



# Corporation of the City of NEW WESTMINSTER

## REQUEST FOR PROPOSAL

**NWRFP-15-19**

### Utility Governance and Rate Setting Principles for Sapperton District Energy System

**Closing Time:**

Thursday, July 9th, 2015  
3:00 PM, Local Time, Vancouver BC

**Closing Location:**

Main Information 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: [nwpurchasing@newwestcity.ca](mailto:nwpurchasing@newwestcity.ca)

<b>COMPANY NAME</b>		
Street Address:		
City Province Postal Code		
Contact Name:		
Telephone number:		Fax:
Email		Date:
<u>Signature:</u> by officer with express authority to bind the Proponent to the statements made in the Proposal		

**PLEASE INCLUDE THIS PAGE WITH SUBMISSION**

**CORPORATION OF THE CITY OF NEW WESTMINSTER**

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**CORPORATION OF THE CITY OF NEW WESTMINSTER****1.0 DEFINITIONS**

- 1.1** **“Agreement” “Contract” “Services Agreement”** means a contract that may be issued to formalize with the successful Proponent through a negotiation process with the City based on the proposal submitted and will incorporate by reference the Request for Proposal, any addenda issued, the Proponent’s response and acceptance by the City.
- 1.2** **“City” “Owner”** means City of New Westminster.
- 1.3** **“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 Proposal 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 Proposal stage, through evaluation process, execution, and performance of the consulting Services.
- 1.4** **“Mandatory” “Must” “Shall” “Will”** mean a requirement that must be met.
- 1.5** **“Product”** means, unless the context requires otherwise, any and all articles, goods, materials, supplies, commodities, machinery, equipment and fixtures to be supplied by the Contractor that comprise a portion of the Services, but specifically excluding facilities, equipment and materials used or constructed to carry out the Services that are not incorporated permanently into the Services.
- 1.6** **“Proponent”** means responder to this Request for Proposal.
- 1.7** **“Proposal”** means the submission by the Proponent.
- 1.8** **“Provide” “Supply”** shall mean provide and pay for, and supply and pay for.
- 1.9** **“Request for Proposal” “RFP”** shall mean and include the complete set of documents, specifications, drawings, and addenda incorporated herein, and included in this Request for Proposal.
- 1.10** **“Services”** means and includes the provision by the successful Proponent of all services, duties and expectations as further described in this RFP.

## CORPORATION OF THE CITY OF NEW WESTMINSTER

### 2.0 INTRODUCTION

The City is seeking the services of a firm with expertise in thermal utility rate-setting principles to develop recommendations for a low-carbon district heating system serving the Royal Columbian Hospital and future customers in the Sapperton area. The successful Proponent will work with City staff and the Electrical Utility Commission to develop and review proposed rate setting principles and recommendations on required skillsets for the rate-setting body, with the intent to seek City Council endorsement of rate-setting principles for the proposed thermal utility in 2015.

### 3.0 PROPOSAL INSTRUCTIONS

One (1) electronic and two (2) hard copies (one to be unbound) of the Proposal, are to be submitted and clearly marked on the outside envelope or box as follows:

**NWRFP-15-19**  
**Utility Governance and Rate Setting Principles**  
**– Sapperton District Energy System**  
Attention: Purchasing Manager

The City will receive Proposals at the location and time indicated on the title page of this Request for Proposal.

It is the Proponent's responsibility to ensure that the City receives its Proposal prior to the stated closing time. The City may nevertheless choose to consider late proposals. The City does not accept facsimile, electronic mail, or other unsealed submissions.

Requests for clarification or further information must be made in writing only to the individual identified on the first page of this RFP. The City will respond to enquiries that it, in its sole discretion, considers relevant to this RFP. The City intends to respond only to those relevant written enquiries received at least ninety-six (96) hours prior to the closing time. The City will record enquiries and post written responses on its website at [City of New Westminster | Bid Opportunities | Business | Request for Bids & Proposals - Open](#)

### 4.0 GENERAL CONDITIONS

#### 4.1 **NO CONTRACTUAL OBLIGATIONS AS A RESULT OF RFP OR PROPOSAL**

This is a Request for Proposal, and not a call for tenders or request for binding offers. The City does not intend to enter into contractual relations as part of this RFP process and no contractual obligations whatsoever will arise between the City and any Proponent who submits a Proposal in response to this RFP until and unless the City and a Proponent enter into a formal, written contract for the Proponent to undertake this project. Attached for reference is the City's Draft Consulting Services Agreement (Appendix B).

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

All documents submitted to the City in response to this RFP or as part of any subsequent negotiation will become the property of the City, and will not be returned. Proponents should also be aware that the City is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) ("Act"). A Proponent may stipulate in their Proposal that a portion(s) of their Proposal that contains confidential information and are supplied to the City in confidence. However, under FOIPPA, the City may nevertheless be obligated to disclose all or part of a response pursuant to a request made under the Act, even if the Proponent has stipulated that part of their Proposal is supplied in confidence. The Proponent

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should review Section 21 and other provisions of FOIPPA in order to gain a better understanding of the City's disclosure responsibilities under the Act.

### **4.3 CONFIDENTIALITY OF CITY INFORMATION**

This RFP and all information provided by the City to a Proponent is provided on a confidential basis, and Proponents will not disclose any such information to any person (other than the Proponent's legal advisers) without the City's prior written consent, nor may any Proponent publicize or advertise its involvement with this RFP process or the City in connection therewith without the prior written consent of the City.

### **4.4 PROPONENT'S EXPENSES**

For clarity, Proponents will be solely responsible for their own expenses incurred in preparing a Proposal or in any subsequent negotiations with the City.

### **4.5 CONTACTING CITY REPRESENTATIVES**

Proponents shall not contact City elected officials, officers or employees directly or indirectly regarding this RFP, except as indicated in this RFP.

### **4.6 CONFLICT OF INTEREST**

By submitting a Proposal, the Proponent confirms that neither it nor any of its officers, directors, employees or proposed subcontractors, has any financial or personal relationship or affiliation with any City elected official, officer or employee or their immediate families which might in any way create or be perceived to create a conflict of interest.

If any of the Proponent's officers, directors, employees or subcontractors, has any financial or personal relationship or affiliation with any elected official, officer 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, the Proponent must disclose the relationship in the outset of their Proposal.

### **4.7 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) Commercial Comprehensive General Liability Insurance protecting the City, for an amount of five million dollars (\$5,000,000) naming the City as additional insured;

### **5.0 LIVING WAGE EMPLOYER**

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 2015 for the Lower Mainland is \$20.68, 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://www.livingwageforfamilies.ca/employers/living-wage-calculator/>

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

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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.

### 6.0 **BACKGROUND**

**6.1** Over the past 3 1/2 years, the City has been investigating the technical and economic feasibility of a neighbourhood-scale energy system serving the Sapperton area, in conjunction with the redevelopment of the Royal Columbian Hospital, and with the objective of supplying clean, renewable energy at a competitive price to the consumer. With an established niche in the local market, district energy provides an opportunity for our Electrical Utility to diversify its service offering through the provision of renewable heating (and potentially cooling) energy to future customers. This direction is strongly supported by the Electric Utility Commission Strategic Plan, which sets a goal to proactively embrace opportunities offered by smart micro grids, digital infrastructure and the green economy.

**6.2** City policy supports district energy as a means of significantly reducing greenhouse gas (GHG) emissions, through the introduction of renewable sources of heating for buildings, and as a long-range investment in sustainable infrastructure. Identifying viable district energy opportunities and establishing a supportive policy and regulatory framework is supported by the City's *Envision 2032* sustainability framework and is one of the top implementation priorities from our *Community Energy & Emissions Plan*. With an estimated greenhouse gas reduction of 8,700 to 9,200 tonnes annually at full build-out of the system, the Sapperton District Energy System represents a major step forward in achieving New Westminster's emission reduction target as expressed in our *Official Community Plan*.

**6.3** The context for a district energy system is favourable in the Sapperton area, with the proposed renovation and expansion of the Royal Columbian Hospital (RCH) representing a large potential customer for the system. Because it has a significant annual heating requirement, the hospital functions as an "anchor load" for the system, thereby supporting the overall feasibility of the project. The proposed district energy service area encompasses 50+ hectares, including the RCH site as well as transit-oriented, mixed-use redevelopment in proximity to Braid and Sapperton Skytrain stations – representing a balance of existing and future demand for clean, renewable heating. The combination of energy demand from Royal Columbian Hospital combined with a large mixed-use commercial-residential community at Braid Skytrain station provides the economic rationale for district energy in the Sapperton area, with the added benefit of being able to connect other buildings to the heating network over time.

**6.4** The following two renewable energy options are technically and economically feasible:

1. Sewage heat recovery, in which low-grade heat is extracted from Metro Vancouver's nearby sewer mainline using advanced electric heat pump technology to heat hot water for distribution to buildings; or
2. Wood chip (biomass) heating using clean, chipped wood from building demolition and urban land clearing as fuel to heat hot water in high-efficiency boilers for distribution to buildings.

**6.5** The proposed location for the renewable energy centre is on City-owned land in nearby Brunette Industrial Area. Renewable energy would provide about 70% of the annual heat demand for the system. The remaining 30% of 'peaking' energy, required on the coldest days of the year, could be supplied by natural gas boilers located in the new RCH heating plant, as part of the first phase

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of hospital expansion. The district energy utility would purchase this ‘top-up’ energy at a mutually agreed price from Fraser Health Authority during peak periods.

**6.6** The system is designed to expand its network of distribution piping in stages, supplying energy to the major demand ‘nodes’ at Royal Columbian Hospital and Sapperton Green redevelopment at Braid Station, and then connecting other customers in the neighbourhood in a staged fashion over time.

**6.7** **City of New Westminister Electric Utility Commission:**

The City of New Westminister Electric Utility Commission is the oldest continuously-operating electrical utility in British Columbia. Today, the Electrical Utility distributes electricity to 29,000 residential accounts and 3,000 commercial / business accounts. The Electrical Utility Commission was formed in 2006, under policy direction from City Council. The Commission oversees and guides the management of the utility, setting policy direction, monitoring strategic plans, reviewing the annual budget, monitoring performance of the utility and ensuring compliance with legal and regulatory requirements. The Commission is comprised of three external specialists, the City’s Chief Administrative Officer, the Mayor and one other City Council member. The Commission has also played a key role in funding and supporting the technical and analytical work on the Sapperton District Energy System, providing direction and feedback on project studies and recommendations.

**7.0** **TERMS OF REFERENCE**

**7.1** The City is seeking a consultant with expertise on district energy regulation in BC to develop a recommended rate setting policy for thermal energy provided by the Sapperton District Energy Utility. This will include analysis of rate structure and rate-setting principles from the perspective of:

- a) Rate competitiveness;
- b) Return on investment;
- c) Cost recovery;
- d) Transparency;
- e) Prioritizing low-carbon / carbon-free energy sources; and
- f) Fairness of heating rates between types of users.

**7.2** As a municipally-owned thermal utility, Sapperton DES is exempt from regulatory oversight of the BC Utilities Commission (BCUC). However, unlike the City’s water, sewer, drainage and solid waste services, the regulation and pricing of a heating utility is relatively complex, requiring specific expertise and an appropriate decision-making structure. Recognizing that the City of New Westminister has its own Electric Utility, the City would like to know what modifications (if any) to the current Commission structure are required to provide sufficient regulatory oversight for a thermal heating utility. As such, the consultant will provide recommendations on the following:

- a) Composition of the thermal utility rate-setting body, including qualifications and experience of the rate setting body;
- b) Frequency of thermal utility rate review; and
- c) Proposed thermal rate structure for Sapperton DES and comparison of rate structure to other energy benchmarks.

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### **8.0 SCOPE OF WORK & DELIVERABLES**

**8.1** The scope of work and deliverables for this project will include:

- a) Review Sapperton District Energy System background materials (e.g., public consultation results, current financial model, preliminary utility rate design, and proposed thermal energy model at RCH heating plant);
- b) Develop proposed utility rate setting principles for Sapperton DES with the objective of balancing rate competitiveness with BAU, return on investment to the utility, cost recovery, transparency, prioritizing low-carbon energy sources and fairness of heating rates between types of customers;
- c) Develop recommendations regarding the composition of a rate-setting body for the Sapperton thermal energy utility. This includes recommended qualifications and composition of the rate setting body, and recommendations on how this body would function within or in relation to the New Westminster Electric Utility Commission;
- d) Prepare a brief report that includes the above recommendations and rate-setting principles for the thermal utility as described in (b) and (c) above; and
- e) Facilitate a workshop with senior City staff and the Electric Utility Commission members on the results of the study and recommended rate-setting principles.

### **9.0 MATERIALS AVAILABLE TO SUCCESSFUL PROPONENT**

**9.1** At project initiation, the City will provide the following documents to the successful proponent:

- Key findings from Sapperton District Energy System Feasibility Study
- Technical report on preliminary heating rate design and proposed thermal model for Sapperton District Energy System
- Electric Utility Commission Strategic Plan

### **10.0 DELIVERABLES**

**10.1** The consultant will:

- a) Provide a brief draft report with recommended rate setting principles for the Sapperton thermal energy utility as well as recommendations regarding the composition of the rate setting body in terms of qualifications and skill set, and how this body would function within or in relation to the City's Electrical Utility;
- b) Co-facilitate a working session with City Council and the Electric Utility Commission on recommendations from the draft report;
- c) Finalize the draft report integrating feedback for the working session;
- d) Draft report ready for review August 31, 2015
- e) Working session on proposed rate setting principles in September 2015 (tentatively Sept. 15<sup>th</sup>, 2015); and,
- f) Final report with presentation ready by October 5, 2015.

### **11.0 PROPOSAL FORMAT AND PREPARATION**

**11.1** Proposals should not exceed twenty (20) pages in length excluding attached appendices. Proposals should be provided double-sided on 8 1/2" white paper, in a font colour of black and not less than 11 point. All proposals must clearly identify:

- a) Understanding of assignment;
- b) Approach;

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- c) Cost / Schedule;
- d) Proposed timeline; and,
- e) Project Team / Experience

**11.2** In addition to the substantive Proposal requirements identified within this RFP, the following are considered key content that should be included as part of the Proponent's Proposal:

- a) Brief outline of the Proponent's understanding of the project;
- b) Proposed work program and methodology to successfully achieve the objectives;
- c) Schedule of activity from date of award to final report, including a labour summary matrix that provides person-hour estimates for each of the work activities;
- d) Cost to complete the project in the form of a table showing the proposed level of effort and fees for each stage of the project;
- e) Estimate of project related disbursements and charge-out schedule for personnel and disbursements in general. The Proponent may not add overhead costs to disbursements;
- f) Proposed project team complete with brief resumes, describe each person's role in this project and their qualifications and experience to take on successfully the role;
- g) Project manager assigned to the project;
- h) A list of any sub-Consultants with a brief resume of experience;
- i) Indication of similar projects undertaken by the Proponent; and,
- j) Names of three references of clients who have undertaken similar work, the City may contact the references to assess the performance of the Proponent.

### **12.0 PRICING**

**12.1** The Proposal is to include a schedule of effort and pricing based on hourly rates. Note that is requirement is only meant for the Proponent to demonstrate the Proponent's anticipated resource allocation for the proposed Scope of Services, and as such, it is the Proponent's responsibility to provide the services specified for the **fixed fee** proposed regardless of the proposed schedule of effort and related pricing.

**12.2** The following expenses **must be included** in the fixed, lump sum fee proposal:

- a) All cost associated with fax, photocopier and long distance telephone calls;
- b) All indirect (or overhead) expenses incurred in the course of operating a firm including local travel expenses;
- c) All costs associated with the necessary insurance coverage.

**12.3** The disbursements which will be reimbursed **at cost** will include the following:

- a) Reproduction of client requested drawings and reports;
- b) Delivery of drawings, reports including courier, postage etc.;
- c) All necessary documents required to obtain all permits and approvals from the authorities having jurisdiction.

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

**13.1** The City of New Westminister 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 priced Proposal or any Proposal, and may reject all submissions.

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- 13.3** 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.
- 13.4** There shall be no obligation on the part of the City neither to receive further information, whether written or oral, from any Proponent nor to disclose the nature of any Proposal received.
- 13.5** The City at its discretion, may invite some or all Proponents for an interview to provide clarifications of their Proposals. In such event, the City will be entitled to consider the answers received in evaluating Proposals.
- 13.6** The City may award a 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.
- 13.7** 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.
- 13.8** Proposals will be evaluated based upon the following criteria:
- a) Experience of company / project manager and team;
  - b) Understanding of assignment and proposed approach;
  - c) Schedule and ability to meet deliverable dates ; and,
  - d) Cost.
- 13.9** 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 five (5) years, including the City of New Westminster).



Corporation of the City of  
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**APPENDIX A**

**Declaration – Living Wage Employer**



### 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:

\_\_\_\_\_

\_\_\_\_\_



Corporation of the City of  
**NEW WESTMINSTER**

**NWRFP-15-19**

**APPENDIX B**

**Draft Consulting Services Agreement**

## DRAFT CONSULTING SERVICES AGREEMENT

This Agreement made the \_\_\_ day of \_\_\_\_\_, 2015 is

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

511 Royal Avenue, New Westminister, BC, V3L 1H9

(the “City”)

**AND: [NAME].**

[address]

(the “Consultant”)

THIS AGREEMENT IS EVIDENCE that in consideration of the mutual covenants and agreements contained herein, the City and the Consultant agree as follows:

### **1.0 Services**

- a) The Consultant agrees to perform the consulting services (herein called the “Services”) detailed in the **Scope of Work and Proposal** which are attached to and forms part of this Agreement. (see Appendix A)
- b) The Consultant represents that the Consultant 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.
- c) 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.
- d) The Consultant warrants that neither it nor any of its officers, directors, and employees, as applicable, has any financial or personal relationship or affiliation with any elected official or employee of the City 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. If any such 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 date]** and be completed in accordance with the schedule in the Scope of Work, subject to further extension as agreed upon by the parties.
- 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, to 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.

## 2.2 Termination

- a) This Agreement may be terminated by the City as follows:
  - i) For Default or Deficiency – if, by an act or omission, the Consultant breaches a term of this Agreement or in the event that City determines, in its sole and unfettered discretion, that the performance of the Consultant is , in the opinion of the City, unsatisfactory, then this Agreement shall terminate immediately upon the City delivering notice to the Consultant;
  - ii) Without Cause – the City may terminate this Agreement for any reason or no reason following fourteen (14) days’ written notice to the Consultant by the City.
- b) Upon termination of this 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.
- c) Acts or omissions by the Consultant which shall justify termination of this Agreement for default 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 the Consultant represented the Consultant as competent to perform;
  - iv) any misrepresentation made or concealment of material fact for the purpose of securing this 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 the Consultant of any such information to unauthorized persons shall be cause for termination of this Agreement.

## 4.0 Freedom Of Information

- 4.1 All documents submitted to the City become the property of the City, and as such, the City advises the Consultant 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* (FOIPPA) and *Community Charter*. Should the Consultant wish to ensure particular parts of this contract are protected from disclosure under the FOIPPA, the Consultant shall specifically identify any information or records forming part of the Services that constitute (1) trade 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 is solely responsible for all payments or deductions required to be made by any enactment, including but not limited to Canada Pension Plan, employment insurance, workers' compensation premiums, and income tax.
- 5.3 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.
- 5.4 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.
- 5.5 The Consultant shall provide evidence that the Consultant has registered for a GST account to the City within five (5) business days of the date on which the Consultant executes this Agreement.
- 5.6 The laws of the Province of British Columbia shall govern the Agreement. Any disputes between the Consultant and the City arising out of or in connection with this Agreement shall be referred to the British Columbia International Commercial Arbitration Centre for arbitration under its applicable rules and resolved by a single arbitrator mutually agreed to by both parties.

## **6.0 Relationship**

- 6.1 It is expressly agreed, represented, and understood that the Consultant's relationship to the City is that of an independent contractor 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 relationship under which the Consultant provides services for which the City will be invoiced according to the terms and conditions of this Agreement.
- 6.2 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, but the Consultant shall ensure the Services are performed on a timely basis and to a reasonable standard of care, skill, and diligence.

## **7.0 Compensation and Records**

- 7.1 In consideration of the performance of the Services, the City shall pay the Consultant **[contract price]** including **[or excluding]** disbursements and excluding the Goods and Services Tax (GST), the Maximum Authorized Expenditure. The City may increase the Maximum Authorized Expenditure by issuing a written and signed Change Order.
- 7.2 Other than as expressly provided in this Agreement, the Consultant is solely responsible for all costs associated with providing the Services under this Agreement, including without limitation all membership costs, travel costs, professional costs, and educational costs.

- 7.3 The Consultant shall keep proper accounts and records for the performance of the Services, including invoices, receipts and vouchers, and shall preserve and keep available for audit and inspection all records described above for at least 2 years after the Term or earlier termination of this Agreement.
- 7.4 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.

#### **8.0 Application For Payment**

- 8.1 The Consultant shall submit invoices to the City 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 twenty (20) days from the invoice date.
- 8.2 Each invoice will show an itemized list of services 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 the invoice.
- 8.3 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.
- 8.4 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.
- 8.5 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.

#### **9.0 Indemnification**

- 9.1 The Consultant shall, on its own behalf and on behalf of all persons and corporations working by, through or under the Consultant, indemnify and save harmless the City and its elected officials, employees, officers, and agents from and against all liabilities, losses, damages, claims, costs, expenses (including legal fees and disbursements), suits, and judgements arising out of or related to the provision of the Services by the Consultant that are found to be negligent.
- 9.2 This indemnification shall not apply:
- a) where the liabilities, losses, damages, claims, costs 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.
- 9.3 The Consultant's liability to indemnify the City and its elected officials, employees, officers, and agents shall not limit or affect any other rights or remedies the City may have against the Consultant in respect of the Services or a breach of this Agreement.

#### **10.0 Change To Scope Of Service**

- 10.1 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.
- 10.2 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 and written agreement between the parties, the City shall not be obligated to make any payments of additional fees to the Consultant.

### **11.0 Insurance**

- 11.1 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) Commercial General Liability Insurance of not less than two million dollars (\$2,000,000.00) inclusive any one occurrence.
- 11.2 Before undertaking any part of the Services, 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.

### **12.0 Ownership, Copyright and Work Product**

- 12.1 The Consultant irrevocably grants the City an unrestricted licence for the City to use for any purpose all intellectual property, including drawings, plans, specifications, reports and other documents produced by the Consultant in relation to the Services. The Consultant agrees that the licence granted by this section includes the right for the City to adapt, use and modify such intellectual property for any purpose, and for those purposes, the Consultant waives the Consultant's moral rights to the work produced by the Consultant in relation to the Services.
- 12.2 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 Microsoft Office format.

### **13.0 Assignment**

- 13.1 The Consultant without the express written consent of the City may not assign this Agreement.

### **14.0 Engagement Of Other Consultants**

- 14.1 The City reserves the right at its own discretion to engage any other consultant in relation to the Services during the Term.

### **15.0 Waiver**

- 15.1 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.

### **16.0 Entire Agreement**

- 16.1 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 of City authorized representative and office]

Accepted and Agreed on

\_\_\_\_\_, 2015

By

**[name of consultant]**

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

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