specifications, reference shall be made to the Engineer and his decision thereon shall be final.

1.7 Headings to Sections and Clauses

Headings to sections, clauses and sub-clauses are inserted for convenience and reference only and shall not affect the interpretation of the Contract.

1.8 Contractor's Risk and Expense

The Contractor shall at his own risk and expense, unless it is expressly stipulated to the contrary, provide, supply, observe, perform and do everything which in the opinion of the City may be required for the execution of this work.

Unless otherwise provided for in the Form of Tender or Specifications, the Contractor shall retain title to the goods and the goods shall be at the Contractor's risk until the goods have been received and accepted by the City or the City's authorized representative.

1.9 Assignment and Subletting

The Contractor shall keep the work under his personal control. The Contractor shall not, without the consent in writing from the City, assign or transfer this Contract or any part thereof.

1.10 Regulations, Permits and Compliance

The materials and/or services ("Goods") called for in the Contract shall comply with all applicable codes, standards, and/or regulations of the governing inspection authorities at the place of use. The Contractor shall acquire and keep in force all required permits and certificates of approval. Any electrical components shall conform to the applicable standards of the Canadian Standards Association. The Contractor shall comply with all dangerous goods legislation and codes governing the safety, handling, packaging, labelling and transport of such Goods.

The Contractor shall perform the work in a lawful manner and shall pay any or all fees or other sums of money payable to any public body or officer or to any person in respect of the fulfilment of the work.

1.11 Service of Notice

Any notice, order, direction, request or other communication given by the City to the Contractor under this Contract shall be deemed to be well and sufficiently given to the Contractor if the same be left at any office used by the Contractor, or be delivered to any of his officers, clerks, or servants, or be mailed in any post office addressed to the Contractor at the address mentioned in this Contract or at the Contractor's last known place of business or be posted on the site of the work and; if mailed, shall be deemed to have been given to the Contractor two days after the day of mailing in any post office or mail box in British Columbia.

1.12 Indemnification of City

The Contractor shall indemnify and save harmless the City and its directors, officers, servants, employees, volunteers, consultants and agents from and against all claims, demands, proceedings, suits, losses, damages, costs and expenses of

whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising in any way out of or connected with the Work by the Contractor under this agreement, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the indemnified parties or any of them.

1.13 Patent and Copyright Infringement

The Contractor shall indemnify and hold the City harmless against all claims, liabilities, losses, damages, judgments, awards and costs (including reasonable legal fees and expenses) incurred in the defence of any claim brought against the City by third parties alleging that the City's use of any Contractor supplied equipment, materials, software, and documentation infringes upon or misappropriates any patent, copyright, or trade secret rights.

1.14 Approval of Contractor's Drawings or Work Methods

The approval by the Engineer of any drawing or any method of work proposed by the Contractor shall not relieve the Contractor of his responsibility for any errors therein, and shall not be regarded as any assumption of risk or liability by the City or Engineer. Such approval shall be considered to mean merely that the Engineer has no objection to the Contractor's using, upon his own full responsibility, the plan or method of work proposed.

1.15 Damage to Work

The work shall be under the Contractor's responsible care and charge. The Contractor shall bear all loss and damage which may occur on or to the work during the fulfilment of the terms of the Contract except that caused solely by an act of the City or Engineer.

If any such loss or damage occurs, the Contractor shall immediately make good any such loss or damage, and in the event of the Contractor refusing or neglecting so to do, the City may itself or by the employment of some other person or supplier make good any such loss or damage, and the cost and expense of so doing shall be charged to the Contractor.

1.16 Installation of Equipment with Others

The equipment purchased by the City shall be installed by the City's staff. The Contractor shall be responsible for co-operation and co-ordination of his activities with the City's and shall assume responsibility for installation checks, start up and commissioning activities as specified in the Contract Documents.

1.17 Payment for Labour and Materials

The Contractor shall pay any and all accounts for labour, (including Worker's Compensation, Employment Insurance assessments and wage and salary deductions required by law), services and materials used by him during the fulfilment of this Contract as and when such accounts become due and payable, and shall furnish the City with proof of payment of such accounts in such form and as often as the City may request. Should payment of such account not be made when as the same becomes due, the City shall be at liberty to pay the same and all money so paid by the City shall be charged to the Contractor.

1.18 Charges to Contractor

Everything charged to the Contractor under the terms of this Contract shall be paid by the Contractor to the City on demand or may be deducted by the City from any moneys due or to become due to the Contractor under this Contract.

1.19 Authority of City

The whole of the work and the manner of performance of the same shall be done to the entire satisfaction and approval of the City, and it shall be the sole judge of the work and materials in respect to both quantity and quality and its decision with regards to the work and materials shall be final and binding upon the Contractor.

1.20 Inspection

All or any part of the work and all workshops or other places where material for the work is being prepared or stored, may be inspected by the City or Engineer

when and as often as the City or Engineer shall deem it expedient, at no additional cost to the City. The Contractor shall afford every facility and access requested and shall give any and all information requested by the Engineer in connection with the work.

1.21 Proof of Compliance

In order that the City or Engineer may confirm that the Contractor has complied with the requirements of the Specifications which are not readily enforceable through inspection and tests of plant, equipment, work, or materials, the Contractor shall, at any time when requested, submit to the Engineer properly authenticated documents or other satisfactory proofs as to his compliance with such requirements.

1.22 Improper Materials and Workmanship

All materials which do not conform to the requirements of the Contract Documents, are not approved by the Engineer, or are in any way unsatisfactory or unsuited for the purpose for which they are intended, will be rejected. Any defective work or materials, whatever the cause thereof, and without limiting the generality of the foregoing, whether the result of poor workmanship or use of defective materials, shall be removed within ten (10) days after written notice is given by the Engineer and the work shall be re-executed by the Contractor. The fact that the Engineer may have previously overlooked such defective work shall not constitute an acceptance.

The removal of work and the re-execution thereof shall be at the expense of the Contractor and he shall pay the cost of replacing the work which shall include materials of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement with acceptable work. The Contractor shall also reimburse the City for any additional engineering inspection, or testing costs incurred in respect of rejected work or materials, whether such work or materials are replaced or not or are accepted at a lower price.

If in the opinion of the Engineer, it is not expedient to re-execute defective work, the City may deduct from the Contract Price the difference in value between the

work as done and that called for by the Contract, the amount of which shall be determined by the Engineer.

1.23 Retention of Imperfect Work

If in the opinion of the Engineer any portion of the materials supplied or furnished or work done under this Contract is defective or not in accordance with the Specifications and drawings and if the imperfection in the same is not of sufficient magnitude or importance to make the work dangerous or undesirable, or if the removal of such material or work is impracticable, or will create conditions which are dangerous or undesirable, the Engineer shall have the right and authority to retain such material or work instead of requiring the imperfect material or work to be removed and reconstructed, but he will make such deductions therefore in the payments due or to become due to the Contractor as the Engineer may deem just and reasonable.

1.24 Varying Progress

The Contractor shall upon the request in writing of the City, suspend any work that in the judgement of the City may be subject to damage, or stop the work or any portion thereof or increase and improve the facilities and methods of the carrying on of the work or any portion thereof or reduce or increase the number of persons employed by him in connection therewith in accordance with the City's request, and the Contractor shall have no claim upon the City for damages or compensation by reason thereof. Should the Contractor refuse or neglect to comply with the said request in writing of the City within the space of three (3) days from the giving to him of such request, any such refusal or neglect on his part shall be deemed to be a failure on his part to comply with the provisions of this Contract.

1.25 City's Termination of the Contractor's Rights

The City will have the right to terminate the Contractor's right to continue with the work if the Contractor at any time becomes bankrupt, makes an assignment of his property for the benefit of his creditors, or if a receiver should be appointed. Such termination shall be effective upon the City giving notice thereof.

If, at any time, the Contractor:

- a) Fails to commence work within the time specified in the Contract Documents;
- b) Fails to use diligence or to make such progress with the work as, in the opinion of the Engineer, is necessary to ensure the completion of the work in the time specified in the Contract Documents;
- c) Fails, in the opinion of the Engineer, to supply enough competent workers, management, and suitable equipment;
- d) Becomes, in any way, in the opinion of the Engineer, unable to carry on the construction of the works;

and fails to remedy such default within ten (10) days of written notice to do so, the City will have the right to terminate the Contractor's right to continue with the work. Such termination will be effective upon the City giving notice thereof.

Upon such termination, the City may take all the work out of the Contractor's hands and employ such means as the City may see fit to complete the works. In such cases:

- i) The Contractor shall have no claim for any further payment in respect of work performed, but shall be liable for all loss of profits, damages, and expenses which may be suffered by the City by reason of such default or delay, or the non-completion by the Contractor of the works;
- ii) No objection or claim shall be raised or made by the Contractor by reason or on account of the ultimate cost of the works so taken over for any reason proving greater than, in the opinion of the Contractor, it should have been;
- iii) All materials and all rights, proprietary or otherwise, licenses, powers and privileges, whether relating to or affecting real or personal property, acquired, possessed, or provided by the Contractor for the purposes of the work under the provisions of this Contract will become or remain and be the property of the City for all purposes incidental to the completion of the works and may be used, exercised and enjoyed by the City as fully to all intents and purposes connected with the works as they might therefore have been used exercised and enjoyed by the Contractor; and

- iv) The City may forthwith enter into possession of all equipment on the site of the work and may use the same in any way it sees fit in order to complete the works without the City being in any way liable for damages or any other cost in connection with such use by the City. Upon completion of the work, such equipment may be returned to the Contractor or may be sold by the City and the net proceeds of such sale credited to the Contractor's account.

1.26 Use of Completed Portion

The City will have the right to take possession of and use any completed or partially completed portions of the work, whether the time for completing the entire work or such portions has or has not expired, but such taking possession and use will not be deemed an acceptance of any work not completed in accordance with the Contract Documents.

If such prior use increases the cost of, or delays the completion of, uncompleted work or causes refinishing the completed work, the Contractor shall be entitled to such extra compensation or extension of time, or both, as the Engineer may determine.

1.27 Waiver of Rights of City

No action nor want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under this Contract shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

1.28 General Quality

The whole of the work whether or not so stated herein shall be done in the most substantial and workmanlike manner with new materials, articles, equipment and workmanship of the best quality and description and by employment of skilled workmen and in strict conformity with and as required by this Contract to the satisfaction of the Engineer whether or not so stated herein. Materials and equipment shall be the products of suppliers or manufacturers of established good reputations regularly engaged in the supply or manufacturer of such

materials and equipment. The Contractor shall upon request of the Engineer furnish him with all vouchers, receipted bills and other documents showing the materials, articles and workmanship used by the Contractor in performing the work.

1.29 Quality in Absence of Detailed Specifications

Whenever the work requires that the Contractor furnish materials or manufactured articles or shall perform work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from suppliers of established good reputation with due consideration of the use to which they are to be put.

1.39 Storage of Materials and Machinery

The Contractor, at his own cost, shall store all materials provided for the work either by himself or the City until they have been incorporated into the completed works. Materials shall be so stored as to ensure the preservation of their quality and fitness for the work and shall be protected from vandalism and theft. Stored materials shall be located so as to facilitate prompt inspection. Faulty materials shall not be stored on the site and any material in storage found to be faulty shall promptly be removed from the site by the Contractor.

1.31 Time is of the Essence

Time shall be strictly of the essence for this Contract.

Refer to the Form of Tender and technical Specifications for required delivery dates and details.

1.32 Extension of Time

If the Contractor desires to claim an extension of the time allowed for the completion of all or part of the work by reason of being ordered to perform extra work and/or furnish extra material or consequent upon any delay occasioned by strikes, lockouts by other than the Contractor himself alone, force majeure, or other cause beyond the control of the Contractor, the time for performance by

the Contractor may be extended by the City by the length of time the Contractor is so prevented or delayed.

In any event of force majeure involving the Contractor which disrupts, or threatens to disrupt the City's operations, the City may cancel the Contract by written notice terminating, without liability, all obligations imposed by the Contract.

1.33 Compensation to the City for Extension of Time

In case the work is not completed within the time limited therefore, the City may extend the time of completion. If the time limit be so extended, the City shall have the right to charge the Contractor and to deduct from the final payment for the work, the actual cost to the City of engineering, inspection, superintendence and other overhead expenses which are directly chargeable to the Contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimates shall not be included in such charges.

1.34 Liquidation Damages for Delay

If the work is not completed before or upon the expiration of the time limit thereof, all costs which the City shall be put to by reason thereof shall be charged to the Contractor.

1.35 Payment for Work

The equipment supplied under this Contract will be paid for at the prices set out in Schedule A - Lump Sum Prices or as detailed in whichever schedule is applicable.

A. Charges to be Paid

Freight, duty, royalties, brokerage, demurrage, unloading and all other charges shall be paid by the Contractor before final acceptance by the City.

No direct payment will be made for any of these charges. It is understood that all charges are included in the prices entered in the Form of Tender and attached Schedules.

B. Payment Terms

After delivery and receipt of all of the equipment and required documentation for item 1.1 in Schedule A, the Contractor will be paid eighty percent (80%) of the Contract Price.

After completion to the satisfaction of the Engineer of all acceptance tests of the equipment as specified in the technical Specifications (confirmed by a certificate from the Engineer) and acceptance of the equipment, the Contractor will be paid the remaining twenty percent (20%) of the Contract Price.

Payment at delivery will not be made to the Contractor until he has presented to the City a certificate from the Engineer that the equipment has been delivered in accordance with the Contract Documents. Payments will be Net 30 days from receipt of a complete invoice and the accompanying certificate from the Engineer.

1.36 Warranty

For the period of one year or for such longer period as may be specifically stated in the Specifications or submitted in the Contractor's Tender, commencing on the acceptance of the work, the Contractor shall, on the receipt of notice in writing from the City, promptly make all repairs arising out of defective materials, workmanship or equipment.

The City is hereby authorized to make such repairs if, 3 days after the giving of such written notice to the Contractor, the Contractor has failed to make or undertake with due diligence said repairs; provided, however, that in case of an emergency where, in the opinion of the City, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and all expenses in connection therewith shall be charged to the Contractor.

For the purpose of this clause, acceptance of the work shall mean the date of the certificate from the Engineer for acceptance of the work for final payment of the Contract Price.

This clause shall be subject to specific modifications where stated elsewhere in the Contract Documents.

1.37 Insurance Requirements

The Contractor shall provide proof of general liability insurance as specified in Appendix A – Certificate of Insurance and submit prior to the commencement of work. The following are some of the requirements noted on the Certificate of Insurance:

- Liability (\$5M required)
- City as additional insured
- Cross Liability
- 30 Days notice of material or cancellation
- Non-owned auto
- Maximum deductible amount of \$2,500.00.

1.38 WorkerSafeBC

All Tenderers must submit with their Tenders a clearance letter from the Workers' Compensation Board of BC (WCB) verifying that they are in good standing.

The Contractor(s) must be and remain in good standing with the WCB during and at completion of the Work. Should they fail to do so, the City may remit any assessments due on behalf of the Contractor(s) and shall either set this amount off against monies owing to the Contractor(s) or charge the amount to the Contractor(s).