



# Corporation of the City of NEW WESTMINSTER

## REQUEST FOR PROPOSAL

**NWRFP-11-24**

### **Multi-Use Civic Facility Brand Development & Marketing Strategy**

**Closing Time:**

Thursday, August 25, 2011  
3:00 PM, Local Time, Vancouver BC

**Closing Location:**

Main Reception Desk  
City of New Westminster  
511 Royal Avenue,  
New Westminster, BC, V3L 1H9

**Further requests for information :**

**Purchasing: Roy Moulder, SCMP**

Purchasing Manager  
Telephone: 604-527-4525  
Facsimile: 604-527-4509  
Email: [rmoulder@newwestcity.ca](mailto:rmoulder@newwestcity.ca)

<b>COMPANY NAME</b>			
Address:			
(including Postal Code)			
Contact Name:			
Telephone number:			
Facsimile number:		Email:	
<u>Signature:</u> by officer with express authority to enter into contract			Dated

**CORPORATION OF THE CITY OF NEW WESTMINSTER**

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## CORPORATION OF THE CITY OF NEW WESTMINSTER

### 1.0 DEFINITIONS

**“Services Agreement” “Agreement” “Contract”** means the contract for services that will be issued to formalize with the successful Proponent through negotiation process with the City based on the proposal submitted and will incorporate by reference the Request for Proposals, any addenda issued, the Proponent’s response and acceptance by the City.

**“City” “Owner”** means City of New Westminster.

**“Consultant” “Contractor” “Project Manager”** means the person(s) firm(s) or corporation(s) appointed by the City to carry out all duties, obligations, work and services first contemplated in the Request for Proposals and all associated documentation, which may also include mutually agreed revisions subsequent to submission of a Proposal. Both **“Consultant” “Contractor” “Project Manager”** and **“Proponent”** are complimentary in terms of duties, obligations, and responsibilities contemplated at the Request for Proposals stage, through evaluation process, execution, and performance of the Branding Services.

**“Proponent”** means responder to this Request for Proposals.

**“Proposal”** means the submission by the Proponent.

**“RFP” “Request for Proposals”** shall mean and include the complete set of documents, specifications, drawings, and addenda incorporated herein, and included in this Request for Proposals.

**“Services”** means and includes the provision by the successful Proponent of all services, duties and expectations as further described in this RFP.

**“Supply” “Provide”** shall mean supply and pay for, and provide and pay for.

**“Shall” “Must” “Will” “Mandatory”** mean a requirement that must be met.

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### 2.0 PROPOSAL INSTRUCTIONS

One (1) electronic and three (3) hard copies of the Proposal, including one signed and initialled copy of this Request for Proposal, are to be submitted and clearly marked on the outside envelope or box as follows:

#### NWRFP-11-24 Multi-Use Civic Facility Branding and Marketing Strategy

The City of New Westminster will receive Proposals at the location and time indicated on the title page of this Request for Proposal. The clock at the MAIN RECEPTION DESK is the official clock.

It is the Proponent's responsibility to ensure that the City receives its Proposal **prior** to the stated Closing Time. The City does not accept facsimile, electronic mail, or other unsealed submissions. The City **will not consider** late proposals.

It is the responsibility of each proponent to seek clarification on any matter relating to this proposal. Requests for clarification must be made in writing to Roy Moulder, SCMP, Purchasing Manager, City of New Westminster, email: [rmoulder@newwestcity.ca](mailto:rmoulder@newwestcity.ca)

The City will respond to enquiries that it considers relevant to this RFP, which the City will determine in its sole discretion. The City or Purchasing Manager will only respond to those written queries received at least ninety-six (96) hours prior to the Closing Date and Time.

The City's representative will not answer enquiries directly. The City will record enquiries and post replies on the City's website at [City of New Westminster | Bid Opportunities | Business | Request for Bids & Proposals - Open](#) along with any additional information and addenda to this RFP.

It is solely the responsibility of the Proponent to check the City's [website](#) regularly for all information related to this RFP. The Proponent shall acknowledge any Addenda in its Proposal. Failure to acknowledge any Addenda may result in disqualification of the Proponent.

The City accepts no responsibility for any information provided by its employees or agents that is not in writing in accordance with this section. The City cautions Proponents that information obtained from any other source is not official and may be inaccurate.

Proposals shall be irrevocable for a period of sixty (60) from date of closing. Successful Proposals submitted may become part of contracts for services. The Proponent has not nor will not copyright the Proposal and offers it for any purposes of the City.

### 3.0 INTRODUCTION

The City is inviting proposals from qualified and experienced firms or individuals for the provision of professional services to develop a new brand and marketing strategy for the future Multi-Use Civic Facility being constructed in downtown New Westminster.

### 4.0 KEY CONTENT

The following are considered key content that should be included as part of the Proponent's submitted Proposal. The City may not consider any Proposal that does not include all of the key content.

1. a brief outline of the Proponent's understanding of the project;

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Proponent's Initials \_\_\_\_\_

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2. a work plan approach and methodology to successfully accomplish this assignment;
3. the cost to complete the project with an explanation of basis of the fee proposal, including an anticipated level of effort detailing hours on the project;
4. an estimate of project related disbursements and the charge-out schedule for personnel and disbursements in general; the Proponent may not add overhead costs to disbursements;
5. the name(s) of the project team complete with brief resumes.
6. the names of three references of clients who have undertaken similar work. The City may contact the references to assess the performance of the Proponent;
7. a statement of commitment to undertake the project, provide the staff, and support necessary to complete the project on time and on budget. The City is seeking the services of a Consulting Firm that can start immediately upon contract award.

### **5.0 ADDENDA**

- 5.1 Should addenda to the Request for Proposal documents be required for any reason, it is the City's intention not to issue addenda during a period three (3) days prior to the Proposal Closing date and time.
- 5.2 Proponents are responsible for checking the City's website for any addenda or other information relating to this Request for Proposal.
- 5.3 All Addenda become part of the Proposal documents. Proponents are responsible for including any adjustment costs in their Proposal. The Proponent must acknowledge receipt of any Addenda in their Proposal.
- 5.4 Failure to acknowledge any Addenda may result in disqualification of the Proponent.

### **6.0 GENERAL CONDITIONS**

#### **6.1 OWNERSHIP OF PROPOSALS AND FREEDOM OF INFORMATION**

All documents submitted to the City of New Westminster become the property of the City, and as such, the City advises Proponents that parts, or all, of their Proposals may be subject to the provisions of British Columbia's *Freedom of Information and Protection of Privacy Act (FOIPP)* and *Community Charter*. Proponent's who wish to ensure particular parts of their Proposals are protected from disclosure under the FOIPP Act should specifically identify any information or records provided with their proposals that constitute a) trade secrets, and b) that are supplied in confidence, and c) the release of which could significantly harm their competitive position. Information that does not meet all three of the foregoing categories may be subject to disclosure to third parties. Please refer to the Freedom of Information and Protection of Privacy Act for further information.

#### **6.2 CONFIDENTIALITY OF CITY INFORMATION**

Proponents must not disclose any information acquired about the City during this RFP process unless authorized in writing by the City, and this obligation will survive the termination of this RFP process. The awarding of any contract or the reaching of any agreement for the provision of services to the City will not permit any Proponent to advertise a relationship with the City without the City's prior written authorization.

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### **6.3 PROPONENT'S EXPENSES**

Proponents shall be solely responsible for their own expenses in preparing a proposal and subsequent negotiations with the City, if any. If the City elects to reject all proposals, the City will not be liable to any Proponent for any claims, whether for costs or damages incurred by the Proponent in preparing the proposal, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

### **6.4 LIMITATION OF DAMAGES**

Further to the preceding section, the Proponent, by submitting a proposal, agrees that it will not claim damages, for whatever reason, relating to the Contract or in respect of the competitive process, in excess of an amount equivalent to the reasonable costs incurred by the Proponent in preparing its proposal and the Proponent, by submitting a proposal, waives any claim for loss of profits if no Contract is made with the Proponent.

### **6.5 ACCEPTANCE OF PROPOSAL**

The City reserves the right to accept or reject any or all proposals received in response to this RFP. The City is under no obligation to proceed with the RFP and, should it decide to abandon the same, it may, at any time, invite further Proposals for the provision of the Services or enter into discussions or negotiations with any party of the provision of such services.

The City at its sole discretion, at any time, may choose to terminate this RFP process.

No contractual, tort, or other legal obligations are created or imposed on the City, or any other individual, officer or employee of the City by the RFP documentation or by submission or consideration by the City of any Proposal.

### **6.6 THE PROPONENT ACKNOWLEDGES AND AGREES THAT:**

1. Other City officers (except those stated on the Title page), City employees and elected officials will not be contacted directly or indirectly regarding this Request for Proposal;
2. This RFP is not a call for Tenders but is intended to invite Proponents to submit detailed Proposals by which the City's objectives, as stated herein, can be met, following which the City will enter into further negotiations with the successful Proponent for the provision of the required services;
3. The City has the absolute right to accept or reject any Proposal for any reason, to negotiate with any Proponent or Proponents and to evaluate the Proposals in accordance with all information submitted by the Proponents and to abandon the RFP at any stage, for any reason;
4. There shall be no obligation on the part of the City of New Westminster neither to receive further information, whether written or oral, from any Proponent nor to disclose the nature of any Proposal received. If the City accepts a Proposal, following negotiations with the City, the Proponent will be required to execute a formal Contract to provide the services, in a form acceptable to the City;
5. The City of New Westminster shall not be obligated in any manner whatsoever until a written agreement has been duly executed relating to an approved proposal.
6. In submitting a proposal, the proponent acknowledges and agrees that it has read, understood, and agreed to all terms and conditions described in the RFP and they have the necessary experience, skills, and ability to provide effectively the Services.

### **6.7 COMPLIANCE WITH LAWS AND REGULATIONS**

Any successful Proponent must be prepared, at no extra cost, to give all the notices, and obtain all the licenses and permits required to provide the services in the City of New Westminster and to comply with all Federal Provincial and Municipal laws applicable to the services or the performance of the contract, including those of WorkSafe BC.

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### **6.8 CLIENT / SERVICE AGREEMENT**

The successful Proponent will be required to enter into a contract with the City of New Westminster, based on the Draft Consulting Services Agreement (attached as Appendix A).

### **6.9 SUBCONTRACT AND ASSIGNMENT**

In the event of any proposed sub-contracting arrangement (which includes a joint Proposal submitted by two bodies having no formal corporate links), the responsibility for the submission of a Proposal, any subsequent negotiation, and the administration of any resulting contract for service will be that of the first Proponent named on the title page.

Under no circumstances may any part of an executed contract resulting from this Request for Proposal be sub-contracted or assigned to another firm, person, or company without the prior written authorization of the City of New Westminster.

### **6.10 INSURANCE**

The successful Proponent will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout the Contract term, the following insurance with insurers licensed in British Columbia in forms acceptable to the City:

- a) Automobile Liability Insurance with a liability limit of two million dollars - \$2,000,000;
- b) Commercial Comprehensive General Liability Insurance protecting the City, for an amount of two million dollars (\$2,000,000) naming the City as additional insured;

### **6.11 INDEMNITY**

Notwithstanding the provision of insurance coverage by the City, the Consultant hereby agrees to indemnify and save harmless the City, its successor(s), assign(s) and authorized representative(s) and each of them from and against losses, claims, damages, actions, and causes of action (collectively referred to as "claims") that the City may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant, servant(s), agent(s) or employee(s) under this agreement, excepting always that this indemnity does not apply to the extent, if any, to which the claims are caused by errors, omissions or the negligent acts of the City, its other consultant(s), assign(s) and authorized representative(s) or any other person.

### **6.12 CONFLICT OF INTEREST**

By submitting a proposal, the Proponent warrants that neither it nor any of its officers, directors, employees or subcontractors, has any financial or personal relationship or affiliation with any elected official or employee of the City of New Westminster or their immediate families which might in any way be seen or perceived (in the City's sole and unfettered discretion) to create a conflict of interest.

### **6.13 MEDIATION**

The parties agree that, both during and after the performance of their responsibilities under the Service Agreement, each of them shall make bona fide efforts to resolve any disputes arising between them by amicable negotiations and provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate those negotiations.

The parties further agree to use their best efforts to conduct any dispute resolution procedures herein as efficiently and cost effectively as possible. The parties agree to attempt to resolve all disputes arising out of or in connection with this Service Agreement, or in respect of any legal relationship associated with it or from it by mediated negotiation with the assistance of a neutral person appointed by the British

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Columbia International Commercial Arbitration Centre administered under its Commercial Mediation Rules.

If the dispute cannot be settled within thirty (30) calendar days after the mediator has been appointed, or such other period agreed to in writing by the parties, the dispute shall be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its rules. Place of arbitration shall be Vancouver, British Columbia, Canada.

### **6.14 FORCE MAJEURE**

Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the first party's failure to perform, or, delay in performing, any of its obligations contained in this agreement where such failure or delay is caused by circumstances beyond the first party's control or which make performance commercially impractical including but not limited to labour disruptions, fire, flood, storm, or, other natural disaster, accident or governmental regulations, or, restrictions of any kind but excluding financial incapacity.

### **6.15 TERMINATION OR CANCELLATION**

Either party may terminate or cancel the Services contract upon seven (7) days written notice. In the event of such termination or cancellation by either party, the successful Proponent shall, within the 7 day notice period, pass over all files to an alternate firm or firms as instructed by the City and shall, under the authority and direction of the City, provide all information and other information relating to the Services that may either be in privilege or held in files and shall not hinder the process of early settlement of or, resolution to, any outstanding matters concerning the Services.

### **6.16 LAW**

The proposal and any resultant award shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed the proper law thereof.

### **6.17 LITIGATION**

In addition to any other provision of this RFP, the City may, in its absolute discretion, reject a proposal if the Proponent, or any officer or director of the proponent, is or has been engaged directly or indirectly in a legal action against the City, its elected or appointed officers, representatives or employees in relation to any matter.

In determining whether or not to reject a proposal under this section, the City will consider whether the litigation is likely to affect the Proponent's ability to work with the City, its consultants and representatives and whether the City's experience with the proponent indicates a risk the City will incur increased staff and legal costs in the administration of the contract if awarded to the Proponent.

### **6.18 LIVING WAGE POLICY**

Effective January 1, 2011, the City of New Westminster became a "Living Wage Employer". As such, the City has established a Living Wage Policy that requires all firms that are contracted by the City to provide services on City premises, to pay their employees, who perform said service on City property, a Living Wage as calculated by the Living Wage for Families Campaign. The figure for 2011 for the Lower Mainland is \$18.81, assuming no benefits are provided by the employer.

In order to determine an employee's hourly rate with benefits the Living Wage for Families has created a Living Wage Calculator to assist with this determination. Please access the following website to determine your compatibility. <http://livingwageforfamilies.ca/calculator/>



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The City includes in all its competitive bid documents a Declaration referencing the City's expectations with regards to compliance of the Policy. **Completion and submission of the Declaration is required prior to Contract award.** (See Appendix B)

In evaluating submissions, the City intends to rely on the Declaration provided by a Respondent and shall have no obligation or duty to investigate the truthfulness of the Declaration. Please review the City's Living Wage Policy for further information.

[http://www.newwestcity.ca/business/living\\_wage\\_employer.php](http://www.newwestcity.ca/business/living_wage_employer.php)

### **7.0 TERMS OF REFERENCE**

**7.1** The branding project objective is to identify the Multi-use Civic Facility's core characteristics, strengths, and brand messages, and distil them into a memorable brand identity and associated imagery, logo, key messaging, visual presentations, and the like, which will be used consistently throughout all marketing campaigns.

**7.2** The purpose of the branding strategy is to generate greater visibility and attention in target markets for the City's Multi-use Civic Facility. The brand will ensure people are aware of the MUCF's offerings and points of differentiation from competing opportunities.

**7.3** Target audiences include local businesses; the meeting, small convention, wedding and banquet market; a variety of stakeholders, funding partners/sponsors; community user groups; producing and co-presenting partners in the arts and culture sector; tourists; regional and local residents.

### **8.0 BACKGROUND**

**8.1** The City wishes to retain a firm or individual to develop a branding and marketing strategy for the future Multi-Use Civic Facility.

**8.2** This \$35 million civic legacy project will include a convention centre and meeting spaces for banquets of up to 500 people, a 350 seat non-proscenium state-of-the-art theatre, a gift shop, multi-purpose art studios (for both visual and performing arts), multi-purpose meeting rooms and a new home for the City's Museum, Archives and Art Gallery, the Canadian Lacrosse Hall of Fame and administrative support space. It will also have a brand-name restaurant at the northeast corner of Eighth Street and Columbia Street. This project is a major revitalization initiative by the City as part of the [Downtown Community Plan](#).

**8.3** In conjunction with the Multi-Use Civic Facility, the City has partnered with Uptown Property Group who will independently fund and construct an 8 storey, 130,000 square foot LEED Gold Class A office building above the civic podium. The Multi-Use Civic Facility and Office development will be completed by December 2013.

**8.4** For more information about the Multi-Use Civic Facility, please refer to the City's online project information "[Projects On The Go](#)" at [http://www.newwestcity.ca/business/planning\\_development/projects\\_on\\_the\\_go/articles214.php](http://www.newwestcity.ca/business/planning_development/projects_on_the_go/articles214.php).

### **9.0 PROJECT BUDGET**

**9.1** The City has established a project budget of **\$15,000.00** (fifteen thousand dollars) for brand development and marketing strategy work.

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### **10.0 SCOPE OF WORK**

**10.1** Proponents submitting proposals to undertake this work are invited to propose innovative methodologies to achieve these branding and marketing objectives. However, methodologies proposed must describe how the Proponent intends to address the following:

- **Brand Development:** The outcome of the brand development process is the creation of a distinct brand for the City of New Westminster's Multi-use Civic Facility. The aim is that the brand identity will attract targeted businesses, the meeting, small convention and banquet market, a variety of stakeholders, funding partners/sponsors, user groups, producing and co-presenting partners in the arts and culture sector, visitors and residents. Brand development will also analyze whether a single "all-in" brand identity is optimal, or whether there will be sub-brands, which emanate from the parent brand.
- **Marketing Strategy:** The brand development process will help identify the preferred targets, assets and collaterals for strategic marketing opportunities.

**10.2** The Consultant will research and design a brand for the Multi-use Civic Facility. This work will include:

**10.2(a)** Preparing a high level overview introduction to the branding process – defining what a branding process is, what resources are needed, mapping out a direction for City Council and Staff so that there is a common understanding of the process;

**10.2(b)** Developing a project plan, timeline and detailed budget breakdown based on the Project Budget under 9.1;

**10.2(c)** Facilitating and leading a "creative working session" with City Council and staff to develop the important steps of identifying and creating the brand for the Multi-use Civic Facility, with the possibility of working with community focus groups to test the brand;

**10.2(d)** Once the brand identity is established, the Consultant will create the plan regarding how the brand collaterals will be designed and used.

**10.3** The Consultant will manage the design of a logo, creation of the colour palette, development of marketing templates for print and digital media including signage and wayfinding, and the creation of a Graphic Standards Manual.

**10.4** The Consultant will evaluate and rank the target markets upon which the City should focus its marketing and economic development activities.

**10.5** The Consultant will prepare a marketing strategy detailing specific approaches that identify who and where the City will market to, what marketing mediums should be used, and the timing of the marketing activities.

**10.6** The marketing strategy will include marketing initiatives for attracting business opportunities, visitors and residents to the Multi-use Civic Facility.

### **11.0 DELIVERABLES AND SCHEDULE**

**11.1** The consultant will provide:

- a) A new brand for the Multi-Use Civic Facility, including a distinct logo and positioning statement(s);
- b) A colour palette;

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- c) A Graphic Standards Manual
- d) Compile all relevant information for the new brand into a visual identity booklet which will be used to communicate the brand to others;
- e) Designs for building signage, including room signage and wayfinding. This should also include the creation of a budget which will result in a prioritized order of magnitude for the fabrication and installation of signage;
- f) A detailed marketing strategy;
- g) A schedule for the project including level of effort and milestone completion dates.

### **12.0 PRICING**

- 12.1** The Proposal is to include a schedule of effort and pricing based on hourly rates and separated into each phase of work as identified in the Proposal.

### **13.0 PROPOSAL EVALUATION AND SELECTION**

- 13.1** The City of New Westminster will evaluate all submitted valid Proposals. The object of the evaluation and selection process is to identify the Proposal that, in the City's opinion offers the best value for the products and/or services requested.

- 13.2** The City is not obligated to accept the lowest or any Proposal, and may reject all submissions.

- 13.3** The City may award the Contract to the Proponent whose submission, in the City's sole discretion, provides the best overall value to the City for the work. In evaluating the overall value to the City for the work in respect of each submission received, the City, in addition to price, will have in mind its critical goals of obtaining a high quality product in accordance with the schedule established under the Request for Proposal documents.

- 13.4** In evaluating overall value, the City may consider, without limitation, price, qualifications and past experience of Proponents, availability of necessary work forces and other resources, proposed methodology and schedule for completing the work, and the past performance of Proponents on similar projects in respect of quality of work, timeliness of work, costs of contract administration to the owner of the project, and costs associated with claims for extras in respect of the project. In this regard, considerations other than price may be of greater weight in the City's evaluation of submissions received.

- 13.5** The City, in assessing best value:

- a) May not necessarily accept the lowest or any Proposal and may, in its sole discretion, accept any Proposal and may waive any minor informality or irregularity in Proposals received;
- b) Has no obligation to receive further information, whether written or oral, from any Proponent, not to disclose the nature of any Proposals received;
- c) May negotiate changes to the scope of work with any one or more Proponents without having any duty or obligation to advise any other Proponent(s) or to allow them to vary their Proposal(s) due to changes to the scope of work.

- 13.6** Proposals will be evaluated based on the following criteria:

- a) Project Manager;
- b) Project Team;
- c) Experience of Company/Team;

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- d) Proposed Approach;
- e) Completeness of Proposal;
- f) Schedule;
- g) The ability of the Consultant to achieve the scope and deliverables of this project within the allotted budget.

**13.7** Proposed project teams must be capable of completing all identified tasks; the City will not consider partial submissions.

**14.0** **REFERENCES**

**14.1** **NOTE: Failure To Provide References May Result In Disqualification**

**14.2** Proponents shall provide sources for three (3) references (companies for whom work of a similar magnitude and nature completed in the past two (2) years, including the City of New Westminster).

# CORPORATION OF THE CITY OF NEW WESTMINSTER

## APPENDIX A

### DRAFT CONSULTING SERVICES AGREEMENT

This Agreement made the \_\_\_\_ day of \_\_\_\_\_ 2011

**BETWEEN: THE CORPORATION OF THE CITY OF NEW WESTMINSTER**

511 Royal Avenue, New Westminister, BC, V3L 1H9  
(herein called the "City")

**AND: "CONSULTANT"**

Address

(herein called the "Consultant")

The City and the Consultant agree as follows:

#### 1.0 Services

- a) The Consultant agrees to perform Consulting Services (herein called the "Services") as detailed in the Scope of Work and Proposal for *(insert name of work here)* submitted to the City *(insert date here)* (as the same may be amended from time to time by mutual agreement in writing) which form part of this Agreement.
- b) The Consultant's relationship to the City will be that of a prime consultant.
- c) The Consultant represents that he/she is professionally qualified and capable of performing the Services and shall at all times exercise the standards of care, skill and diligence normally provided by a professional specializing in the performance of the Services similar to those contemplated by this Agreement.
- d) The Consultant will not act for any party whose interests are in conflict with those of the City, unless the City provides specific prior waiver of that term in writing, in each instance.
- e) The Consultant warrants that neither it nor any of its officers or directors, or any employee, has any financial or personal relationship or affiliation with any elected official or employee of the Corporation or their immediate families which might in any way be seen or perceived (in the Corporation's sole and unfettered discretion) to create a conflict. If such any conflict of interest arises during this Agreement, the Consultant will immediately inform the City in writing.

#### 2.0 Duration And Termination

##### 2.1 Duration

- a) Services under this Agreement shall commence on *(insert start date)* and be completed in accordance with the schedule in the Scope of Work, subject to further extension as agreed upon by the parties.

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- b) When the Consultant fulfils all requirements under this agreement to the satisfaction of the City, the City shall certify completion in writing.
- c) In the event additional services are required that do not fall within those described in the Scope of Work then the completion date set forth above may be extended by mutual agreement, by a period determined to be sufficient for such additional services. The City may request additional services and the Consultant will provide a written fee quote. The Consultant will not commence additional services until the City has accepted the fee quote.
- d) Should the Consultant breach this agreement, either by abandonment, or by act or omission on his part contravening the terms of this Agreement then this Agreement shall terminate at the time of such abandonment or act or omission and the Consultant shall be paid only for Services performed up to the date of contravention.
- e) Acts or omissions by the Consultant which shall justify termination of this Agreement shall include but not be limited to the following:
  - i) neglect of duties;
  - ii) non-compliance of this Agreement;
  - iii) inability to perform the Services he represented himself as competent to perform;
  - iv) any misrepresentation made or concealment of material fact for the purpose of securing this Agreement.

### 2.2 Termination

- a) The agreement may be terminated by the City as follows:
  - i) For Deficiency or Default – following seven (7) days written notice by the City, the City may at any time terminate this Agreement if the performance of the Consultant is unsatisfactory in the opinion of the City, or if the Consultant breaches any provisions of the Agreement and fails to remedy the same promptly;
  - ii) Without Cause - by providing the Notice in writing to the Consultant's representative (as agreed upon).
- b) Upon termination of the agreement, the City will pay the Consultant for all work performed up to the effective date of termination. All other obligations of the City to the Consultant will terminate upon the termination or expiry of the agreement.

### **3.0 Non-Disclosure Of Information**

- 3.1 The Consultant accepts that any information relating to the business affairs of the City is confidential and that any disclosure by him of any such information to unauthorized persons shall be reason for termination of this Agreement.

### **4.0 Ownership Of Contract Documents And Freedom Of Information**

- 4.1 All documents submitted to the City of New Westminster become the property of the City, and as such, the City advises Consultants that parts, or all, of this contract and documents legally connected to this contract may be subject to the provisions of British Columbia's *Freedom of Information and Protection of Privacy* (FOIPP) and *Community Charter*. Consultants who wish to ensure particular parts of this contract are protected from disclosure under the FOIPP Act should specifically identify any information or records forming part of the contract that constitute (1) trade

## **CORPORATION OF THE CITY OF NEW WESTMINSTER**

secrets, (2) that are supplied in confidence, and (3) the release of which could significantly harm their competitive position. Information that does not meet all three of the foregoing categories may be subject to disclosure to third parties. Please refer to the Freedom of Information and Protection of Privacy Act for further information.

### **5.0 Compliance With Applicable Laws**

- 5.1 The Consultant shall be responsible for giving all notices and complying with all laws, ordinances, rules, regulations, codes, and standards relating to the conduct of the Services and the locations to which the Services are to be performed. The Consultant shall indemnify the City and hold it harmless from and against any claim, penalty, losses, damages, or expenses that might be made, imposed, suffered, or incurred due to an asserted or established violation of any such laws, ordinances, rules, regulations, codes or standards.
- 5.2 The Consultant will register for, obtain, and maintain their own separate WorkSafe BC Insurance Coverage, when required by WorkSafe BC and the *Workers Compensation Act*. When WorkSafe BC Insurance coverage is required, the Consultant will provide proof of Good Standing to the City before the Consultant starts work for the City and again before the City makes final payment to the Consultant.
- 5.3 The Consultant will comply with the WorkSafe BC Occupational Health and Safety Regulation and the *Workers' Compensation (WC) Act*. Any WorkSafe BC violation by the Consultant may be considered a breach of contract resulting in possible termination or suspension of the contract and/or any other actions deemed appropriate at the discretion of the City. Any penalties, sanctions or additional costs levied against the City, because of the actions of the Consultant are the responsibility of the Consultant.

### **6.0 Patent Rights And Royalties**

- 6.1 The Consultant shall save harmless and indemnify the City from and against all claims and proceedings for or in account of infringement or any patent, design right, trademark or name or other protected rights in respect of any practice or process in respect of the Services to be performed.

### **7.0 Advertising And Publicity**

- 7.1 The Consultant shall submit all proposed advertising or publicity by the Consultant referring to the City or performance of the Services to the City for written approval prior to issue.

### **8.0 Relationship**

- 8.1 It is expressly agreed, represented and understood that the parties have entered into an arm's length independent contract for the rendering of the above-mentioned Services and that the Consultant is not an employee, agent or servant, of the City. Further, this Agreement shall not be deemed to constitute or create any partnership, joint venture, master-servant, employer-employee, principal-agent, or any other relationship apart from an independent contractor status providing an independent service for which the City will be invoiced according to the terms and conditions of this Agreement.
- 8.2 The manner and means by which the Consultant conducts its work in order to provide the Services contemplated by this Agreement are under its control.

## CORPORATION OF THE CITY OF NEW WESTMINSTER

### **9.0 Compensation**

- 9.1 In consideration of the performance of the Services, the City shall pay the Consultant the rates provided in the Proposal dated *(enter date here)*, not to exceed *(enter amount)* excluding HST and disbursements, the Maximum Authorized Expenditure. The City may increase the Maximum Authorized Expenditure by issuing a written and signed Change Order. The Consultant will invoice for disbursements separately.
- 9.2 The City retains the right to access and audit the Consultant's files and records related to the City's business with twenty-four (24) hours notice during normal business hours.

### **10.0 Application For Payment**

- 10.1 The Consultant shall submit invoices to the City, attention *(as directed)*, on, or before the tenth (10<sup>th</sup>) day of each month. The City, if it approves the amount of such invoices, shall pay such invoices within thirty (30) days from the invoice date.
- 10.2 Each invoice will show an itemized list of series and costs incurred for each of the tasks outlined in the Scope of Work. In addition to an itemized invoice, each invoice submitted by the Consultant will clearly include: the total amount of services and disbursements and total for each task; the total to date for each task; and the total payable for this invoice.
- 10.3 The Consultant shall attach to each invoice a brief report detailing the work completed to date, work completed during the month covered by the invoice, and work outstanding to complete the Services.
- 10.4 Notwithstanding any to the contrary in this Agreement, the City shall never be obligated to pay the Consultant a greater percentage of total fees and disbursements than the degree of percentage complete of the total Services.
- 10.5 If the city does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Consultant's invoices, for whatever reason, the City shall not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted, until that date that invoice is paid. The City, if it approves the amount of such invoices, shall pay such invoices on or before the twentieth (20<sup>th</sup>) day of the following month.
- 10.6 The Consultant shall keep proper accounts and records of all costs and expenditures forming the basis of any billing to the city, including but not limited to, hours worked, details of all disbursements (including copies of services invoices), and percentage amounts of work completed. The City shall be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Consultant and by such other means as shall be reasonably necessary or advisable.
- 10.7 The Consultant agrees to remit and shall be responsible for all withholding taxes, income taxes, Canada Pension Plan contributions, Employment Insurance deductions, and any other deductions required by the applicable provincial or federal statutes for the Consultant and any of its employees.

### **11.0 Indemnification**



## **CORPORATION OF THE CITY OF NEW WESTMINSTER**

- 11.1 The Consultant, on its own behalf and on behalf of all persons and corporations working by, through or under the Consultant, hereby agrees to indemnify and save harmless the City and its employees, officers, and agents from and against all losses, damages, claims, expenses suits and judgements arising out of, or related to, the provision of the Services by the Consultant that are found to be negligent.
- 11.2 This indemnification shall not apply:
- a) where the losses, damages, claims, expenses, suits or judgements result from the City acting on the advice of, or receiving direct service from, the sub consultants or employees of the sub consultants of the Consultant and without the knowledge or consent of the Consultant; **or**
  - b) to the extent that the City, its employees, officers, or agents were negligent.
- 11.3 This indemnification shall terminate two (2) years from the date of Substantial Performance as certified by the Consultant for the project herein.
- 11.4 Nothing in this article shall derogate from the tort and other duties and liabilities of the Consultant and its sub consultants to the City.

### **12.0 Change To Scope Of Service**

- 12.1 The City may vary at any time the Scope of Work to be provided by the Consultant as part of the Services. In that case and where this Agreement contains a limit as to the maximum fees and disbursements to be paid to the Consultant for all or any part of the Services, such limit or limits shall be adjusted as agreed to by both parties in writing.
- 12.2 Should the Consultant consider that any request or instruction from the City constitutes a change in the scope of the work; the Consultant shall so advise the City within ten (10) days in writing. Without said written advice within the period specified, the City shall not be obligated to make any payments of additional fees to the Consultant.

### **13.0 Insurance**

- 13.1 The Consultant shall provide, maintain and pay for the following insurance which shall be in place with such insurance company or companies and in such form as may be acceptable to the City:
- a) General Liability Insurance of not less than two million dollars (\$2,000,000.00) inclusive any one occurrence;
  - b) Automobile Liability Insurance with a liability limit of two million dollars - \$2,000,000.
- 13.2 Before undertaking any part of the work, the Consultant shall furnish to the City certificates showing that such insurance is in force. Such certificates shall provide that the insurance is non-cancellable except upon thirty (30) days prior written notice to the City.

### **14.0 Drawings And Designs**

- 14.1 The Consultant shall deliver to the City, upon request and at no additional cost to the City, at least one complete set of all drawings, estimates, programs, or other documents produced in connection with the Agreement, on a compact disk (CD) in Adobe (PDF) format, unless otherwise stated.

### **15.0 Authorization To Proceed**

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Proponent's Initials \_\_\_\_\_

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**CORPORATION OF THE CITY OF NEW WESTMINSTER**

15.1 The City will issue a Purchase Order to the Consultant. Issuance of the Purchase Order authorizes the Consultant to proceed with the work.

**16.0 Assignments**

16.1 This Agreement may not be assigned by the Consultant, or to its successor (s) without the express written consent of the City.

**17.0 Engagement Of Other Consultants**

17.1 The City, in any event, reserves the right at its own discretion to engage any consultant, other than that with which it reaches agreement(s), during the term of such agreement(s), if is deemed advantageous or appropriate.

**18.0 Ownership And Copyright**

18.1 All drawings, plans, specifications, reports, and other documents or products produced by the Consultant from the Service shall remain the property of the Consultant.

18.2 The Consultant shall give the City reproducible copies of any such documents and/or products, and these may be used by the City in any manner as part of its operations at its own risk, if the City chooses to use them in any manner other than for the particular purpose for which they were provided.

No term of this Agreement shall be deemed to have been waived by a party unless written waiver from the other party has been first obtained, and no condoning, excusing or overlooking of any default on previous occasions, or any earlier written waiver shall operate as a waiver in respect of a subsequent default.

This Agreement is the whole of the Agreement between the parties and sets forth all the warranties, representations, covenants, promises, terms, and conditions between the parties and there is no other written or oral express or implied terms, conditions, warranties, representations or promises not reduced to writing and set out in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their respective seals to be affixed as of the day and year first above written

**THE AUTHORIZED SIGNATURE FOR  
THE CORPORATION OF THE CITY OF  
NEW WESTMINSTER:**

\_\_\_\_\_  
Name and Title

Accepted and Agreed on

\_\_\_\_, 2011

By

Doc # 180366

Proponent's Initials \_\_\_\_\_

**CORPORATION OF THE CITY OF NEW WESTMINSTER**

**CORPORATE NAME**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name and Office

**CORPORATION OF THE CITY OF NEW WESTMINSTER**

**APPENDIX B**



**DECLARATION – LIVING WAGE EMPLOYER**

I, \_\_\_\_\_ as a duly authorized signing officer of

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_, confirm that all employees and sub-

contractors under our contract with the City as outlined below, are paid not less than the “Living Wage” as calculated by the Living Wage for Families Campaign.

I understand that this requirement extends only to those employees and sub-contractors’ employees that perform work while on City premises and property for durations in excess of one continuous hour per occasion.

I understand that the City will conduct audits if and when notification of breach of this compliance is received by the City. I understand that in the event any breach of this declaration is found to be true, the City reserves the right to cancel its contract without penalty at any time once said authentication of the breach is made.

Contract Name: \_\_\_\_\_

Authorized Signatory:

Dated:

\_\_\_\_\_

\_\_\_\_\_