



Corporation of the City of NEW WESTMINSTER

REQUEST FOR PROPOSAL NWRFP-09-28

Engineering Services 2010-2011 Sewer Separation Program

Closing Time:

Thursday, December 17, 2009
3:00 P.M., Local Time, Vancouver BC

Closing Location:

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

Title Page	Page 1
Introduction	Page 2
General Conditions	Page 4
Scope of Work	Page 6
Appendix A – 2010-2011 Storm Sewer Locations	2 Pages
Appendix B – Draft Consulting Service Agreement	7 Pages

Further requests for information :

Purchasing:

Heather Rossi, Intermediate Buyer
Telephone: 604-515-3781
Facsimile: 604-521-3895
email: hrossi@newwestcity.ca

Technical:

Steve Day, A.Sc.T.
Telephone: 604-527-4546
Facsimile: 604-527-4567
email: sday@newwestcity.ca

COMPANY NAME		
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

INTRODUCTION

PURPOSE AND BACKGROUND OF THE REQUEST FOR PROPOSAL

The City of New Westminster (the "City"), the first city in western Canada, is seeking Proposals from qualified, experienced firms to provide engineering services to include topographic survey, design, contract preparation and tendering, contract administration and inspection for the installation of storm sewers listed below and shown on the attached drawing, for the City's 2010/2011 Sewer Separation Program.

RESPONSE TIME AND PHYSICAL FORMAT OF PROPOSAL

Three (3) 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:

ENGINEERING SERVICES 2010-2011 SEWER SEPARATION PROGRAM NWRFP-09-28

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. Proponents must make requests for clarification in writing to Heather Rossi, Intermediate Buyer, City of New Westminster at hrossi@newwestcity.ca

The City's representative will not answer enquiries directly. The City will record enquiries and post replies on the City's website at http://www.newwestcity.ca/business/bid_opportunities/request_for_bids_proposals_-_open.php along with any additional information and addenda to this RFP.

It is the 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) days 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.

Proposals must not exceed ten (10) pages in length excluding attached appendices. All Proposals must clearly identify:

1. Understanding of the assignment;
2. Proposed approach;
3. Cost/Schedule;
4. Project Team and Experience.

CORPORATION OF THE CITY OF NEW WESTMINSTER

MANDATORY REQUIREMENTS

The following are **Mandatory Requirements** for submitted Proposals. The City will not consider any Proposal that does not include all Mandatory Requirements.

1. A brief outline of the Proponent's understanding of the project;
2. A clear description of your plan, a detailed work plan and methodology to successfully accomplish this assignment;
3. A list which expands the Scope of Work into a series of work activities that provide a detailed and comprehensive scope of services including the individual project deliverables;
4. A schedule of activity from date of award to final submission, including a labour summary matrix that provides person-hour estimates for each of the work activities.
5. The cost to complete the project in the form of a spreadsheet showing the proposed level of effort and fees for each stage of the project as well as an estimate of disbursements supported by a cost breakdown. No overhead costs shall be added to disbursements. The spreadsheet must include the charge-out schedule for personnel and disbursements in general. All pricing to be provided in Canadian dollars;
6. The names of the project manager and project team, along with brief resumes and a description of the role of each member in the team, and their qualifications and experience to successfully take on the role;
7. A list of any sub-Consultants with a brief resume of experience;
8. An indication of similar projects undertaken by the Proponent;
9. Names of three references of clients who have undertaken similar work, the City may contact the references to assess the performance of the Proponent.
10. A statement of commitment to undertake the project and provide the staff and support necessary to complete the project on time and on budget.

The City of New Westminister reserves the right to invite Proposals from other parties and reject any or all Proposals received. The City is looking for a Proposal offering the best overall value. The City will evaluate the Proposals based on selection criteria such as understanding of the project requirements, work methodology, team experience, qualifications, schedule, and costs. The lowest fee submission or any Proposal may not necessarily be accepted.

CORPORATION OF THE CITY OF NEW WESTMINSTER

GENERAL CONDITIONS

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.

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. Proponents may not use any portion of this RFP for any purpose other than the submission of Proposals. The successful Proponent must agree not to divulge or release any confidential information received during the course of performing its duties and/or services.

PROFESSIONAL CONDUCT

Proponents will comply with published professional standards governing these services.

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.

LIMITATION OF DAMAGES

Further to the preceding paragraph, 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. The Proponent, by submitting a proposal, waives any claim for loss of profits if no Contract is made with the Proponent.

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

CORPORATION OF THE CITY OF NEW WESTMINSTER

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.

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.

FORM OF CONTRACT

The selected Proponent shall agree to enter into a Contract with the City based on the Consulting Services Agreement attached as Appendix B of this Request for Proposal.

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.

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.

INSURANCE

Any contract for service, which results from this RFP process, will include a term requiring the service provider(s) to carry Errors and Omissions insurance for one million dollars (\$1,000,000.00), for staff or others involved in performing the contract responsibilities on behalf of the service provider.

ACTING IN CONFLICT

Any contract for service, which results from this RFP process, will include a term prohibiting the service provider(s) from acting for any party whose interests are in conflict with those of the City, unless specific prior waiver of that term has been given in writing by the City in each instance.

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.

CORPORATION OF THE CITY OF NEW WESTMINSTER

SCOPE OF WORK

1.0 INTRODUCTION

- 1.1** The work involves topographic survey, design, contract preparation and tendering, contract administration and inspection for the installation of storm sewers listed below, to be carried out in two phases, with the first phase (2010) including design of both phases and construction of the first phase works and second phase being construction of the second phase works (2011).

2.0 LOCATION OF PROPOSED WORK

- 2.1** Phase 1 work includes:

- a) 135 metres of 675 mm diameter on Royal Avenue from Seventh St. to Sixth St;
- b) 220 metres of 600 mm diameter on Sixth Street from Royal Ave. to Queens Ave;
- c) 90 metres of 250 mm diameter on Ash Street from Royal Ave. to Gloucester St.

- 2.2** Phase 2 work includes:

- a) 220 metres of 600 mm diameter on Sixth Street from Queens Ave. to Third Ave;
- b) 145 metres of 250 mm diameter on Queens Avenue, from Sixth Street to east;
- c) 168 metres of 250 mm diameter on St. Georges Street, from Sixth Street to east.

- 2.3** The work is to include picking up all existing catch basins with new leads and all related appurtenances.

3.0 SCHEDULE

- 3.1** The successful Proponent must initiate work by **January 6, 2010**.

- 3.2** The successful Proponent must provide complete tender documents to the City in order for the City to issue the tender prior to **March 1, 2010**.

4.0 SCOPE OF PROPOSED WORK

- 4.1** Proponents must ensure their proposal incorporates the following scope of work for each phase of the work:

- a) Topographic survey, sufficient for detailed design;
- b) Detailed design of proposed storm sewers and catch basin leads, including any geotechnical investigations that may be required. The proposal is to include an allowance for submission of the design package for City review and revision as required. Note: storm sewer modelling and catchment analysis is not required;
- c) Investigation of existing underground utilities, including sewer and water service connections;
- d) Construction cost estimate for the proposed works;
- e) Preparation of tender and contract documents;
- f) Review tenders submitted and make recommendation based on review;
- g) Provide engineering survey layout for the works;
- h) Provide fulltime inspection during construction (allow thirty-five (35) working days per phase for the purpose of this proposal) and coordinate materials testing as required;
- i) Provide contract administration and preparation of progress claims for each phase;
- j) Obtain all required approvals;
- k) Provide as-built information, in both AutoCAD format, to City Standards, and paper drawings for each phase;

CORPORATION OF THE CITY OF NEW WESTMINSTER

4.2 The City reserves the right to cancel the second phase of the contract at its discretion.

5.0 MATERIALS AVAILABLE TO PROPONENTS

5.1 The City is able to provide digital information showing legal framework, water and sewer main location and alignments, building outlines, paved areas and topography.

6.0 PRICING

6.1 The proposal is to include a schedule of effort and pricing based on hourly rates and separated into the following components for each phase, listed as 2009 and 2010:

- a) Topographic Survey;
- b) Detailed design;
- c) Quantities and construction cost estimate;
- d) Effort required to prepare for, set up and attend open house;
- e) Preparation of contract documents;
- f) Review of submitted Tenders and award recommendation;
- g) Construction layout;
- h) Inspection of works;
- i) Contract administration;
- j) Record Drawings;

7.0 ADDENDA

7.1 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.

7.2 Proponents are responsible for checking the City's website for any addenda or other information relating to this Request for Proposal.

7.3 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. Failure to acknowledge any Addenda may result in disqualification of the Proponent.

8.0 PROPOSAL EVALUATION AND SELECTION

8.1 The City of New Westminster will evaluate all submitted valid Proposals. Any or all proposals will not necessarily be accepted. The City will disqualify Proponent(s) that fail to meet a minimum requirement for qualifications, experience, and methodology from the process prior to cost considerations. 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.

8.2 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, nor 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.

CORPORATION OF THE CITY OF NEW WESTMINSTER

- 8.3** The City will evaluate all valid Proposals. The evaluation criteria includes, but is not limited to:
 - a) The proposed Project Manager;
 - b) The proposed Project Team;
 - c) The experience of the Company/Team;
 - d) The proposed approach;
 - e) The completeness of Proposal;
 - f) The proposed schedule;
 - g) The fee structure (fixed fee, hourly rates of proposed team members, and basis of fee estimate);
 - h) The cost.

9.0 REFERENCES

9.1 NOTE: Failure To Provide References May Result In Disqualification

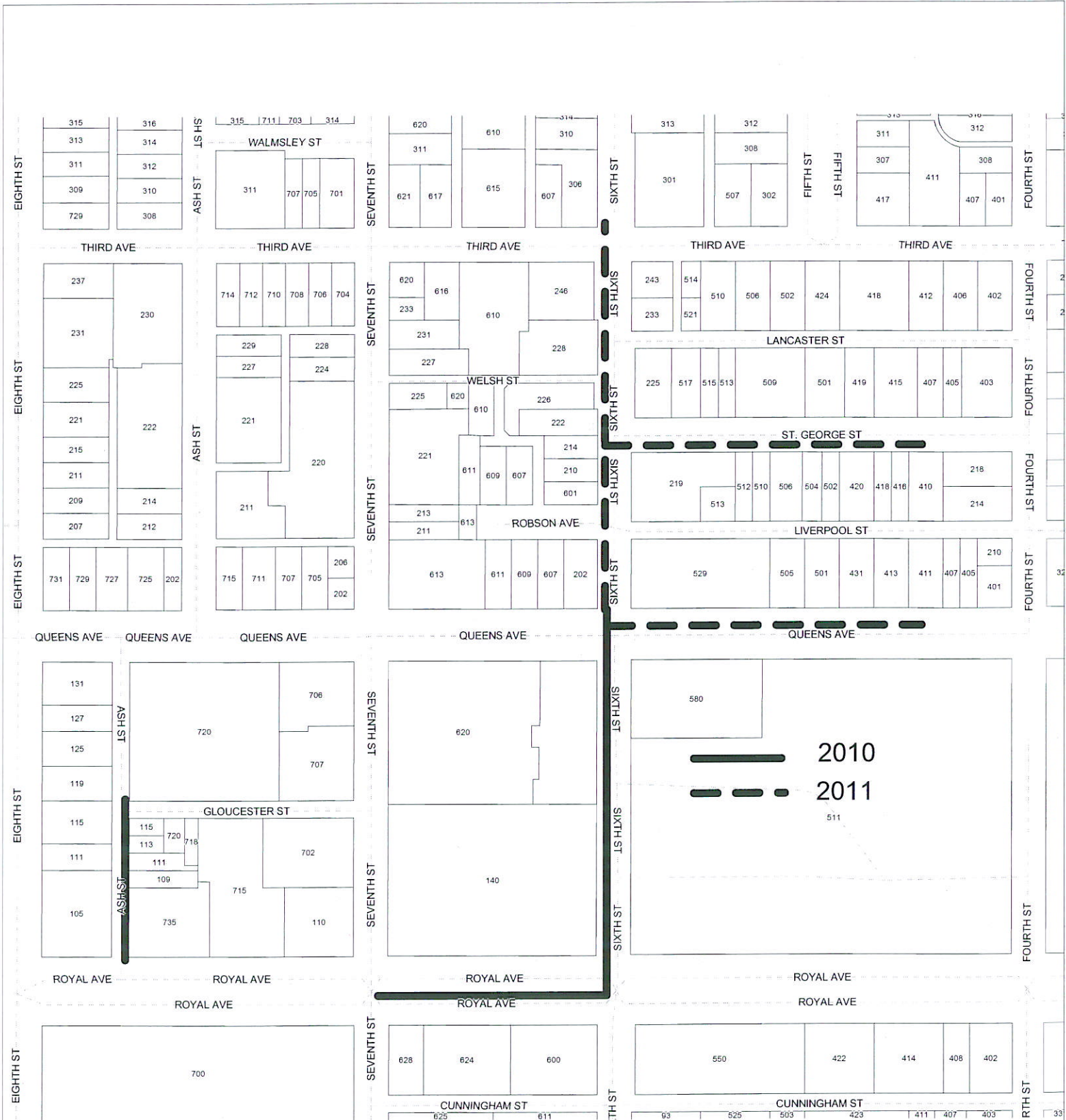
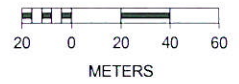
9.2 Proponents shall provide sources for three (3) references (companies for whom work of a similar magnitude and nature completed in the past two (2) years, including the City of New Westminster).

***End of Request for Proposal Document**

CORPORATION OF THE CITY OF NEW WESTMINSTER

APPENDIX A

2010 – 2011 Sewer Locations



CORPORATION OF THE CITY OF NEW WESTMINSTER

APPENDIX B

Draft Consulting Services Agreement

**APPENDIX A
DRAFT CONSULTING SERVICES AGREEMENT**

This Agreement made the ____ day of _____ 2009

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.
- 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 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.

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 GST, the Maximum Authorized Expenditure, except when the Maximum Authorized Expenditure is increased by a written Change Order issued and signed by the City. 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 (10th) day of each month. The City, if it approves the amount of such invoices, shall pay such invoices on before the twentieth (20th) day of the following month.
- 10.2 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.
- 10.3 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.
- 10.4 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 (20th) day of the following month.
- 10.5 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.
- 10.6 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

- 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) Professional Errors and Omissions Liability Insurance protecting the Consultant, any sub consultant and their respective servant(s), agent(s) or employee(s) against any loss or damage arising directly or indirectly out of the professional services rendered by the Consultant, any sub consultant, servant(s), agent(s), or employee(s) under the contract. Such insurance shall be for an adequate amount acceptable to the City and shall in any event be not less than one million dollars (\$1,000,000.00) inclusive any one occurrence. The Consultant shall not be entitled to payment for services resulting in errors or omissions for which the Consultant is held responsible.
 - b) General Liability Insurance of not less than two million dollars (\$2,000,000.00) inclusive any one occurrence.
- 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

- 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:**)

_____)

Roy Moulder, CPP, Purchasing Manager:)
Accepted and Agreed on

_____, 20__ By
CORPORATE NAME)

_____)
Consultant)

_____)
Authorized Signature)

Name and Office