NEW WESTMINSTER

CONSULTING SERVICES AGREEMENT

This Agreement made the ___ day of_____, 2023 is

BETWEEN: **THE CORPORATION OF THE CITY OF NEW WESTMINSTER**
511 Royal Avenue, New Westminster, BC, V3L 1H9
(the "City")

AND: **COMPANY 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 Statement of Work which is attached to and forms part of this Agreement (refer to 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, during the term of this agreement, 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 Statement of Work, subject to further extension as agreed upon by the parties.

b) In the event additional services are required that do not fall within those described in the Statement 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 – immediately, 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, and the Consultant has failed to correct the default or deficiency to the City's satisfaction within five (5) business days of receiving written notification of that default or deficiency from the City

ii) With Notice – the City may terminate this Agreement for any reason by providing fourteen (14) days' written notice to the Consultant by the City.

b) This Agreement may be terminated by the Consultant by providing fourteen (14) days' written notice to the City.

c) 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.

d) Acts or omissions by the Consultant which shall justify termination of this Agreement for default or deficiency 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; or
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 City is a Sanctuary City, the Consultant shall comply with the Sanctuary City Policy which can be found on the City's website at https://www.newwestcity.ca/sanctuary-city-policy

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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 two (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^{th}) day of each month. The City, if it approves the amount of such invoices, shall pay such invoices within twenty (20) days from receipt of the invoice.

8.2 Each invoice will show an itemized list of services and costs incurred for each of the tasks outlined in the Statement 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^{th}) 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 Statement Of Service

10.1 The City may vary at any time the Statement 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 statement 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) Professional Errors and Omissions Liability Insurance protecting the Consultant, any subcontractors 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 subcontractor, 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 two million dollars ($2,000,000.00) 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) Commercial General Liability Insurance of not less than five million dollars ($5,000,000.00) inclusive per occurrence against death, bodily injury, personal injury and property damage arising directly or indirectly out of the work or operations of the Consultant, subcontractors, servants(s), agent(s) or employee(s). The insurance policy will be endorsed to add the Corporation of the City of New Westminster, its officials, employees and agents as Additional Insured and will include cross liability and severability of interests.

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 – select 1 or 2

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 OR: The Consultant hereby sells, assigns and transfers to the City the right, title and interest required for the City to use and receive the benefit of all the reports, drawings, plans, designs, models, specifications, computer software, concepts, products, designs or processes or other such work product produced by or resulting from the Services provided by the Consultant

12.3 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.

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:

_____
Patrick Shannon, SCMP
Purchasing Manager

Accepted and Agreed on

_____, 2023

By

COMPANY NAME

_____
Authorized Signature

Name and Office