

CORPORATION OF THE CITY OF NEW WESTMINSTER



**REQUEST FOR PROPOSAL
NWRFP-10-03**

MULTI FAMILY RECYCLING PROGRAM

Closing Time:
March 26, 2010
3:00 P.M., Local Time, Vancouver BC

Closing Location:
Main Reception Desk
City of New Westminster
511 Royal Avenue,
New Westminster, B.C. V3L 1H9

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Further requests for information :
 Kristian Davis, Solid Waste & Recycling Supervisor 604-517-5414,
 Fax 604-526-5291
 kdavis@newwestcity.ca
 Ron Gidda, Purchasing Supervisor 604-517-5406, Fax 604-527-7783
 rgidda@newwestcity.ca

COMPANY NAME			
Address:			
Telephone number		Email	
<u>Signature:</u> by officer with express authority to enter into contract			1. DATED

CORPORATION OF THE CITY OF NEW WESTMINSTER

INTRODUCTION

The City of New Westminister Engineering Operations provides multi family units with recycling services, the supply, repair and maintenance of recycling containers. The City of New Westminister is requesting submissions from the market to supply services that meet the needs and requirements for a multi family recycling program for the next five years.

PROPOSAL INSTRUCTIONS

Three (3) copies of the Proposal, including one signed and initialed copy of this Request for Proposal , are to be submitted and clearly marked on the outside envelope or box as follows:

MULITI FAMILY RECYCLING PROGRAM

NWRFP-10-03

Submissions to the RFP must be received at:

Main Information Desk, City Hall
511 Royal Avenue,
New Westminister, B.C. V3L 1H9

on/or before Friday, March 26, 2010 at 3:00 p.m. local time (the "Closing Date"). The clock at the Main Information Desk is the official clock.

Faxed or electronically submitted proposals or amendments will not be accepted. Any proposals received after the Closing Date and time will not be considered.

Proposals may be revised by written amendment, delivered to the location set out above, at any time before the Closing Time, but not after. An amendment must be signed by an authorized signatory of the Proponent in the same manner as the original 3 copies.

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 or Email to Ron Gidda, CPP, Purchasing Supervisor, City of New Westminister. E-mail: rgidda@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 96 hours prior to the Closing Date.

Any additional information will be posted on BC Bid and the City's website along with any additional information and addendums to this RFP. It is the respondent's sole responsibility to check these websites regularly (www.bcbid.ca and www.newwestcity.ca) to ensure that you have all information related to this RFP. The Proponent shall acknowledge any and all Addenda in its Proposal.

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The City accepts no responsibility for any information provided by its employees or agents that is not in writing in accordance with this section. Proponents are cautioned not to seek or rely on any such information.

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 City of New Westminster reserves the right to invite proposals from other parties and to reject any or all proposals. The City is looking for a proposal offering best overall value. The proposal will be evaluated based on selection criteria (see below) such as understanding of project requirements, team experience and qualifications, schedule, and costs. The lowest fee submission or any proposal may not necessarily be accepted.

WASTE QUANTITIES

Proponents are required to provide a price that will apply over a range of quantities, each with assumed minimum guaranteed quantities. Proponents are invited to express modifications to their proposed prices to cover changes in the range of quantities. Proponents must clearly identify the residential volumes expected and the corresponding collection costs. No assurance is provided on waste composition or quality, nor will any guarantees be provided.

The City will be implementing a multi family recycling program for the following materials: newspaper, glass, ferrous and non-ferrous metal cans and tins, mixed paper products, and rigid plastic containers.

NUMBER OF BUILDINGS AND UNITS

Proponents shall base their proposal on the basis of providing service for the number of units and to the buildings at the addresses shown on the table appended to this Request for Proposal (RFP). It is intended that service will be provided to the listed addresses. Multi family complexes currently exist at 499 addresses with a total number of units estimated to be approximately 19746. The City of New Westminster may add new addresses to the list with future anticipated growth. The list of these addresses with the corresponding start date is appended to this RFP.

FORMAT AND CONTENT OF PROPOSAL

Proponents' Proposals must include the following four main parts:

- Part A: Required Declarations
- Part B: Operational Procedures
- Part C: Experience and Capabilities
- Part D: Proposed Prices and Price Breakdown

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REQUIRED DECLARATIONS

If more than one corporate entity is involved in a Proposal, the relationship between the various entities must be clearly explained. The party or parties who may ultimately enter into a contractual arrangement with the City must be clearly identified. If the Proposal is from a joint venture or a consortium, the Proposal must be signed by the signing officer of all of the firms.

The legal name and address, as well as telephone and facsimile number must be provided for all corporate entities submitting the Proposal. The name and title of the officer of the entity(s) submitting the Proposal must also be identified.

Provide a copy of the notarized Certificate of Incorporation of the entity(s) submitting the Proposal.

If the Proposal is from a joint venture or a consortium, notarized copies of Certificate of Incorporation of all joint venture or consortium members must be provided.

OPERATIONAL PROCEDURES

Proponents shall identify and describe in their submission the following:

- Services levels
- Collection procedures
- Vehicle standards, available equipment, and equipment maintenance
- Maximum number of vehicles in the city at any given day
- Public relations
- Dealing with customer complaints and complaint procedure
- Employee conduct and appearance
- Existing company policies
- Workers' Compensation Board compliance
- Toter requirements and replacement
- Advertising and advertising information
- Record keeping
- Reporting procedures
- Collection route mapping and schedule production
- Method of payment
- Dispute resolution mechanism
- Processing and marketing
- Missed pick-ups
- Any additional information pertinent to operational procedures

EXPERIENCE AND CAPABILITIES

Proponents are requested to provide information on their experience, capabilities and resources. The organization or consortium must have sufficient capabilities and resources to provide the services requested in this RFP.

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As part of the proposal the Proponent shall discuss recyclable materials haul capabilities in terms of haul services presently provided. Items discussed should include but not be limited to the following:

- Cities currently served with tonnes and distances hauled
- Total tonnes of recyclable materials hauled/transported in the past three years
- Other information relevant to assessing the Proponents' capabilities and experience in the area of recycling, processing, and marketing of the collected materials
- Key staff, roles, responsibilities and current operational experience of employees
- Current fleet size and age
- Type of collection vehicles proposed and vehicles to be designated to this contract
- Any other relevant information pertaining to collection capabilities

Proponents must provide references (senior municipal officials) including name, title, address and telephone and fax numbers, who can be contacted to confirm their capabilities in the area of recyclable materials collection, transportation and disposal for processing and marketing.

Proponents must confirm their financial capabilities. Public companies must submit audited financial statements for the past three (3) years. This submission may be in the form of an annual report provided as an appendix to their Proposal. Proponents must also extract the relevant information from their financial statements.

If a Proponent is a private corporation and not in a position to provide an audited financial statement they must, at a minimum, provide a letter from their auditor attesting to the financial numbers presented.

If a Proponent is a large multi-divisional corporation and financial information is reported on a divisional basis then the Proponent is encouraged to submit the information for the relevant waste management division in addition to the consolidated corporate information.

PROPOSED PRICES AND PRICE BREAKDOWN

Proponents are asked to submit prices on a dwelling unit basis utilizing the information provided in section above. The actual number of units to which service will be provided will be established by the City.

All proposed prices must be submitted at 2010 price levels. At the contract negotiation stage, the City proposes to establish with the successful Proponent, a published price index (e.g. Statistics Canada CPI for the Vancouver Region) to be used in adjusting price levels in future years. Contract prices to prevail in subsequent years of the agreement will be based on the 2010 contract price adjusted by the agreed indicator for only the operating cost portion of the price.

There will be no adjustments in proposed prices in response to changes in exchange rates with the United States. All proposed prices and cost information must be expressed in

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Canadian dollars. All risks associated with movements between the value of the Canadian and U.S. dollar will be the responsibility of the Proponent.

All prices must include any applicable taxes. GST must be clearly identified and listed separately.

The proposed prices must be all-inclusive for providing the services specified and described. This service must conform to all applicable codes and regulations and the proposed price must include the cost of complying with all applicable codes and regulations during the life of the contract.

If, in addition to the proposed price, there are any other charges or other financial obligations required of the City, they must be clearly identified and quantified. There will be no provision for negotiating any such additional fees, charges or obligations following the submission of the Proposals.

For the purpose of evaluating proposed prices, adjustments will be made to the stated prices to account for any additional costs proposed by the Proponent.

SECURITY DEPOSIT

All Proponents are required to provide an irrevocable letter of credit or bond (a sample is appended) guaranteeing the information, terms and conditions set out in their Proposals. This instrument must be in the amount of TWENTY THOUSAND (\$20,000.00) DOLLARS in favour of the City of New Westminister and shall be valid for a period of ninety (90) days from the proposal closing date. This letter of credit must be included with the Proposal submission.

If a Proponent is selected, the period of validity of the irrevocable letter of credit or a bond must be extended for the anticipated period required for finalization of a contract (but not to exceed 365 days from the date on which it is formally requested). This instrument, like the initial one, will be in favour of the City to guarantee the information, terms and conditions set out in the Proponents' Proposal. The use will be cancelled following the Proponent entering into a formal contract with the City.

PROPONENT TO INVESTIGATE

Proponents shall carefully examine, investigate, and satisfy themselves, and their own risk and expense, with respect to all matters relating to the scope of work to be undertaken, the work required for the necessary and proper completion of the scope of work, and the conditions under which it will be performed. No allowance shall be made subsequent to the Proposal submission for failure to properly investigate all issues related to this RFP and the subsequent contract finalization.

SELECTION CRITERIA

The following criteria, not in any order of importance, will be considered in the evaluation of each proposal submitted to the City:

- Evidence of the Proponent's ability to satisfactorily handle the type and volume of work being offered by the City including management, technical capability and experience in the type of work and equipment proposed.

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- References for the Proponent (including contact person's phone/fax, Email) provided with the proposal, highlighting similar previous experience, especially in working with other Public Agencies.
- The quality and timeliness of the proposal, prepared in a clear, comprehensive and straightforward manner, appropriate to the purpose.
- Implementation plan details
- The Proponent's financial proposal.
- Demonstration of Proponent's financial stability
- Evidence confirming supply and maintenance provisions for all equipment.
- Value added services that extend beyond the minimum requirements.

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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, Proponents are advised that parts, or all, of their proposals may be subject to the provisions of British Columbia's *Freedom of Information and Protection of Privacy (FIPP) and Community Charter*. Proponent's who wish to ensure particular parts of their Proposals are protected from disclosure under the FIPP 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.

All information, data systems or other material prepared or collated for this project will become the property of the City of New Westminster. Staff will identify the data and the presentation format for any findings to be made available to the public.

CONFIDENTIALITY OF CITY INFORMATION

Any information acquired about the City by a Proponent during this RFP process must not be disclosed 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 legal services to the City will not permit any Proponent to advertise a relationship with the City without the City's prior written authorization.

The following conditions apply:

- This RFP, or any portion thereof, may not be used for any purpose other than the submission or proposals.
- The successful proponent must agree not to divulge or release any confidential information that has been received during the course of carrying out its duties or performing its 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.

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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 and 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 to receive further information, whether written or oral, from any Proponent nor to disclose the nature of any proposal received; and if its Proposal is accepted by the City, 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.

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 submitting the proposal, 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 that there is a risk the City will incur increased staff and legal costs in the administration of the contract if it is awarded to the proponent.

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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 RFP be sub-contracted or assigned to another firm, person or company without the prior written authorization of the City of New Westminster.

INSURANCE

Any contract for service, which results from this RFP process, will also include a term requiring the service provider(s) to, insofar as is legally permissible, indemnify and hold harmless the City, its officers and employees, from any and all liability arising out of the service provider's or a contractor's performance or non-performance of the terms of the contract or out of the provision of the service generally.

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 or directors, or any employee or subcontractor, 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.

MULTIPLE PREFERRED PROPONENTS

The City reserves the right and discretion to divide up the services, either by scope, geographic area, or other basis as the City may decide, and to select one or more preferred proponents to enter into discussions with the City for one or more contracts to perform a portion or portions of the Services.

In addition to any other provision of this RFP, proposals may be evaluated on the basis of advantages and disadvantages to the City that might result or be achieved from the City dividing up the services and entering into one or more contracts with one or more proponents.

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SCOPE OF WORK

SUPPLY

Proponents shall make provision in their Proposal for the supply of all labour, materials, tools, equipment and all other items required for the collection, transporting, and processing of recycling materials from the multi family housing sector in the City.

RECYCLING CONTAINERS

The Proponent shall be responsible for the procurement, supply and delivery of an appropriate number of fully assembled recycling containers to each site. A minimum of three (3) containers shall be provided to each site. Based on the Proponent's experience, additional containers shall be supplied for all complexes where the number of units will produce recyclable material in quantities which exceed the likely capacity available in the minimum three containers. Proponents are to supply the wheeled cart type of recycling containers of 360 litre capacity. If appropriate, and approved by the City and the complex management, blue boxes, as currently provided to the City's single family sector, may be provided for complexes which have fewer than four (4) suites.

The Proponent shall also be responsible for the procurement, supply and delivery of reusable, recycling tote bags that shall be distributed to each unit. The bags should be of woven material, suitable for printing, and have carrying handles. Provision for replacement is to be included.

COLLECTION VEHICLES

Vehicles proposed for collection must be approved by the City. Proponents must ensure that all vehicles and equipment proposed conform to current industry standards and complies with all Federal, Provincial, and Municipal government requirements. Proponents are to assign an appropriate number of vehicles to each route to ensure adequate performance of the work.

Collection vehicles shall have exterior surfaces that are suitable for the application of City advertising which will promote recycling or City waste management programs. No other advertising will be permitted on the collection vehicles other than the Proponent's name.

EQUIPMENT

Proponents shall have appropriate facilities and identify and describe their service yard to be used for parking, maintaining and cleaning their vehicles.

The City of New Westminister reserves the right to invite proposals from other parties and to reject any or all proposals. The proposal offering the lowest cost or any proposal may not necessarily be accepted. The City is looking for a proposal offering best overall value.

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PERSONNEL

Proponents shall propose only personnel which are experienced and adequately trained in the performance of this work. Training, identification, conduct, grooming, discipline, and all other areas shall be the responsibility of the Proponent. Supervisory personnel and administrative personnel are to be identified.

ROUTE MAPS

The successful Proponent, as part of contract finalization, shall be required to develop route maps for each collection vehicle for each collection day. Route maps will require City approval prior to implementation. The City will provide base mapping in digital format if required.

SERVICE FREQUENCY

All complexes shall receive pick-up service once per week. Statutory holidays shall be accommodated and incorporated into the service schedule.

IMPLEMENTATION PLAN

Proponents shall provide a schedule detailing activities and procedures necessary for the successful implementation of the multi family recycling program. The City requires that proponent also submit a schedule of replacement of current containers and phase in of program if new proponent is selected.

COORDINATION

The successful proponent shall be responsible for contacting the appropriate representative at each building/property to inform them of or coordinate the following:

- Procedures for notification
- Container delivery plan
- Pick-up schedule
- Collection procedures
- Container location
- Details of the program
- Distribution of recycling literature
- Access arrangement
- Collection start date
- Any other item related to the work

MATERIALS COLLECTED

Recyclable materials to be collected include:

- Newspaper
- Mixed waste paper
- All colours of glass containers with lids and labels of any material
- All ferrous and non-ferrous metal cans and tins

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- Plastic food and beverage containers identified by SPI codes 1, 2 & 5

DISPOSITION OF COLLECTED MATERIALS

Upon pick-up, ownership of the collected materials becomes that of the successful Proponent. They shall be responsible for the collected material from the point of pick-up onward. They shall also be responsible for the recollection of any materials spilled during or as part of the collection process. They shall convey the collected material to a City approved processing and marketing facility which is licensed to operate under the authority of the Greater Vancouver Regional District or the Provincial government.

REPORTING REQUIREMENTS

The successful Proponent shall maintain books and records relating to the performance of this work. Any records or documents required to be maintained for the performance of this work must be made available at any time when requested by the City. At a minimum, reports to the City will be as follows:

- Weights of all materials collected by category
- Vehicle collisions
- Customer incidents or complaints of any nature
- Claims of reported damage
- Locations in non-compliance with requirements
- Other incidents to which the City would be interested

Reports are to be produced as required and also at weekly, monthly, quarterly and annual intervals.

INVOICING

The successful Proponent will invoice the City for work performed on a monthly basis. Invoices are to be based on the completion of the previous month's work.

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TERMS OF REFERENCE

LENGTH OF CONTRACT

The length of the negotiated contract will be for a period of five (5) years. Following the expiration of the initial contract period, the contract may be extended for a further period of two (2) years by mutual agreement of the City and successful Proponent. The agreement to extend the contract must be established in writing six (6) months prior to the initial contract period expiring.

SCHEDULE

During the period of contract finalization, the successful Proponent will produce a schedule for pick-up service which satisfies City requirements and receives City approval. A schedule which identifies a five day cycle for pick-up will not receive City approval.

RECYCLING CONTAINERS

OWNERSHIP

Option A: Recycling containers shall remain the property of the successful proponent for the entire duration of the contract period.

Option B: Recycling containers will become property of The City of New Westminister following the 5 year contract.

MARKINGS

Both wheeled carts as well as recycling tote bags shall be decaled or printed with the City coat-of-arms, City name, recycling symbol and the words "WE RECYCLE". A full size mock-up of both carts and tote bags will be required for approval prior to production and distribution.

LOCATION

The successful Proponent shall establish the container location with the appropriate representative from each building/property. The city will not be involved with this process and will only become involved should there be failure in establishing a mutually agreed upon location. Containers can not be placed on City property without written approval from the City. Placement of recycling containers can not displace existing waste collection facilities onto City property.

REPLACEMENT

It shall be the responsibility of the successful proponent to ensure that all containers are maintained in good shape and in fully usable condition. Repairs are to be made to containers within five (5) days of defects being discovered. In cases where repair is not

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possible or cost effective, a replacement shall be delivered within five (5) days and the defective container removed.

The City will not accept responsibility for containers which are damaged, lost, or stolen. The cost of all replacement containers shall be at the expense of the successful Proponent as will be the replacement cost of all required tote bags.

As additional buildings/complexes are constructed, containers are to be delivered to these locations upon written notification from the City. The cost for these containers will be at the expense of the City and this cost, including all coordination, procurement, supply, assembly, delivery, and all other items related to establishing service to a new location, shall be included as a separate item in the Proposal.

QUALITY OF MATERIALS

The City does not provide a guarantee for the quality of the materials to be picked up in this service. The successful Proponent will be responsible for ensuring that residents at each site participate in the program in the correct manner. The City will not be responsible for the improper use of the containers, nor for correcting contamination issues at problem sites. The successful Proponent shall have the right to leave behind materials that are not recyclable. In instances where materials are left behind, a non-compliance notice shall be affixed to the recycling container(s). These City approved notices shall be included in the unit price and additional payment for this item will not be made.

Disputes arising out of what material is or is not recyclable shall be settled by the City.

SEVERE WEATHER CONDITIONS

The City shall not be responsible for any towing charges or damage to collection vehicles or equipment resulting from poor street or lane conditions resulting from severe weather conditions. The City shall be advised of any streets or lanes which are in a condition which may impede or require alteration of the normal collection schedule.

Collection services may be temporarily discontinued due to weather only on the written approval of the City. Notification of temporarily discontinued service shall be made to all the affected properties.

MISSED PICK-UPS

Missed pick-ups shall be collected within 24 hours of notification.

LATE PUT-OUTS

Late put-outs shall be collected following notification. Late put-outs may be issued a notice of non-compliance which identifies the time requirements for scheduled service. Proponents shall identify acceptable limits for late put-outs in terms of frequency of non-compliance as well as remediation of this non-compliance.

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PRIVATE ACCOUNTS

Under no circumstances shall vehicles or personnel used in undertaking this work be permitted to engage in private collection while undertaking the contract work.

PUBLIC RELATIONS

The Proponent acknowledges that this work entails considerable dealings with the public and that it is of primary importance to the City that excellent relations with the public be maintained.

The distribution of educational material forms a part of this work. The content of all public educational materials requires City approval.

PAYMENT

Payment will be made by the City with thirty (30) days from the date of invoice. Invoices are to be issued on a monthly basis following completion of the work in that month. Each monthly invoice will be in an amount equal to one twelfth (1/12) of the annual contract work value. The contract work value will be based on the unit price established multiplied by the total number of units as accounted for by the City.

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APPENDIX A

SUPPLY AND SERVICES AGREEMENT

This Agreement made as of the _____ day of _____, 2010

BETWEEN: THE CORPORATION OF THE CITY OF NEW WESTMINSTER
(herein called the "City")

OF THE FIRST PART

AND: "SUPPLIER"
(herein called the "Supplier")

OF THE SECOND PART

The City and the Consultant agree as follows:

ARTICLE 1 - ENGAGEMENT

a) The City engages the Supplier and the Supplier agrees to perform Services (herein called the "Services") and provide all qualified personnel, support services, reports, analysis and such other things required by the Terms of Reference attached hereto and proposal for _____, submitted to the City _____ (as the same may be amended from time to time by mutual agreement in writing) which form part of this Agreement.

The Supplier 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.

The Supplier will not act 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.

The Supplier 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 Supplier will immediately inform the City in writing.

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ARTICLE 2 - DURATION AND TERMINATION

DURATION

- a) Services under this Agreement shall commence _____ and be completed in accordance with the schedule in the Terms of Reference, subject to further extension as agreed upon by the parties.
- b) Completion shall be when the City certifies in writing all requirements under this Agreement have been fulfilled to the satisfaction of the City.
- c) In the event additional services are required which do not fall within those described Terms of Reference then the completion date set forth above may, by mutual agreement, be extended by a period determined to be sufficient for such additional services. Additional services may be requested in writing by the City and payment therefore shall be agreed between the Consultant and the City prior to provision of same.
- 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.

TERMINATION

The agreement may be terminated by the City as follows:

- (a) For Deficiency or Default - immediately by providing to the Consultant written notice of the deficiency or default after the Consultant has been given a reasonable opportunity to remedy said deficiency or default;
- (b) Without Cause - by providing the Notice in writing to (as agreed upon).

Upon termination of the agreement, the Consultant will be paid 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.

ARTICLE 3 - NON-DISCLOSURE OF INFORMATION

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.

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ARTICLE 4 OWNERSHIP OF CONTRACT DOCUMENTS AND FREEDOM OF INFORMATION

All documents submitted to the City of New Westminster become the property of the City, and as such, Consultants are advised 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 (FIPP) and Community Charter*. Consultants who wish to ensure particular parts of this contract are protected from disclosure under the FIPP 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.

ARTICLE 5 - COMPLIANCE WITH APPLICABLE LAWS

The consultant is required to build the apparatus to comply with all CMVSS, Canada Transport Regulations, WCB standards, Hydraulic institute standards, applicable SAR standards and codes.

The Consultant shall be responsible for giving all notices and complying with all laws, ordinances, rules, regulations, codes and standard 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 which might be made, imposed, suffered, or incurred by reason of an asserted or established violation of any such laws, ordinances, rules, regulations, codes or standards.

The Consultant will register for, obtain and maintain their own separate WorkSafeBC Insurance Coverage, when required by WorkSafeBC and the Workers Compensation Act. Most employers are required by law to register their firm with WorkSafeBC and pay premiums; however, there are some exemptions to registration and there are situations where registration is optional (i.e. Personal Optional Protection and voluntary coverage). When WorkSafeBC Insurance coverage is required, the Consultant will prove to the City they are registered with WorkSafeBC and are up to date on their premiums by providing a WorkSafeBC Clearance letter to the City before the Consultant starts work for the City and again before the City makes final payment to the Consultant.

The Consultant will comply with the WorkSafeBC Occupational Health and Safety Regulation and the Workers' Compensation (WC) Act. Any WorkSafeBC 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, as a result of the actions of the Consultant are the responsibility of the Consultant.

For information on who is required to register and who is exempt from registering for WorkSafeBC Insurance Coverage and/or more information on Personal Optional Protection, go to the WorkSafeBC website (www.worksafebc.com).

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ARTICLE 6 - PATENT RIGHTS AND ROYALTIES

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.

ARTICLE 7 - ADVERTISING AND PUBLICITY

All proposed advertising or publicity by the Consultant referring to the City or performance of the Services shall be submitted to the City for written approval prior to issue.

ARTICLE 8 - RELATIONSHIP

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.

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.

ARTICLE 9 - FEES

In consideration of the performance of the Services, the City shall pay the Consultant monies determined by the rates provided in the proposal and the limits found in the Terms of Reference not to be exceeded without the prior written consent of the City:

The City retains the right to access and audit the Consultant's files and records related to the City's business with 24 hours notice during normal business hours.

ARTICLE 10 - APPLICATION FOR PAYMENT

Application for payment in respect of lump sum items may be made by the Supplier in writing as the Services proceed. Applications may be made monthly up to the last day of the monthly payment period for the value of Services performed to that date including expenses (if any) properly incurred during the performance of the Services and any approved additional services.

The Supplier 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.

The Supplier must also obtain and maintain its own separate Worker's Compensation Coverage and abide by all provisions of the Worker's Compensation Act and Regulations. A letter of good standing from the Worker's Compensation Board must be provided to the City prior to commencement of the work.

Application for payment in respect of hourly items may be made by the Supplier as described above providing such applications shall be accompanied by the appropriate time sheets for verification by the City.

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Payment will be made by the City to the Supplier within thirty (30) days of receipt of Supplier application for payment subject only to an amount which may be withheld, on written notice to the Supplier, to protect the City from any actual or anticipated loss, damage, cost or expense arising from one or more of the following:

- i) The Supplier not making satisfactory progress in the opinion of the City;
- ii) Deficiencies and errors in design, reporting, analysis or similar which have not been corrected or remedied; and
- iii) Any other breach described in this Agreement under ARTICLES 2, 3, 4 AND 5.

ARTICLE 11 – INSURANCE

The Consultant, insofar as is legally permissible, indemnify and hold harmless the City, its officers and employees, from any and all liability arising out of the Consultant's performance or non-performance of the terms of the contract or out of the provision of the Services generally.

ARTICLE 12 - ASSIGNMENTS

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

ARTICLE 13 – ENGAGEMENT OF OTHER CONSULTANTS

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

ARTICLE 14 – OWNERSHIP AND COPYRIGHT

Any documents or products produced by the Supplier for the benefit of the City as a result of the provision of the Services 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.

The City is to receive all document, model and data files related and will become the property of the City for its use.

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.

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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 SIGNATURES FOR
THE CORPORATION OF THE CITY OF
NEW WESTMINSTER:**

Purchasing Manager:

Fleet Services Department Representative

Accepted and Agreed on
_____, 20__ By

CORPORATE NAME

Vendor

Authorized Signature

Name and Office