

THIS AGREEMENT dated (*MM. DD, 2006*)

BETWEEN:

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

("herein called the City ")

AND:

(herein called the "Consultant")

BACKGROUND:

- A. Pursuant to the Request for Proposals, No. PS06083 (the "RFP") the City invited proposals from qualified Proponents *for Engineering Consulting Services For Sidewalk Widening And Lighting Upgrades On The Burrard Bridge* that meet the Requirements (as defined below) set out in the RFP;
- B. In response to the RFP, the Consultant submitted the Proposal proposing to perform the Requirements on the terms and conditions of the RFP as supplemented by the Proposal;
- C. The City has agreed to retain the Consultant for the performance of the Requirements on the terms as set out in this Agreement and the RFP, as supplemented by the Consultant's Proposal, and the Consultant has agreed to perform the Requirements on those same terms.

THE CITY AND THE CONSULTANT NOW AGREE as follows:

1.0 Definitions

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

"Agreement" means this agreement inclusive of all schedules, appendices or exhibits attached hereto;

"City" means the municipal corporation, generally known as the City of Vancouver, as described under the Vancouver Charter;

"City 's Designated Representatives" means the City 's employees or representatives who are 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 the Agreement;

"Contract Documents" has the meaning set out in section 2.0 of this Agreement;

"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;

"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 therefore in force from time-to-time;

"Proposal" means the proposal submitted in response to the RFP by the Contractor;

"Proponent" means the individual, partnership, corporation or combination thereof, including joint venturers, who or which sign the Proposal form set out in Part D of the RFP;

"Proprietary Information" has the meaning set out in section 12.0 of this Agreement;

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

"Requirements" means all of the requirements and set out in the RFP that describe the requirements that the Services must meet and the Consultant must provide;

"RFP" means Request for Proposal No. PS06083 including, but not limited to: Part B - Instructions to Proponents; Part C - Special Conditions; Part D - Proposal Form (with Attachment A - Legal Terms and Conditions); Appendix 1- Form of Agreement; Appendix 2 - Certificate of Insurance; Appendix 5 to 11 inclusive, any additional attachments listed in the Table of Contents; and any amendments, addenda, and/or clarifications pertaining to the RFP;

"Security Clearance" means the security clearance level required of the City from time to time for personnel being allowed access to City's sites;

"Services" means all services, facilities, materials and equipment which the Consultant agrees to provide under this Agreement;

"Sub-Consultant" means all suppliers and agents of the Contractor;

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

"Term" means starting on the effective date and ending on completion of the requirements unless sooner cancelled.

"WCB Legislation" means the Worker's Compensation Act and all regulations enacted pursuant to the Workers Compensation Act, all as amended and re-enacted from time to time;

"WHMIS Legislation" are the laws governing the information that must be provided on labels of packaging containing hazardous materials;

"Work Site" means the site(s) where the Requirements are to be performed.

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, including the attached *Schedules A to D*;
- (b) Part C of the RFP- Special Conditions, *Pertinent Sections 1.0 to 5.0*;
- (c) any Addenda to the RFP issued by the City;
- (d) the Consultant's Proposal;
- (e) those parts of the RFP not referenced above.

3.0 Notices

3.1 Any notice required to be given under this Agreement will be given in writing and delivered or mailed by registered mail addressed to the City's Designated Representative and to the Consultant at the address set forth in its Proposal or such other person, position, address as one party may advise the other from time to time or at any time, by delivery and any notice given in accordance with this or any other more specific provision of this Agreement is deemed to be received as at the time of delivery or receipt of fax or e-mail confirmation as applicable. Only where expressly authorized by this Agreement may notice be given verbally or by telephone.

3.2 Notice of Actions against Contractor

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

4.0 Conduct of the Agreement

The City's Designated Representative shall have the conduct of the Agreement.

5.0 Services Of Consultant

5.1 Provide Services During Term

During the Term, 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 - General Standards

The Consultant will perform the Services:

- (a) with 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,
- (b) in accordance with sound current professional practices,
- (c) in conformance with the professional standards and codes applicable at the time of rendering the Services, and
- (d) promptly and will carry out the Services in such a manner so as to meet the deadlines set out in the Contract Documents, or as reasonably specified from time to time by the City.

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 Schedule A, Section 3.0 - *Key Personnel* of the Consultant's Proposal have been accepted by the City and may only be replaced in accordance with this Section 15.3.

6.0 Price

6.1 The parties now agree that the maximum upset price of \$_____ set out in the Consultant's Proposal, Schedule B - *Price Proposal* will apply to the Services and the City now agrees to pay for the Services on a time and materials basis up to the maximum upset price set out in that schedule (the "Contract Price") subject only to the terms of this Agreement which expressly provide for an adjustment to same.

6.2 Term

The Contract Price (including all hourly and unit prices) will remain fixed for the Term and may not be increased by the Consultant for any reason.

6.3 Basis of Payment

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 reimbursable expenses set out in this Agreement, plus the Goods and Services Tax as applicable.

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

- (a) hours worked by the Project Team members in providing the Services

multiplied by the hourly charge-out rates set out in Appendix [__], 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 Despite anything to the contrary in this Agreement,

the maximum total of the fees and disbursements to be paid by the City to the Consultant for each Deliverable will not exceed the amounts set out in Table 1 below for that Deliverable, and as this is a "time and materials" Agreement (subject to a maximum fees and disbursements limit) and no portion of this Agreement is a "fixed price" Agreement for Services, accordingly:

6.3.2.1 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 Table 1 below, the City will only pay for the aggregate of the time and materials at the hourly rates and reimbursable disbursement amounts set out in this Agreement; and

6.3.2.2 where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable exceeds the maximum amounts set out in Table 1 below, the City will only pay the maximum amount applicable for that Deliverable in Table 1 below.

TABLE 1: COSTS FOR SERVICES

Description of deliverable	Sub-components of deliverable	Sub-component delivery date	Maximum fees & disbursements amount of deliverable
Complete Services Delivery Date (Firm)			
Total Amount for Complete Services =			\$_[_____], not including GST or PST

6.4 Despite anything to the contrary contained in this Agreement, except for Section 6, the maximum liability of the City for all fees and disbursements for the complete Services will be the "Total Amount" set out in the last line of Table 1 above.

- 6.5 Where additional fees or disbursements are to be paid by the City to the Consultant for increases in the scope of the Services provided by the Consultant, they will not exceed the amount mutually agreed in writing pursuant to Section 6. The maximum amounts on fees and disbursements as set out in Table 1 above will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.
- 6.6 Subject to the maximum liability of the City under Table 1 above, disbursements for which the City will reimburse the Consultant will be limited to the following:
- Transportation costs, including travel time, for all the Project Team members to meetings requested by the City at locations other than the Consultant's offices to a maximum of \$0.41 per kilometre.
- 6.6.1 Long distance telephone calls, telegrams and telex.
- 6.6.2 Photocopies to a maximum of \$0.20 per page.
- 6.6.3 Delivery of drawings, specifications or correspondence by courier, where this method of delivery has been requested by the City.
- 6.6.4 Provision of office space and related services at a job site (but only if first approved in writing by the City) where the Project Team members are performing management, inspection, construction supervision, administration or other field services as part of the Services.
- 6.6.5 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 its duties under this Agreement.
- 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) pursuant to Sections 3 and 4 above, then the Consultant will make full payment to those Sub-Consultant(s) for work performed in relation to the Services.
- 6.7 Where the City and Consultant have expressly stated in Table 1 (or by subsequent written agreement or amendment to Table 1) 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.
- 6.8 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 pay rates of all Project Team members that have provided services for each Deliverable that month, the total amount of previous payments made by the City for that Deliverable, and the percentage completion for each Deliverable. Each invoice will show separately the applicable amount of the Goods and Services Tax and the Provincial Sales Tax.

Attached to each invoice will be copies of: (a) invoices for all disbursements 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.

The City will pay the Consultant on a time and materials basis, as discussed above, up to 90% of the maximum budget for each Deliverable, with the final 10% paid once all deliverables are received, reviewed and approved by the City's Designated Representative.

- 6.9 Despite anything to the contrary in this Agreement, 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 Table 1.
- 6.10 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.
- 6.11 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 disbursements 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.

6.12 Taxes/Currency

The Contract Price is expressed and payable in Canadian dollars and is exclusive of the federal goods and services tax and the provincial sales tax whenever and wherever applicable.

7.0 Term/Non-Exclusivity

- 7.1 Despite any other term of this Agreement, the RFP or the 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 Contractor 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, the 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, 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, strike/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 City May Request

The City may, by giving written notice to the Consultant, be entitled to request amendments to the Requirements. Upon receipt of such notice, the Consultant will, as soon as practicable and in no event later than 10 days after receipt of such notice, inform the City of any adjustments to the Contract Price, either increasing or decreasing the Contract Price, that would be necessitated by such change in the Requirements, or will notify the City's Designated Representative that no adjustment is appropriate. If adjustments to the Contract Price are necessary and the City's Designated Representative confirms in writing that such adjustments are acceptable to it, the Requirements and the Contract Price will then be deemed to be amended as agreed by the City's Designated Representative.

10.2 Disputes Over Requested Change

If the City determines that such adjustments, or no adjustments, to the Contract Price are unacceptable and the City's Designated Representative and the Consultant are unable to agree on an acceptable price, the City may elect to pursue any one of the following options:

- (a) The City may refer the issue to arbitration to determine the price for such amendments to the Requirements pursuant to paragraph (b) of Section 26.0 - *Resolution of Disputes*.
- (b) The City may proceed with this Agreement without the proposed change in Requirements.
- (c) The City may cancel all or any part of the Services required to be provided under this Agreement, provided the City gives the Consultant at least
 - (i) 2 days' prior written notice of cancellation with respect to any given category of Services (as those categories are set out in the Consultant's Proposal, Schedule C - *Pricing*), or
 - (ii) 10 days' prior written notice of cancellation with respect to a

cancellation of all Services.

10.3 Disputes as to Requirements (where no prior change request)

The City's Designated Representative 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 Designated Representative 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 Designated Representative will not constitute an acknowledgment by the City as to the validity of the Consultant's claim, and the City will then be at liberty to contest or dispute the Consultant's claim. 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 drawings, audio-visual materials, information, plans, models, schematics, designs, specifications, reports and other documents or products produced, received or acquired by the Consultant to 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 Material will be delivered by the Consultant to the City immediately on expiration or sooner termination of this Agreement. The City may, at any time or times prior to the expiration or sooner termination 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 permitted 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, its officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Consultant, its officers, employees and agents 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 personnel employed or contracted by the Consultant to perform the Services.

13.3 Indemnity

Despite any insurance which may be placed by the City, the Consultant now agrees to indemnify and save harmless the City, its successors, assigns and authorized representatives and each of them from and against all losses, claims, damages, actions, and causes of actions (collectively, the "Claims") that the City may sustain, incur, suffer or be put to at any time either before or after the expiry or sooner termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant or its sub-consultants, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of the City, its other consultants, assigns and authorized representatives or any other persons. 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 expiry or sooner cancellation of this Agreement.

14.0 Sub-Consultants/Key Personnel

14.1 All Sub-Consultants are the responsibility of the Consultant.

14.2 The Consultant will be held as fully responsible to the City for the acts and omissions of its Sub-Contractors 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 Subconsultants and the City.

14.4 The Consultant agrees to ensure compliance by every Subconsultant with the terms and requirements of the Contract Documents and then only for the Area of Responsibility set out beside their names in Schedule D - Sub-Contractors of its Proposal.

15.0 Named Sub-Consultants/Key Personnel

15.1 The Consultant confirms that the Consultants shown in its Proposal are the only Sub-Consultants that it will use to carry out the Requirements. The Consultant will engage only the listed Sub-Consultants and no others their stead except pursuant to 15.2.

15.2 Sub-Consultants

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. The Consultant will administer, coordinate, and manage all services of sub-consultants, and will assume full responsibility to the City for all work performed by such sub-consultants in relation to the Services and will pay all fees and disbursements of all sub-consultants.

16.0 Independent Subcontractor

The Consultant, its Sub-Consultant, the officers, directors, shareholders, partners, personnel, affiliates and agents of the Consultant and its Subconsultant 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 Work; 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 Work, the Consultant will in no way be relieved from its responsibility for the fulfilment of the Work, but will continue to be responsible for the same in the same manner as if all the Work 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, and the Consultant will be solely responsible for all loss, damages, costs and expenses in respect of any injury to persons, damage of property, or infringement of the rights of others incurred in the performance of the Services or caused in any other manner by the Consultant, or its employees or Sub-Contractors.

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 \$2,000,000 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 its personnel in the performance of the Services.
- (b) a Comprehensive General Liability insurance policy with limits of not less than \$5,000,000 per occurrence, and a deductible of not more than \$50,000, protecting the Consultant 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 its personnel. The policy will contain a cross liability clause in favour of the City and will name the City and its officials,

employees and agents as additional insured.

21.2 Required Policy Terms

All required insurance policies will remain in full force and effect at all times during the Term 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 Director of Risk Management,
- (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 its officers, employees and agents.

21.2.1 The Contractor and each of its sub-contractors 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 Contractor 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 Contractor from any other provisions of the Contract Documents with respect to liability of the Contractor or otherwise.

21.2.3 Prior to the Effective date, the Contractor will provide the City with evidence of all required insurance to be taken out in the form of the attached Certificate of Insurance supported by a certified copy(s) of the policy(s). The Certificate of Insurance will identify the Contract title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. Proof of insurance, in the form of a Certificate of Insurance or certified copies of all insurance policies will be made available to the City's Director of Risk and Emergency Management at any time during the term of the Contract immediately upon request.

21.2.4 The Contractor will provide in its agreements with its Sub-Contractors clauses in the same form as in this Agreement. Upon request, the Contractor 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-Contractors and a copy of the applicable insurance clauses from its sub-contract agreements.

21.3 Insurance Certificate

Prior to commencing the Services, and at any time requested by the City's Director of Risk Management or the City's Designated Representative, the Consultant will provide

evidence of all required insurance to be taken out in the form of a detailed certificate of insurance and the insurance certificate will not contain any disclaimer whatsoever. If required by the City, the Consultant will provide certified copies of the policies signed by the insurers.

21.4 Subconsultant's Insurance

If the Consultant hires a subconsultant to perform any work related to the Services, the Consultant will cause such subconsultant to obtain the same type, amount and terms of coverage as is required of the Consultant under this Agreement and will be required to provide evidence of same to the City's Director of Risk Management in the same manner as is required of the Consultant.

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 the WCB 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 WCB registration number and a letter from the WCB confirming that the Consultant is registered in good standing with the WCB 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 claims, demands, costs, losses, penalties and proceedings 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 the WCB, including penalties levied by the WCB.

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

- (a) Prior to commencing any Services on the City's sites, the Consultant must provide evidence to the City's Designated Representative that it is in good standing with the WCB ("WCB"). The Consultant is responsible for having such site secured in accordance with the WCB OHS Regulation and ensure the safety of the site during the performance of the Services on the City's sites.
- (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 OHS 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

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 City's Manager of Materials Management, 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 shall be agreed upon by the parties, and failing agreement by the parties, shall 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 shall 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 34.1, 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.
- 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 the Agreement will not constitute a waiver of such terms and

