

CITY OF VANCOUVER

REQUEST FOR PROPOSAL PS06084

CONSULTANT SERVICES FOR  
THE STILL CREEK ENHANCEMENT PROJECT

Proposals will be received in the Courier Delivery Drop-off Office, 1<sup>st</sup> Floor, Vancouver City Hall, 453 West 12<sup>th</sup> 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, September 5, 2006, and registered at 11:00 A.M. Wednesday, September 6, 2006.

NOTES:

1. Proposals shall be in a sealed envelopes or package 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 located in the City's Courier Delivery Drop-off Office.
3. DO NOT SUBMIT BY FAX.

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

Linda Syvertsen, C.P.P.B.,  
Contracting Specialist,

FAX: 604-873-7057 Mail: [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca)

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**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
TABLE OF CONTENTS**

---

**PART A - GENERAL INFORMATION**

Pages 3 - 7

- 1.0 Purpose
- 2.0 Definitions
- 3.0 Receipt of Responses
- 4.0 Review Process
- 5.0 Freedom of Information and Protection of Privacy Act
- 6.0 Confidentiality
- 7.0 Environmental Responsibility
- 8.0 Council Approval
- 9.0 Professional Service Agreement
- 10.0 No Legal Obligation Assumed by Owner
- 11.0 No Duty
- 12.0 Proponent's Risk
- 13.0 Insurance Requirements
- 14.0 Changes to Requirements

**PART B - REQUIREMENTS**

Pages 8 - 10

- 1.0 Background
- 2.0 Purpose
- 3.0 Site Description
- 4.0 Scope of Work
- 5.0 Project Team
- 6.0 Schedule
- 7.0 Costs
- 8.0 Deliverables

**PART C - RESPONSE FORMAT**

Pages 11 - 12

- 1.0 Introduction
- 2.0 Submission Instructions

**PART D - SUB-CONTRACTORS**

Page 13

- APPENDIX 1 Response Notification Form (1)
- APPENDIX 2 Aerial Photo (Still Creek Enhancement Area) (1)
- APPENDIX 3 Professional Services Agreement (18)
- APPENDIX 4 Certificate of Insurance (2)

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART A – GENERAL INFORMATION**

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**1.0 Purpose**

- 1.1 This Request for Proposal (“RFP”) identifies a business opportunity for the successful Proponent to provide the City of Vancouver (the “City”) with engineering design services for a specified portion of Still Creek.
- 1.2 Qualified and experienced Proponents are invited to submit Proposals and the City will consider Proposals from those Proponents who are able to meet all the Requirements as set out herein. However, the successful Proponent will be the Proponent who offers the best overall value along with a high level of service and “best practice” business solutions. The City expects to enter into a Professional Service Agreement with a proponent for the services outlined within.
- 1.3 Key dates to be noted are:

Event	Dates
Release of RFP	August 15, 2006
Deadline for Response Notification Form	August 22, 2006
Deadline for Enquiries	September 1, 2006
RFP Closing	September 5, 2006

**2.0 Definitions**

- 2.1 In this Request for Proposal (RFP), the following terms have the meaning set forth below:
  - “The City” means the municipal corporation, generally known as the City of Vancouver, as described under the Vancouver Charter;
  - “Proponent” means the person, firm or corporation responding to this RFP;
  - “Contractor” means the Proponent(s) that enters into a Professional Services Agreement with The City.
  - “Response” means the Proponent’s’ submission with all accompanying schedules, appendices or addenda submitted by the Proponent in response to the RFP.

**3.0 Receipt of Responses**

- 3.1 Responses to this RFP should be submitted by the date and in the place shown on the title page of this RFP. The Response and required number of copies should be submitted in a sealed envelope, marked with the Proponent’s name and the RFP title.
- 3.2 The City reserves the right to accept Responses submitted after this date, but is under no obligation to do so.
- 3.3 The City is not obligated to pay any costs the Proponent incurs, or may incur, in the preparation of their Response. All costs for the preparation of the Response will be borne solely by the Proponent.

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART A – GENERAL INFORMATION**

---

**4.0 Review Process**

- 4.1 To select a qualified Contractor(s) the City will review each response on the basis of, but not limited to, the following:
- a) The ability to meet the requirements of the scope of work;
  - b) The overall cost impact on the operations of the City of Vancouver;
  - c) The ability to meet the project budget;
  - d) The Proponent's business reputation and capabilities and where applicable the experience of the personnel that will be assigned to this project;
  - e) The technical credibility, financial resources and environmental responsibility of the Proponent;
  - f) Project approach and methodology;
  - g) The source of any materials to be used by the Proponent in performance of the contract;
  - h) The Proponent's proposed work scheduling in relation to the City's schedule and availability to complete the work within specified time required by the City;
  - i) The best value to the City based on, but not limited to, quality, service and price;
  - j) Any other criteria that the City deems, in its sole discretion, required to determine the likely success of the project.
- 4.2 Subsequent to the review, the City may ask one or more Proponent to provide clarifications and/or meet with City staff for the purpose of further expanding on its submission.
- 4.3 Subsequent to the receipt and review of the Responses, the City reserves the right, in its sole discretion, to enter into an agreement with any proponent for all or part of the requirements described herein or to enter into negotiations with any Proponent or with any number of other Proponents concurrently for the purpose of entering into an agreement or to cancel this process in its entirety.

**5.0 Freedom of Information and Protection of Privacy Act**

- 5.1 The City is subject to the Province of British Columbia Freedom of Information and Protection of Privacy Act. All documents submitted by Proponents to the City become the property of the City. All documents will be received and held in confidence by the City and the information will not be disclosed, except to the extent necessary for carrying out the City's purposes or as required by law.

**6.0 Confidentiality**

- 6.1 Information about the City obtained by a Proponent, including information regarding this RFP process, must not be disclosed unless authorized by the City in writing. By submitting a Response, the Proponent agrees that this obligation of confidentiality will survive the termination of this RFP and any contract that might arise between the parties.

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART A – GENERAL INFORMATION**

---

**7.0 Environmental Responsibility**

7.1 The City is committed to preserving the environment. Proponents are to provide environmentally sensitive products or services wherever possible.

**8.0 Council Approval**

8.1 Proponents should note that City Council must approve all Consultant contracts if the gross cost of the contract exceeds \$30,000.00.

**9.0 Professional Service Agreement**

9.1 The successful proponent will be required to enter into a Professional Services Agreement (attached as Appendix 3 in a sample format) with the City, and must be able to meet all conditions within the agreement.

**10.0 No Legal Obligation Assumed by Owner**

10.1 Despite any other term of this Proposal Form the City assumes no legal duty or obligation in respect of this RFP or a Proposal or 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.

**11.0 No Duty**

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

**12.0 Proponent's Risk**

12.1 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):

- a) a contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP or Proposal process; or
- b) 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.

**13.0 Insurance Requirements**

13.1 Without limiting any of its obligations or liabilities under the Contract, the Contractor and its Sub-Contractor(s) will obtain and continuously carry during the term of the Contract at their own expense and cost, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below.

- (a) Commercial General Liability insurance in sufficient amounts and description to protect the Contractor, its Sub-Contractors, the City of Vancouver and its respective officers, officials, employees, and agents against claims for

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART A – GENERAL INFORMATION**

---

damages, personal injury including death, bodily injury and property damage which may arise under this Contract.

The limit of commercial general liability insurance will be not less than \$2,000,000 per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations. The deductible per occurrence will not exceed \$5,000 per occurrence.

The policy of insurance shall:

- i. be on an occurrence form;
- ii. add the City of Vancouver and its officials, officers, employees and agents as additional insureds;
- iii. contain a cross-liability or severability of interest clause;
- iv. extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

- (b) The Contractor will ensure that vehicles owned and/or operated by the Contractor in connection with the Contract maintain Third Party Legal Liability Insurance in an amount not less than \$2,000,000 per occurrence.

- 13.2 All insurance policies will be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the City's Director of Risk and Emergency Management and will provide the City's Director of Risk and Emergency Management with 60 days prior written notice of material change, lapse or cancellation. Notice must identify the Contract title, number, policy holder, and scope of work.
- 13.3 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.
- 13.4 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.
- 13.5 The insurance coverage will be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees, or agents will be excess of the Contractor's insurance and will not contribute with it.
- 13.6 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

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART A – GENERAL INFORMATION**

---

available to the City's Director of Risk and Emergency Management at any time during the term of the Contract immediately upon request.

- 13.7 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.
- 13.8 The Contractor will ensure that the required insurance is provided only by a company duly registered and authorized to conduct insurance business in the Province of British Columbia.

**14.0 Changes to Requirements**

- 14.1 Proponent's are expected to make themselves fully aware of the project requirements and current construction codes, changes to standards, new products, etc. Any changes throughout the project which may thus become necessary will be part of the Contractor's normal services and not considered extra work, except where expressly agreed in writing by the Client. Only written approval for changes in the City of Vancouver's requirements will be considered extra work.

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART B - REQUIREMENTS**

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**1.0 Background**

- 1.1 This request for proposals (RFP) outlines the desired scope of Consultant services for the Still Creek Enhancement Plan.
- 1.2 The Still Creek Enhancement Plan was adopted by Vancouver City Council in July 2002. The long-term objectives of the Plan are to:
- a) improve creek ecology;
  - b) enhance recreation opportunities along the creek;
  - c) improve stormwater management; and
  - d) increase public awareness of Still Creek as an important environmental and recreational resource.
- 1.3 The Plan calls for the following measures for the portion of the creek located along the 3400 to 3600 blocks of Cornett Road:
- a) narrowing of Cornett Road by 2.5 meters and realignment of the north curb to widen the streamside area;
  - b) creation of a pedestrian and cycle path along the south side of the creek;
  - c) replacement of invasive species with native shrubs and trees; and
  - d) improvements to the stream bed.

Further detail on the Still Creek Enhancement Plan and related initiatives to restore and rehabilitate the Creek can be found at:

<http://www.vancouver.ca/commsvcs/cityplans/stillcreek/index.htm>

**2.0 Purpose**

- 2.1 The purpose of this project is to enhance the portion of Still Creek along the North side of the 3400 to 3600 blocks of Cornett Road. This project will provide opportunities for stormwater treatment, groundwater recharge and public education. The design should be innovative and aesthetically pleasing, while fulfilling environmental goals and achieving objectives set out in the Still Creek Enhancement Plan.

**3.0 Site Description**

- 3.1 The portion of Still Creek along the 3400 to 3600 blocks of Cornett Road runs in a straight, narrow, open channel with a mix of riprap, concrete and earthen banks. The vegetation is predominantly Himalayan Blackberries. There is an abandoned wooden rail bridge and an active wood access bridge to an adjacent site. An adjacent section of the Creek to the West, which is currently in a culvert, will be daylighted as part of the development of a Canadian Tire Store.

An aerial photo is provided in Appendix 2.

**4.0 Scope of Work**

- 4.1 This section describes the scope of work that the successful Consultant will provide for the Still Creek Enhancement Plan as contemplated by the City. Proposal submissions should comment on the scope of work as described in this section, indicate any



**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART B - REQUIREMENTS**

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proposed changes, and outline the resources expected to be devoted by the Contractor.

- 4.2 The Consultant will provide engineering design services for the specified portion of Still Creek. The Consultant's work shall comprise the following:
- Project initiation;
  - Field investigation;
  - Assessment of the condition of the existing bridge crossing in the 3400 block of Cornett;
  - Recommend options for the retention or replacement of the bridge;
  - Conceptual, preliminary and detailed design for the enhancement area;
  - Drawings and technical specifications for the final design;
  - Cost estimate for construction of the final design; and
  - Approval of works from Fisheries and Oceans Canada and notification to the Ministry of the Environment regarding changes in and about stream.

**5.0 The Project Team**

- 5.1 It is anticipated that the project team will be a multidisciplinary team with extensive experience in creek enhancement projects and innovative landscaping initiatives with a focus on habitat improvement. The team is expected to include professionals with expertise in the following areas:
- Hydrotechnical Engineering
  - Geotechnical Engineering
  - Structural Engineering
  - Landscaping
  - Environmental Protection

**6.0 Schedule**

- 6.1 The Consultant's portion of the project is expected to be completed within 3 months of the signing of the Professional Services Agreement. The Consultant shall submit a project schedule as part of the proposal. The Consultant should allot a 2 week period for the City of Vancouver staff to review the conceptual design, prior to completion of the final design.

**7.0 Costs**

- 7.1 A proposed fee structure for the scope of work as outlined including a maximum total fee and disbursements is required and is to be included with responses.
- 7.2 The hourly charge out rates for team members assigned to the project should be included.
- 7.3 A description of all costs associated with sub-Contractors.

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART B - REQUIREMENTS**

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7.4 Description of all costs, for any additional proposed scope of work related to this project.

**8.0 Deliverables**

8.1 The Consultant will be required to meet with City and GVRD staff a minimum of 3 times: at the project initiation, conceptual design phase and to review the final design. In addition, the Consultant may be required to meet once with other stakeholders during the conceptual design phase.

8.2 The Consultant will report to Simone Rousseau, EIT and work closely with the Still Creek Enhancement staff team. The Consultant will work out of their own office and are expected to attend meetings at City Hall and on-site as required.

8.3 Three sets of drawings are to be completed and provided to the City. An electronic version of the material is to be provided. Drawings and specifications must be in a form suitable to include in construction tender documents. Drawings shall include plans, profiles, sections and details (certified by a professional engineer).

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART C – RESPONSE FORMAT**

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**1.0 Introduction**

1.1 It is intended that this section of the RFP will communicate to Proponents the structured and standardized format for submission of Responses.

**2.0 Submission Instructions**

2.1 Proponents should submit two (2) copies and one (1) electronic version (pdf and/or Word format) of its Response, including the original, in an envelope or package marked with the Proponent's name, the RFP title and number in accordance with the instructions shown on the title page of this RFP.

2.2 Proponents are requested to organize its Response according to the following format:

**TITLE PAGE**

The title page should show the RFP title and number, submission date, Proponent name, address, telephone number and the name and title of the contact person.

**TABLE OF CONTENTS:**

Page numbers should be indicated.

**EXECUTIVE SUMMARY:**

A short summary of the key features of the Response demonstrating the Proponent understands of the requirement.

**PROPONENT PROFILE:**

Provide a brief overview of your company or organization including information on previous or present collaborations with other companies or organisations. If applicable, provide the name and address, contact person and telephone number of the companies or organisations, and the effective dates of similar projects as outlined in this RFP.

**RESPONSE:**

Interested Proponents should address the following:

- 1) Their ability to meet the requirements of the scope of work as outlined in Part B section 4.0;
- 2) The technical credibility, financial resources and environmental responsibility of the Proponent;
- 3) A description and schedule of the task(s) and milestones proposed to fulfill the requirements of this project and a list of all deliverables;
- 4) The name of the Project Manager including a resume of their qualifications. Specific reference should be made to skills and experience in project management;
- 5) List of specific key personnel to be assigned to the project and a resume of qualifications for each;

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART C – RESPONSE FORMAT**

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- 6) An organizational chart including every person whose resume is provided and shall clearly show the function which each person will be expected to fulfill;
- 7) The Proponent shall provide a flow chart or Gantt chart depicting the sequence and duration of each of the activities described in the Scope of Work (Part B - Section 4.0);
- 8) A brief indication of special problems or considerations foreseen and potential solutions for each;
- 9) A list of potential sub-Contractors;
- 10) A clear and thorough description of all assumptions made, including, but not limited to, a listing of all services the Proponent would require from the City throughout the term of the project;
- 11) A list of a minimum of three (3) relevant and successfully completed projects worked on by the personnel listed in the organizational chart. Each project shall include a reference and telephone number, and a brief description of the project (function, date, value) as well as the scope and value of work carried out by the Proponent;
- 12) All costs as outlined in Part B - Section 7.0;
- 13) Compliance with all City insurance requirements;
- 14) Proponents may be invited to provide a thirty (30) minute presentation outlining their proposed project methodology to the Project Steering Committee.

**REQUEST FOR PROPOSAL PS06084  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
PART D – SUB-CONTRACTORS**

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**SUB-CONTRACTORS:**

The Sub-Contractors shown below are the Sub-Contractors that the Proponent proposes to use to carry out the Requirements. The City expects that the Proponent will engage the listed Sub-Contractors and no others in their stead, without prior written authorization of the City.

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

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



**CITY OF VANCOUVER**  
CORPORATE SERVICES GROUP  
Materials Management  
Purchasing Services

Request for Proposal  
No. PS06084  
Consultant Services for Still Creek Enhancement Project

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, August 22, 2006.

Philip 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  
"PS06084 Consultant Services for the Still Creek Enhancement Project

by the closing date (Tuesday, September 5, 2006, 3:00:00 P.M.)

\_\_\_\_\_  
Authorized Signatory and Name of Company (Please print)

\_\_\_\_\_  
E-mail Address (Please print)

\_\_\_\_\_  
Date



CITY OF VANCOUVER  
CONSULTANT SERVICES FOR THE  
STILL CREEK ENHANCEMENT PROJECT  
  
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 2006

BETWEEN:

CITY OF VANCOUVER  
453 West 12th Avenue  
Vancouver, British Columbia  
V5Y 1V4

(the "City")

OF THE FIRST PART

AND:

[SUCCESSFUL PROPONENT'S LEGAL NAME, ETC. TO BE INSERTED]

(the "Consultant")

OF THE SECOND PART

BACKGROUND:

- A. By way of Request for Proposals No. PS06084 (the "RFP"), the City requested proposals from proponents for the provision of Consulting Services for the Still Creek Enhancement Project.
- B. In response to the RFP, the Consultant submitted a detailed proposal (the "RFP Proposal").
- C. After evaluating the Consultant's and other proponents' proposals, City Council authorized City staff 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.
- D. The City and the Consultant have now completed those negotiations and have agreed to the following terms and conditions.

THE CITY AND CONSULTANT NOW AGREE AS FOLLOWS:



## 1.0 INTERPRETATION

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

“**Agreement**” means the agreement between the City and the Consultant as set out in the Contract Documents.

“**Business Day**” means a weekday (Monday to Friday) that is not a “holiday” as defined in the *Interpretation Act* of British Columbia.

“**City’s Project Manager**” means the City’s employee, or his or her delegate, who is authorized in writing to deal with the Consultant on behalf of the City in connection with the goods or services to be provided by the Consultant, or to make decisions in connection with the Contract Documents.

“**Contract Documents**” means this Professional Services Agreement, the Consultant’s RFP Proposal, the RFP and such other documents as listed in this Professional Services Agreement, including all amendments or addenda agreed between the parties.

“**Deliverables**” means each component of the services to be provided by the Consultant, as further defined in Schedule A – *Requirements*, Section 3.4 of the RFP.

“**Term**” means the term of this Agreement as specified in Section 12.

“**WCB OH&S Regulation**” means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9) enacted pursuant to such Act, including all amendments to or re-enactments of such Act or Regulations from time to time.

“**Work Site**” means the City’s property designated for the Vancouver Landfill in Delta, as further defined in the RFP.

- 1.2 The terms and conditions of this Agreement including all Appendices are complementary and what is called for by one will be as binding as if called for by all. In the event of any conflict or inconsistency between or among any of the terms and conditions of this Agreement, such terms and conditions will take precedence and govern in the following order of priority, from highest to lowest:

- 1.2.1 this Professional Services Agreement;
- 1.2.2 the Consultants Proposal; and
- 1.2.3 the RFP.

- 1.3 The section headings used in this Agreement are for convenience of reference only and do not affect its interpretation.

## 2.0 CONSULTANT'S SERVICES TO THE CITY

- 2.1 The Consultant will provide and be fully responsible for the following services (collectively, the “Services”):

- 2.1.1 Services as described in Part [\_\_\_], Section [\_\_\_] of the RFP attached as Appendix A;
- 2.1.2 Services as described in Part [\_\_\_], Section [\_\_\_] of the RFP Proposal attached as Appendix B;
- 2.1.3 [Note: List out all other relevant documentation describing Services].
- 2.2 The Consultant will be fully responsible for:
- 2.2.1 taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Section 5.0 - *Insurance*;
- 2.2.2 adhering to the project schedule and deliverable deadlines for the Services as described in Part [\_\_\_], Section [\_\_\_] of the RFP Proposal (the "Project Schedule");
- 2.2.3 maintaining and supervising the project team members as described in Part [\_\_\_], Section [\_\_\_] of the RFP Proposal (the "Project Team"); and
- 2.2.4 scheduling, requesting and maintaining the stated requirements and resources to be provided by the City in order to facilitate the Consultant's performance of the Services as described in Part [\_\_\_], Section [\_\_\_] of the RFP Proposal (the "City Resources").
- 2.3 The Consultant represents and warrants to the City that the Consultant possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the satisfaction of the City.
- 2.4 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 and design standards; and (c) in conformance with any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, and courts having jurisdiction (collectively, "Laws and Regulations") applicable at the time of design.
- 2.5 The Consultant will commence the Services promptly and will use every reasonable endeavour to carry out the Services in such a manner so as to fulfill the completion dates (a) set out in this Agreement, (b) the Project Schedule (as defined in Section 2.2 above), and (c) where no such dates are set out in this Agreement, such completion dates as are reasonably specified from time to time by the City.
- 2.6 The Consultant agrees that in the event the Consultant does not complete the Services to the satisfaction of the City during the term of this Agreement, the Consultant will spend such additional time (at its own expense) as is reasonably required to complete the Services.

- 2.7 The Consultant will not permit, do or cause anything to be done at any time which will allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the Work Site or to the Consultant's personal property within this Work Site.

### 3.0 PROJECT TEAM/MANAGEMENT

- 3.1 Subject to Section 3.2 below, the Consultant will utilize only the Project Team members named in the Consultant's Proposal for the provision of the Services.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Consultant may not make substitutions of Project Team members without the prior written consent of the City, whose consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Consultant or its affiliates.
- 3.4 The City may, with stated reasons and acting reasonably, request that the Consultant replace a Project Team member. The Consultant will, subject to scheduling and staffing considerations make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.
- 3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Consultant for any replacement Project Team member.

### 4.0 SUB-CONSULTANTS

- 4.1 Except as expressly permitted pursuant to Section 3 above, the Consultant confirms that it does not intend to utilize any sub-contractors or sub-consultants for the performance of any part of the Services, except for the individual Project Team members named in the Consultant's Proposal, who may be retained by the Consultant on an independent or dependent contractor basis (the "Sub-Consultants") rather than a contract of employment basis.
- 4.2 Except as expressly permitted pursuant to Sections 3 and 4.1 above, the Consultant may not engage sub-contractors or sub-consultants for the performance of any part of the Services, unless the Consultant has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.3 The Consultant will administer, coordinate, and manage all Services provided by any Sub-Consultants, and will assume full responsibility to the City for all work performed by the Sub-Consultants in relation to the Services and will pay all fees and disbursements of all Sub-Consultants, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Consultant.
- 4.4 Where a Sub-Consultant is used by the Consultant under this Agreement, the Consultant will legally bind the Sub-Consultant to comply with this Agreement.

4.5 Nothing in this Agreement will create any contractual relationship between a Sub-Consultant and the City.

5.0 BASIS OF PAYMENT TO THE CONSULTANT

5.1 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.

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

5.2.1 hours worked by the Project Team members in providing the Services multiplied by the hourly charge-out rates set out in Appendix [ ], and

5.2.2 the direct out-of-pocket expenses necessarily incurred in providing the Services and expressly permitted to be charged separately under this Agreement.

5.3 Despite anything to the contrary in this Agreement,

5.3.1 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

5.3.2 as this is a “time and materials” contract (subject to a maximum fees and disbursements limit) and no portion of this Agreement is a “fixed price” contract for Services, accordingly:

5.3.2.1 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

5.3.2.2 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.

However, where some Deliverables are “under budget” and other Deliverables are “over budget”, the Consultant may be permitted (subject to approval by the City’s Project Manager) to transfer its time or material expenses between any of the different Deliverables referred to 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

5.4 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.

5.5 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.

5.6 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.

5.6.1 Long distance telephone calls, telegrams and telex.

5.6.2 Photocopies to a maximum of \$0.20 per page.

5.6.3 Delivery of drawings, specifications or correspondence by courier, where this method of delivery has been requested by the City.

5.6.4 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.

5.6.5 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.

5.6.6 AutoCAD licensing and other costs to a maximum of \$[\_\_\_\_\_] per hour when operated by a Project Team member in performing the Services.

5.6.7 Engineering software licensing and other costs for only the following engineering software, and only to a maximum of the following limits:

- [\_\_\_\_\_] and \$[\_\_\_\_\_] per run;
- [\_\_\_\_\_] and \$[\_\_\_\_\_] per run; and
- [\_\_\_\_\_] and \$[\_\_\_\_\_] per run.

5.6.8 Printing costs, but only for the following: (a) large format plots, checkplots, and scanning to file at maximum of \$0.60 per square foot; and (b) large format colour plots at maximum of \$2.75 per square foot.

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.

5.7 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.

5.8 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.

5.9 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 Project Manager.

5.10 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.

5.11 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.

- 5.12 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.

## 6.0 CHANGES TO SCOPE OF SERVICES

- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Consultant, vary the scope of Services to be provided by the Consultant. In that case and where this Agreement contains a delivery date(s) and/or limit(s) as to the maximum fees and disbursements to be paid to the Consultant in Table 1 for all or any part of the Services, such delivery date(s) and/or limit(s) will be adjusted as agreed to by both parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.
- 6.2 Should the Consultant consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Consultant shall so advise the City's Project Manager within ten days (in writing) of such request or instruction. Without said written advice within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Consultant.

## 7.0 RELEASE AND INDEMNIFICATION

- 7.1 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, Sub-Consultants, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.
- 7.2 In undertaking the Services, the Consultant acknowledges that the Consultant has inspected the site, agrees to accept the site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Consultant to perform the Services.
- 7.3 Despite the provision of insurance coverage by the City, the Consultant hereby agrees to indemnify and save harmless the City, its successors, assigns and authorized representatives and each of them from and against losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that the City may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant, Sub-Consultants, or their respective officers, 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 or its officers, employees or agents.
- 7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law.
- 7.5 The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.



## 8.0 INSURANCE

## 8.1 General

- (a) Required Coverage - The Consultant will comply at all times with the insurance provisions set out in this Professional Services Agreement - Appendix 4.
- (b) Limitations - The requirements set out in this Appendix 4 do not limit any insurance requirements imposed on the Consultant by municipal, provincial or federal law.
- (c) Additional Coverage - It will be the sole responsibility of the Consultant to determine what additional insurance coverage, if any, is necessary or advisable for the Consultant's own protection and/or to fulfill the Consultant's obligations under this Agreement. Any additional insurance will be provided and maintained by the Consultant at its own expense.

## 8.2 Requirements for All Policies

- (a) Minimum Limits - Without limiting any of its obligations or liabilities under this Agreement, the Consultant and its Sub-Consultants and subcontractors will obtain and continuously carry during the Term of this Agreement, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below.
- (b) Premiums - The Consultant will pay all premiums and deductible costs for all insurance required to be effected under this Agreement provided always that under no circumstances does the payment of such premiums give the Consultant any interest in the proceeds of such insurance or any control over such policies as they relate to the City's interests.
- (c) Insurers - All policies must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *Best Rating Guide on Property and Casualty Insurance Companies*.
- (d) Form of Policy - All insurance policies must be in a form acceptable to the City's Director of Risk Management. Self-funded, policy fronting or other non-risk transfer insurance mechanisms are not permitted.
- (e) Notice to City - All insurance policies must provide the City with 30 days' prior written notice of material change, lapse or cancellation. The policy must provide that the notice will identify the Contract title, number, policy holder, and be delivered in accordance with Section 18.0 - *Notices* of this Agreement.
- (f) Insurance Obligations Separate - Neither the providing of insurance by the Consultant 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 this Agreement with respect to the liability of the Consultant or otherwise.
- (g) Primary Coverage - The insurance coverage will be primary insurance in respect



to the City. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees or agents will be excess to the insurance effected by the Consultant under this Agreement and will not contribute with it.

- (h) Properly Disclose - The Consultant will properly disclose all risks in each insurance application, ensure that it does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers and underwriters.
- (i) Failure to Provide - If at any time the Consultant fails to provide a certificate of insurance or certified copies of all insurance policies as required in Section 8.3 - *Evidence of Insurance*, the City may (but is not obligated to or liable for the manner in which it does so) effect such insurance on behalf of the Consultant and the cost of doing so will be paid by the Consultant to the City upon request and, in any event, within five (5) calendar days of such a request.

### 8.3 Evidence of Insurance

- (a) Proof of Insurance - Prior to commencement of this Agreement, the Consultant will provide the City with evidence of all required insurance to be taken out in the form of a detailed Certificate of Insurance attached as Appendix 5 supported by a certified copy(ies) of the policy(ies). The certificate of insurance must identify the Contract Title, number, policy holder and contract subject-matter, and must not contain any disclaimer. 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 Management at any time upon request.
- (b) Cause Sub-Consultants to Carry - The Consultant will ensure that those Sub-Consultants of the Consultant named below will place and maintain the same type of Professional Liability (Errors and Omissions) insurance, and for the same period of time, as is required of the Consultant, except that the policy limits must be no less than the amounts indicated below for each respective Sub-Consultant:

[Insert Sub-Consultant No. 1]. - \$[\_\_\_\_\_]per claim/\$[\_\_\_\_\_] in aggregate

[Insert Sub-Consultant No. 2]. - \$[\_\_\_\_\_]per claim/\$[\_\_\_\_\_] in aggregate

[Insert Sub-Consultant No. 3]. - \$[\_\_\_\_\_]per claim/\$[\_\_\_\_\_] in aggregate

[THE LIMITS WILL DEPEND ON THE NATURE AND VALUE OF EACH SUB-CONSULTANT'S WORK, AND THESE LIMITS WILL BE SUBJECT TO REVIEW BY THE CITY'S RISK AND EMERGENCY MANAGEMENT DEPARTMENT.]

Upon request, the Consultant will deposit with the City's Director of Risk Management detailed certificates of insurance for the policies it has obtained from its Sub-Consultants and a copy of the insurance-related clauses from those agreements. For further certainty, the above requirements will apply to all replacement and substitution Sub-Consultants.

#### 8.4 Commercial General Liability (“CGL”) Insurance

- (a) Must Carry CGL - The Consultant will maintain insurance in sufficient amounts and description to protect the Consultant, its Sub-Consultants, the City and their respective officers, officials, employees and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement.
- (b) \$3,000,000 - The limit of commercial general liability insurance must be not less than \$3000,000 per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations.
- (c) Form of Policy - The policy of insurance will:
- i. be on an occurrence form,
  - ii. add the City and its officials, officers, employees and agents as additional insureds,
  - iii. contain a cross-liability or severability of interests clause,
  - iv. extend to cover non-owned automobiles, contingent employer’s liability, blanket contractual liability, contractor’s protective liability, broad form property damage, broad form completed operations and operations of attached machinery.
- (d) Primary Insurance
- Pursuant to Section 8.2(g) - *Primary Coverage*, the Consultant's commercial general policy will be primary insurance in respect to the City.

#### 8.5 Motor Vehicle Liability Insurance

The Consultant will maintain motor vehicle liability insurance for owned and leased or licensed vehicles with limits of \$2,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Whether or not the policy has been issued pursuant to a government operated automobile insurance system, the Consultant will provide the City’s Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Consultant and its permitted Sub-Consultants used in connection with this Agreement.

#### 8.6 Professional Liability (Errors and Omissions) Insurance

- (a) Form of Coverage - An Architects' & Engineers' Professional Liability Insurance policy will be arranged and maintained in full force by the Consultant for the Term of this Agreement and for a further period of two (2) years following expiry of the Term. The policy must protect the Consultant and its officers, officials, employees and agents performing services for and on behalf of the Consultant against all liability resulting from an error, omission or negligent act in the provision of the Services under this Agreement.
- (b) \$3,000,000 - The limit of this policy must be no less than \$3,000,000 per claim,

and \$3,000,000 annual aggregate.

- (c) Deductible - The policy will provide for a limit of deductibility of not greater than \$50,000.
- (d) Project Specific - The insurance coverage provided by the policy may be "Project Specific".

#### 8.7 Property Insurance

- (a) Form of Coverage - The Consultant will maintain an All-Risks insurance policy covering the Consultant's property of every description.
- (b) Waiver of Subrogation - The policy must contain a provision in which the insurer waives all rights which it may acquire by payment of a claim to recover the paid amount from the City or its officers, officials, employees or agents (a "Waiver of Subrogation").
- (c) All Property Insurance Must Contain Waiver - All property insurance policies of any kind carried by the Consultant must contain a Waiver of Subrogation in favour of the City (whether or not such property insurance is carried as a requirement of this Agreement).

#### 9.0 WORKERS' COMPENSATION BOARD

- 9.1 The Consultant agrees that it will at its own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees and others engaged in or upon the Services. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such Worker's Compensation Board coverage against any money owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the Services have been paid in full.
- 9.2 The Consultant will have a safety program acceptable to the Workers' Compensation Board and will ensure that all City and Workers' Compensation Board safety policies, rules and regulations are observed during any performance of the Services at the Work Site, not only by the Consultant but by all Sub-Consultants, workers, material suppliers and others engaged in the performance of the Services.
- 9.3 Prior to the start of the Term, the Consultant will provide the City with the Consultant's and all Sub-Consultant's Workers' Compensation Board registration numbers.
- 9.4 Prior to the start of the Term, and concurrently with making any application for payment under this Agreement, the Consultant will provide the City with written confirmation that the Consultant and all Sub-Consultants are registered in good standing with the Workers' Compensation Board and that all assessments have been paid to date.
- 9.5 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:

- 9.5.1 unpaid Workers' Compensation Board assessments of the Consultant or any other employer for whom the Consultant is responsible under this Agreement;
- 9.5.2 the acts or omissions of any person engaged directly or indirectly by the Consultant in the performance of this Agreement, or for whom the Consultant is liable pursuant to the Consultant's obligations and which acts or omissions are or are alleged by the Workers' Compensation Board to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including any and all fines and penalties levied by the Workers' Compensation Board; or
- 9.5.3 any other breach of the Consultant's obligations under this Section 9.

#### 10.0 CITY INFORMATION/APPROVALS

- 10.1 The City acknowledges that the Consultant's ability to provide the Services in accordance with this Agreement will be dependent on the City providing the City Resources in a prompt and timely manner as reasonably required by the Consultant. To the extent that the City fails to provide the City Resources, the Consultant will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will this delay or failure to provide City Resources constitute a breach of this Agreement by the City, nor will the Consultant be entitled to extra compensation for same.
- 10.2 No reviews, approvals or inspections carried out or information supplied by the City Resources will derogate from the duties and obligations of the Consultant (with respect to design or otherwise), and all responsibility related to the Services will be and remain with the Consultant.

#### 11.0 COMMUNICATION BETWEEN CONSULTANT AND CITY

- 11.1 The City appoints \_\_\_\_\_, of the \_\_\_\_\_ Department, as the City's Project Manager for the purposes of this Agreement.
- 11.2 The Consultant appoints \_\_\_\_\_, of the \_\_\_\_\_ Department, as its representative for the purposes of this Agreement (the "Consultant's Project Manager").
- 11.3 All material communication between the Consultant and the City regarding this Agreement, including performance of the Services, will be between the City's Project Manager and the Consultant's Project Manager.

#### 12.0 TERM OF AGREEMENT

- 12.1 The Term of this Agreement will commence on \_\_\_\_\_, 2006 and will expire on \_\_\_\_\_, 2006.

**13.0 TERMINATION**

- 13.1 The City at any time, in its sole judgment, may, whether or not cause exists, terminate the services of the Consultant in whole or in part by giving 10 calendar days prior written notice (signed by the City's Project Manager) to the Consultant. If termination is not for cause, the Consultant will be paid at the rate prescribed for all Services properly performed to the date of the delivery of the said notice (subject to the terms of this Agreement) plus all necessary and reasonable wind up costs incurred, if any, in closing out the Services or the part terminated.
- 13.2 Despite Section 13.1, in no event and under no circumstances will the Consultant's "necessary and reasonable wind up costs incurred" pursuant to Section 13.1 exceed \$1,000.00.

**14.0 ASSIGNMENT**

- 14.1 The Consultant will not assign this Agreement in whole or in part except with the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned. Any attempt to assign this Agreement without such consent will be void and of no effect. However, the Consultant will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Consultant have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Consultant, provided always that the Consultant:
- 14.1.1 first provides the City with reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and
- 14.1.2 first provides the City with a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

**15.0 CONFIDENTIALITY**

- 15.1 The Consultant acknowledges that in performing the Services required under this Agreement, it will acquire information about certain matters which are confidential to the City, and such information is the exclusive property of the City. The Consultant undertakes to treat as confidential all information received by reason of its position as Consultant, and agrees not to disclose same to any third party either during performance of the Services or after the Services have been rendered under this Agreement.

**16.0 NO PROMOTION OF RELATIONSHIP**

- 16.1 The Consultant 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 Consultant to perform the Consultant's obligations under the terms of this Agreement). The Consultant undertakes not to use "VANOC", "Vancouver 2010", 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 Consultant undertakes not to disclose or promote its relationship with the City in any communication or manner whatsoever as a basis to create an association, express or implied, between the Consultant and the IOC, the Olympics or the Olympic Movement.

**17.0 OWNERSHIP OF DOCUMENTS AND COPYRIGHT**

- 17.1 All drawings, audiovisual materials, information, plans, models, designs, specifications, reports and other documents or products produced, received or acquired by the Consultant as a result of the provision of the Services (collectively, the "Material") will be the sole property of the City, and the City will have the right to utilize all of the Material for its benefit in any way it sees fit without limitation.
- 17.2 The Material will be delivered by the Consultant to the City forthwith following the expiration or sooner termination of this Agreement, PROVIDED that 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 part of the Material, in which event the Consultant will forthwith comply with such request.
- 17.3 The Consultant hereby transfers title in and to the Material and assigns to the City sole copyright in the Material. The Consultant agrees that title to the Material is to be considered to have been transferred, and any copyright in the Material is to be considered to have been assigned by the Consultant to the City upon creation of the Material. The Consultant hereby irrevocably waives, in favour of the City, the Consultant's moral rights in respect of the Material. The Consultant will obtain in writing, from its personnel, its permitted 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 Material to the City.
- 17.4 The Consultant hereby represents and warrants that the portion of the Material produced by the Consultant (or its Sub-Consultants, if applicable) will not infringe any patent or copyright or any other industrial or intellectual property rights, including trade secrets.

**18.0 NOTICES**

- 18.1 Any notice required or permitted to be given to the Consultant will be sufficiently given if delivered in writing by the City's Project Manager to the Consultant's Project Manager personally or, if mailed, by registered mail to the last known address of the Consultant.

18.2 Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by the Consultant's Project Manager to the City's Project Manager personally or, if mailed, by registered mail to City of Vancouver at 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4 (addressed to the attention of the City's Project Manager).

#### 19.0 NON-COMPETITION

19.1 The Consultant agrees that during the Term of this Agreement and at all times thereafter, the Consultant will not, without the express consent of the City's Project Manager, assist any person to become acquainted with the clients of the City, and will not divulge or disclose the name or address of a client of the City and, without limiting the generality of the foregoing, will not take any advantage, directly or indirectly, of contracts established between the Consultant and the clients of the City during the Term of this Agreement.

19.2 The Consultant agrees that during the Term of this Agreement and for a period of 24 (24) months after the termination of this Agreement, the Consultant will not, without the express consent of the City's Project Manager, directly or indirectly, as an individual, as a member, employee, or agent of a firm, as a shareholder, director, officer, employee or agent of a corporation, or as part of any other organization or group, participate in, assist, engage in, advise or consult for, permit the Consultant's name to be used by, or be in any way connected with any business similar in nature to all or any part of the City's business or which competes in any way with the City's business.

#### 20.0 NO CONFLICT OF INTEREST

20.1 The Consultant agrees that during the Term of this Agreement, the Consultant will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person, whether or not a client of the Consultant's. Without limiting the general scope of this Section 20.1 and by way of example only, the Consultant is prohibited from and will not provide any services which assist or could be seen to be assisting any person in responding to a Request for Proposal or Tender or otherwise giving that person an unfair competitive advantage over other proponents responding to a Request for Proposals or Tender by the City. The Consultant now acknowledges that a breach of this Section 20.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act (Canada)* and *Criminal Code of Canada*, and accordingly, could be punishable as a crime (as well as a breach of contract).

20.2 The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (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 an elected official or employee of the City, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.



**21.0 NON-RESIDENT WITHHOLDING TAX**

21.1 If the Consultant is, at any time, a non-resident of Canada, within the meaning of the *Income Tax Act* of Canada as amended, then, and the Consultant hereby so agrees, the City may deduct from all monies payable under this Agreement and remit to the Receiver-General of Canada, the Government of Canada or Revenue Canada, Taxation sums not greater than the greater of:

21.1.1 25% of all monies payable under this Agreement; and

21.1.2 sums required to be withheld and remitted by the *Income Tax Act* of Canada as amended.

The City will receive full credit under this Agreement for monies withheld as of and from the date of the withholding (regardless of when or whether remitted) and no interest will be payable by the City on sums withheld, not remitted as aforesaid, and later paid directly to the Consultant.

**22.0 COMPLIANCE WITH LAW**

22.1 The Consultant will comply with the City of Vancouver License By-law and maintain a valid Business License throughout the duration of the Agreement.

22.2 The Consultant agrees that it will obey all laws and by-laws whether municipal, provincial or federal.

**23.0 RESOLUTION OF DISPUTES**

23.1 This Agreement will be governed by the laws of the Province of British Columbia and the parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution.

**24.0 INDEPENDENT CONSULTANT**

24.1 This Agreement is a contract for services and the Consultant, its permitted Sub-Consultants, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Consultant and its permitted Sub-Consultants are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.

24.2 The Consultant will not represent to anyone that the Consultant has any authority to bind the City in any way or that the Consultant is an employee of the City.

**25.0 INDEPENDENT LEGAL ADVICE**

25.1 The Consultant acknowledges that the Consultant has been advised to seek independent legal advice before executing this Agreement.

**26.0 LEGALLY BINDING AGREEMENT**

26.1 This Agreement will benefit and be legally binding on the parties and their successors and permitted assigns.



26.2 This is the entire agreement between the Consultant and the City regarding its subject, and it terminates or nullifies any negotiations, other agreements or representations made by or between the Consultant and the City. Any modification of this Agreement must be in writing and executed by both the Consultant and the City.

As evidence of their agreement to be bound by the above contract terms, THE CITY and THE CONSULTANT each have executed this Agreement as of the day and year first above written.

By (full and precise name of Consultant)

\_\_\_\_\_  
(Authorized Signatory(ies))

\_\_\_\_\_  
(Authorized Signatory(ies))

CITY OF VANCOUVER  
By its Authorized Signatory(ies)

\_\_\_\_\_  
General Manager - Engineering Services

\_\_\_\_\_  
Manager - Materials Management

\_\_\_\_\_  
Director of Legal Services

SAMPLE

THIS CERTIFICATE IS ISSUED TO THE CITY OF VANCOUVER,

NAMED INSURED: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

*And certifies that policies of insurance as herein described will be issued to the named insured (s) and will be in full force and effect as of the effective date of the award of contract(s).*

**PROPERTY (All Risks Coverage incl. Earthquake & Flood) PROPERTY REPLACEMENT COST INSURED VALUES:**

INSURER: \_\_\_\_\_ Building incl. Tenants Imp.: \$ \_\_\_\_\_

TYPE OF COVERAGE: \_\_\_\_\_ Contents and Equipment: \$ \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_ Deductible/Accident: \$ \_\_\_\_\_

POLICY PERIOD: From: \_\_\_\_\_ to \_\_\_\_\_

**COMMERCIAL GENERAL LIABILITY including:**

- Occurrence Form
- Personal Injury
- Products and Completed Operations
- Cross Liability or Severability of Interest
- Employees as Additional Insureds
- Blanket Contractual
- Non-Owned Automobile

**LIMITS OF LIABILITY:**

Bodily Injury and Property Damage Inclusive

Per Occurrence: \$ \_\_\_\_\_

Aggregate: \$ \_\_\_\_\_

All Risk Tenant's Legal Liability: \$ \_\_\_\_\_

INSURER: \_\_\_\_\_ Deductible Per Occurrence: \$ \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_ POLICY PERIOD: From: \_\_\_\_\_ to \_\_\_\_\_

**AUTOMOBILE LIABILITY including: \_\_\_\_\_ Owned Vehicles \_\_\_\_\_ Leased Vehicles \_\_\_\_\_**

INSURER: \_\_\_\_\_ LIMITS OF LIABILITY: \$ \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_ Combined Single Limit: \$ \_\_\_\_\_

POLICY PERIOD: From: \_\_\_\_\_ to \_\_\_\_\_

**\_\_\_\_\_ UMBRELLA LIABILITY \_\_\_\_\_ EXCESS LIABILITY LIMITS OF LIABILITY: \_\_\_\_\_**

INSURER: \_\_\_\_\_ (Bodily Injury and Property Damage Inclusive)

POLICY NUMBER: \_\_\_\_\_ Per Occurrence: \$ \_\_\_\_\_

POLICY PERIOD: \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

Self-Insured Retention: \$ \_\_\_\_\_

**OTHER [Boiler & Machinery, Professional Liability...etc.] Specify Policy, Name of Insurer, Policy Period**

**POLICY PROVISIONS (ALL LINES except Automobile Liability Insurance):**

These policies will comply with the insurance requirements set out in this RFP. It is understood and agreed that, where required, the City will be added as an additional named insured and that sixty (60) days notice of any material change or cancellation of any of the policies listed herein, either in part or in whole will be given by the insurers to the holder of this certificate.

*All the foregoing insurance will be primary and insurance or self-insurance maintained by the City shall be in excess of this insurance and not contribute to it.*

AUTHORIZED SIGNATORY FOR THE NAMED INSURED (Contractor) \_\_\_\_\_ Dated: \_\_\_\_\_

AUTHORIZED SIGNATORY ON BEHALF OF THE INSURERS \_\_\_\_\_ Dated: \_\_\_\_\_

NAME OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER, ADDRESS, and PHONE NO:

CITY OF VANCOUVER

CERTIFICATE OF INSURANCE  
Professional Liability Insurance

THIS CERTIFICATE IS ISSUED TO: City of Vancouver

*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.*

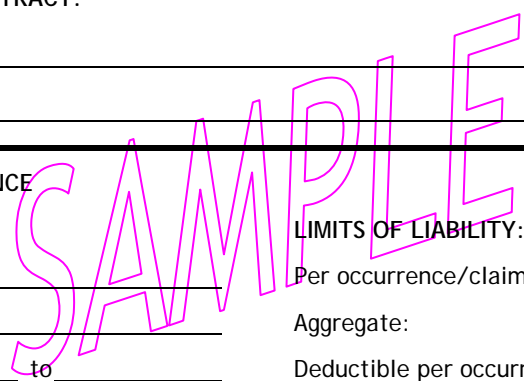
NAMED INSURED:  
\_\_\_\_\_

MAILING ADDRESS:  
\_\_\_\_\_

LOCATION ADDRESS:  
\_\_\_\_\_

DESCRIPTION OF OPERATION/CONTRACT:  
\_\_\_\_\_  
\_\_\_\_\_

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:* \_\_\_\_\_

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 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 NAMED INSURED (Contractor/Consultant)

\_\_\_\_\_ Dated: \_\_\_\_\_

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

\_\_\_\_\_ Dated: \_\_\_\_\_

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

\_\_\_\_\_