



REQUEST FOR PROPOSAL PS07152

STRUCTURAL ENGINEERING CONSULTING SERVICES FOR
CENTRAL WATERFRONT HUB

Proposals will be received in the Courier Delivery Drop-Off Office, 1st Floor, Vancouver City Hall, 453 West 12th Avenue, Vancouver, British Columbia, Canada, V5Y 1V4 prior to the Closing Time: 3:00:00 P.M. City Hall Clock Time (as defined in Note 2 below), Tuesday, January 15, 2008 and registered at 11:00:00 A.M. on Wednesday, January 16, 2008.

NOTES:

1. Proposals are to be in sealed envelopes or packages marked with the Proponent's Name, the RFP Title and Number.
2. The Closing Time will be conclusively deemed to be the time shown on the clock used by the City's Courier Delivery Drop-Off Office for this purpose.
3. DO NOT SUBMIT BY FAX.

All queries related to this RFP are to be submitted
in writing to the attention of:

Wendy Corneau, B.Sc.
Contracting Specialist

Fax: 604.873.7057 E-mail: purchasing@vancouver.ca

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**REQUEST FOR PROPOSAL NO. PS07152
STRUCTURAL ENGINEERING CONSULTING SERVICES FOR
CENTRAL WATERFRONT HUB
PART A - INTRODUCTION**

1.0 Overview

1.1 This Request for Proposal (“RFP”) identifies a business opportunity for the successful Proponent to provide structural engineering consulting services for the Central Waterfront Hub area of Vancouver. The required services will include but are not limited to:

- Civil structural
- Building structural
- Freight rail operations

1.2 The City of Vancouver is requesting these proposals from interested consulting engineering firms with expertise in structural engineering. The successful Proponent’s work on this project will consist of:

- Structural feasibility assessment
- Provision of preliminary structural concepts
- Provision of construction cost estimates

1.3 Key dates to be noted:

Event	Estimated Dates
Release of RFP	December 20, 2007
Deadline for Response Notification Form	January 8, 2008
Deadline for Enquiries	January 8, 2008
RFP Closing	January 15, 2008
Evaluation of RFP	January 2008
Award of Contract	February 2008

1.4 Proponents shall indicate their intention to submit a Proposal prior to the Closing Time by completing and sending the Response Notification Form (Appendix 4) prior to the Response Notification Deadline set out above.

1.5 Proponents are encouraged to read this document and submit any questions pertaining to this RFP by e-mail to: purchasing@vancouver.ca.

2.0 Background

The City of Vancouver is in the process of preparing an Urban Design and Transportation Plan for the Central Waterfront Hub area in Downtown Vancouver. This plan will include a new street network, expanded transit concourse and development sites located over the existing rail yards immediately north of Waterfront Station. To aid the ongoing planning and design process, the City is requesting proposals for engineering consulting services to carry out feasibility analysis and develop preliminary structural concepts and construction cost estimates.

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PART A - INTRODUCTION**

3.0 Insurance

Proponent is requested to review and ensure that they fully understand and have the ability to meet the City's insurance requirements as outlined within Section 21.0 of the Professional Services Agreement in Appendix 1.

4.0 Requirements

In support of the RFP Objectives as outlined above, the City has identified specific Requirements within Schedule A of the RFP to which the Proponent should offer its detailed solution(s).

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PART B - INSTRUCTIONS TO PROPONENTS**

NOTE: The definitions set out in Attachment A - Legal Terms and Conditions of the Proposal Form (Part D) and in the Professional Services Agreement (Appendix 1) apply throughout this RFP, including this Part B of this RFP, except where otherwise expressly stipulated or the context otherwise requires.

1.0 Administrative Requirements

- 1.1 Prior to the deadline please indicate whether or not you will be submitting a Proposal prior to the Closing Time by sending the Response Notification Form (Appendix 4).
- 1.2 It is the sole responsibility of the Proponent to check the City's website at <http://www.vancouver.ca/bid/bidopp/openbid.htm> regularly for amendments, addenda, and questions and answers related to this RFP.
- 1.3 The Proponent is to submit their Proposal in accordance with instructions identified on the cover page and as provided within this Part B.

2.0 Conduct of RFP - Inquiries and Clarifications

- 2.1 The City's Manager of Materials Management will have conduct of this RFP, and all communications are to be directed only to the contact person named on the cover page.
- 2.2 It is the responsibility of the Proponent to thoroughly examine these documents and satisfy itself as to the full requirements of this RFP. Inquiries are to be in written form only, faxed to 604-873-7057 or e-mailed to purchasing@vancouver.ca to the attention of the contact person shown on the cover page before the deadline date. If required, an addendum will be issued to all registered Proponents and posted on the City's website as noted in item 1.2 above.

3.0 Contract Requirements - Professional Services Agreement

- 3.1 The term of Contract will be as per timeline set out in Schedule A, Section 6.0.
- 3.2 Where the head office of the successful Proponent is located within the City of Vancouver and/or where the successful Proponent is required to perform any Work at a site located within the City of Vancouver, the successful Proponent is required to have a valid City of Vancouver business license prior to Contract execution.
- 3.3 The successful Proponent will be requested to enter into the Professional Services Agreement substantially in accordance with Appendix 1. Where the Proponent is proposing modifications to the Professional Services Agreement, the Proponent should attach a copy of the proposed contract language and indicate in the Proposal Form (Schedule C - Deviations and Variations) which clauses in the attached Professional Services Agreement and which clauses in the Proponent's form of contract apply to the Proponent's proposal. While the City is not obligated to accept any alternative, all suggested alternatives will be considered during the evaluation process, but may or may not be acceptable to the City.

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4.0 Pricing

- 4.1 Prices quoted are to be exclusive of GST and PST.
- 4.2 Pricing shall be held firm for the term of the contract.
- 4.3 Prices are to be quoted F.O.B Destination, including freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.
- 4.4 Proponents located in Canada are to quote in Canadian Funds and indicate the rate of exchange included within their prices if the product is imported from the USA or from other countries. Prices will be subject to adjustment based on the rate of exchange in effect at the day of importation. Proponents located outside Canada may quote prices in the monetary currency of their location.

5.0 Consortium Proposals

- 5.1 The City will consider a proposal from two or more persons or companies having no formal corporate links who wish to form a joint venture or consortium solely for the purpose of submitting a proposal in response to this RFP, provided they disclose the names of all members of the joint venture or consortium and all members sign the Proposal Form.
- 5.2 One person or company is to be identified as the Key Contact Person on the Proposal Form (Part D), and be prepared to represent the consortium to the City. The Key Contact Person will serve as the primary contact and take overall responsibility for all communications with the City during the Proposal submission, evaluation, and any negotiation process.
- 5.3 Consortium Proposals should include proposed contract language describing each consortium members' roles and responsibilities and the proposed legal contract structure.
- 5.4 The City reserves the right to accept the consortium as proposed or choose to contract with individual consortium members separately. Each component of the consortium proposal should be priced out individually.

6.0 Submission of Proposal

- 6.1 Proponents are to submit **six (6) copies** of their Proposal, in three ring binders with each section tabbed and including all accompanying schedules, appendices or addenda in a sealed envelope or package marked with the Proponent's name, the RFP title and number, prior to the Closing Time set out on the date and to the location shown on the cover page of this RFP.
- 6.2 Only the English language may be used in responding to this RFP.
- 6.3 Proposals received after the Closing Time or in locations other than the address indicated, may or may not be accepted and may or may not be returned. The City may or may not elect to extend the Closing Time.

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- 6.4 Amendments to a Proposal are to be submitted in writing in a sealed envelope or package, marked with the Proponent's name and the RFP title and number.
- 6.5 Proposals may be withdrawn at any time before or after the Closing Time and are to be withdrawn by written notice delivered to the office of the Purchasing Department, 2nd Floor, City Hall, and signed by the authorized signatory for the Proponent.
- 6.6 All costs associated with the preparation and submission of the Proposal, including any costs incurred by the Proponent after the Closing Time, will be borne solely by the Proponent.

7.0 Format of Proposal

- 7.1 Unnecessarily elaborate Proposals, beyond that sufficient to present a complete and effective response, are not required and unless specifically requested, the inclusion of corporate brochures and narratives are discouraged.
- 7.2 Proponents are to complete all forms included in this RFP attaching any additional appendices that may be required. Proposals are to be arranged as follows:

Title Page: The title page will show the RFP title and number, Closing Time and Date, Proponent name, address, telephone number and the name and title of the contact person.

Table of Contents: Page numbers are to be indicated.

Executive Summary: A short summary of the key features of the Proposal demonstrating the Proponent's understanding of the scope of the Requirements.

Proposal Form: The Proponent is to complete the Proposal Form and attached Attachment A included in this RFP in accordance with the instructions.

Schedules: The Proponent is to complete and provide the information within the respective schedules included in this RFP. If additional space is required to respond to the requirements as outlined, then additional pages can be attached.

Added Value: Proponents may submit Added Value services above and beyond the scope of work and are to identify same as additional appendices within their Proposal.

8.0 Bid and Performance Security

- 8.1 Since no irrevocable offer is required under this RFP, no bid security is required.

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9.0 Conflict of Interest/Solicitation

- 9.1 Proponents are to ensure that any and all conflicts or potential conflicts and any and all collusion, or appearance of collusion is fully and properly disclosed in Section 6.0 of Attachment A of the Proposal Form.
- 9.2 Failure to disclose this information may result in the rejection of the Proposal, the associated entity's Proposal, and/or the immediate cancellation of any Contract should one be concluded in reliance on the information contained in the submitted Proposal.
- 9.3 If any director, officer, employee, agent or other representative of a Proponent makes any representation or solicitation offering a personal benefit of any kind, directly or indirectly, to any officer, employee, agent or elected official of the City with respect to the Proposal, whether before or after the submission of the Proposal, the City will automatically disqualify such Proponent.

10.0 Opening of Proposals

- 10.1 The City reserves the right to open all Proposals in a manner and at the time and place determined by the City. Dissemination of Proposal information will be as follows:
 - a) Upon opening of the Proposals, the names of each Proponent will be publicly announced.
 - b) Upon completion of Proposal evaluation, the salient features of each Proposal and the recommended Proposal will be summarized and reported on to the City's Council.

11.0 Evaluation of Proposals

- 11.1 Proposals will be evaluated by representatives of the City of Vancouver on the basis of the overall best value to the City, based on quality, service, price and any other relevant criteria set out herein including, but not limited to:
 - a) the Proponents ability to meet the requirements of the scope of work and the Proponents ability to deliver the requirements when and where required;
 - b) proven experience in delivering a similar scope of work;
 - c) the Proponents financial offer;
 - d) Compliance with all City Insurance Requirements;
 - e) the Proponent's business and technical reputation and capabilities; experience and where applicable, the experience of its personnel; financial stability; track record; and references of current and former customers;
 - f) project approach and methodology;
 - g) quality of submission; and
 - h) any other criteria set out in the RFP or otherwise reasonably considered relevant.
- 11.2 The City may elect to short list Proponents in stages as deemed necessary. Short-listed Proponents will be asked to provide additional information or details for clarification, which may include the Proponent (and any or all Sub-Consultants of the Proponent), attending interviews, making a presentation, supplying samples, performing demonstrations, and/or furnishing additional technical data.

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- 11.3 Samples of items, when required, should be submitted within the time specified and must be supplied at no expense to the City. If not destroyed in testing, they will be returned at the Proponent's request and expense.
- 11.4 Prior to approval of a Proposal, the City must be satisfied as to the Proponent's financial stability. The Proponent(s) may be asked to provide annual financial reports or a set of financial statements prepared by an accountant and covering the Proponent's last 2 fiscal years.
- 11.5 Preference may be given to Proposals offering environmentally beneficial products or services.

12.0 Deviation from Requirements or Conditions

- 12.1 Any deviation from the Requirements or the conditions specified in this RFP should be clearly stated in the Proponent's Proposal within Schedule C - Deviations and Variations. The City will be the sole judge as to what constitutes an acceptable deviation. If no deviations are indicated in the Proponent's Proposal, the City will assume that the Proponent is proposing full compliance with the Requirements and conditions of this RFP.

13.0 Proposal Approval

- 13.1 Proposal approval is contingent on funds being approved and the Proposal being approved by City Council. Only then may the successful Proponent and the City proceed to settle, draft and sign the necessary legal agreement.
- 13.2 The City will notify the successful Proponent in writing that its Proposal has been approved in principle and invite the Proponent to proceed with discussions to settle, draft and sign a legal agreement.
- 13.3 The City is not under any obligation to approve any Proposal and may elect to terminate this RFP at any time.

14.0 Quantities - Intentionally Omitted

15.0 Brand Names - Intentionally Omitted

16.0 Alternate Solutions

- 16.1 If in addition to proposing services which meet the Requirements, the Proponent wishes to offer an alternative, the alternative solution is to be submitted separately as an appendix within the Proposal.

17.0 Environmental Responsibility

- 17.1 The City is committed to preserving the environment. Proponents are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Consultant supplies materials, and where such materials may cause adverse effects, the Proponent is to indicate the nature of the hazard in its Proposal.

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17.2 The Proponent is to advise the City of any known alternatives or substitutes for such materials that would mitigate the effects of any adverse conditions on the environment.

18.0 Freedom of Information and Protection of Privacy Act

18.1 Proponents should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's Consultants to protect all personal information acquired from the City in the course of providing any service to the City.

19.0 Confidentiality

19.1 Proponents should note that upon submitting their Proposal Form, they will be legally bound to certain confidentiality obligations not to disclose any City information without the City's prior written consent.

19.2 This RFP is the property of the City. Except for the purpose of submitting a Proposal, copies may not be made or distributed without the prior written approval of the City's Manager of Materials Management.

20.0 Advertising

20.1 The approval of any Proposal and the signing of an Agreement does not permit a Proponent to advertise its relationship with the City, without the City's prior written authorization.

21.0 Special Conditions

21.1 Proponents should note that if the Special Conditions of this RFP (if any) conflict with Parts A and B of this RFP, the Special Conditions are intended to govern over Parts A and B.

22.0 Non-Resident Withholding Tax

22.1 Proponents should note that the *Income Tax Act* (Canada) requires that payments to non-residents for any services performed in Canada are subject to a Non-resident Withholding Tax of a specified percentage (depending on residency of the Consultant). Exemption from this withholding tax is available in some circumstances, but the non-resident must apply directly to the Canada Revenue Agency (CRA) at least 30 days before commencing the service.

23.0 Legal Terms and Conditions

23.1 No part of Part A - Introduction, this Part B - Instructions to Proponents nor Part C - Special Conditions will be legally binding on the City or the Proponent. All legal terms and conditions of the process contemplated by this RFP are contained in the Proposal Form (Part D), including without limitation, Attachment A to the Proposal Form.

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PART C - SPECIAL CONDITIONS**

1.0 Additional Evaluation Criteria

- 1.1 In addition to the evaluation criteria set out in Part B of this RFP, the following criteria, which are not in any order of importance, will be taken into consideration where applicable during the City's evaluation of the Proposal:
- The Proponent's proven ability to meet the requirements set out herein;
 - The Proponent's ability to deliver the services when and where required;
 - The Proponent's business reputation and capabilities;
 - The business reputation and capabilities of the Proponent's personnel;
 - The Proponent's financial stability;
 - Proven experience in similar local government projects;
 - Results of reference checks on current and former clients;

2.0 Insurance Requirements

- 2.1 The Proponent is advised to refer to Appendix 1, Professional Services Agreement, and Section 21.0 for the Insurance Requirements pertaining to this RFP.
- 2.2 Proponents are to include in their Proposal, a certificate confirming their insurance coverages, along with a letter from their broker or insurance agent indicating whether or not (and if not then to what extent) they will be able to comply with the insurance requirements set out in the Professional Services Agreement. A copy of the City's "Certificate of Existing Insurance" is attached for reference as Appendix 2.
- 2.3 A copy of the City's "Certificate of Insurance" is attached for reference as Appendix 3. The successful Proponent will be required to file a completed certificate with the City's Risk and Emergency Management Department showing proof of all insurance requirements described in Section 21.0 of the Professional Services Agreement. This certificate must be reviewed and approved by the City's Department of Risk and Emergency Management prior to the City entering into any Contract with the successful Proponent.

3.0 Council Approval

- 3.1 Proponents should note that City Council must approve all consultant contract(s) if the gross cost of the contract exceeds \$30,000.

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PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS**

Proponent's Name: _____
"Proponent"

Address: _____

Telephone: _____ Fax: _____

Key Contact Person: _____

E-mail: _____ Incorporation Date: _____

Attach additional pages immediately behind this page for Sub-Consultants, if applicable.

To the City of Vancouver Materials Management Department,

The Proponent, having carefully examined and read the RFP, including the Professional Services Agreement and its Schedules, now submits the following Proposal:

1.0 Required Documents

If the documents listed below do not accompany the Proposal at the time of opening, the Proposal may or may not be put aside and given no further consideration.

Description	Required	Received
Certificate of Existing Insurance (Part C - 2.2)	Yes	
Letter from Proponent's Broker (Part C - 2.2)	Yes	

To be Initialled at Proposal Opening:

Manager, Materials Management or designate

Witness

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 PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS

2.0 Compliance

By initialling each item, the Proponent acknowledges it has read and understands the Requirements, has submitted the required addenda, has identified deviations or alternatives, and has provided an explanation of where it does not comply with the Requirements. If additional space is required, detail deviations and/or suggested amendments in Schedule C - Deviations and Variations.

Section Title	Understand, Will Comply	Does Not Comply	Variations, Alternatives or Explanation for Non-Compliance
<u>Part B</u> Instructions to Proponents			
<u>Part C</u> Special Conditions			
<u>Part D</u> Proposal Form			
<u>Proposal Form - Attachment A</u> Legal Terms and Conditions			
<u>Professional Services</u> <u>Agreement,</u> <u>Appendix 1</u>			
<u>Certificate of Existing</u> <u>Insurance</u> <u>Appendix 2</u>			
<u>Certificate of Insurance</u> <u>Appendix 3</u>			
<u>Response Notification Form -</u> <u>Appendix 4</u>			

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 PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS

3.0 Required Proposal Documents

By initialling each item, the Proponent confirms it has completed and enclosed the Proposal Form and the required Schedules and any required addenda, and has identified any deviations or items of non-compliance providing an explanation of where it does not comply.

Section Title	Submitted	Variations, Alternatives or Explanation for Non-Compliance
<u>The Proposal Form</u>		
<u>Proposal Form, Attachment A, Legal Terms and Conditions</u>		
<u>Schedule A Requirements</u>		
<u>Schedule B Pricing</u>		
<u>Schedule C Deviations and Variations</u>		
<u>Schedule D Sub-Consultants</u>		

4.0 Proponent's Declaration and Acknowledgment

4.1 The undersigned Proponent confirms that it has read and agreed to the Legal Terms and Conditions attached as Attachment A and agrees to be bound by the same.

IN WITNESS TO THE ABOVE, the Proponent has executed this Proposal Form and submits same with the attached Schedules:

Authorized Signatory for the Proponent
Date

Name and Title (*please print*)

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PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS

1.0 LEGAL TERMS AND CONDITIONS OF PROPOSAL PROCESS

1.1 Application of These Terms and Conditions

These legal terms and conditions set out the City's and Proponent's/Sub-Contractors' legal rights and obligations only with respect to this RFP and Proposal process. In no event will the legal terms and conditions of this Attachment A apply to the Contract formed between the City and the Proponent and the signing of the legal Professional Services Agreement (if any).

1.2 Definitions

In this Attachment A, the following terms have the following meanings:

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the *Vancouver Charter*,
- (b) "Contract" means any legal agreement between the City and Proponent separate from this Attachment A, including the Professional Services Agreement - Appendix 1.
- (c) "Proposal" means the package of documents, consisting of this Proposal Form as well as all Schedules, once completed and submitted to the City by the Proponent, and "proposal" means any proposal submitted by any other proponent, excluding or including the Proponent, depending on the context.
- (d) "Proponent" means the legal entity(ies) who has (have) signed and delivered this Proposal Form, and "proponent" means any proponent responding to the Instructions to Proponents, excluding or including the Proponent, depending on the context.
- (e) "Losses" means in respect of any matter all
 - (i) direct or indirect, as well as
 - (ii) consequential,claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (f) "RFP" means the documents issued by the City as Request for Proposal No. PS07152, including all addenda.
- (g) "Sub-Contractors" includes any or all third parties listed in Schedule D of this Proposal Form.

2.0 GENERAL TERMS AND CONDITIONS OF RFP/PROPOSAL PROCESS

2.1 *No Legal Obligation Assumed by City*

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PROPOSAL FORM - ATTACHMENT A - LEGAL TERMS AND CONDITIONS

Despite any other term of this Proposal Form (except only (where applicable) Section 4.3 - *Limitation*, Section 4.4 - *Dispute Resolution*, Section 5.2 - *Proponent's Submission Confidential*, and Section 5.5 - *Declaration of Confidentiality*, the City assumes no legal duty or obligation in respect of this RFP or this Proposal process unless and until the City enters into a Contract). This RFP and Proposal process is at all times contingent on funds being approved by the Vancouver City Council and a Contract being signed by the City.

2.2 Legal Rights and Obligations Suspended

Despite any other term of this Proposal Form (except only (where applicable) Section 5.2 - *Proponent's Submission Confidential*, and Section 5.5 - *Declaration of Confidentiality*, the City and Proponent agree that all of their respective rights and obligations at law and in equity, in contract and in tort, in all matters relating to the RFP and this Proposal process will be absolutely and unconditionally subject to Section 4.0 - *Protection of City Against Lawsuits*, and the following:

(a) No Duty

The City has no legally enforceable duty or obligation to the Proponent unless and until the City signs a Contract.

(b) Proponent's Risk

The Proponent acknowledges that the City is a public body required by law to act in the public interest. Accordingly, in no event does the City owe to the Proponent (as opposed to the public):

- (i) a contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP or Proposal process; or
- (ii) any contract or tort law duty to preserve the integrity of the RFP or Proposal process,

and the Proponent now waives and releases the City from all such duties and expressly assumes the risk of all Losses arising from participating in the RFP and Proposal process on this basis.

(c) Proponent's Cost

The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP and Proposal process.

3.0 EVALUATION OF PROPOSALS

3.1 Compliance/Non-Compliance

Any Proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP or, which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion.

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3.2 Reservation of Complete Control Over Process

The City reserves the right to retain complete control over the RFP and Proposal process at all times except only as otherwise expressly stipulated in any Contract. Accordingly, the City is not legally obligated to review, consider or evaluate the Proposals and need not necessarily review, consider or evaluate the Proposals in accordance with the procedures set out in this RFP and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation process on any or all Proposals at any time without further explanation or notification to any of the Proponents subject only to the express legal terms and conditions which bind the City, which terms and conditions are expressly limited to those set out in Section 4.3 - *Limitation*, Section 4.4 - *Dispute Resolution*, Section 5.2 - *Proponent's Submission Confidential*, and Section 5.5 - *Declaration of Confidentiality*.

3.3 Discussions/Negotiations

The City may, at any time prior to or after signing a Contract, discuss/negotiate changes to the scope of the RFP, or any of the terms or conditions of the RFP with any one or more of the Proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of discussions or negotiations with other Proponents or changes to the RFP, and, without limiting the general scope of Section 4.0 - *Protection of City Against Lawsuits*, and by way of example only, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

4.0 PROTECTION OF CITY AGAINST LAWSUITS

4.1 Release

Except only and to the extent that the City is in breach of a Contract, Section 5.2 - *Proponent's Submission Confidential*, or Section 5.5 - *Declaration of Confidentiality*, the Proponent now releases the City from all liability for any Losses in respect of:

- (a) any alleged (or judicially imposed) breach by the City of the RFP (it being acknowledged and agreed that to the best of the parties' knowledge, the City has no obligation or duty under the RFP or Proposal process which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City occurring in the course of conducting this RFP and Proposal process;
- (c) the Proponent preparing and submitting its Proposal;
- (d) the City accepting or rejecting its Proposal or any other submission;
- (e) the manner in which the City:
 - (i) reviews, considers, evaluates or negotiates any Proposal,
 - (ii) deals with or fails to deal with any Proposal or Proposals, or
 - (iii) decides to enter into a Contract or not enter into any Contract;
- (f) the Proponent(s), if any, with whom the City enters a Contract.

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4.2 Indemnity

Except only and to the extent that the City breaches a Contract, Section - 5.2 - *Proponent's Submission Confidential* or Section 5.5 - *Declaration of Confidentiality*, the Proponent now indemnifies and will protect and save the City harmless from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its Sub-Contractors or agents alleging or pleading

- (a) any alleged (or judicially imposed) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP or Proposal process which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially)),
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting this RFP or Proposal process, or
- (c) liability on any other basis related to this RFP or the Proposal process.

4.3 Limitation

In the event that, with respect to anything relating to this RFP or Proposal process (except only and to the extent that the City breaches a Contract, Section 4.3 - *Limitation*, Section 4.4 - *Dispute Resolution*, Section 5.2 - *Proponent's Submission Confidential*, or Section 5.5 - *Declaration of Confidentiality*), the City or its officials, officers, agents or employees are found to have breached any duty or obligation of any kind to the Proponent or its Sub-Contractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its Sub-Contractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

4.4 Dispute Resolution

Any dispute relating in any manner to this RFP or the Proposal process (except only and to the extent that the City breaches a Contract, Section 4.3 - *Limitation*, Section 4.4 -

Dispute Resolution, Section 5.2 - *Proponent's Submission Confidential*, or Section 5.5 - *Declaration of Confidentiality*, will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia) amended as follows:

- (a) The arbitrator will be selected by the City's Manager - Materials Management.
- (b) This Section 4.0 - *Protection of the City from Lawsuits* will:
 - (i) bind the City, Proponent and the arbitrator; and
 - (ii) survive any and all awards made by the arbitrator.
- (c) The Proponent will bear all costs of the arbitration.

5.0 ACCESS/OWNERSHIP OF PROPOSAL INFORMATION

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5.1 Proposal Documents Remain/Proposal Becomes - City's Property

- (a) All RFP packages and addenda provided to the Proponent by the City remain the property of the City and must be returned to the City upon request.
- (b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal.

5.2 Proponent's Submission Confidential

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council on the Proposal results or announcing the results of the Proposals to the Proponent, the City will treat all material and information expressly submitted by the Proponent (and the City's evaluation of it) in confidence in substantially the same manner as it treats its own confidential material and information.

The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

5.3 All City Data/Information is Confidential

The Proponent will not divulge or disclose to any third parties any information concerning the affairs of the City which may be communicated to the Proponent at any time (whether before or after the closing date and time of this RFP process). Recognizing the need for confidentiality of the City's data, files and other confidential information, the Proponent will not use, exploit or divulge or disclose to third parties any confidential or proprietary information of the City of which the Proponent may gain knowledge in connection with or in the course of discussions or negotiations with the City.

All material and information that has or will come into the Proponent's possession or knowledge in connection with this Proposal process is confidential and may not be disclosed or utilized in any way except in accordance with the Instructions to Proponents and this Proposal Form.

5.4 Disclosure Requires Prior Consent

The Proponent may not divulge any information respecting the Proposal process to any third party without the prior written consent of the City, which consent may be arbitrarily withheld unless it is information which the City has already made public or has been required to disclose pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

5.5 Declaration of Confidentiality

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The Proponent now declares and agrees that, except for the information disclosed by the City in the course of publicly reporting to the Vancouver City Council or any public proposal opening:

- (a) the information supplied by the Proponent in response to the RFP is expressly provided in strict confidence;
- (b) any records made of the evaluation of this Proposal and all other submissions will be the property of, and private to, the City and will not be disclosed to the Proponent nor anyone else;
- (c) the disclosure of the information in items (a) and (b) above to anyone outside of the City's staff would reveal the Proponent's trade secrets or proprietary commercial information concerning its private business affairs; and
- (d) the disclosure of the information in items (a) and (b) above, could reasonably be expected to harm the Proponent's competitive position, harm the Owner's ability to engage in competitive procurement of goods and services, and result in undue financial loss to the Proponent and/or the City.

6.0 DECLARATION - NO CONFLICT OF INTEREST / NO COLLUSION

6.1 Declaration as to Conflict of Interest

The Proponent now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Proponent's or Sub-Contractor's organizations (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:

- (a) an elected official or employee of the City; or
- (b) related to or has any business or family relationship with any elected official or employee of the City, such that there would be any conflict of interest or any
- (c) appearance of conflict of interest in the evaluation or consideration of this Proposal by the City, except as set out below:

[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any or all relationships which might give rise to a conflict of interest or an appearance of a conflict of interest].

6.2 Declaration as to Collusion

The Proponent now confirms and warrants that:

- (a) the Proponent has no affiliation, whether legal or financial, with any other entity which is in the business of providing the same type of goods or services which are the subject of this RFP; and
- (b) the Proponent is not competing within this RFP process with any entity which it is legally or financially associated or affiliated, except as set out below:

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[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any and all affiliations or relationships which might give rise to collusion or an appearance of collusion].

7.0 NO PROMOTION OF RELATIONSHIP

7.1 The Contractor must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Contractor to perform the Contractor's obligations under the terms of the Contract). The Contractor undertakes not to use "VANOC", "Vancouver 2010", "City of Vancouver", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", the official emblem, logo or mascot of the 2010 Games or any reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the Contractor undertakes not to disclose or promote its relationship with the City in any communication or matter whatsoever as a basis to create an association, express or implied, between the Contractor and the "City of Vancouver", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", IOC, the Olympics or the Olympic Movement.

8.0 SURVIVAL/LEGAL EFFECT OF PROPOSAL CONTRACT

8.1 All of the terms of this Attachment A to this Proposal Form which by their nature require performance or fulfilment following the conclusion of the Proposal process will survive such process and will remain legally enforceable by and against the Proponent and City.

AS EVIDENCE OF THE PROPONENT'S INTENT TO BE LEGALLY BOUND BY THIS ATTACHMENT A, THE PROPONENT HAS EXECUTED AND DELIVERED THIS ATTACHMENT A AS AN INTEGRAL PART OF THIS PROPOSAL FORM IN THE MANNER AND SPACE SET OUT ABOVE.

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SCHEDULE A - REQUIREMENTS**

This Schedule identifies the Requirements to which the City is seeking a solution or a response. Proponents are to address, but are not limited in their response to, the respective issue(s). Proponents may submit their solution or response on a separate sheet. However, the same number sequence is to be used.

1.0 Scope of Services

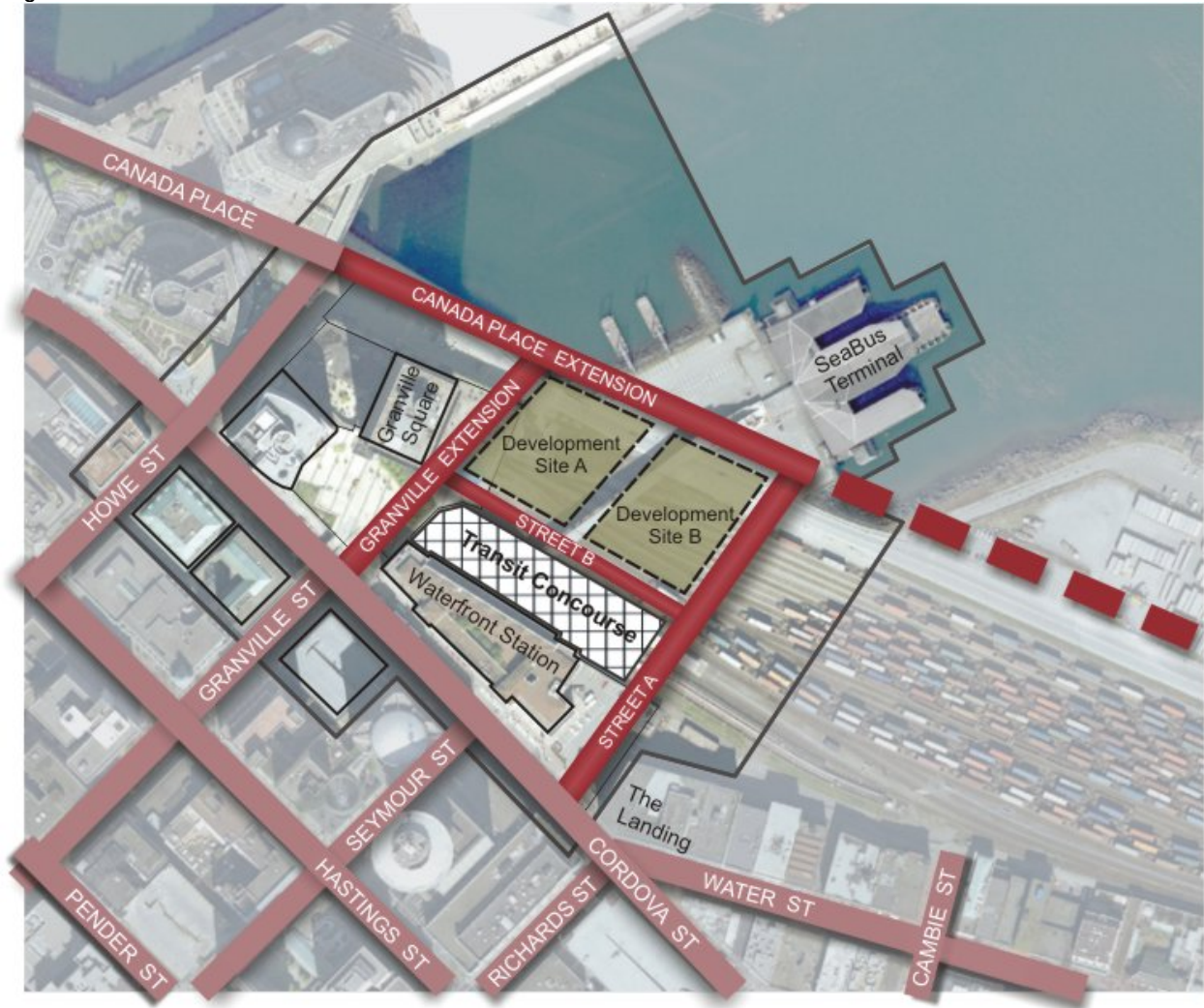
(a) Central Waterfront Hub Study Plan Elements

The feasibility analysis and structural concepts shall be developed for the following elements of the plan:

1. Creating a viaduct road network north of Cordova Street and east of Howe Street involving (see Figure 1):
 - a. an eastern extension of the Canada Place viaduct, including an extension of the waterfront walkway/bikeway,
 - b. a northern connection between Cordova and the Canada Place viaduct extension from between the Landing and Waterfront Station building ("Street A" as per Fig.1),
 - c. an extension of Granville Street to the north of Cordova (which will be an update of a 2005 study concept),
 - d. a transit roadway connecting the extension of Granville Street to "Street A" approximately midway between Cordova Street and the Canada Place viaduct ("Street B" as per Fig.1).
2. Creating a new transit concourse north of the Station building, including a concept for a pedestrian underpass of the transit roadway ("Street B").
3. Creating two development sites above the railway tracks south of the Canada Place viaduct extension.
4. Creating a new entrance to the Granville Square parkade from Cordova Street and updating the cost estimate for a previous entrance design from Canada Place.

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SCHEDULE A - REQUIREMENTS

Fig.1



(b) Central Waterfront Hub Study Criteria

The feasibility analysis and structural concepts shall be developed in accordance with the following criteria:

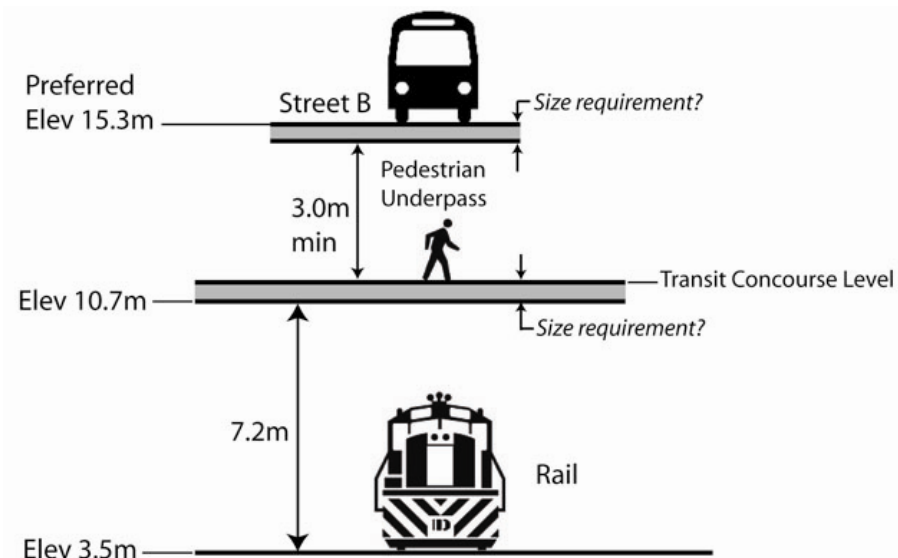
Rail

1. The need to minimize impact on railway and transit operations.
2. Consultation with the Railways to establish appropriate column spacing and locations.
3. Examination of any track-work moves required to accommodate viaduct structures or development structures including tower cores and footings.
4. Column placement should allow for the addition of another heavy rail platform to the north of the existing West Coast Express platforms.
5. Potential need to accommodate additional freight rail tracks.

Transit Concourse

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1. Connection to the existing Expo line skytrain platforms.
2. Three connections to the West Coast Express platforms.
3. Pedestrian connection from the transit concourse to the Seabus terminal, including the phased replacement of the existing walkway and the vertical circulation structure at the terminal.
4. Pedestrian connection between the transit concourse and Waterfront Station building.
5. Pedestrian connection to the additional heavy rail platform.
6. A roof structure providing weather protection for the concourse.
7. At the location of the pedestrian underpass of "Street B", the road elevation should be minimised as much as possible under the following constraints:
 - i. The clear height of the pedestrian underpass should be no less than 3m.
 - ii. Street B should be as level as possible (allowing for drainage requirements) from the connection with Granville extension to the connection with "Street A".



Viaducts

1. Accommodation of future transit vehicles (bus and/or streetcar) on all viaducts.
2. Creating a good 'urban fit', and accommodating street trees in trenches where possible.
3. Provide a structural concept for the extension of the Canada Place viaduct to the east and down to Waterfront Road.

Development Sites

1. Structural impacts of the constraints imposed by the rail tracks on column placement and elevator core locations.

Clearances

Above Rail = 7.2m
Above Waterfront Road = 7.5m or 5.2m for discrete intervals

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Pedestrian underpass = 3m

2.0 Mandatory Experience Requirements

The City has identified key mandatory experience requirements which require compliance by the Proponent to meet the service requirements of this RFP.

a) Company Profile

Provide a brief company history with emphasis placed on local information.

b) Project Specific Experience

The Proponent is required to complete the information for the respective items listed within the following table. Non-compliance with these Mandatory Requirements may or may not result in the Proposal being set aside and given no further consideration.

For each entry which the Proponent marks "Yes", the Proponent is to list a minimum of three relevant projects along with an explanation as to how each listed project demonstrates the Proponent's compliance with that Requirement by, for example, describing the Proponent's experience in the required area, specifying client names where applicable, and attaching a published client list along with any letters of recommendation that may be appropriate to this project. By submitting a Proposal, the Proponent consents to the City contacting the client references, and consents to the City also contacting any other organization for the purposes of evaluating the Proponent's company and Proposal.

Requirement	Complies (No or Yes, with Explanation/Description)
Demonstrated understanding of the workings of a major municipal government including the time limitations imposed on this project.	
Demonstrated understanding and ability to meet project deadlines.	
Demonstrated corporate experience in relevant projects which are comparable to the Work required for this project;	
Demonstrated ability of the staff proposed to be assigned to this project by the Proponent including the following areas of expertise: <ul style="list-style-type: none"> • Freight Rail operations • Civil structural • Building Structural 	

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SCHEDULE A - REQUIREMENTS**

c) **General Experience/References**

To the extent not already addressed in (b) above, the Proponent may elect to provide further references, by completing the table below. The Proponent may, at its own discretion, expand on the number of references and information as it deems necessary to support its Proposal.

Name and Address of Company Providing Reference	Contact Name & Telephone Number	Brief Description of Services Provided by Proponent

3.0 Project Deliverables

The following are the Project Deliverables and are to be provided with respect to the proposed plan elements described in Section 1.0(a) and Figure 1 of this Schedule A - *Requirements* and in accordance with the criteria described in Section 1.0(b) of this Schedule A - *Requirements*.

1. A preliminary assessment of the basic feasibility of each of the proposed plan elements, to inform the ongoing design process at the earliest possible stage of the study.
2. Conceptual structural plans indicating column locations and spacing as well as track alignment and any reconfiguration.
3. Construction cost estimates for each of the plan elements including a commentary on how these may differ from other construction sites in the vicinity.
4. An overview of how construction phasing could occur.
5. A summary of some of the construction challenges in this area relating to maintaining transit and rail operations while constructing viaducts and the transit concourse.
6. A report detailing the results of the study and the recommendations, including comments on the following:

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SCHEDULE A - REQUIREMENTS**

- the general feasibility and/or risks associated with each of the proposed plan elements;
- the reliability of the construction cost estimates;
- any implications for other transportation links at the hub;
- any implications for adjacent properties; and
- potential construction phasing and challenges.

7. Periodic consultation with the City (bi-weekly) as the work progresses to keep on track regarding the options and to ultimately make recommendations as to the most feasible, practical or suitable option.

4.0 Approximate Timeline/Project Schedule

Approximate timeline for this project is as follows:

Work Plan Estimates		
Phase and Work Package		Duration
1.	Preliminary Feasibility Assessment	Weeks 1-4*
2.	Conceptual Design, Costing and Preparation of Final Report	Weeks 5-12*

*As measured from date of signing Professional Services Agreement

The Proponent shall provide a flow chart or Gantt chart depicting the sequence and duration of each of the activities or tasks described in Section 6.0 and 7.0 below for its methodology and work program. The time allotments for each member of the Proponent’s proposed team grouped within their respective areas of responsibility for each activity shall be tabulated. The schedule should also show how the City milestone dates will be met and if or how the different task items can be reduced in time from the City’s milestones. The commencement and completion dates of each task should be included. Along the bottom of the tabulation, the total hours for each person in the team shall be computed and along the right side of the tabulation, the total hours for each task should be computed. The total hours for each Phase of the work should also be tabulated.

5.0 Project Appreciation

The Proponent shall state their understanding of the project and study approach, as well as any relevant City policies and plans.

6.0 Methodology and Work Program

The Proponent shall:

- a. provide a detailed plan of approach and description of the services proposed, including details of the services that the firm intends to obtain by using sub-consultants;
- b. provide an itemized work program grouped by items of work (tasks) envisioned by the Proponent, with a description of each task. Activities in this section shall be carried forward into the flow chart or Gantt chart referenced in Section 3.0 above as well as into Schedule B - *Pricing*;
- c. indicate those activities the City is expected to undertake in the description of the task along with the level of support that the Proponent would provide;

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- d. state any proposed deviations from the scope of services specified in these RFP documents utilizing Schedule C - *Deviations and Variations*; and
- e. describe the methods to be employed to perform and coordinate the services and to control the scope, quality, schedule and cost of the project.

7.0 Value Added Services

Describe any additional services or benefits offered as part of the Proponent's methodology and work program other than those described in Section 5.0 above. Unless otherwise specified it will be assumed there will be no additional fees or other charges for these services or benefits.

8.0 Project Team Organization and Personnel Descriptions

The Proponent shall provide:

- a. names of the Project Manager and specific key personnel assigned to the project,
- b. a fully completed Schedule D - *Sub-Consultants*, setting out the names of all sub-consultants to be used, including key personnel, contact information, and area of responsibility,
- c. resumes of the qualifications for each person listed in items a. and b. above with specific reference to skill and experience with a minimum of three similar projects to this one. Each project description shall include a reference contact and telephone number, a brief description of the project (function, date, value) and the scope and value of the work; and
- d. an organizational chart including every person whose resume is provided that clearly shows the function each person will perform and the tasks they will complete. This should identify who will be primarily responsible for each key discipline, including civil engineering, freight rail expertise, and building structural expertise.

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 SCHEDULE B - PRICING**

1.0 INSTRUCTIONS

- 1.1 The Proponent shall complete a fee schedule and task/cost schedule that includes the following components:
- a. Hourly charge-out rate for each team member, including all sub-consultants identified in Schedule D.
 - b. Estimated time in hours dedicated to each activity in the work program for each member.
 - c. Disbursements and reimbursables shall be listed separately from the Pricing Table.
 - d. Proponents are to copy and customize the below Pricing Table for inclusion in their RFP submission.

Estimated Price					
Work Package/Phase	Team Members	Activity/Role	Estimated Hours	Hourly Rate	Deliverables

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SCHEDULE C - DEVIATIONS AND VARIATIONS**

Proponents are to use this Schedule to detail any deviations and/or variations from the terms and conditions set out in this RFP and if applicable, detail proposed amendments.

Where Proponent is proposing the use of contract language/clauses other than set out in the Professional Services Agreement, such clauses are to be attached to this Schedule C. The City will assume such clauses are in addition to those in the Professional Services Agreement unless otherwise indicated by the Proponent.

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SCHEDULE D - SUB-CONSULTANTS**

The Sub-consultants shown below are the Sub-consultants that the Proponent proposes to use to carry out the Requirements. The City expects that the Proponent will engage the listed Sub-consultants and no others in their stead, without prior written authorization of the City. (For contractual requirements, Proponents should note Sections 14.0 - 17.0 of the Professional Services Agreement.)

If no Sub-consultants will be used, indicate "Not Applicable".

Company Name, Address	Contact Name and Telephone Number	Area of Responsibility

THIS AGREEMENT dated _____, 2008

BETWEEN:

THE CITY OF VANCOUVER, a municipal corporation continued pursuant to the *Vancouver Charter* and having an office at 453 West 12th Avenue, Vancouver, British Columbia V5Y 1V4.

(the "City")

AND:

[INSERT SUCCESSFUL PROPONENT'S NAME], a corporation incorporated pursuant to the [_____] (Incorporation Number _____) and having an office at Suite [____], [_____] Street, [_____]

(the "Consultant")

BACKGROUND:

- A. Pursuant to the Request for Proposals, No. PS07152 (the "RFP") the City invited proposals from qualified Proponents for Structural Engineering Consulting Services For Central Waterfront Hub that meet the Requirements as set out in the RFP;
- B. In response to the RFP the Consultant submitted its RFP Proposal on [_____, 2008] to perform the Requirements on the terms and conditions of the RFP as supplemented by the RFP Proposal;
- C. After evaluating the Consultant's and other proponents' proposals, City Council authorized the General Manager of Engineering Services to enter into negotiations with the Consultant for a legal agreement based on both the RFP and the RFP Proposal and on such other terms and conditions considered acceptable to the City and the Consultant; and
- D. The City and the Consultant have now completed those negotiations and have agreed to the following terms and conditions.

NOW THEREFORE, in consideration for the mutual covenants and promises made by the parties and other good and valuable consideration, the receipt and sufficiency of which is now acknowledged, the parties agree as follows:

1.0 Definitions and Interpretation

- 1.1 The following words and terms, unless the context otherwise requires, have the meanings set out below:

"Agreement" means this agreement as set out in the Contract Documents comprised of this Form of Agreement and attachments;

"Certificate of Insurance" means a certificate of the type attached as Schedule E - *Certificate of Insurance Form*; [Note: To be the same form as Appendix 3 - Certificate of Insurance of the RFP]

"City" means the City of Vancouver, a municipal corporation continued pursuant to the *Vancouver Charter*;

"City's Personnel" means the City's and the City's contractors' directors, officials, officers, employees, agents, licensees and invitees and includes where the context permits, the Vancouver Police Board, Vancouver Public Library Board, Vancouver Board of Parks and Recreation, and all officials, officers, employees and other agents of same;

"City's Project Manager" means the City's employee or representative (or any replacement or delegate of that person) who is authorized in writing to deal with the Consultant on behalf of the City in connection with the Services or to make decisions in connection with this Agreement;

"City Security Clearance" means the security clearance level required by the Vancouver Police Department or the City in respect to third party personnel who require access to security sensitive information, equipment, or areas in order to carry out services for the City;

"City of Vancouver Engineering Cadd Standards" means the City's standardized set of procedures and guidelines to ensure consistent transfer of spatial data;

"Contract Documents" has the meaning set out in Section 2.0 - *Contract Documents*;

"Contract Price" has the meaning set out in Section 6.0 - *Price*;

"Consultant" means the entity defined as such on the front page of the Contract Documents;

"Consultant's Personnel" means the Consultant's and the Sub-Consultants' directors, officials, officers, employees, agents, licensees and invitees;

"Consultant's Project Manager" is the Consultant's employee or representative who has the overall responsibility for the successful planning and execution of the Services and who is authorized to deal with the City on behalf of the Consultant in connection with the Services or to make decisions in connection with this Agreement;

"Contemplated Change Notice/Change Order" means a change order in the form attached as Schedule F hereto;

"Deliverable" means the Services completion/payment milestones specifically identified as such in Schedule B - *Contract Price*;

"Effective Date" means the date on which this Agreement takes legal force and effect and is the date set out on the first page of these Contract Documents;

"GST" means the goods and services tax administered under the *Excise Tax Act* (Canada) and any successor tax or levy in force from time-to-time;

"Losses" means all

(a) direct and indirect, as well as

(b) consequential, claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs, and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties, and amounts paid in settlement whether from a third person or otherwise).

"Materials" has the meaning set out in Section 11.1.

"Professional Standard" means the highest of the standard:

- (i) imposed by law,
- (ii) prescribed by the professional and regulatory bodies in the applicable profession, field or discipline,
- (iii) equal to that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered,
- (iv) necessary to meet the Project Schedule and other deadlines set out in the Contract Documents, or as reasonably specified from time to time by the City,
- (v) necessary to be consistent with City of Vancouver Engineering Cadd Standards, and

(vi) imposed by the Requirements.

"Project Schedule" means the schedule attached in Schedule C; [Note: To be attached utilizing the flow chart or Gantt chart submitted by the successful Proponent as part of Schedule A - *Requirements* of its Proposal.]

"Proprietary Information" has the meaning set out in Section 12.0 - *Confidential and Proprietary Information*;

"PST" means the provincial sales tax administered under the *Social Services Tax Act* (British Columbia) and any successor tax or levy in force from time-to-time;

"Requirements" means all the requirements set out in the RFP as supplemented by the RFP Proposal and the Contract Documents that the Consultant must perform;

"RFP" means the City's Request for Proposals No. PS07152, including all addenda, Q&A, and related documents issued by the City pursuant to the RFP;

"RFP Proposal" means the proposal submitted in response to the RFP by the Consultant, including all written clarifications subsequently submitted to the City;

"Services" means the services set out in Schedule A; [Note: To be attached utilizing the applicable portions of Schedule A - *Requirements* from the successful Proponent's Proposal.]

"Sub-Consultant" means the independent consultants, agents, associates, subcontractors and other third parties retained by the Consultant to assist in the performance of the Services;

"Unavoidable Delay" has the meaning set out in Section 9.0 - *Unavoidable Delay*;

"WorkSafeBC" means the Workers Compensation Board (British Columbia) an entity created pursuant to the WorkSafeBC Regulations;

"WorkSafeBC Regulations" means the *Workers Compensation Act* (British Columbia) including all regulations and directives enacted or issued from time to time pursuant to that Act, all as amended or replaced from time to time.

- 1.2 Headings The headings appearing in this Agreement are for convenience of reference only and in no way define, limit or enlarge the scope or meaning of any provision.
- 1.3 RFP Defined Terms All other terms not defined above will have the meanings given to them in the RFP.

2.0 Contract Documents

The terms and conditions of the Contract Documents, whether or not actually attached to this Form of Agreement will govern the terms of this Agreement. The Contract Documents are complementary, and what is called for by any one will be as binding as if called for by all. In the event of any inconsistency or conflict between any of the terms and conditions within these Contract Documents, the provisions of the Contract Documents will take precedence and govern in the following priority:

- (a) this Agreement, excluding the attached *Schedules A to D*;
- (b) Schedule A - *Services*;
- (c) Schedule B - *Contract Price*;
- (d) Schedule C - *Project Schedule*
- (e) Schedule D - *Sub-Consultants*;
- (f) Schedule E - *Certificate of Insurance Form*;
- (g) Schedule F - *Contemplated Change Order Form*;
- (h) Part C of the RFP- *Special Conditions*,
- (i) any *Addenda* to the RFP issued by the City;
- (j) the Consultant's RFP Proposal;
- (k) those parts of the RFP not referenced above.

3.0 Notices

3.1 Notices

Any notice required to be given under this Agreement will be given in writing and delivered, faxed or e-mailed to the City's Project Manager or Consultant's Project Manager, as applicable, or such other person, position, address as one party may advise the other from time to time or at any time, and any notice given in accordance with this or any other more specific provision of this Agreement will be deemed to be received as of the first Business Day following:

- (a) delivery if sent by courier to the civic address, or
- (b) transmission, if sent by fax or e-mail transmission

(except where, in the case of e-mail, the recipient's computer notifies the sender that the recipient is absent - e.g. the "auto-reply" feature has been activated or where with a fax transmission, the sender's fax machine notifies the sender that none or only part of the pages were successfully transmitted).

Only where expressly authorized by this Agreement may notice be given verbally or by telephone.

3.2 Notice of Actions against Consultant

The Consultant will notify the City immediately upon the written threat or commencement of any actions brought against the Consultant or any Sub-Consultants, the outcome of which may affect the rights of the City, or the ability of the Consultant to comply with its obligations under this Agreement.

4.0 Conduct of the Agreement

- 4.1 The City's Project Manager For the purposes of this Agreement, the City designates as its Project Manager:

[_____] , P.Eng
 Structures Engineer
 Structures Branch, National Yard
 701 National Yard Avenue, Vancouver BC
 Telephone: 604-871-[_____]
 Fax: 604-871- [_____]
 E-mail: [_____] . [_____]@vancouver.ca

- 4.2 The Consultant's Project Manager For the purposes of this Agreement, the Consultant designates as its Project Manager:

[_____] , P.Eng
 [_____]
 [_____]
 Telephone: [_____]
 Fax: [_____]
 E-mail: [_____]

5.0 Services of Consultant

5.1 Provide Services

The Consultant will perform the Services for the City at the times and in the manner reasonably requested from time to time by the City, all in accordance with the Requirements and all such other services and work as are necessary for or incidental to the Requirements including supplying all labour, supervision, management, overhead, materials, supplies, and all other things necessary for or incidental to the Requirements.

5.2 Requirements - Professional Standard

The Consultant will perform the Services to a Professional Standard.

5.3 Requirements - Interpretation

The Requirements have been prepared and agreed upon to describe in general terms the City's requirements and the performance criteria that the Services must satisfy. However, despite Section 2.0 - *Contract Documents*, where there is an inconsistency between one part of the Requirements and any other part of the Requirements or between any other terms of the Contract Documents which could be construed as creating an ambiguity in the amount of work involved, the cost or amount of the Service to be supplied, the Contract Price being lower or higher, or any other similar discrepancy or inconsistency, the discrepancy or conflict will be resolved as follows: The portion or term of the Contract Documents most favourable to the City will be deemed to be correct.

5.4 Key Personnel

The Consultant will furnish all personnel required to perform the Services, and all such personnel will be competent and qualified to perform the Services. Where specific personnel have been proposed by the Consultant for the performance of the Services, and have been accepted by the City, such personnel will not be replaced with other personnel without the prior written consent of the City, such consent not to be unreasonably withheld where the Consultant must use a replacement by reason of injury, death, pregnancy, retirement, or cessation of employment, but which consent may be arbitrarily withheld when the replacement is required in order to permit the key personnel to service other customers of the Consultant.

The parties now confirm and agree that the key personnel listed out in Section [____] - Schedule A - *Services, Project Team Organization and Key Personnel* of the RFP Proposal have been accepted by the City and may only be replaced in accordance with this Section.

6.0 Contract Price

6.1 Maximum Fees and Disbursements - Contract Price

This Agreement is a "time and materials" contract subject to an upset price maximum. Accordingly, despite any other term of this Agreement (except for Section 10.0 - *Changes in Requirements*), the maximum fees and expenses payable by the City to the Consultant for the Services is \$[_____]CDN (the "Contract Price") as set out in Schedule B - *Contract Price*.

6.2 Hourly Rates/Unit Rates Fixed

All hourly rates and unit rates set out in this Agreement will remain fixed until the completion of the Services and may not be increased by the Consultant for any reason.

6.3 Basis of Payment - "Time and Materials" Contract

In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms of this Agreement, the City will pay the Consultant the fees and expenses set out in this Agreement, plus the GST and PST as applicable.

6.3.1 Time and Materials

Subject to the other terms of this Agreement, payment to the Consultant will be based on:

- (a) hours worked by the Consultant's Personnel in providing the Services multiplied by the applicable hourly charge-out rate for that personnel as set out in Schedule B - *Contract Price*, and
- (b) the direct out-of-pocket expenses necessarily incurred in providing the Services and expressly permitted to be charged separately under this

Agreement.

6.3.2 Deliverable Price is Maximum

Despite anything to the contrary in this Agreement (except Section 10.0 - *Changes in Requirements*), the maximum fees and disbursements to be paid by the City to the Consultant for each Deliverable will not exceed the amounts set out in Schedule B - *Contract Price* for that Deliverable and accordingly:

- (a) where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable is less than the maximum amounts set out in Schedule B - *Contract Price*, the City will only pay for the aggregate of the time and materials at the hourly rates for fees and the unit rates for expenses; and
- (b) where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable exceeds the maximum amounts set out in Schedule B - *Contract Price* for that Deliverable, the City will only pay the maximum fees and disbursements amount set out for that Deliverable in Schedule B - *Contract Price*.
- (c) the Consultant will only invoice for and the City will only be obligated to pay a maximum of 90% of the maximum amounts set out in Schedule B - *Contract Price* for each Deliverable, with the remaining 10% being a performance security holdback retained by the City and which the City will be obligated to pay once all Deliverables have been completed and accepted by the City's Project Manager.

6.4 Services Obligations Included in Contract Price

The Contract Price and maximum amounts on fees and disbursements as set out in Schedule B - *Contract Price* will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.

6.5 Permitted Expenses

Subject to the maximum liability of the City under Schedule B - *Contract Price*, expenses for which the City will reimburse the Consultant will be limited to the following:

- (a) Transportation costs, including travel time, for any of the Consultant's Personnel to travel to meetings requested by the City at locations other than the Consultant's offices or the City's premises within the City of Vancouver is not to exceed \$0.41 per kilometre to a maximum of 10 kilometres one way. No hourly rates may be charged for travel time and no accommodation, food or other travel related expenses will be reimbursable.
- (b) Long distance telephone calls.
- (c) Photocopies to a maximum of \$0.20 per page.
- (d) Delivery of drawings, specifications or correspondence by courier, where this method of delivery has been requested by the City.
- (e) Provision of office space and related services at a job site (but only if first approved in writing by the City) where the Consultant's Personnel are performing management, inspection, construction supervision, administration or other field services as part of the Services.
- (f) Sub-Consultant fees and disbursements for drilling and soil sampling or other work, if first approved in writing by the City, which are required for the Consultant to carry out the Services.

Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit.

All other expenses not listed above are now deemed to be expressly included in the Consultant's fees.

If the Consultant has engaged Sub-Consultant(s), then the Consultant will make full payment to those Sub-Consultant(s) for work performed in relation to the Services.

6.6 Sub-Consultant Services All-Inclusive Unless Change Order

Where the City and Consultant have expressly stated in Schedule B - *Contract Price* (or by Change Order) that certain Services to be performed by a Sub-Consultant are to be paid for separately from the other Services, the City will reimburse the Consultant for payments made to such Sub-Consultant(s) at amounts equal to the actual payments made to that Sub-Consultant by the Consultant without any additions for overhead and profit.

6.7 Interim Invoices

The Consultant will submit invoices to the City on or before the 10th day of each month. Each invoice will list the names, hours worked and hourly rates of all Consultant's Personnel that have provided Services for each Deliverable that month, the total amount of previous payments made by the City for each Deliverable, the percentage completion for each Deliverable, a holdback of 10% from the invoice, and (for the purposes of showing the 90% limit on each Deliverable referred to in Section 6.3(c) above) the percentage that all invoices to date bears to the total maximum fees and expenses for each Deliverable.

Each invoice will show separately the applicable amount of the GST and PST.

Attached to each invoice will be copies of: (a) invoices for all expenses claimed categorized according to Deliverable; (b) confirmation of payments made to Sub-Consultant(s) for the previous month for each Deliverable; and a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete each Deliverable.

6.8 90% Limit on Time & Materials Payments Until Completion

Despite anything to the contrary in this Agreement,

- (a) the City will never be obligated to pay the Consultant a greater percentage of total fees and disbursements than the degree of percentage completion of each Deliverable as set out in Schedule B - *Contract Price*, and
- (b) the City will never be obligated to pay more than 90% of the fees and expenses actually owing on any monthly invoice until after all Deliverables have been completed and accepted by the City's Project Manager and then the aggregate of the 10% holdbacks will become due.

6.9 Review of Invoice

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 will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to have the review, audit or clarification resolved within a 60 day period. The City will, if it approves the amount of such invoices, cause the respective invoices to be paid within 30 days of approval.

6.10 Records Requirements

The Consultant will 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 expenses and percentage amounts of work completed. All such accounts and records will not be disposed of by the Consultant without the prior written consent of the City. The City will 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 will be reasonably necessary or advisable.

6.11 Taxes/Currency

The Contract Price is expressed and payable in Canadian dollars and is exclusive of any applicable GST or PST.

7.0 Term/Non-Exclusivity

7.1 Despite any other term of this Agreement, the RFP or the RFP Proposal, nothing in this Agreement is intended to grant the Consultant any rights of exclusivity or any other right to be the sole supplier to the City of the Requirements, to supply a specified or minimum quantity of the Requirements to the City or any other similar right and the Consultant now acknowledges and agrees to same.

8.0 Cancellation of Agreement

The City may cancel this Agreement without cause at any time, but only if the City first gives at least 10 days' prior written notice of cancellation. As of the effective date of such a notice of cancellation, this Agreement will be cancelled as to all or those specified Services and the parties will have no further obligations to each other in respect to same except that the City will remain liable to pay for those Services already ordered and performed prior to the effective date of the cancellation (inclusive of any and all holdbacks retained in respect of same), and except for those obligations which by their nature are intended to survive the expiry or sooner cancellation of this Agreement.

9.0 Unavoidable Delay

Except for the performance of obligations to pay money, time periods for the City's and the Consultant's performance under this Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this section, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, strikes/lockouts, acts of God, war or other strife or governmental action) but expressly excludes any and all delays caused by the Consultant's lack of financial resources or insolvency, strikes, lockouts or labour affiliations of the Consultant's employees or Sub-Consultants' employees, or governmental action taken in the enforcement of law specifically against the Consultant or its Sub-Consultants.

10.0 Changes in Requirements

10.1 **Right to Make Changes** The City may at any time, upon notice to the Consultant, increase, reduce or otherwise modify the scope of the Services, and the Consultant will, subject to the other provisions of this Section 10.0, accept and perform such increased, decreased or modified scope of Services.

10.2 **Change Order Process for Increases in Scope of Services** If the City's Project Manager

- (a) expressly requests a Change Order, or
- (b) if the request is not expressed as a requested Change Order but the Consultant's Project Manager reasonably believes (as set out in Section 10.5 that is,

and such request would entitle the Consultant to additional fees and/or reimbursable expenses ("Additional Compensation") or an extension to the Project Schedule ("Additional Time") if that work or service was performed, the Consultant will, prior to undertaking the work or service, promptly provide to the City a Contemplated Change Notice/Change Order appended in Schedule F, setting out the Additional Compensation and Additional Time to which it believes it is entitled, which Additional Compensation will be determined based on pricing terms and methodology set out in Schedule B - Contract Price and which Additional Time will be based on a reasonable extrapolation of the Project Schedule. If the City accepts the Consultant's claim for Additional Compensation and Additional Time, it will execute the Contemplated Change Notice/Change Order in the space provided for its approval, and such execution will constitute an approved Change Order and the Consultant's authorization to proceed with change in Services. In the event that the City does not accept the Consultant's claim for Additional Compensation or Additional Time, acting reasonably, the City may direct the Consultant to carry out the requested change to the Services

and the Consultant will promptly do so without prejudice to any right it may have to assert a claim for Additional Compensation and Additional Time pursuant to Section 10.4.

- 10.3 **Change Order Process for Decreases in Scope of Services** If the City requests a decrease to the scope of Services, or if any modification to the Services requested by the City constitutes a reduction in scope that it would be reasonable to conclude entitles the City to a reduction in the Contract Price or Project Schedule. The Consultant will promptly prepare a Contemplated Change Notice/Change Order appended to Schedule F to reflect such change and the parties will negotiate an equitable reduction to the Contract Price and Project Schedule in respect of the decrease, and then if they agree on such changes, execute a Contemplated Change Notice/Change Order in order to create an approved Change Order. In the event the parties are unable to agree upon the changes, the City may direct the Consultant to carry out the reduced scope of Services and will notify the Consultant in writing of the change in Contract Price and Additional Time as the City determines is equitable, without prejudice to any right the Consultant may have to assert a claim pursuant to Section 10.4 for all or any portion of the compensation or Project Schedule time withheld by the City in reliance on this Section (provided that the Consultant's claim will not include any amount for loss of revenue or loss of profit).

10.4 **Disputes Over Requested Change**

Where the parties are unable to agree on the change to the Contract Price and Project Schedule under Section 10.2 or 10.3, the Consultant may (provided always that the Consultant is proceeding with the change as requested by the City) refer the issue to arbitration to determine the change to the Contract Price and Project Schedule for such changes pursuant to paragraph (b) of Section 26.0 - *Resolution of Disputes*.

10.5 **Disputes as to Requirements (Where No Prior Change Request)**

The City's Project Manager may issue orders or instructions with respect to the timing, quality and quantity of the Services. They will be obeyed, performed and complied with by the Consultant promptly, efficiently and to the satisfaction of the City. However, if the Consultant is of the opinion that such orders or instructions are not authorized under the provisions of the Contract Documents or involve a change in the Requirements, it will so notify the City's Project Manager in writing before proceeding to carry them out and, in any event, within 2 days of the receipt of such orders or instructions. The giving of such notice to and receipt by the City's Project Manager will not constitute an acknowledgment by the City as to the validity of the Consultant's claim, and the parties will promptly process the claim pursuant to the Section 10.2(b). If the Consultant does not so notify the City within the time so limited, it will not be entitled to later claim that the orders or instructions were not so authorized or involved a change in the Requirements. Nevertheless, the giving of such notice to the City will not relieve the Consultant of its obligation to carry out and to obey such orders or instructions.

11.0 **Ownership of Documents and Copyright**

- 11.1 All Deliverables as well as all other drawings, audio-visual materials, information, plans, models, schematics, designs, specifications, reports and other documents or products produced, received or acquired by the Consultant for the City as a result of the provision of the Services (the "Materials") will be the sole property of the City, and the City will have the right to utilize all of the Materials for its benefit in any way it sees fit without limitation.
- 11.2 The Materials will be delivered by the Consultant to the City immediately on completion or sooner cancellation of this Agreement. The City may, at any time or times prior to the completion or sooner cancellation of this Agreement, give written notice to the Consultant requesting delivery by the Consultant to the City of all or any particular Materials (whether completed or not) in which event the Consultant will promptly comply with such request.
- 11.3 The Consultant now transfers title in and to the Materials and assigns to the City sole copyright in the Materials. The Consultant agrees that title to the Materials is to be considered to have been transferred, and any copyright in the Materials is to be considered to have been assigned by the Consultant to the City upon creation of the Materials. The Consultant now irrevocably waives, in favour of the City, the Consultant's moral rights in respect of the Materials. The Consultant will obtain in writing, from its personnel, its Sub-Consultants or from any other source used, all

required assignments, waivers, including waivers of moral rights, releases of interest and acknowledgements necessary to transfer title to and copyright in the Materials to the City.

- 11.4 The Consultant represents and warrants that the Materials will not infringe any patent or copyright or any other industrial or intellectual property rights including trade secrets.

12.0 Confidential and Proprietary Information

12.1 Consultant's Confidential and Proprietary Information - Defined

"Proprietary Information" means, with respect to the Consultant,

- (a) all know-how, methodologies, technology, documentation, data files, templates, tools or software (in executable code and source code) or any other materials, information or data developed or owned by or licensed to the Consultant prior to the provision of the Services under this Agreement, and all corrections, improvements and enhancements to same, and related documentation and source code and any complete or partial copies of them in any media, the concepts, techniques, ideas, know-how embodied and expressed in any computer programs or modules included in the Proprietary Information including the structure sequence and organization, and any benchmark or survey results,
- (b) any and all information obtained by the City from the Consultant or its affiliates through the course of carrying out this Agreement, including any compilations of otherwise public information,
- (c) any and all information the disclosure of which is restricted by the *Personal Information Protection and Electronic Documents Act* (Canada), or any other legislation similar in intent and effect to the above, and
- (d) and any other information reasonably identifiable in writing as the confidential or proprietary information of the Consultant.

12.2 City's Confidential and Proprietary Information - Defined

"Proprietary Information" means, with respect to the City,

- (a) all City owned or licensed software or proprietary information including, by way of example only, City made modifications or extensions, and related documentation, source code and any complete or partial copies of them in any media, the concepts, techniques, ideas, know-how embodied and expressed in any computer programs or modules included in such software including the structure sequence and organization, and any benchmark or survey results,
- (b) any and all information obtained by the Consultant from the City or its affiliated organizations through the course of carrying out this Agreement, including any compilations of otherwise public information,
- (c) any and all information the disclosure of which is restricted by the *Protection of Privacy and Freedom of Information Act (British Columbia)*, and
- (d) any other information reasonably identifiable in writing as the confidential or proprietary information of the City .

12.3 Restrictions/Limitations on Obligations Respecting Proprietary Information

For further certainty, the obligations set out in Section 12.4 respecting Proprietary Information do not apply to any part of such information which:

- (a) is or becomes publicly available through no act or failure of the recipient party, or
- (b) was or is rightfully acquired by the recipient party from a source other than the disclosing

party prior to receipt from the disclosing party, or

- (c) becomes independently available to the recipient party as a matter of right (and such right is recorded in writing and is exercisable without any obligation of confidentiality), or
- (d) is compelled to be disclosed pursuant to law, provided that
 - (i) the disclosing party is promptly notified by the recipient party and given any available opportunity to obtain a protection order or other remedy against disclosure, and
 - (ii) if so compelled, the recipient party being ordered to disclose will only furnish that portion of the Proprietary Information that it is legally required to furnish.

12.4 Obligations of Recipient Party

- (a) The Consultant and the City now confirm and agree not to make use or permit any other party to make any use of the Proprietary Information except for the limited purposes contemplated by this Agreement.
- (b) The City and the Consultant now agree to limit disclosure of the Proprietary Information to only those of its employees, officers, directors, or third parties, whose access is necessary to carry out the intent of this Agreement. Prior to disclosing any Proprietary Information to any third party, the City and the Consultant will obtain from that third party a written acknowledgment that the third party will be bound by this Section 12.4 with respect to the Proprietary Information. The Consultant and the City will take all reasonable steps and the same protective precautions to protect the other's Proprietary Information from disclosure to third parties as it does with its own proprietary and confidential information provided that the standard of care utilized will not in any case be less than that which would be taken by a reasonable person to safeguard information of like commercial, personal, or public interest value.

13.0 Release and Indemnification

13.1 Release

The Consultant now releases the City and City's Personnel from all Losses, including those caused by personal injury, death, property damage or loss, and economic loss arising out of, suffered or experienced by the Consultant or Consultant's Personnel in connection with their performance of the Services.

13.2 Acceptance "As Is"

In undertaking the Services, the Consultant acknowledges that it has inspected the City's site(s), agrees to accept the site(s) "as-is" and undertakes to take all precautions necessary to ensure the safety of all Consultant's Personnel.

13.3 Indemnity

Despite any insurance which may be placed by the City, the Consultant now indemnifies and will indemnify and save harmless the City and City's Personnel from and against all Losses that the City may sustain, incur, suffer or be put to at any time either before or after the completion or sooner cancellation of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant or Consultant's Personnel under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Losses are caused by errors, omissions or negligent acts of the City or City's Personnel. This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law.

13.4 Survival of Release/Indemnity

This Section 13.0 will survive the completion or sooner cancellation of this Agreement.

14.0 Sub-Consultants

- 14.1 All Sub-Consultants are the responsibility of the Consultant. The Consultant will administer, coordinate, and manage all services of Sub-Consultants, and will assume full responsibility to the City for all Services performed by such Sub-Consultants in relation to the Services and will pay all fees and expenses of all Sub-Consultants.
- 14.2 The Consultant will be held as fully responsible to the City for the acts and omissions of its Sub-Consultants and of persons directly or indirectly employed by the Consultant, as for the acts and omissions of persons directly employed by it.
- 14.3 Nothing contained in any of the Contract Documents will create any contractual relationship between the Sub-Consultants and the City.
- 14.4 The Consultant agrees to ensure compliance by every Sub-Consultant with all Requirements.

15.0 Named Sub-Consultants Only

- 15.1 The Consultant confirms that the Sub-Consultants shown in Schedule D - *Approved Sub-Consultants* are the only Sub-Consultants that it will use to carry out the Requirements and then only for the Area of Responsibility set out beside their names in Schedule D - *Approved Sub-Consultants*. The Consultant will engage only the listed Sub-Consultants and no others in their stead except pursuant to Section 15.2.
- 15.2 The Consultant may engage alternative professional sub-consultants for the performance of certain specific tasks forming part of the Services, provided the Consultant has obtained prior written consent from the City, which consent may be arbitrarily withheld.

16.0 Independent Contractor

The Consultant and Consultant's Personnel are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.

17.0 Assignment

Subject to Sections 15.1 and 15.2, the Consultant may not assign, sublet or let out as task work any part of the Services, which consent the City may elect to withhold. If the City consents to any such assignment, subletting or letting out as task work of all or any part of the Services, the Consultant will in no way be relieved from its responsibility for the Requirements, but will continue to be responsible for the same in the same manner as if all the Services had been performed by the Consultant.

18.0 Time of the Essence

For all obligations of the Consultant pursuant to this Agreement, time is of the essence. The acceptance of a late performance, with or without objections or reservations by the City, will not waive the City's right to claim damages for such breach nor constitute a waiver of the City of the requirement of timely performance of any obligation remaining to be performed.

19.0 Laws, Permits and Regulations

In carrying out its obligations, the Consultant will familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and will obtain all necessary licenses, permits and registrations as may be required by law.

20.0 Protection of Person and Property

- 20.1 The Consultant will use due care that no persons are injured, no property damaged or lost, and no rights are infringed in the performance of the Services.
- 20.2 The Consultant will effectively warn and protect the public and other personnel from any danger as a result of the Services being done.

21.0 Insurance Requirements

21.1 Required Types/Amounts

Prior to commencing the Services, the Consultant will obtain at its own expense,

- (a) a Professional (Errors and Omissions) Liability insurance policy with limits of not less than \$5,000,000 per occurrence with an aggregate of not less than \$5,000,000 and a deductible of not more than \$50,000, protecting the Consultant against all claims for loss or damage arising out of any wrongful act or error or omission of the Consultant or Consultant's Personnel in the performance of the Services.
- (b) a Commercial General Liability insurance policy with limits of not less than \$2,000,000 per occurrence, and a deductible of not more than \$5,000, protecting the Consultant and Consultant's Personnel against all claims for personal injury, death, bodily injury or property damage arising out of the operations of the Consultant or the actions of the Consultant or Consultant's Personnel. The policy will contain a cross liability clause in favour of the City and will name the City and City's Personnel as additional insured.

21.2 Required Policy Terms

All required insurance policies will remain in full force and effect at all times until completion of the Services and for a period of not less than 2 years following the completion of the Services and will,

- (a) be obtained and issued by insurance companies authorized to carry on business in British Columbia, on terms satisfactory to the City's Materials Management Department,
- (b) be primary insurance in respect to the City and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute to such policies,
- (c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least 30 days' prior written notice by registered mail,
- (d) contain a clause that waives the insurer's right of subrogation against the City and City's Personnel.

21.2.1 The Consultant and each of its Sub-Consultants will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.

21.2.2 Neither the providing of insurance by the Consultant or Sub-Consultants in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Consultant from any other provisions of the Contract Documents with respect to liability of the Consultant or otherwise.

21.3 Evidence of Insurance

Prior to the Effective Date, the Consultant will provide the City's Project Manager with evidence of all required insurance to be taken out in the form of a "Certificate of Insurance" (insurance certificates in the form as provided in Appendices 3 and 4). The Certificate of Insurance will identify the Contract title, number, policyholder and scope of work and must not contain any qualifications or disclaimers whatsoever. Throughout the term of this Contract, similar evidence of renewals, extensions or replacement of all required insurance must be forwarded to the City's Material Management Department. At any time upon request, certified copies of all insurance policies will be made available to the City's Material Management Department.

21.4 Sub-Consultant's Insurance

The Consultant will provide in its agreements with its Sub-Consultants clauses in the same form as in this Agreement. Upon request, the Consultant will deposit with the City's Director of Risk and Emergency Management detailed Certificates of Insurance for the policies it has obtained from its

Sub-Consultants and a copy of the applicable insurance clauses from its Sub-Consultant agreements.

22.0 Workers' Compensation

22.1 Maintain Coverage - General

The Consultant will carry and pay for full Workers' Compensation Board ("WCB") coverage for itself and all personnel engaged in or on the Services, failing which the City has the unfettered right to set off the amount of any unpaid premiums and assessments for such WCB coverage against any amounts owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until WorkSafeBC premiums, assessments or penalties in respect of the Services have been paid in full.

22.2 Provide Evidence of Coverage - General

The Consultant will provide the City with the Consultant's WorkSafeBC registration number and a letter from WorkSafeBC confirming that the Consultant is registered in good standing with WorkSafeBC and that all assessments have been paid to date prior to the City having any obligation to pay any invoice under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of Losses arising out of or in any way related to unpaid WCB assessments owing from any person or corporation engaged in the performance of the Services or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.

22.3 Special WCB Requirements Where Services Are Provided on City of Vancouver Sites

- (a) Prior to commencing any Services on any City Site, the Consultant must provide updated evidence to the City's Project Manager that it is in good standing with WorkSafeBC. The Consultant is responsible for having the City Site secured in accordance with WorkSafeBC Regulations and ensure the safety of the City Site during the performance of the Services on the City Site.
- (b) The Consultant is now appointed and now accepts appointment as the Prime Contractor for the purpose of this Agreement and as such, has the responsibility to
 - (i) ensure the Services are performed in a safe manner that complies with all WCB Regulations,
 - (ii) direct and coordinate the work activities related to the health and safety of all of the Consultant's Personnel and any other workers within the City Site,
 - (iii) obtain from the City written information on hazards and conditions and the methods to address the hazards and conditions and circulate this information to all workers within the City Site.
- (c) Prior to commencing any Services on the City Site, the Consultant must,
 - (i) have its own safety program and have written safe work procedures specific to the Services being performed available at the City Site, and
 - (ii) ensure the safety program meets the requirements of WorkSafeBC Regulations.
- (d) The Consultant must also,
 - (i) advise the City of any accidents or incidents at the City Site that must be reported to WorkSafeBC, and
 - (ii) inform all personnel performing the Services on the City Site of the health and safety requirements at that workplace.
- (e) At all times the Consultant will ensure that its personnel, and all other workers engaged or indirectly engaged by the Consultant coming onto the City Site will comply with
 - (i) WorkSafeBC Regulations,

- (ii) the Consultant's safety program, and
- (iii) all work site safety requirements.

23.0 Character of Workers/Security Clearance

- 23.1 On the written request of the City, the Consultant will remove any Consultant's Personnel for any reason including but not limited to the following:
- (a) intoxication,
 - (b) use of foul, profane, vulgar or obscene language or gestures,
 - (c) solicitation of gratuities or tips from any person for services performed under this Agreement,
 - (d) willful, negligent or reckless action in disregard of safety or sanitary requirements or regulations,
 - (e) loss of or failure to obtain appropriate or required City Security Clearance, or
 - (f) any action which may constitute a public nuisance or disorderly conduct.
- 23.2 The Consultant will immediately comply with each such request and will satisfy the City that the person has been removed from further involvement with this Agreement.

24.0 City's Right to Remedy

Should the Consultant neglect to execute the Services properly or fail to perform any provision of this Agreement, the City may, without prejudice to any other right or remedy it may have, make good such deficiencies and may deduct the cost of doing so from the Contract Price.

25.0 Dispute Resolution

- 25.1 All claims, disputes or issues in dispute between the City and the Consultant will be decided by mediation or arbitration, if the parties agree, or failing agreement, in a Court of competent jurisdiction within British Columbia and be governed by the laws of British Columbia.
- 25.2 In the event that (a) the parties agree to arbitration pursuant to the above, or (b) matter is referred to arbitration by the Consultant, pursuant to Section 10.0, the arbitration will be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and will be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators will be agreed upon by the parties, and failing agreement by the parties, will be appointed by a court of competent jurisdiction with the Province of British Columbia.
- 25.3 In the event that the parties agree to arbitration, the arbitration will take place in the Lower Mainland, British Columbia and be governed by the laws of British Columbia.
- 25.4 The procedure set out in this section is not meant to preclude or discourage informal resolution of disagreements between the City and the Consultant.
- 25.5 Despite Section 25.1, the laws of British Columbia will govern this Agreement and the courts of British Columbia will have exclusive jurisdiction over all disputes arising under this Agreement unless and until the parties agree in writing to mediate or arbitrate any specific dispute and the parties now irrevocably attorn to the jurisdiction of the courts of British Columbia.
- 25.6 All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.

26.0 Set-off

The City may at its option, withhold and set-off against any amount owing to the Consultant (whether under this Agreement or otherwise) the amount of any damages suffered or claims made or to be made by the City as a result of any other claim it may have against the Consultant, whether such claim is at law or in equity or tort or on any other basis.

27.0 Joint Venture or Partnership

If a joint venture or partnership, the Consultant represents and warrants that all members of the joint venture or partnership are as indicated on the execution page of this Agreement and have duly executed same. The obligations and liabilities of the members of a joint venture or partnership executing this Agreement as the Consultant will be joint and several.

28.0 Entire Agreement

The Contract Documents constitute the entire agreement between the parties and supersede all previous communications, representations and agreements whether verbal or written between the parties with respect to their subject matter. The Consultant now acknowledges that it is not relying on any representations of the City as to the performance of the Requirements.

29.0 Failure to Enforce

Any failure by the City to enforce or require the strict keeping and performance of any of the terms and conditions contained in this Agreement will not constitute a waiver of such terms and conditions, and will not affect or impair such terms and conditions in any way or the City's right at any time to avail itself of such remedies as the City may have for any breach or breaches of such terms and conditions.

30.0 NO PROMOTION OF RELATIONSHIP

30.1 The Contractor must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Contractor to perform the Contractor's obligations under the terms of the Contract). The Contractor undertakes not to use "VANOC", "Vancouver 2010", "City of Vancouver", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", the official emblem, logo or mascot of the 2010 Games or any reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the Contractor undertakes not to disclose or promote its relationship with the City in any communication or matter whatsoever as a basis to create an association, express or implied, between the Contractor and the "City of Vancouver", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", IOC, the Olympics or the Olympic Movement.

31.0 Successors and Assigns

This Agreement will benefit and bind each party and its successors and permitted assigns.

32.0 Letter of Credit [Intentionally Deleted]

AS EVIDENCE OF THE CITY'S AND CONSULTANT'S agreement to be legally bound by the terms of the Contract Documents, the City and Consultant have signed and delivered this Agreement effective as the Effective Date.

CITY OF VANCOUVER,
by its authorized signatory:

Francie Connell, Director of Legal Services

APPROVED AS TO TERMS:

Tom Timm, General Manager of Engineering Services

[INSERT CONSULTANT NAME],
by its authorized signatory(ies):

[Name, Title]

[Name, Title]

Contemplated Change Notice/Change Order

Number: _____ Change Order Issue Date: _____
Purchase Order: _____

Project: Engineering Design of/Consulting Services for [INSERT PROJECT NAME]

Consultant: [INSERT CONSULTANT NAME]

City of Vancouver
453 West 12th Avenue, Vancouver, B.C.
Telephone (604) 871-[____]
Attn: [INSERT CITY'S PROJECT
MANAGER NAME]

[INSERT CONSULTANT ADDRESS]

Attention: [INSERT CONSULTANT PROJECT
MANAGER]

This Contemplated Change Notice is prepared pursuant to Section 10.0 – Changes in Requirements of Professional Services Agreement. This document will not be construed as or operate as an approved Change Order unless and until it is signed by the City's Project Manager , City Engineer, and City's Director of Legal Services. Upon such signature this Change Order supersedes all previous contemplated change notices and, with respect to the Contract Price and Project Schedule, supersedes and replaces all previous approved Change Orders and constitutes the new Contract Price and Project Schedule.

Description of Change in Services:

Previous Contract Price (excluding GST and PST) \$ _____

Contract Price will: (a) increase (excluding GST/PST) \$ _____

(b) decrease (excluding GST/PST) \$ _____

Revised Contract Price, excluding GST/PST \$ _____

Project Schedule will: _____ days or decrease _____ days
increase

Completion Date as of this Change Order _____

SIGNATURE DATE

Consultant Acceptance _____

Copy 1 **ENGINEERING
PROJECT FILE**

City's Project Manager	_____	_____	Copy 2	CITY PURCHASING COPY
City Engineer	_____	_____	Copy 3	CONSULTANT'S COPY
Director of Legal Services	_____	_____	COPY 4	LAW DEPARTMENT COPY
Work Order number:				



**CERTIFICATE OF EXISTING INSURANCE
TO BE COMPLETED AND SUBMITTED ALONG WITH
PROPOSAL/TENDER**

Section 2 through 8 – to be completed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
And certifies that the insurance policy (policies) as listed herein has been issued to the Named Insured and is in full force and effect as of the effective date of the agreement described below.

NAMED INSURED (must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)

BUSINESS TRADE NAME or DBA DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**

INSURER _____	Insured Values (Replacement Cost) -
TYPE OF COVERAGE _____	Building and Tenants Improvement \$ _____
POLICY NUMBER _____	Contents and Equipment \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**

Including the following extensions:	INSURER _____
√ Personal Injury	POLICY NUMBER _____
√ Property Damage including Loss of Use	POLICY PERIOD From _____ to _____
√ Products and Completed Operations	Limits of Liability (Bodily Injury and Property Damage Inclusive) -
√ Cross Liability or Severability of Interest	Per Occurrence \$ _____
√ Employees as Additional Insureds	Aggregate \$ _____
√ Blanket Contractual Liability	All Risk Tenant's Legal Liability \$ _____
√ Non-Owned Auto Liability	Deductible Per Occurrence \$ _____

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles

INSURER _____	Limits of Liability -
POLICY NUMBER _____	Combined Single Limit \$ _____
POLICY PERIOD From _____ to _____	<i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i>

6. **UMBRELLA OR** **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive) -**

INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE**

INSURER _____	Limits of Liability
POLICY NUMBER _____	Per Occurrence/Claim \$ _____
POLICY PERIOD From _____ to _____	Aggregate \$ _____
	Deductible Per Occurrence/Claim \$ _____

If the policy is in a "Claims Made Form", please specify the applicable Retroactive Date: _____

8. **OTHER INSURANCE**

TYPE OF INSURANCE _____	Limits of Liability
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____
TYPE OF INSURANCE _____	Limits of Liability
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

_____ Dated _____
PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER



PROFESSIONAL LIABILITY INSURANCE CERTIFICATE

Section 4 – to be completed by City staff. Select # of days Written Notice is required.
Section 2 & 3 – to be completed by the Insurer or its Authorized Representative

1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4

And certifies that the insurance policy as listed herein has been issued to the Named Insured(s) and is in full force and effect as of the effective date of the agreement described below.

2. NAMED INSURED: (must be the same name as the Permittee/Licensee or Party(ies) to Contract and is either an individual or a legally incorporated company)

MAILING ADDRESS:

LOCATION ADDRESS:

DESCRIPTION OF OPERATION/CONTRACT:

3. PROFESSIONAL LIABILITY INSURANCE

LIMITS OF LIABILITY:

INSURER: Per occurrence/claim: \$

POLICY NUMBER: Aggregate: \$

POLICY PERIOD: From to Deductible per occurrence/claim: \$

If the policy is in a "Claims-made Form", please specify the applicable Retroactive Date:

4. POLICY PROVISIONS:

Where required by the governing contract, agreement, permit or license, it is understood and agreed that SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to the policy listed herein, either in part or in whole, will be given by the Insurer to the Holder of this Certificate. The exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply.

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER Dated:



CERTIFICATE OF INSURANCE

Section 8 b) – to be completed by City staff. Select # of days Written Notice is required.
 Section 2 through 7 – to be completed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
And certifies that the insurance policies as listed herein have been issued to the Named Insured(s) and are in full force and effect as of the effective date of the agreement described below.

2. **NAMED INSURED:** *(must be the same name as the Permittee/Licensee or Party(ies) to Contract and is either an individual or a legally incorporated company)*

MAILING ADDRESS:

LOCATION ADDRESS:

DESCRIPTION OF OPERATION, CONTRACT, AGREEMENT, LEASE, PERMIT OR LICENSE:

3. **PROPERTY INSURANCE** naming the City of Vancouver as a Named Insured and/or Loss Payee with respect to its interests (All Risks Coverage including Earthquake and Flood) **INSURED VALUES: (Replacement Cost)**
 INSURER: _____ Building and Tenants Improvement: \$ _____
 TYPE OF COVERAGE: _____ Contents and Equipment: \$ _____
 POLICY NUMBER: _____ Deductible Per Loss: \$ _____
 POLICY PERIOD: From _____ to _____

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)** **LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)**
 Including the following extensions:
 Personal Injury
 Products and Completed Operations
 Cross Liability or Severability of Interest
 Employees as Additional Insureds
 Blanket Contractual Liability
 Non-Owned Auto Liability
 INSURER: _____ Per Occurrence: \$ _____
 POLICY NUMBER: _____ Aggregate: \$ _____
 POLICY PERIOD: From _____ to _____ All Risk Tenant's Legal Liability: \$ _____
 Deductible Per Occurrence: \$ _____

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles **LIMITS OF LIABILITY:**
 INSURER: _____ Combined Single Limit: \$ _____
 POLICY NUMBER: _____
 POLICY PERIOD: From _____ to _____ *If vehicles are insured by ICBC, complete and provide Form APV-47.*

6. **UMBRELLA OR** **EXCESS LIABILITY INSURANCE** **LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)**
 INSURER: _____ Per Occurrence: \$ _____
 POLICY NUMBER: _____ Aggregate: \$ _____
 POLICY PERIOD: From _____ to _____ Self-Insured Retention: \$ _____

7. **OTHER INSURANCE** (e.g. Boiler & Machinery, Business Interruption, Crime, etc.) – Please specify Name of Insurer(s), Policy Number, Policy Period, and Limit

8. **POLICY PROVISIONS:**
Where required by the governing contract, agreement, lease, permit or license, it is understood and agreed that:
 a) *The City of Vancouver, its officials, officers, employees, servants and agents have been added as Additional Insureds with respect to liability arising out of the operation of the Named Insured pursuant to the governing contract, agreement, lease, permit or license;*
 b) *SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to any of the policies listed herein, either in part or in whole, will be given by the Insurer(s) to the Holder of this Certificate; the exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply;*
 c) *The insurance policy (policies) listed herein shall be primary with respect to all claims arising out of the operation of the Named Insured. Any insurance or self-insurance maintained by the City of Vancouver shall be in excess of this insurance and shall not contribute to it.*

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated: _____

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER



CORPORATE SERVICES GROUP
 Materials Management
 Purchasing Services

Request for Proposal
No. PS07152 - Structural Engineering Consulting Services for Central Waterfront Hub

To acknowledge your intent to submit a Proposal, and to ensure that you receive the required information, please submit this form to the person identified below before close of business day, Tuesday, January 8, 2008.

Phillip Lo
 Administrative Assistant
 City of Vancouver
 Fax: (604) 873-7057
 Email: purchasing@vancouver.ca

Your details:

Proponent's Name: _____
 "Proponent"

Address: _____

Telephone: _____ Fax: _____

Key Contact Person: _____

E-mail: _____ Incorporation Date: _____

Our company **WILL / WILL NOT** submit a proposal for
 "PS07152 - Structural Engineering Consulting Services for Central Waterfront Hub"
 by the closing date (January 15, 2008 at 3:00:00 P.M.).

 Authorized Signatory and Name of Company (Please print)

 E-mail Address (Please print)

 Date