



SHORT FORM - REQUEST FOR PROPOSAL PS11177

CONSULTING SERVICES FOR VANCOUVER ART GALLERY AND VANCOUVER CONCERT HALL AND THEATRE SOCIETY CRITICAL REVIEW AND EVALUATION OF RESEARCH

Responses will be received in the Purchasing Services Office, 3rd Floor, Suite #320, East Tower, 555 West 12th Avenue, Vancouver, British Columbia, Canada, V5Z 3X7 prior to the Closing Time of Tuesday May 10, 2011, 3:00:00 PM, City Hall Clock Time (as defined in Note 2 below).

NOTES:

1. Responses shall be in a sealed envelope or package marked with the Proponent's Name, the SF-RFP Title and Number and addressed to Purchasing Services, City of Vancouver.
2. The Closing Time and Vancouver Time will be conclusively deemed to be the time shown on the clock used by the City's Purchasing Services Office for this purpose.
3. The City's Purchasing Services Office is open on Business Days 8:30 A.M. to 4:30 P.M. Vancouver Time and closed Saturdays, Sundays and holidays.
4. Responses to be submitted, in hard copy: Five (5) copies.
5. DO NOT SUBMIT BY FAX OR E-MAIL.

All queries related to this SF-RFP shall be submitted in writing, five (5) business days prior the above closing time to the attention of:

Gordon Harvey, SCMP
Contracting Specialist

FAX: 604.873.7057 E-MAIL: purchasing@vancouver.ca

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1.0 BACKGROUND

On February 1, 2011, Vancouver City Council directed City staff to work with the Vancouver Art Gallery (the "Gallery") and Vancouver Concert Hall and Theatre Society ("VCHTS") to develop a strategy that considers potential development of a new Gallery, concert hall, and theatre for a City owned site at 688 Cambie (also known as the old Bus Depot). As the City of Vancouver ("City") has been working with both organizations for many years on the development of these projects, this request for proposal seeks a qualified consultant team (the "Proponent") to provide a comprehensive review of the analysis and research provided to date, to corroborate any assumptions made to date and re-evaluate the various options that have been considered, within the context of current circumstances, to better inform the City's process.

2.0 SCOPE OF WORK SUMMARY

This Short Form - Request for Proposal ("SF-RFP") identifies a business opportunity for the successful Proponent to provide an objective review, analysis and summary of the extensive existing material, particularly commissioned reports, related to the relocation and expansion of the Vancouver Art Gallery (the Gallery), and the Vancouver Concert Hall and Theatre Society's (VCHTS) proposed 450 seat theatre and 1,950 seat concert hall.

The successful Proponent will provide a final written report which would synthesize the findings, identify major gaps and review the conclusions in the context of the current proposals, new opportunities, present economy and funding environment. Work includes, but is not limited to:

- 2.1 An objective, informed and knowledgeable review of existing material identifying major gaps, significant changes within the current context and environment. This would include reviewing all relevant materials and informal interviews with study authors, relevant industry experts, key stakeholders and City staff.
- 2.2 A document that provides a clear written summary of the research and work to date, and a timeline, that can be used for public print and web communications on the project. This would include a separate document that identifies and summarizes any information that can not be shared with the public due to confidentiality.
- 2.3 A final Report that includes an analysis and review of existing materials, an assessment of key decisions in light of any new knowledge or current context, identification of next steps and further review required and if possible, potential process, resources and structure required to carry out the work.

A complete scope of work is contained in Appendix A.

3.0 TIMELINE

- 3.1 The anticipated completion date for delivery of the final report is June 30, 2011.

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- 3.2 If the above is not achievable, the Proponent shall provide a suggested timeline, including the timing for completion of the project, and will be required to develop and maintain a project schedule.

4.0 GENERAL METHODOLOGY

- 4.1 Proposal submissions should outline the resources to be committed to this work by the Proponent.
- 4.2 Proponents are to provide a description of the services proposed, including the details of the services.
- 4.3 In the submission, the Proponent should provide a description of the methods to be employed to perform and co-ordinate the work.
- 4.4 No information meeting will be held for this SF-RFP.
- 4.5 No public opening of bids will be held for this SF-RFP

5.0 PROPOSAL FORMAT

Proponents are requested to organize its response according to the following format:

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

Table of Contents: Page numbers are to be indicated.

5.1 COMPANY PROFILE

- a) Provide a description of the Proponent's company, purpose and history of successes including number of years in business, projects.
- b) Evidence of a City of Vancouver Business License.
- c) Business Number or an article of incorporation.
For more information, please visit:
<http://www.fin.gov.bc.ca/registries/corppg/default.htm>.
- d) HST registration number.

5.2 KEY PERSONNEL

- a) Identify and provide resumes for the key personnel in the Proponent's proposed team and outline what their roles will be in servicing this project.
- b) The City will consider a Proposal from two (2) or more persons or companies having no formal corporate links who wish to form a joint venture or consortium solely for the purpose of submitting a Proposal in response to this SF-RFP, provided they disclose the names of all members of the joint venture or consortium and all members provide detail of their involvement and background. While the City will

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consider such a consortium Proposal, the City has a strong preference for Proposals submitted by a single firm who would act as a prime contractor and then supplies any required specialist expertise via Sub-contractors or Sub-consultants, as the case may be.

5.3 REFERENCES

- a) The Proponent is to describe the Proponent's relevant experience with similar engagements for similar work over the last two (2) years as well as references for same by completing the table below. By submitting a Proposal, the Proponent consents to the City contacting these references, and consents to the City also contacting any other organization for the purposes of evaluating the Proponent's company and Proposal.
- b) In addition, the Proponent shall submit two samples of written work.

Name and Address of Company	Contact Name and Telephone Number	Brief Description of Work and Date Performed

5.4 WORK METHODOLOGY

- a) Provide a summary of the Proponent's approach to the planning and conduct of the work, by phase and deliverable.

5.5 TERMS AND CONDITIONS

- a) Proponents shall indicate their acceptance of the terms and conditions as per Appendix C.

5.6 WORKSAFEBC AND INSURANCE COVERAGE

- a) Proponents shall submit evidence of WorkSafeBC registration.
- b) Proponents shall submit a Certificate of Existing Insurances (See Appendix B) duly completed and signed by their insurance agent or broker as evidence of their existing insurance, along with a letter from their insurance broker or agent indicating whether or not (and if not then to what extent) they will be able to comply with the insurance

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requirements set out in Appendix C should they be selected as a successful Contractor/Consultant.

5.7 PRICING

- a) Prices are to be quoted in Canadian currency.
- b) Prices quoted are to be exclusive of HST, except where expressly requested.
- c) Prices are to include all freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs.
- d) Proponents shall provide a price breakdown and total price as per the following table.

Item	Description (By Activity, Milestone and/or Deliverable)	Price
1.		
2.		
3.		
4.		
5.		
6.		
	Total Price	
	HST	
	Total Price with HST	

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- e) Proponents shall provide unit price for applicable labour and materials as follows:

Name/Title	Area of Responsibility/ Description of Services Provided	Hourly Rate

5.8 TERMS OF PAYMENT

- a) The City's standard payment terms are Net Thirty (30) days after receipt of approved invoice: however any discounts or more favourable terms which may be offered by the Proponent will be taken into consideration in the financial evaluation. Please indicate in your response if other than Net 30.
- b) Invoices shall indicate labour separate from materials and where applicable, where HST is applied. Invoices shall be sent to:
- City of Vancouver
453 West 12th Avenue
Vancouver, BC
V5Y 1V4
- c) Describe if Electronic Fund Transfer (EFT) is available.

6.0 EVALUATION CRITERIA

- 6.1 Proposals will be evaluated by representatives of the City on the basis of the overall best value to the City, based on quality, service, price and any other relevant criteria as determined by the City in its sole and absolute discretion.

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- 6.2 The City may elect to short list some of the Proponents and require short listed Proponents to provide additional information or details, including making a presentation, and/or attending an interview.
- 6.3 The City may, at any time prior to signing a contract, discuss or negotiate changes to the scope of the SF-RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.
- 6.4 No bid security is required since no irrevocable binding legal offer is made by submitting a proposal in response to this SF-RFP.
- 6.5 There are no mandatory requirements for submitting Proposals in response to this SF-RFP but Proponents are encouraged to provide all information requested by the City, particularly where the words "must", "shall", "will", "is to" or "are to" precede a requirement regarding the content or format of a Proposal.

7.0 CONTRACT APPROVAL

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

8.0 NO CLAIM AGAINST THE CITY

- 8.1 The Proponent acknowledges and agrees that the City will not be responsible for any costs, expenses, losses, damages (including damages for loss of anticipated profit) or liabilities incurred or alleged to be incurred by the Proponent and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim whatsoever.

Appendix A Scope of Work

Vancouver Art Gallery and Vancouver Concert Hall and Theatre Society Critical Review and Evaluation of Research

1.0 Introduction

The City's cultural goals include ensuring the existence of adequate facilities for the creation and presentation of the arts in Vancouver. In June 2008, Council adopted a Cultural Facilities Priorities Plan in which cultural facility development was identified as essential to any community and key to the economic health of our city. The plan articulated the City's role in cultural facility development as that of enabling cultural development through capacity building, resources and partnerships.

- 1.1 On February 1, 2011, Vancouver City Council directed City staff to work with the Vancouver Art Gallery (the "Gallery") and Vancouver Concert Hall and Theatre Society ("VCHTS") to develop a strategy that considers potential development of a new Gallery, concert hall, and theatre for a City owned site at 688 Cambie (also known as the old Bus Depot). As the City of Vancouver ("City") has been working with both organizations for many years on the development of these projects, this request for proposal seeks a qualified consultant team (the "Proponent") to provide a comprehensive review of the analysis and research provided to date, to corroborate any assumptions made to date, and re-evaluate the various options that have been considered, within the context of current circumstances, to better inform the City's process.

2.0 Background

The Vancouver Art Gallery is a federally designated "A" category museum which signifies "outstanding significance and national importance" to Canada's heritage. It is the largest public art museum in western Canada and has an international reputation as a centre for contemporary art. While the Gallery itself is a non-profit organization it manages an extensive collection which is owned by the City. Founded in 1931, the Gallery moved to the current site at 750 Hornby in 1983. Fifteen years later, the Gallery began to address space requirements and assess capital improvements for 750 Hornby, beginning with a 1998 functional program review by Lundholm Associates Architects.

In 2003, a Master Plan report identified the need for a doubling of Gallery space to expand exhibition, programming, storage, and revenue areas. The study also included cost evaluations and an examination of options for expansion at the existing site. At this time the Gallery and City staff concluded that onsite expansion was not feasible.

In 2005, the Gallery formed an adhoc Real Estate Committee, with City representation, that explored alternate gallery locations and led to the identification of two sites: 688 Cambie and Northeast False Creek - as the most suitable

opportunities. In 2008, after further study, 688 Cambie was confirmed as the most suitable site.

Also in 2005, various other cultural initiatives for 688 Cambie were proposed including the theatre and concert hall by VCHTS (previously Coal Harbour Arts Complex). The society is a partnership of many large and small music groups which initially focused on a lyric hall to accommodate a variety of uses, including dance, theatre and opera companies. In 2008, the proposal was expanded to include the Vancouver Symphony Orchestra (VSO) and a change in the format of the venue from lyric hall to a 1950-seat concert hall, which would serve as the primary performance venue for the VSO.

In 2006, all of the proposals were brought together into a cooperative planning process with the Province of British Columbia to support a downtown “cultural precinct” that would develop and support major facilities along the Georgia Street corridor in the downtown.

By 2008, substantive research and planning for 688 Cambie was commissioned including market demand analysis, fundraising assessments, massing studies, capital cost estimates, governance options and a Conceptual Plan that considered various combinations of development options for 688 Cambie.

In 2010, the Vancouver Art Gallery submitted a formal proposal to the City resulting in the report and subsequent recommendations approved by Council in January, 2011 <http://vancouver.ca/ctyclerk/cclerk/20110120/documents/csbu3.pdf>. Also in 2011, the VCHTS with Bing Thom Architects developed a new proposal that would utilise the existing gallery site at 750 Hornby as a cultural centre that would include a concert hall and theatre.

3.0 Summary of Requirement

The Consultant will conduct an objective informed review, analysis and summary of the extensive existing material (particularly commissioned reports) and subsequent decisions related to the relocation and expansion of the Vancouver Art Gallery (the Gallery), and the Vancouver Concert Hall and Theatre Society’s (VCHTS) proposed 450 seat theatre and 1,950 seat concert hall.

The Consultant will provide a final written report which would synthesize the findings, identify major gaps and review the conclusions in the context of the current proposals, new opportunities, present economy and funding environment. The successful Proponent will have a strong knowledge of non profit cultural facility development and operations, and financial analysis: knowledge of related government and private sector fundraising and expertise in architectural design and massing may also be an asset.

4.0 Work Scope

Work scope includes, but is not limited to:

- (a) An objective, informed and knowledgeable review of existing material identifying major gaps, significant changes within the current context and environment. This would include reviewing all relevant materials and informal

interviews with study authors, relevant industry experts, key stakeholders and City staff.

Existing materials include, but are not limited to: functional program reviews, massing and conceptual documents, schematic drawings, feasibility studies, fundraising assessments, land use options, conceptual plans and cost estimates, Council reports and any additional work deemed relevant by the Consultant and City staff. A complete list of existing materials will be provided by the City to the successful Proponent.

- (b) The delivery of a document that provides a clear written summary of the research and work to date, and a timeline, that can be used for public print and web communications on the project. This would include a separate document that identifies and summarizes any information that can not be shared with the public due to confidentiality.
- (c) A final Report that includes an analysis and review of existing materials, an assessment of key decisions in light of any new knowledge or current context, identification of next steps and further review required and if possible, potential process, resources and structure required to carry out the work.

5.0 City Provided

The Consultant will be expected to manage all aspects of the process, working with a City Project Manager reporting to the Managing Director of Cultural Services. The City will provide access to all documents and materials.

6.0 Deliverables

The Consultant will provide the following deliverables:

- a) A work plan with a revised scope, detailed tasks and schedule
- b) A document that provides a clear written summary of the research and work to date, and a timeline, that can be used for public print and web communications on the project. This would include a separate document that identifies and summarizes any information that can not be shared with the public due to confidentiality.
- c) Draft report
- d) Presentation of findings to City staff and key stakeholders. This will also likely include presentations to representatives from both the Gallery and VCHTS.
- e) Final Report

7.0 Acceptance Criteria

Final report meets deliverables to the satisfaction of the General Manager of Community Services.

8.0 Schedule

The Consultant will develop a work plan provide timelines and delivery dates for all Deliverables, including:

- a) May 15, 2011 Begin work
- b) June 30, 2011 Draft report
- c) July 15, 2011 Final report

The work plan shall be discussed and agreed to with the City Project Manager.

9.0 Attachments:

9.1 Policy Report Culture dated December 16, 2010:

<http://vancouver.ca/ctyclerk/cclerk/20110120/documents/csbu3.pdf>



**CERTIFICATE OF EXISTING INSURANCE
TO BE COMPLETED AND APPENDED TO THE PROPOSAL/TENDER**

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

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

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

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

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

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

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

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

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

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

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

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

7. **PROFESSIONAL LIABILITY INSURANCE**

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

If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date: _____

8. **OTHER INSURANCE**

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

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

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

Dated _____

Appendix C
Professional Services Agreement Sample

CITY OF VANCOUVER
COMMUNITY SERVICES GROUP
PROFESSIONAL SERVICES AGREEMENT

Agreement #

PART A - AGREEMENT DETAILS
BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

[NAME OF CONSULTANT]
[address of Consultant]

(the "Consultant")

OF THE SECOND PART

BACKGROUND:

- A. The City requires the professional services described below, and desires to engage the Consultant to perform the services.
- B. The Consultant has agreed to perform the services in accordance with the terms and conditions contained in this Agreement.

1.0 PROJECT MANAGERS

- 1.1 The City's Project Manager for this Agreement is as follows:
[NTD: Insert name, title, address, e-mail and telephone.]
- 1.2 The Consultant's Project Manager for this Agreement is as follows:
[NTD: Insert name, title, address, e-mail and telephone.]

2.0 SERVICES

2.1 The "Services" will consist of the services described in the following documents (and those subsequently included upon the request or instruction of the City's Project Manager pursuant to Part B, Section 3.0 - *Changes to Scope of Service*, if any):

- (a) Scope of Work - Schedule A
- (b) Consultant's Proposal - Schedule B

2.2 All of which documents are now deemed to be attached to and form an integral part of this Agreement whether or not actually attached to this Agreement. In the event of any conflict or inconsistency, the terms of Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms* will be given priority, followed by the terms of this Part A - *Agreement Details*, followed by the above-noted documents, in the order set forth above.

3.0 DELIVERABLES/AGREEMENT PRICE

The following Table 1 describes each Deliverable and sets out the maximum fees and expenses for each Deliverable and is to be read in conjunction with Part B, Section 2.0 - *Basis of Payment to Consultant*.

Table 1

Deliverables Description	Maximum Fees for Deliverable (fixed dollar amount or % of total)	Maximum Expenses
Report #1		
Report #2		
Final Report		
"Agreement Price" (Maximum Fees and Expenses) excluding HST, as per Part B, Section 2.1		

3.1 Pursuant to Part B, Section 2.2 - *Hourly (or Daily) Rates/Unit Rates Fixed*, the Consultant now confirms that the following hourly rates apply for the following Consultant's Personnel:

Table 2

Name/Title	Area of Responsibility/ Description of Services Provided	Hourly Rate
[insert name] Consultant's Project Manager		

4.0 KEY PERSONNEL

Pursuant to Part B, Section 1.6 - *Key Personnel*, the following individuals are now designated "key personnel":

Table 3 - Key Personnel

Name/Title	Area of Responsibility/Description of Services Provided
[insert name] Consultant's Project Manager	

5.0 PROJECT SCHEDULE

Pursuant to Part B, Section 1.7 - *Project Schedule*, the following Project Schedule will apply to the Services:

Table 4 - Project Schedule

Deliverable	Completion Deadline
Report #1	
Final Report	

6.0 CONFLICT OF INTEREST/LOBBYIST REGISTRATION DISCLOSURE

Pursuant to Part B, Section 17 - *Conflict of Interest/Lobbyist Registration Disclosure*, the Consultant has the following exceptions regarding conflict of interest or lobbyist registration:

This Agreement is between the City and the Consultant and consists of this Part A - *Agreement Details*, Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms* and any documents referred to in any of these sections. If there is any conflict between these sections, Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms*, will take precedence. The Consultant acknowledges that it has read and understands this Agreement.

AS EVIDENCE OF THE CITY'S AND THE CONSULTANT'S agreement to be legally bound by the terms of this Agreement, the City and the Consultant have signed where indicated below and delivered this Agreement to each other effective as of [insert month, day, year].

CITY OF VANCOUVER

by its authorized signatory:

[insert name],
[insert job title]

[LEGAL NAME OF CONSULTANT - to exactly match name on insurance, WorkSafeBC and business licence]

by its authorized signatory(ies):

[Name and Title]

[Name and Title]

PART B - PROFESSIONAL SERVICES TERMS AND CONDITIONS**1.0 CONSULTANT'S SERVICES TO THE CITY****1.1 Defined Terms**

Capitalized words and terms used in this Agreement have the meanings given to them in Part C - *Defined Terms*.

1.2 Effective Date

This Agreement will take effect and become legally binding on the parties once it is signed and delivered by both the City and the Consultant.

1.3 Provide Services

The Consultant now agrees to provide and be fully responsible for the Services.

1.4 No Contracting Out Without Consent

The Consultant will not engage sub-consultants or otherwise assign, sub-contract or let out as task work any part of the Services, unless the Consultant has obtained the prior written consent of the City's Project Manager, which consent may be arbitrarily withheld.

1.5 Quality of Service

The Consultant represents and warrants that, it has the necessary skill, ability, experience, personnel and other resources to perform the Services, and that it will perform the Services:

- (a) with the degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to the Services,
- (b) in accordance with sound current professional practices,
- (c) in conformance with the latest standards and codes prescribed by professional and regulatory bodies in the applicable profession, field or discipline, and
- (d) in accordance with the requirements of this Agreement, and any requests or instructions of the City's Project Manager made/given pursuant hereto.

1.6 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 key personnel have been named as such in Part A, Section 4.0 - *Key Personnel*, such key personnel will not be replaced with other personnel without the prior written consent of the City's Project Manager, which consent may be arbitrarily withheld.

1.7 Project Schedule

The Consultant will commence the Services promptly and will carry out the Services in accordance with the Project Schedule.

2.0 BASIS OF PAYMENT TO THE CONSULTANT**2.1 Maximum Fees and Expenses - Agreement Price**

This Agreement is a "time and materials" contract subject to an upset price maximum. Accordingly, despite any other term of this Agreement (except for Part A, Section 3.0 - *Deliverables/Agreement Price*) the maximum fees and expenses payable by the City to the Consultant for the Services is the amount set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* (the "**Agreement Price**").

2.2 Hourly (or Daily) Rates/Unit Rates Fixed

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

2.3 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 expenses set out in this Agreement, plus the HST, as applicable.

2.4 “Time and Materials” Agreement

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

- (a) hours worked by the Consultant’s Personnel in providing the Services multiplied by the applicable hourly charge-out rate for that personnel as set out in Table 2 of Part A, Section 3.0 - *Deliverables/Agreement Price*; and
- (b) the direct out-of-pocket expenses necessarily incurred in providing the Services and expressly permitted to be charged separately under this Agreement.

2.5 Deliverable Price is Maximum

Despite anything to the contrary in this Agreement (except Part A, Section 3.0 - *Deliverables/Agreement Price*) the maximum fees and expenses to be paid by the City to the Consultant for each Deliverable will not exceed the amounts set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* for that Deliverable, and accordingly:

- (a) where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable is less than the maximum amounts set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price*, the City will only pay for the aggregate of the time and materials at the hourly (or daily) rates for fees and the unit rates for expenses;
- (b) 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 of Part A, Section 3.0 - *Deliverables/Agreement Price* for that Deliverable, the City will only pay the maximum fees and expenses amount set out there for that Deliverable; and
- (c) the Consultant will only invoice for, and the City will only be obligated to pay, a maximum of 90% of the maximum amounts set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* for each Deliverable, with the remaining ten percent being a performance security holdback retained by the City, and which the City will be obligated to pay once all Deliverables have been completed in accordance with the terms and conditions of this Agreement and accepted by the City’s Project Manager.

2.6 Services Obligations included in Agreement Price

The Agreement Price and maximum amounts of fees and expenses as set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.

2.7 Permitted Expenses

Subject to the maximum liability of the City under Part A, Section 3.0 - *Deliverables/Agreement Price*, expenses for which the City will reimburse the Consultant will be limited to the following:

- (a) transportation costs, for any of the Consultant's Personnel to travel to meetings requested by the City's Project Manager at locations other than the Consultant's offices or the City's premises within the City of Vancouver, is not to exceed \$0.41 per kilometre to a maximum of 10 kilometres one way. No accommodation, food or other travel related expenses will be reimbursable;
- (b) long distance telephone calls;
- (c) photocopies to a maximum of \$0.20 per page; and
- (d) delivery of reports, documents, drawings or correspondence by courier, where this method of delivery has been requested by the City's Project Manager.

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

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

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

2.8 Sub-Consultant Services all-inclusive unless Change Order

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

2.9 Interim Invoices

The Consultant will submit invoices to the City's Project Manager on or before the tenth day of each month. Each invoice will list the names, hours worked and hourly (or daily) rates of all Consultant's Personnel that have provided Services for each Deliverable that month, the total amount of previous payments made by the City for each Deliverable, the percentage completion for each Deliverable, a holdback of ten percent from the invoice, and (for the purposes of showing the 90% limit on each Deliverable referred to in Section 2.3.2(c) above) the percentage that all invoices to date bears to the total maximum fees and expenses for each Deliverable.

Each invoice will show separately the applicable amount of the HST.

Attached to each invoice will be copies of:

- (a) invoices for all expenses claimed, categorized according to Deliverable;

- (b) confirmation of payments made to Sub-Consultant(s) for the previous month for each Deliverable; and
- (c) a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete each Deliverable.

2.10 90% Limit on Time & Materials Payments Until Completion

Despite anything to the contrary in this Agreement:

- (a) the City will never be obligated to pay the Consultant a greater percentage of total fees and expenses than the degree of percentage completion of each Deliverable as set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price*; and
- (b) the City will never be obligated to pay more than 90% of the fees and expenses actually owing on any monthly invoice until after all Deliverables have been completed in accordance with the terms and conditions of this Agreement and accepted by the City's Project Manager, and then the aggregate of the ten percent holdbacks will become due.

2.11 Review of Invoice

If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Consultant's invoice(s), 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, that 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 calendar days of approval.

2.12 Records Requirements

The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all expenses and percentage amounts of work completed. All such accounts and records will not be disposed of by the Consultant without the prior written consent of the City's Project Manager. 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.

2.13 Taxes/Currency

The Agreement Price is expressed and payable in Canadian dollars and is exclusive of any applicable HST.

3.0 CHANGES TO SCOPE OF SERVICES

The City's Project Manager may, at any time and from time to time and without invalidating this Agreement, require a change to the Services and/or the Project Schedule. Should the Consultant consider that any such request or instruction constitutes a change warranting amendment of the Agreement Price or Project Schedule, the Consultant must advise the City in writing prior to acting on any such request or instruction, and in any event within five (5) Business Days of such request

or instruction. In that case, the maximum Agreement Price and/or Project Schedule will be adjusted, if/as agreed to by both parties in writing, and failing agreement, if/as the City's Project Manager may determine, acting reasonably. Failing any such adjustment, the Services provided pursuant to the request or instruction will be deemed to be included within the Agreement Price and to be subject to the Project Schedule.

4.0 RELEASE AND INDEMNIFICATION

4.1 Release

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

4.2 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 the Consultant's Personnel.

4.3 Indemnity

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

4.4 Separate from Other Remedies and Rights

This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law.

4.5 Survival of Release/Indemnity

This Section 4.0 will survive the completion of the Services or sooner cancellation of this Agreement.

5.0 INSURANCE

5.1 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 \$1,000,000 per claim and an aggregate of not less than \$1,000,000, protecting the Consultant against all claims for loss or damage arising out of any error or omission of the Consultant or the Consultant's Personnel in the performance of the Services; and
- (b) a Commercial General Liability insurance policy with limits of not less than \$2,000,000 per occurrence, and a deductible of not more than \$2,000 protecting the Consultant and the Consultant's Personnel against all claims for

personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the Consultant or the actions of the Consultant or the Consultant's Personnel. The policy will contain a cross liability clause in favour of the City and will name the City and the City's Personnel as additional insured.

5.2 Required Policy Terms

All required insurance policies will remain in full force and effect at all times until completion of the Services or earlier cancellation of this Agreement, and for a period of not less than two years thereafter, and will:

- (a) be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City's Director of Risk Management, acting reasonably;
- (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; and
- (c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least 30 calendar days' prior written notice

for any property insurance carried by the Consultant, contain a clause that waives the insurer's right of subrogation against the City and the City's Personnel.

5.3 Insurance Certificate

Prior to signing this Agreement, the Consultant will provide the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more Certificate(s) of Insurance. The Certificate(s) of Insurance will identify the Agreement title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. Proof of insurance, in the form of such Certificate(s) of Insurance (or copies of the policy(ies) themselves, if requested), will be made available to the City's Project Manager at any time during the performance of the Services immediately upon request.

5.4 Sub-Consultant's Insurance

The Consultant will provide in its agreements with its Sub-Consultants insurance clauses in the same form as in this Agreement. Upon request, the Consultant will deposit with the City's Project Manager detailed Certificates of Insurance for the policies of its Sub-Consultants (or copies of the policy(ies) themselves, if requested) and a copy of the applicable insurance clauses from its Sub-Consultant agreements.

5.5 Insurance Requirements Additional to any other Requirements

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

5.6 Insurance Requirements Independent of Agreement Obligations

Neither the providing of insurance by the Consultant or the Sub-Consultants in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any

insurance company to pay any claim accruing, will be held to relieve the Consultant from any other provisions of this Agreement with respect to liability of the Consultant or otherwise.

6.0 WORKSAFEBC REQUIREMENTS

6.1 Maintain Coverage - General

The Consultant will carry and pay for full WorkSafeBC coverage for itself and all the Consultant's Personnel engaged within British Columbia in the performance of the Services, failing which the City has the unfettered right to set off and withhold the amount of any unpaid premiums, assessments and/or penalties for such WorkSafeBC coverage against any amounts owing by the City to the Consultant pursuant to this Agreement, until all amounts payable to WorkSafeBC have been paid in full.

6.2 Provide Evidence of Coverage - General

On request, the Consultant will provide the City's Project Manager with the Consultant's WorkSafeBC registration number and a letter from WorkSafeBC confirming that the Consultant is registered in good standing with WorkSafeBC and that all amounts owing to Work Safe BC have been paid to date, prior to the City having any obligation to pay any invoice under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of Losses arising out of or in any way related to unpaid WorkSafeBC 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 the safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.

7.0 CITY APPROVALS

No reviews or approvals carried out or information supplied by the City or the City's Personnel will derogate from the duties and obligations of the Consultant, and all responsibility related to the Services will be and remain with the Consultant.

8.0 CANCELLATION

The City (through the City's Project Manager) may at any time, in its sole discretion, whether or not the Consultant is in default, cancel this Agreement in whole or in part by giving 5 Business Days' prior written notice to the Consultant. Where the Consultant is not in default and the City cancels this Agreement, the City will pay the Consultant at the rates set out in this Agreement for all Services properly performed to the date of the delivery of the cancellation notice (subject to the terms of this Agreement) plus necessary and reasonable wind up costs incurred, if any, in respect to the cancellation. However, in no event will the Consultant be entitled to compensation for wind up costs which exceed ten percent of the remaining balance of the Agreement Price as at the date of cancellation.

9.0 CONFIDENTIALITY

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 that 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 or after the performance of the Services under this Agreement, without the express prior written consent of the City's Project Manager.

10.0 OWNERSHIP OF DOCUMENTS AND COPYRIGHT**10.1 Ownership**

All reports, drafts, data, drawings, audiovisual materials, information, plans, models, designs, specifications and other documents or products produced, received or acquired by the Consultant as a result of the provision of the Services (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.

10.2 Time of Delivery

The Material will be delivered by the Consultant to the City's Project Manager immediately on the expiration or sooner cancellation of this Agreement, provided that the City's Project Manager may, at any time or times prior to the expiration or sooner cancellation of this Agreement, give written notice to the Consultant requesting delivery by the Consultant to the City's Project Manager of all or any part of the Material, in which event the Consultant will immediately comply with such request.

10.3 Patent and Copyright

- (a) The Consultant now 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 now irrevocably waives, in favour of the City, the Consultant's moral rights in respect of the Material. The Consultant will obtain in writing, from the Consultant's Personnel 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.
- (b) The Consultant now represents and warrants that the portion of the Material produced by the Consultant will not infringe any patent or copyright or any other industrial or intellectual property rights including trade secrets.

11.0 NON-RESIDENT WITHHOLDING TAX

- 11.1 If the Consultant is a non-resident of Canada, as defined in Canadian income tax legislation, the City may withhold from all monies payable under this Agreement such amounts as set out in Canadian income tax legislation unless a Canada Revenue Agency waiver has been provided to the City within the time limits required under the Canada Revenue Agency administrative guidelines as in effect from time to time, and in any event, prior to payment of an invoiced amount.
- 11.2 The City shall receive full credit under this Agreement for monies withheld as of and from the date of the withholding and no interest will be payable by the City on sums withheld and later paid directly to the Consultant.
- 11.3 The Consultant shall indemnify the City for any Losses incurred by the City as a result of the Consultant's failure to properly disclose to the City its non-resident status, as defined in Canadian income tax legislation.

12.0 CITY BUSINESS LICENCE

The Consultant will comply at all times with the City of Vancouver License By-law.

13.0 RESOLUTION OF DISPUTES

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

14.0 INDEPENDENT CONSULTANT

This Agreement is a contract for services and the Consultant and the Consultant's Personnel, are not, nor are they to be deemed to be partners, appointees, employees or agents of the City.

15.0 NO ASSIGNMENT

The Consultant will not assign, either directly or indirectly (including, without limitation, by way of any transfer of control of the shares or ownership interests in the Consultant), this Agreement or any right of the Consultant under this Agreement, without the prior written consent of the City's Project Manager, which consent may be arbitrarily withheld.

16.0 NO PROMOTION

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, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City's Project Manager (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 the name, official emblem, mark, logo or mascot of the City, including without limitation, the use of "City of Vancouver", "Vancouver Police Board", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", or any other reference or means of promotion or publicity to any of the foregoing, without the express prior written consent of the City's Project Manager. Furthermore, the Consultant undertakes not to disclose or promote its relationship with the City in any communication or matter whatsoever as a basis to create an association, express or implied, between the Consultant and the "City of Vancouver", "Vancouver Police Board", "Vancouver Public Library", "Vancouver Park Board", or "Vancouver Board of Parks and Recreation".

17.0 CONFLICT OF INTEREST/LOBBYIST REGISTRATION DISCLOSURE**17.1 Conflict of Interest**

- (a) The Consultant agrees that until 90 calendar days after completion of the Services, 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. The Consultant now acknowledges that a breach of this Section 17.1 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 and not merely as a breach of contract.

(b) 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:

(i) an elected official or employee of the City, or

(ii) 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 or this Agreement or the performance of the Services,

except as expressly disclosed in Part A - *Agreement Details*, and now agrees that if at any time prior to 90 calendar days after completion of the Services such declarations or representations cease to be true, complete and accurate, the Consultant will notify the City's Project Manager immediately.

17.2 Lobbyist Registration Disclosure

The Consultant now confirms and warrants that neither it nor any of its Sub-Consultants, nor any of their respective officers, directors, shareholders, partners or employees is registered as a lobbyist under any lobbyist registration legislation in any jurisdiction in Canada or the United States of America, except as expressly disclosed in Part A - *Agreement Details*, and now agrees that if at any time prior to 90 calendar days after completion of the Services such declarations or representations cease to be true, complete and accurate, the Consultant will notify the City's Project Manager immediately.

18.0 NOTICES

Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party c/o its Project Manager at the respective address specified in Part B, Section 1.0 - *Section Managers*, or to such other address in Canada as either party may specify in writing to the other. Any such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

19.0 TIME OF ESSENCE

Time will be of the essence of this Agreement.

20.0 FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, if an Event of Force Majeure occurs or is likely to occur, the party whose performance is affected thereby will promptly notify the other party of the particulars of the relevant event or circumstances and, if reasonably possible, supply supporting evidence. The parties

will use their reasonable best efforts to remove, curtail or contain the cause of the delay, interruption or failure (provided that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of the party which is the employer affected) and to resume, with the least possible delay, their compliance with their respective duties, covenants and obligations under this Agreement. Neither the City nor the Consultant will be liable to the other for any delay, interruption or failure in the performance of its duties, covenants or obligations hereunder if caused by an Event of Force Majeure, and the date limited for the performance of such duties, covenants or obligation hereunder will be postponed for a period equal to the delay occasioned by such an Event of Force Majeure, unless otherwise agreed in writing by the parties hereto.

21.0 LEGAL EFFECT/ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties, and will benefit and bind each party and their successors and permitted assigns.

PART C - DEFINED TERMS

1.0 DEFINITIONS

In this Agreement, the following words and phrases have the following meanings:

- (a) **"Agreement"** means this agreement as set out in Part A - *Agreement Details*, Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms* and any attachments, all as may be amended from time to time as contemplated hereby;
- (b) **"Agreement Price"** has the meaning set out in Part B, Section 2.1 - *Maximum Fees and Expenses - Agreement Price*;
- (c) **"Business Day"** means any day other than a Saturday, Sunday or "holiday" as defined in the *Interpretation Act* (British Columbia);
- (d) **"Certificate(s) of Insurance"** means certificate(s) of the type provided to the Consultant by the City and required to be completed pursuant to Part B, Section 5.0 - *Insurance*;
- (e) **"City"** means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter;
- (f) **"City's Personnel"** means the City's and the City's contractors' (other than the Contractor's) directors, officials, officers, employees, agents, licensees and invitees and includes where the context permits, the Vancouver Police Board, Vancouver Public Library Board, Vancouver Board of Parks and Recreation, and all officials, officers, employees and other agents of each of the same;
- (g) **"City's Project Manager"** means the City's employee or representative (or any replacement or delegate of that person) who is authorized to deal with the Consultant on behalf of the City in connection with the Services and to make decisions in connection with this Agreement, as identified in Part A, Section 1.0 - *Project Managers*;
- (h) **"Consultant"** means the entity defined as such on the front page of tPart A of the Agreement;
- (i) **"Consultant's Personnel"** means the Consultant's and the Sub-Consultants' respective partners, principals, directors, officials, officers, employees, agents, licensees and invitees;
- (j) **"Consultant's Project Manager"** is the Consultant's employee or representative who has the overall responsibility for the successful planning and execution of the Services and who is authorized to deal with the City on behalf of the Consultant in connection with the Services and to make decisions in connection with this Agreement, as identified in Part A, Section 1.0 - *Project Managers*;
- (k) **"Deliverable"** means the Services completion/payment milestones specifically identified as such in Part A, Section 3.0 - *Deliverables/Agreement Price*;

- (l) “**Event of Force Majeure**” means acts of God or public enemy (including criminals and terrorists), wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or public authority, including the City (provided that such orders were not issued nor any such labour disputes occasioned as a result of an act or omission of the Consultant, or anyone employed or retained by the Consultant), freight embargos or power failures, PROVIDED that any such event or circumstance reasonably constitutes a material disabling event or circumstance which is beyond the reasonable control of a party, does not arise from the neglect or default of a party, and which results in a material delay, interruption or failure by a party in carrying out its duties, covenants or obligations under this Agreement, but which does not mean or include any delay caused by the Consultant’s lack of funds or financial condition;
- (d) “**HST**” means the tax payable and imposed pursuant to part IX of the Excise Tax Act (Canada) as amended, including any provincial component collected by Canada on behalf of British Columbia, and any successor legislation thereto;
- (m) “**Losses**” means all:
 - (i) direct and indirect, as well as;
 - (ii) consequential, claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and expenses, interest, penalties and amounts paid in settlement, whether from a third person or otherwise);
- (n) “**Material**” has the meaning set out in Part B, Section 10 - *Ownership of Copyright and Documents*;
- (o) “**Personnel**” means, depending on the context, the City’s Personnel or the Consultant’s Personnel;
- (p) “**Project Schedule**” means the schedule for delivery of the Services as set out in Part A, Section 5.0 - *Project Schedule*;
- (q) “**Services**” means the services described in Part A, Section 2.0 - *Services*;
- (r) “**Sub-Consultant**” means the independent consultants, agents, affiliates, associates, subcontractors and other third parties, if any, retained by the Consultant to assist in the performance of the Services;
- (s) “**WorkSafeBC**” means the entity formerly known as Workers Compensation Board (British Columbia) an entity created pursuant to the *Workers Compensation Act* (British Columbia) and any reference to “WorkSafeBC” requirements includes a reference to that Act as well as all regulations and directives enacted or issued from time to time pursuant to that Act, all as amended or replaced from time to time.

Schedule A
Scope of Work

Schedule B
Consultant's Proposal