



Request for Proposals
For
Professional Consulting Services for Bridge Crossing Study

Request for Proposals No.: **335761**

Issued: **June 2, 2021**

Submission Deadline: **June 25, 2021 14:00 local time**

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PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

1.1 Invitation to Proponents

This Request for Proposals (the “RFP”) is an invitation by the City of Kamloops (the “City”) to prospective proponents to submit proposals for Professional Consulting Services for a Bridge Crossing Study as further described in Section A of the RFP Particulars (Appendix D) (the “Deliverables”).

1.2 Background Information

The City of Kamloops is seeking professional consulting services to undertake a multi-disciplinary feasibility study to determine the routing options and feasibility of an additional bridge crossing the Thompson River. This is to advance the council approved Transportation Master Plan’s (TMP) recommended study:

“a future Thompson River crossing for the long term is crucial, and this study should identify the preferred future crossing location to permit the City to plan for an secure this future corridor”¹

The results of this study will guide City staff in both transportation and land-use planning to protect the identified corridor for the future crossing as set out by Kamloops Official Community Plan (KAMPLAN):

“The City will protect an additional corridor across the Thompson River for growth beyond the 120,000 population. During the term of this plan the City will undertake studies to confirm the location of the preferred crossing”²

It should be noted that prior to the adoption of the Transportation Master Plan (TMP) in 2018, the second crossing location was planned to be located on an alignment joining Singh Street to the south side of Kamloops using a 4-lane cross section. However, during the development of the TMP this alignment was assessed to align poorly with the stated Vision, Goals, and Objectives of the Official Community Plan in Kamloops (KAMPLAN).

The study area for the second crossing is shown in the TMP Road Network Map and again in the Truck Route Network Map. It should be noted the truck route network map shows the second crossing area slightly further west than on the Road Network Map.

Resources include:

- Most recent EMME model
- 2018 Kamloops Area Transportation Data Collection Program (Streetlight OD Data)
- 2005 Floodplain Mapping Kamloops Lake, Thompson, North Thompson and South Thompson Rivers-Design Brief

¹ [Transportation Master Plan p 42](#)

² [Official Community Plan \(KAMPLAN\) | City of Kamloops](#)

- City of Kamloops Transportation Master Plan
- City of Kamloops Official Community Plan (KAMPLAN)
- Available information on existing crossing structures as required

1.3 RFP Contact

For the purposes of this procurement process, the “RFP Contact” will be:

Carly Norris BBA, SCMP

Contact via:

<https://kamloops.bonfirehub.ca/opportunities/42602>

Messages → Opportunity Q&A

Proponents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials, or other representatives of the City, other than the RFP Contact, concerning matters regarding this RFP. Failure to adhere to this rule may result in the disqualification of the proponent and the rejection of the proponent’s proposal.

1.4 Contract for Deliverables

1.4.1 Type of Contract

The selected proponent will be requested to enter into direct contract negotiations to finalize an agreement with the City for the provision of the Deliverables. The terms and conditions found in the Form of Agreement (Appendix A) are to form the basis for commencing negotiations between the City and the selected proponent. It is the City’s intention to enter into an agreement with only one (1) legal entity.

1.4.2 Term of Contract

The term of the agreement is to be for a period of one year, with an option in favour of the City to extend the agreement on the same terms and conditions for an additional term of up to four, additional terms.

1.5 RFP Timetable

1.5.1 Key Dates

| | |
|------------------------------------|--------------------------------|
| Deadline for Questions | June 11, 16:00 PM local time |
| Submission Deadline | June 25, 2021 14:00 local time |
| Rectification Period | Two business days |
| Contract Negotiation Period | 15 business days |
| Anticipated Execution of Agreement | July 2021 |

The RFP timetable is tentative only, and may be changed by the City at any time. For greater clarity, business days means any day except for Saturday, Sunday, or any British Columbia statutory holidays³.

1.6 Submission of Proposals

1.6.1 Proposals to be Submitted at Prescribed Location

Proposals must be submitted via the City's Bonfire Submission Portal:

<https://kamloops.bonfirehub.ca/opportunities/42602>

Proponents agree that in no event will the City have any liability whether based on negligence or other torts, contract, warranty, strict liability or otherwise, for any loss or damage of any nature or kind suffered by the Proponents arising from or related to any mistakes, errors, omissions, oversights, statements, representations or warranties in any guideline, guidance or information, written or oral, given to the Proponents by or on behalf of the City regarding or in connection with the Bonfire Submission Portal Service, including the use of the Bonfire Submission Portal Service or the Bonfire Submission Portal Service Delivery Method.

1.6.2 Proposals to be Submitted on Time

Proposals submitted after the Submission Deadline will be rejected. Onus and responsibility rest solely with the Proponent to submit their Proposal to the exact location indicated in the RFP on or before the Submission Deadline. The City does not accept any responsibility for submissions delivered to any other location by the Proponent or its delivery agents. Proponents are advised to make submissions well before the deadline. Proponents making submissions near the deadline do so at their own risk.

1.6.3 Proposals to be Submitted in Prescribed Format

Proponents should submit their response in the prescribed format as stated in Bonfire under Requested Information>Type.

1.6.4 Amendment of Proposals

Proponents may amend their proposals prior to the Submission Deadline.

1.6.5 Withdrawal of Proposals

At any time throughout the RFP process until the execution of a written agreement for provision of the Deliverables, a proponent may withdraw a submitted proposal.

To withdraw a proposal prior to the Submission deadline, Proponents can un-submit their as per below in Bonfire:

³<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/statutory-holidays>

Need to Revise Your Submission?

[Click here to un-submit your submission](#). Note that only submissions that have been finalized and submitted will be considered.

To withdraw a proposal after the Submission deadline, a notice of withdrawal must be sent to the RFP Contact and must be signed by an authorized representative of the proponent. The City is under no obligation to return withdrawn proposals.

[End of Part 1]

PART 2 – EVALUATION, NEGOTIATION AND AWARD

2.1 Stages of Evaluation and Negotiation

The City will conduct the evaluation of proposals and negotiations in the following stages:

2.2 Stage I – Mandatory Submission Requirements

Stage I will consist of a review to determine which proposals comply with all of the mandatory submission requirements. If a proposal fails to satisfy all of the mandatory submission requirements, the City will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. If the proponent fails to satisfy the mandatory submission requirements within the Rectification Period, its proposal will be rejected. The Rectification Period will begin to run from the date and time that the City issues a rectification notice to the proponent. The mandatory submission requirements are set out in Section C of the RFP Particulars (Appendix D).

2.3 Stage II – Evaluation

Stage II will consist of the following two sub-stages:

2.3.1 Mandatory Technical Requirements

The City will review the proposals to determine whether the mandatory technical requirements as set out in Section D of the RFP Particulars (Appendix D) have been met. Questions or queries on the part of the City as to whether a proposal has met the mandatory technical requirements will be subject to the verification and clarification process set out in Part 3.

2.3.2 Rated Criteria

The City will evaluate each qualified proposal on the basis of the non-price rated criteria as set out in Section F of the RFP Particulars (Appendix D).

2.4 Stage III – Pricing

Stage III will consist of a scoring of the submitted pricing of each qualified proposal in accordance with the price evaluation method set out in Pricing (Appendix C). The evaluation of price will be undertaken after the evaluation of mandatory requirements and rated criteria has been completed.

2.5 Stage IV – Ranking and Contract Negotiations

2.5.1 Ranking of Proponents

After the completion of Stage III, all scores from Stage II and Stage III will be added together and the proponents will be ranked based on their total scores. The top-ranked proponent will receive a written invitation to enter into direct contract negotiations to finalize the agreement with the City. In the event of a tie, the selected proponent will be the proponent selected by way of coin toss.

2.5.2 Contract Negotiation Process

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the RFP Process (Part 3) and will not constitute a legally binding offer to enter into a contract on the part of the

City or the proponent, and there will be no legally binding relationship created with any proponent prior to the execution of a written agreement. The terms and conditions found in the Form of Agreement (Appendix A) are to form the basis for commencing negotiations between the City and the selected proponent. Negotiations may include requests by the City for supplementary information from the proponent to verify, clarify, or supplement the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the City for improved pricing or performance terms from the proponent.

2.5.3 Time Period for Negotiations

The City intends to conclude negotiations and finalize the agreement with the top-ranked proponent during the Contract Negotiation Period, commencing from the date the City invites the top-ranked proponent to enter negotiations. A proponent invited to enter into direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D), provide requested information in a timely fashion and conduct its negotiations expeditiously.

2.5.4 Failure to Enter into Agreement

If the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D) are not satisfied or if the parties cannot conclude negotiations and finalize the agreement for the Deliverables within the Contract Negotiation Period, the City may discontinue negotiations with the top-ranked proponent and may invite the next-best-ranked proponent to enter into negotiations. This process will continue until an agreement is finalized, until there are no more proponents remaining that are eligible for negotiations, or until the City elects to cancel the RFP process.

2.5.5 Notification of Negotiation Status

Other proponents that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked proponent.

[End of Part 2]

PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS

3.1 General Information and Instructions

3.1.1 Proponents to Follow Instructions

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP.

3.1.2 Proposals in English

All proposals are to be in English only.

3.1.3 No Incorporation by Reference

The entire content of the proponent's proposal should be submitted in a fixed format, and the content of websites or other external documents referred to in the proponent's proposal but not attached will not be considered to form part of its proposal.

3.1.4 Past Performance

In the evaluation process, the City may consider the proponent's past performance or conduct on previous contracts with the City or other institutions.

3.1.5 Information in RFP Only an Estimate

The City and its advisers make no representation, warranty, or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only, and are for the sole purpose of indicating to proponents the general scale and scope of the Deliverables. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

3.1.6 Proponents to Bear Their Own Costs

The proponent will bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews or demonstrations.

3.1.7 Proposal to be Retained by the City

The City will not return the proposal or any accompanying documentation submitted by a proponent.

3.1.8 No Guarantee of Volume of Work or Exclusivity of Contract

The City makes no guarantee of the value or volume of work to be assigned to the successful proponent. The agreement to be negotiated with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The City may contract with others for goods and services the same as or similar to the Deliverables or may obtain such goods and services internally.

3.2 Communication after Issuance of RFP

3.2.1 Proponents to Review RFP

Proponents should promptly examine all of the documents comprising this RFP and may direct questions or seek additional information in writing by email to the RFP Contact on or before the Deadline for Questions. No such communications are to be directed to anyone other than the RFP Contact. The City is under no obligation to provide additional information, and the City is not responsible for any information provided by or obtained from any source other than the RFP Contact. It is the responsibility of the proponent to seek clarification from the RFP Contact on any matter it considers to be unclear. The City is not responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

3.2.2 All New Information to Proponents by Way of Addenda

This RFP may be amended only by addendum in accordance with this section. If the City, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addendum. Each addendum forms an integral part of this RFP and may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the City.

3.2.3 Post-Deadline Addenda and Extension of Submission Deadline

If the City determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, the City may extend the Submission Deadline for a reasonable period of time.

3.2.4 Verify, Clarify, and Supplement

When evaluating proposals, the City may request further information from the proponent or third parties in order to verify, clarify, or supplement the information provided in the proponent's proposal, including but not limited to clarification with respect to whether a proposal meets the mandatory technical requirements set out in Section D of the RFP Particulars (Appendix D). The City may revisit, re-evaluate, and rescore the proponent's response or ranking on the basis of any such information.

3.3 Notification and Debriefing

3.3.1 Notification to Other Proponents

Once an agreement is executed by the City and a proponent, the other proponents may be notified directly in writing and will be notified by public posting of the outcome of the procurement process.

3.3.2 Debriefing

Proponents may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the RFP Contact and must be made within sixty (60) days of such notification.

3.3.3 Procurement Protest Procedure

If a proponent wishes to challenge the RFP process, it should provide written notice to the Manager of Procurement at purchasing@kamloops.ca in accordance with applicable procurement protest procedures.

3.4 Conflict of Interest and Prohibited Conduct

3.4.1 Conflict of Interest

For the purposes of this RFP, the term “Conflict of Interest” includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the City in the preparation of its proposal that is not available to other proponents; (ii) having been involved in the development of the RFP, including having provided advice or assistance in the development of the RFP; (iii) receiving advice or assistance in the preparation of its response from any individual or entity that was involved in the development of the RFP; (iv) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process); or (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair; or
- (b) in relation to the performance of its contractual obligations under a contract for the Deliverables, the proponent’s other commitments, relationships, or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

3.4.2 Disqualification for Conflict of Interest

The City may disqualify a proponent for any conduct, situation, or circumstances, determined by the City, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

3.4.3 Disqualification for Prohibited Conduct

The City may disqualify a proponent, rescind an invitation to negotiate or terminate a contract subsequently entered into if the City determines that the proponent has engaged in any conduct prohibited by this RFP.

3.4.4 Prohibited Proponent Communications

Proponents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form (Appendix B).

3.4.5 Proponent Not to Communicate with Media

Proponents must not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered into pursuant to this RFP without first obtaining the written permission of the RFP Contact.

3.4.6 No Lobbying

Proponents must not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful proponent(s).

3.4.7 Illegal or Unethical Conduct

Proponents must not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion, or collusion. Proponents must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials, or other representatives of the City; deceitfulness; submitting proposals containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.

3.4.8 Past Performance or Past Conduct

The City may prohibit a consultant from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the consultant to honour its submitted pricing or other commitments; or
- (c) any conduct, situation or circumstance determined by the City, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

3.4.9 FIN 5-7 Procurement – Supplier Code of Conduct Policy (Appendix E)

The City requires its consultants to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any consultant that has engaged in illegal or unethical bidding practices, has an undisclosed actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices.

Consultants are responsible for employees, representatives, agents, or subcontractors acting on their behalf to conduct themselves in accordance with FIN 5-7 Procurement – Supplier Code of Conduct Policy.

3.5 Confidential Information

3.5.1 Confidential Information of the City

All information provided by or obtained from the City in any form in connection with this RFP either before or after the issuance of this RFP

- (a) is the sole property of the City and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from the City; and
- (d) must be returned by the proponent to the City immediately upon the request of the City.

3.5.2 Confidential Information of Proponent

A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The confidentiality of such information will be maintained by the City, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by the City to advise or assist with the RFP process, including the evaluation of proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the RFP Contact.

3.6 Procurement Process Non-Binding

3.6.1 No Contract A and No Claims

This procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) this RFP will not give rise to any Contract A–based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (b) neither the proponent nor the City will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract, or failure to honour a proposal submitted in response to this RFP.

3.6.2 No Contract until Execution of Written Agreement

This RFP process is intended to identify prospective consultants for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service will be created between the proponent and the City by this RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

3.6.3 Non-Binding Price Estimates

While the pricing information provided in proposals will be non-binding prior to the execution of a written agreement, such information will be assessed during the evaluation of the proposals and the ranking of

the proponents. Any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the City to enter into an agreement for the Deliverables.

3.6.4 Cancellation

The City may cancel or amend the RFP process without liability at any time.

3.7 Governing Law and Interpretation

These Terms and Conditions of the RFP Process (Part 3):

- (a) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (b) are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (c) are to be governed by and construed in accordance with the laws of the province of British Columbia and the federal laws of Canada applicable therein.

[End of Part 3]

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ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“Authority” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and **“Authorities”** means all such authorities, agencies, bodies and departments;

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the City has elected to be closed for business;

“City Representative” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“Confidential City Information” means all information of the City that is of a confidential nature, including all confidential information in the custody or control of the City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Consultant in connection with the Contract. For greater certainty, Confidential City Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the City, the Consultant or any third-party; (ii) all information (including Personal Information) that the City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Consultant of any duty of confidentiality owed by the Consultant to the City or to any third-party; (ii) the Consultant can demonstrate to have been rightfully obtained by the Consultant, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Consultant free of any obligation of confidence; (iii) the Consultant can demonstrate to have been rightfully known to or in the possession of the Consultant at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Consultant; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Consultant had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to (i) having access to information that is confidential to the City and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the Consultant’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be

seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

“Deliverables” means everything developed for or provided to the City in the course of performing under the Contract or agreed to be provided to the City under the Contract by the Consultant or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, Schedule 1, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“Effective Date” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act*;

“Indemnified Parties” means the City and the City’s officials, directors, officers, agents, employees and volunteers;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Consultant establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the City;

“Intellectual Property” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

“Newly Created Intellectual Property” means any Intellectual Property created by the Consultant in the course of performance of its obligations under the Contract;

“Person” if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

“Personal Information” means recorded information about an identifiable individual or that may identify an individual;

“Proceeding” means any action, claim, demand, lawsuit, or other proceeding;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“Record” means any recorded information, including any Personal Information, in any form: (a) provided by the City to the Consultant, or provided by the Consultant to the City, for the purposes of the Contract; or (b) created by the Consultant in the performance of the Contract;

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

“Consultant Representative” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“Consultant’s Intellectual Property” means Intellectual Property owned by the Consultant prior to its performance under the Contract or created by the Consultant during the Term of the Contract independently of the performance of its obligations under the Contract;

“Term” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions); and

“Third-Party Intellectual Property” means any Intellectual Property owned by a party other than the City or the Consultant.

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from the City

Notwithstanding anything else in the Contract, any express or implied reference to the City providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City beyond the obligation to pay the Rates in respect of Deliverables accepted by the City, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

2.02 Entire Contract

The Contract embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.

2.03 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.04 Failure to Enforce Not a Waiver

Any failure by the City to insist in one or more instances upon strict performance by the Consultant of any of the terms or conditions of the Contract shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions, and the obligations of the Consultant with respect to such performance shall continue in full force and effect.

2.05 **Changes by Written Amendment Only**

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

2.06 **Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

2.07 **Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the City Representative and the Consultant Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.08 **Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the Province of **British Columbia** and the federal laws of Canada applicable therein.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN CITY AND CONSULTANT

3.01 **Consultant's Power to Contract**

The Consultant represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the City under the Contract.

3.02 **Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 **Consultant Not a Partner, Agent or Employee**

The Consultant shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The Consultant shall not hold itself out as an agent, partner or employee of the City. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the City and the Consultant or any of the Consultant's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

3.04 Non-Exclusive Contract, Work Volumes

The Consultant acknowledges that it is providing the Deliverables to the City on a non-exclusive basis. The City makes no representation regarding the volume of goods and services required under the Contract. The City reserves the right to contract with other parties for the same or similar goods and services as those provided by the Consultant and reserves the right to obtain the same or similar goods and services internally.

3.05 Responsibility of Consultant

The Consultant agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Consultant's liabilities under the Contract and under the general application of law. The Consultant shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Consultant pursuant to the Contract or otherwise at law or in equity, the Consultant shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above-mentioned individuals and entities. This paragraph shall survive the termination or expiry of the Contract.

3.06 No Subcontracting or Assignment

The Consultant shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. Without limiting the generality of the conditions which the City may require prior to consenting to the Consultant's use of a subcontractor, every contract entered into by the Consultant with a subcontractor shall adopt all of the terms and conditions of the Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the City.

3.07 Duty to Disclose Change of Control

In the event that the Consultant undergoes a change in control the Consultant shall immediately disclose such change in control to the City and shall comply with any terms and conditions subsequently prescribed by the City resulting from the disclosure.

3.08 Conflict of Interest

The Consultant shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the Contract upon giving notice to the Consultant where: (a) the Consultant fails to disclose an actual or potential

Conflict of Interest; (b) the Consultant fails to comply with any requirements prescribed by the City to resolve a Conflict of Interest; or (c) the Consultant's Conflict of Interest cannot be resolved to the satisfaction of the City. This paragraph shall survive any termination or expiry of the Contract.

3.09 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

1.10 FIN 5-7 Procurement Consultant Code of Conduct

The Consultant shall act with integrity and conduct business in an ethical manner. The City may refuse to do business with the Consultant if has engaged in illegal or unethical bidding practices, has an undisclosed actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices.

The Consultant is responsible for their employees, representatives, agents, or subcontractors acting on their behalf to conduct themselves in accordance with FIN 5-7 Procurement – Consultant Code of Conduct Policy⁴.

ARTICLE 4 – PERFORMANCE BY CONSULTANT

4.01 Commencement of Performance

The Consultant shall commence performance upon receipt of written instructions from the City.

4.02 Deliverables Warranty

The Consultant hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the Consultant shall forthwith make the necessary corrections at its own expense as specified by the City in a rectification notice.

4.03 Health and Safety

Without limiting the generality of section 4.02, the Consultant warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws, regulations and standards in relation to the performance of the Consultant's obligations under the Contract. The Consultant shall provide the City with evidence of the Consultant's compliance with this section upon request by the City.

⁴ https://www.kamloops.ca/sites/default/files/docs/city-services/324686pdf_fin-5-7_procurement_-_supplier_code_of_conduct_pol.pdf

The Consultant must keep the following current and provide a copy to the City annually:

- a. WorkSafeBC Clearance Letter,
- b. City of Kamloops business licence,
- c. Insurance acceptable to the City of Kamloops,
- d. An up-to-date copy of your Occupational Health and Safety Program acceptable to the City of Kamloops.
 - i. For companies with more than 20 employees the City will require a copy of the Consultant's Occupational Health and Safety Program for review to ensure that it meets the criteria set by the WorkSafeBC Regulation 3.3. The manual must also contain safe work procedures regarding the type of work the Consultant is being hired to do.
 - ii. For companies with less than 20 employees there must be proof that employees have been properly trained in the work they have been hired to do and evidence there is a commitment to safety by the Consultant.

4.04 **Shipment of Goods**

To the extent that the Deliverables include the shipment of goods to the City, all such goods shall be delivered F.O.B. Destination, Freight Prepaid to the City's place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the City, unless specifically agreed by the City in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Consultant until the Deliverables are received by the City. Receipt of the Deliverables at the City's location does not constitute acceptance of the Deliverables by the City. The Deliverables are subject to the City's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the City, are inadequately provided or require corrections, the Consultant shall make the necessary corrections at its own expense as specified by the City in a rectification notice.

4.05 **Use and Access Restrictions**

The Consultant acknowledges that unless it obtains specific written preauthorization from the City, any access to or use of the City property, technology or information that is not necessary for the performance of its contractual obligations with the City is strictly prohibited. The Consultant further acknowledges that the City may monitor the Consultant to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Consultant.

4.06 **Notification by Consultant of Discrepancies**

During the Term, the Consultant shall advise the City promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.07 **Change Requests**

The City may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Consultant shall comply with all reasonable City change

requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Consultant is unable to comply with the change request, it shall promptly notify the City and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

4.08 Pricing for Requested Changes

Where a City change request includes an increase in the scope of the previously contemplated Deliverables, the City shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Consultant shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the City and the Consultant within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

4.09 Performance by Specified Individuals Only

The Consultant agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Consultant shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the City, which may not arbitrarily or unreasonably be withheld. Should the Consultant require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Consultant shall not claim fees for any replacement individual greater than the Rates established under the Contract.

4.10 Time

Time is of the essence of the Contract.

4.11 Rights and Remedies Not Limited to Contract

The express rights and remedies of the City and obligations of the Consultant set out in the Contract are in addition to and shall not limit any other rights and remedies available to the City or any other obligations of the Consultant at law or in equity.

ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Contract Rates

The City shall, subject to the Consultant’s compliance with the provisions of the Contract, pay the Consultant for the Deliverables provided at the Rates established under the Contract.

5.02 Hold Back or Set Off

The City may hold back payment or set off against payment if, in the opinion of the City acting reasonably, the Consultant has failed to comply with any requirements of the Contract.

5.03 No Expenses or Additional Charges

There shall be no other charges payable by the City under the Contract to the Consultant other than the Rates established under the Contract.

5.04 Payment of Taxes and Duties

Unless otherwise stated, the Consultant shall pay all applicable taxes, including excise taxes incurred by or on the Consultant's behalf with respect to the Contract.

5.05 Withholding Tax

The City shall withhold any applicable withholding tax from amounts due and owing to the Consultant under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

5.06 Interest on Late Payment

If a payment is in arrears through no fault of the Consultant, the interest charged by the Consultant, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.

5.07 Document Retention and Audit

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Consultant shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the expiry or termination of the Contract, the Consultant shall permit and assist the City in conducting audits of the operations of the Consultant to verify (a) and (b) above. The City shall provide the Consultant with at least ten (10) Business Days prior notice of its requirement for such audit. The Consultant's obligations under this paragraph shall survive any termination or expiry of the Contract.

ARTICLE 6 – CONFIDENTIALITY

6.01 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of the City. The City may, in its sole discretion, acknowledge the Deliverables provided by the Consultant in any such publicity or publication. The Consultant shall not make use of its association with the City without the prior written consent of the City. Without limiting the generality of this paragraph, the Consultant shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the City.

6.02 Confidential City Information

During and following the Term, the Consultant shall: (a) keep all Confidential City Information confidential and secure; (b) limit the disclosure of Confidential City Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential City Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the City and (ii) in respect of any Confidential City Information about any third-party, the written consent of such third-party; (d) provide Confidential City Information to the City

on demand; and (e) return all Confidential City Information to the City on or before the expiry or termination of the Contract, with no copy or portion kept by the Consultant.

6.03 Restrictions on Copying

The Consultant shall not copy any Confidential City Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Consultant, the Consultant must reproduce all notices which appear on the original.

6.04 Notice of Breach

The Consultant shall notify the City promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of Confidential City Information.

6.05 Injunctive and Other Relief

The Consultant acknowledges that breach of any provisions of this Article may cause irreparable harm to the City or to any third-party to whom the City owes a duty of confidence, and that the injury to the City or to any third-party may be difficult to calculate and inadequately compensable in damages. The Consultant agrees that the City is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

6.06 Notice and Protective Order

If the Consultant or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any Confidential City Information, the Consultant will provide the City with prompt notice to that effect in order to allow the City to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the City and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Consultant will disclose only that portion of Confidential City Information which the Consultant is legally compelled to disclose, only to such person or persons to which the Consultant is legally compelled to disclose, and the Consultant shall provide notice to each such recipient (in co-operation with legal counsel for the City) that such Confidential City Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential City Information subject to those terms and conditions.

6.07 Records and Legislative Compliance

The Consultant and the City acknowledge and agree that FOIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Consultant agrees (a) to keep Records secure; (b) to provide Records to the City within seven (7) calendar days of being directed to do so by the City for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the City determines, in its sole discretion, that access is permitted under FOIPPA and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the City; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to

restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a City representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the City would improve the adequacy and effectiveness of the Consultant's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the City may be disclosed by the City where it is obligated to do so under FOIPPA, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

6.08 Survival

The provisions of this Article shall survive any termination or expiry of the Contract.

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 City Intellectual Property

The Consultant agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the City to the Consultant shall remain the sole property of the City at all times.

7.02 No Use of the City Insignia

The Consultant shall not use any insignia or logo of the City except where required to provide the Deliverables, and only if it has received the prior written permission of the City to do so.

7.03 Ownership of Intellectual Property

The City shall be the sole owner of any Newly Created Intellectual Property. The Consultant irrevocably assigns to and in favour of the City and the City accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the City all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Consultant's Intellectual Property, the Consultant grants to the City a license to use that Consultant Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Consultant by the City.

7.04 Consultant's Grant of License

For those parts of the Deliverables that are Consultant Intellectual Property, the Consultant grants to the City a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the City.

7.05 No Restrictive Material in Deliverables

The Consultant shall not incorporate into any Deliverables anything that would restrict the right of the City to modify, further develop or otherwise use the Deliverables in any way that the City deems necessary, or that would prevent the City from entering into any contract with any

contractor other than the Consultant for the modification, further development of or other use of the Deliverables.

7.06 Third-Party Intellectual Property

The Consultant represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Consultant further represents and warrants that it has obtained assurances with respect to any Consultant Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

7.07 Survival

The obligations contained in this Article shall survive the termination or expiry of the Contract.

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 Consultant Indemnity

The Consultant hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Consultant, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Consultant's obligations under, or otherwise in connection with, the Contract. The Consultant further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the City, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 Insurance

The Consultant hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Consultant would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$5,000,000** per occurrence and including products and completed operations liability. The policy is to include the following:
 - the City as an additional insured with respect to liability arising in the course of performance of the Consultant's obligations under, or otherwise in connection with, the Contract
 - contractual liability coverage
 - cross-liability and severability of interests clause

- employers liability coverage
- 30 day written notice of cancellation, termination or material change
- tenants legal liability coverage (if applicable and with suitable sub-limits)
- non-owned automobile coverage with blanket contractual coverage for hired automobiles

(b) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in the Contract, in the amount of not less than \$1,000,000 per claim and in the annual aggregate.

8.03 Proof of Insurance

The Consultant shall provide the City with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage. The Consultant shall provide the City with renewal replacements on or before the expiry of any such insurance. Upon the request of the City, a copy of each insurance policy shall be made available to it. The Consultant shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the City and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

8.04 Workplace Safety and Insurance

The Consultant warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable will provide proof of valid coverage by means of a current clearance certificate to the City upon request. The Consultant covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under all applicable workplace safety and insurance laws and regulations during the Term. The Consultant further agrees to indemnify the City for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Consultant's failure to comply with any applicable workplace safety and insurance laws or related to the Consultant's status with any workplace safety and insurance board or body.

ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

The City may immediately terminate the Contract upon giving notice to the Consultant where (a) the Consultant is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Consultant's insolvency; (b) the Consultant breaches any provision in Article 6 (Confidentiality); (c) the Consultant breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between City and Consultant); (d) the Consultant, prior to or after entering into the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the City; (e) the Consultant undergoes a change in control which adversely affects the Consultant's ability to satisfy some or all of its obligations under the Contract; (f) the Consultant subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the City; or (g) the Consultant's acts or omissions constitute a substantial failure of performance and the above

rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

9.02 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the Consultant fails to comply with any of its obligations under the Contract, the City may issue a rectification notice to the Consultant setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Consultant shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the City. If the Consultant fails to either comply with that rectification notice or provide a satisfactory rectification plan, the City may immediately terminate the Contract. Where the Consultant has been given a prior rectification notice, the same subsequent type of non-compliance by the Consultant shall allow the City to immediately terminate the Contract.

9.03 Termination on Notice

The City reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Consultant.

9.04 Consultant's Obligations on Termination

On termination of the Contract, the Consultant shall, in addition to its other obligations under the Contract and at law (a) at the request of the City, provide the City with any completed or partially completed Deliverables; (b) provide the City with a report detailing: (i) the current state of the provision of Deliverables by the Consultant at the date of termination; and (ii) any other information requested by the City pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the City to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the City, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

9.05 Consultant's Payment Upon Termination

On termination of the Contract, the City shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Consultant of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the City may hold back payment or set off against any payments owed if the Consultant fails to comply with its obligations on termination.

9.06 Termination in Addition to Other Rights

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the City under the Contract, at law or in equity.

9.07 Expiry and Extension of Contract

The Contract shall expire on the original Expiry Date, unless the City exercises its option to extend the Contract, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract. The option shall be exercisable by the City giving notice to the Consultant not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

9.08 Evaluation of Performance

The Consultant will be subject to a performance evaluation during the course of, and/or at the conclusion of the assignment.

In the event that the Consultant fails to perform its obligations under the Contract, the City may, in addition to any and all legal and equitable remedies available to it, place the Consultant on probation or suspend the Consultant from participating in future procurement opportunities.

APPENDIX B – SUBMISSION FORM

A. Proponent Information

| | |
|--|--|
| Please fill out the following form, naming one person to be the proponent’s contact for the RFP process and for any clarifications or communication that might be necessary. | |
| Full Legal Name of Proponent: | |
| Any Other Relevant Name under which Proponent Carries on Business: | |
| Street Address: | |
| City, Province/State: | |
| Postal Code: | |
| Phone Number: | |
| Company Website (if any): | |
| Proponent Contact Name and Title: | |
| Proponent Contact Phone: | |
| Proponent Contact Email: | |

B. Acknowledgment of Non-Binding Procurement Process

The proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Contract-A bidding process contract), and that no legal relationship or obligation regarding the procurement of any good or service will be created between the City and the proponent unless and until the City and the proponent execute a written agreement for the Deliverables.

C. Ability to Provide Deliverables

The proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required. The proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in its proposal.

D. Non-Binding Pricing

The proponent has submitted its pricing in accordance with the instructions in the RFP and in Pricing (Appendix C) in particular. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work.

E. Addenda

The proponent is deemed to have read and taken into account all addenda issued by the City prior to the Deadline for Issuing Addenda.

F. No Prohibited Conduct

The proponent declares that it has not engaged in any conduct prohibited by this RFP, as defined in FIN 5-7 Procurement – Consultant Code of Conduct Policy (Appendix E).

G. Conflict of Interest

The proponent must declare all potential Conflicts of Interest, as defined in section 3.4.1 of this RFP.

This includes disclosing the names and all pertinent details of all individuals (employees, advisers, or individuals acting in any other capacity) who:

- 1. have family members⁵ currently employed by the City,
- 2. participated in the preparation of the proposal; AND/OR
- 3. were employees of the City within twelve (12) months prior to the Submission Deadline.

If the box below is left blank, the proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its proposal; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

Otherwise, if the statement below applies, check the box.

- The proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the proponent declares an actual or potential Conflict of Interest by marking the box above, the proponent must set out below details of the actual or potential Conflict of Interest:

⁵ As defined in the Employment Standards Act of BC: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/137_2019

H. Disclosure of Information

The proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or by order of a court or tribunal. The proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the City to the advisers retained by the City to advise or assist with the RFP process, including with respect to the evaluation of this proposal.

Signature of Proponent Representative

Name of Proponent Representative

Title of Proponent Representative

Date

I have the authority to bind the proponent.

APPENDIX C – PRICING

A. Instructions on How to Provide Pricing

1. Proponents should provide the information requested under section 3 below.
2. Rates must be provided in Canadian funds, inclusive of all applicable duties and taxes except for PST and GST, which should be itemized separately.
3. Rates quoted by the proponent must be all-inclusive and must include all labour and material costs, all travel and carriage costs, all insurance costs, all costs of delivery, all costs of installation and set-up, including any pre-delivery inspection charges, and all other overhead, including any fees or other charges required by law.

B. Evaluation of Pricing

Pricing is worth 25 points of the total score.

Each proponent will receive a percentage of the total possible points allocated to price for the particular category it has submitted a proposal for, which will be calculated in accordance with the following formula:

$$\text{lowest price} \div \text{proponent's price} \times \text{weighting} = \text{proponent's pricing points}$$

C. Required Pricing Information

1. Provide an upset price for the Deliverables included in your proposal:
 - a. Enter this value into Bonfire
2. Provide a list of staff and hourly rates should correspond to the staff actively working on the Project.
3. Provide a breakdown of person-hour estimates for the work activities.

APPENDIX D – RFP PARTICULARS

A. THE DELIVERABLES

The City is relying on the Proponent to detail the PCS that the Proponent determines as necessary to achieve the completion of the Project. Such services include, but not necessarily be limited to, the following deliverables:

1. Transportation and Land-Use High Level Review

- a. Consider anticipated future needs for the second crossing, traffic demands, travel desire lines, and multi-modal considerations at a high level. Comment on how this aligns with the existing OCP / TMP and how it would impact future updates to the documents in terms of long-range land-use and transportation planning.
- b. Conduct the following supporting studies to help determine **feasible alignment options** (maximum four) for both the bridge and approaching routes:
 - Environmental / Archaeological Assessment
 - Review of Hydrotechnical Data or Studies
 - Geotechnical Review
 - Navigation Protection Act
 - Impacts to Kamloops Airport

Including the following considerations: existing road network connectivity and alignment, assess new potential routes and alignments, to connect to the provincial highway network directly without requiring truck traffic to go through the City Centre.

c. Traffic Forecasts and Required Laning Study

Perform modelling analysis to determine the impacts to the transportation network. Including an update to the recently updated EMME model. Based on results from the EMME model analysis, comment on the need to provide the Hillside Drive Extension from a vehicle capacity standpoint assuming Singh Street Crossing is not a future road connection.

Confirm the functional layout of the new crossing including the number of vehicle lanes, active transportation facilities, accommodation of transit, and opportunities. Include modification of the function and capacity of the cross sections to adapt to future mobility demands.

d. Conceptual Designs

Using data including City Lidar, develop a conceptual plan and profiles of the bridge crossing options including the approaching routes and bridge. Include a typical cross section of the bridge, span configuration, substructure, superstructure and constructability of the options.

Based on the conceptual design, prepare a property acquisition drawing for the City to start acquiring land to accommodate the future crossing infrastructure.

e. Class C Cost Estimate

Based on the high level conceptual designs, provide Class C planning level cost estimates for each option.

f. Public Engagement and Workshops with Stakeholders

Provide material and assist with one public engagement session. Participate in stakeholder meetings including but not limited to: BC Ministry of Transportation and Infrastructure (MoTI), the Insurance Corporation of BC (ICBC), and Kamloops Airport (YKA).

g. Multiple Account Evaluation

Perform a Multiple Account Evaluation (MAE) for the four options to narrow down the most suitable alignment option. Accounts to be considered but not limited to include:

- Transportation / Mobility / Truck Route
- Public Preference
- Environmental Impact
- Social / Community Impacts
- Consistency with OCP / TMP
- Archaeological Impacts
- Cost Estimate

h. Reporting and Documentation

Provision of the following:

- Ongoing progress meetings with the City
- Draft report that summarizes all background information, assumptions, analysis, key findings. Identify a preferred option.
- Assist staff with materials to present to council
- Prepare Final Report. To be stamped and sealed by a senior Professional Engineer upon acceptance from the City

B. MATERIAL DISCLOSURES

Not applicable.

C. MANDATORY SUBMISSION REQUIREMENTS

1. Submission Form (Appendix B)

Each proposal must include a Submission Form (Appendix B) completed and signed by an authorized representative of the proponent.

2. Pricing (Appendix C)

Each proposal must include pricing information that complies with the instructions contained in Pricing (Appendix C).

D. MANDATORY TECHNICAL REQUIREMENTS

Not applicable

E. PRE-CONDITIONS OF AWARD

The City Contractors Coordination Program requires that before a Contractor can be hired to do the Work for the City, the following information must be on file:

1. a copy of your current WorkSafeBC clearance letter.
2. a copy of your current City Business Licence.
3. a copy of your insurance acceptable to the City.
4. an up-to-date copy of your Occupational Health and Safety Program acceptable to the City.
5. for companies with more than 20 employees the City will require a copy of the Contractor's Occupational Health and Safety Program for review to ensure that it meets the criteria set by the WorkSafeBC Regulation 3.3. The manual must also contain safe work procedures regarding the type of work the Contractor is being hired to do.
6. for companies with less than 20 employees there must be proof that employees have been properly trained in the work they have been hired to do and evidence there is a commitment to safety by the Contractor.

F. RATED CRITERIA

The following sets out the categories, weightings, and descriptions of the rated criteria of the RFP. Proponents who do not meet a minimum threshold score for a category will not proceed to the next stage of the evaluation process.

Table I

| Rated Criteria Category | Weighting (Points) | Minimum Threshold |
|---|--------------------|-------------------|
| 1. Proposal Presentation | 10 | 60 % |
| 2. Experience and Qualifications | 25 | |
| 3. Technical | 25 | |
| 4. Project Management Services | 5 | |
| 5. References | 5 | |
| 6. Sustainability | 5 | |
| Pricing (See Appendix C for details) | 25 | |
| Total Points | 100 | |

1. Proposal Presentation

Proposals should include the information outlined in this section. To facilitate uniformity of presentation and ease of evaluation, the proposals should be clear, concise and address the following all items in Table I.

The proposal should be limited to 12 pages including resumes. The proposal should include following: Experience and Expertise, Technical, Project Management Services, References and Sustainability. Appendix B and Appendix C are not included in the page limit.

2. Experience and Qualifications

- a. Describe your company, include: (5%)
 - i. Length of time company has been in business,
 - ii. Length of time in Professional Consulting Services, conducting multi-disciplinary planning studies and delivering transportation and civil infrastructure projects for clients.
- b. Describe your experience with similar water crossing projects which have been completed for other municipalities and agencies. Include experience with public engagement and workshops with stakeholders. Including experience conducting or coordinating multidisciplinary studies and evaluating options under a Multiple Accounts Evaluation framework (10%)
- c. Indicate the team which would work with the City. Highlight relevant experience and qualifications of team member. Detail how these members will meet the deliverables of the project, especially as this is a multi-disciplinary planning study. (10%)

3. Technical Response

- a. Describe work and schedule, table or chart format is preferred. Provide a detailed work task schedule detailing the timeline for completion for each of the activities. (5%)
- b. Discuss the team's approach to the project tasks and overall project. (15%)
- c. Specify additional products and services provided by your company which may benefit the City. Include value added and innovation. (5%)

4. Project Management Services

- a. Demonstrate how the project management specific to this project will control overall consulting costs and ensure schedules are adhered to. (5%)

5. References

- a. Provide at least three references that your company has provided similar solutions. (5%)

List:

- Customer Name and Title
- Contact position, phone number and email address
- Project(s) date (start, completion, ongoing)
- Specific role of your company in the Project(s)
- Description of Project(s)/Scope
- Relevance in terms of similarity to the City's technical environment deliverables

6. Sustainability

- a. Describe how your company will work with and support the City of Kamloops in meeting their sustainability targets. Please refer to the Sustainable Kamloops Plan for specific details on the City of Kamloops targets. www.kamloops.ca/sustainable. (2%)
- b. Describe what policies, programs, memberships or certifications your company has in place to manage its environmental impact and to become more sustainable. (2%)
- c. Describe how your company works to reduce its greenhouse gas (GHG) emissions. (1%)