



**REQUEST FOR PROPOSAL (RFP)**

**Emergency Daytime Warming Centre  
Operator Services**

**RFP Reference No.: WR24-PDS01**

**Important dates and information to note:**

Estimated Contract Period: November 1, 2024, through March 31, 2025  
Submit Proposal to: Attn: Anne Berry  
City of White Rock  
15322 Buena Vista Avenue  
White Rock BC, V4B 1Y6

Or email applications to [aberry@whiterockcity.ca](mailto:aberry@whiterockcity.ca)

Estimated Available Funding: \$360,000.00 – including the provision of ATCO trailer and Tow n' go style washroom facilities, and servicing hook ups

Designated Contact Person: Anne Berry, Director Planning & Development Services  
[aberry@whiterockcity.ca](mailto:aberry@whiterockcity.ca)

The City of White Rock is pleased to invite you to respond to this Request for Proposals (RFP) for the management and operation of an Emergency Daytime Warming Centre.

Release Date: TBD

Responses Due: TBD

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# Part A - INFORMATION AND INSTRUCTIONS

## 1.0 Introduction

The City of White Rock intends to retain a qualified Operator to provide an emergency daytime warming centre and associated support services for the winter 2024/2025 period. For more detailed information regarding the Scope of Work, refer to Part C-Terms of Reference.

## 2.0 Definitions

**"Addendum/ Addenda"** means a change, or addition, or correction significant enough to be formally made to this RFP. Addenda are posted on BC Bid.

**"Agreement"** means the written agreement entered into by the City and the Operator for the provision of the Services, substantially in the form attached hereto as Sample Operator Agreement in Part C.

**"BC Bid"** is a web-based service providing access to public sector business opportunities.

**"Business Day"** means any day from Monday to Friday inclusive, excluding statutory or civic holidays observed in British Columbia.

**"The City"** means the City of White Rock.

**"Closing Date and Time"** means the established date and time for the closing of this RFP as identified herein on the cover page or as amended through issuance of a Closing Date and Time publication.

**"Contract"** means a formal written Agreement formed between the Preferred Proponent and the City by way of the City issuing a purchase order, or by execution of a Contract Document(s).

**"Designated Contact Person"** has the meaning given on the cover page.

**"Evaluation Team"** means the team appointed by the City to evaluate the proposals submitted by proponents in response to this RFP.

**"GST"** means the Goods and Services Tax in effect in the Province of British Columbia at the time a Contract is executed.

**"Must"** or **"mandatory"** means, with respect to a requirement stated in this RFP, a requirement that needs to be met by the Proponent in order for a Proposal to be considered valid and be eligible for consideration.

**"Should"** or **"may"** or **"desirable"** or **"requested"** means, with respect to a requirement stated in this RFP, a requirement having a significant degree of importance to the RFP but one which the Proponent may, at its discretion, need not meet for a Proposal to be considered valid and be eligible for consideration.

**"Operator (Team)"** means the Preferred Proponent of this RFP who enters into an Agreement with the City.

**"Preferred Proponent"** means the Proponent selected by the Evaluation Team to enter into negotiations with the City for the intended purpose of concluding an Agreement.

**"Proposal"** means a Submission submitted in response to this RFP.

**"Requirements"** means all of the specifications, Requirements and Services set out in the RFP that describe the Requirements that the Services, goods, materials and equipment must meet, and the Operator must provide.

**"RFP"** means this Request for Proposal, including all schedules and addendum attached hereto.

**"ROW"** means Right of Way.

**"Services"** means the Services as outlined in Part C-Terms of Reference of this RFP document, or as otherwise agreed to.

**“Sub-Consultant”** means all sub-consultants, suppliers, and agents of the Proposal.

**“Submission”** means the Proponent’s offer made for this RFP with all appendices or addenda submitted by the Proponent in response to the RFP.

**“Work”** means all the labour, materials, equipment, supplies, Services, and other items necessary for the execution, completion and fulfilment of the Requirements.

### **3.0 Enquiries**

All enquiries and other communications including any request for information and clarification are to be directed in writing only to the **Designated Contact Person** as noted on the cover page of this RFP document and submitted prior to the enquiries deadline as noted on the cover page of this RFP. Enquiries and responses will be recorded and may be distributed at the discretion of the City.

The City shall have no responsibility for, and the Proponent agrees not to rely upon communications, representation or statements from any other person regarding this RFP, its subject matter or any subsequent contract.

### **4.0 Addenda**

All subsequent information regarding this RFP including changes made to this document will be posted on BC Bid for Proponents to access. It is solely the responsibility of the Proponents to check BC Bid from time to time to ensure that they have all amendments to this RFP in the form of addenda and to ensure that they have obtained, read, and understood the entire RFP including all addenda that may have been issued prior to the Closing Date and Time.

### **5.0 Submission Instructions**

The Closing Date and Time as noted on the cover page of this RFP document.

Completed proposals shall be submitted to the City by email:

It is preferred that one (1) complete PDF copy emailed to the email address as noted on the cover page. Emailed proposals shall include in the subject line of the email, the RFP Number, RFP Title and Proponent's name. Proponents are advised that the City’s file size limit is 10 MB. If the proposal and supporting documentation exceed the maximum size limit, please submit the proposal via multiple e-mails clearly marked in the subject line as stated before with number serial of 1 of 2, and 2 of 2, etc.

### **6.0 Proposal Format and Contents**

To aid in the evaluation of proposals, the following format and content is desirable (Please note that proposal font should be no smaller than 11pt):

#### **6.1 Cover Page (1 Page)**

A cover page should include RFP title and number, closing date, legal name of the proponent, address, contact name and phone number.

#### **6.2 Proposal Signatory Form (1 Page)**

A proposal signatory Form (as noted as Appendix B in Part C) shall be signed, completed, and included in the proposal after the cover page.

#### **6.3 Table of Contents (1 page)**

A table of contents that references the applicable section, sub-section and page numbers in the proposal.

#### **6.4 Team and Experience (maximum 3 pages)**

The Proposal should include an overview of the Proponent's company, briefing purpose, certifications, awards and history of successes; and a project organization chart of the key personnel, outlining responsibility and lines of communication. A short biographical information of key personnel including sub-consultants should be included in the Proposal to highlight the relevant experience, project title, professional accreditation(s) and clearly identify their roles and responsibility on this project. A 2-page CVs of individuals proposed on the project are attached to the Appendix section of the proposal. Any change of key personnel requires the written approval by the City.

#### **6.5 Project Understanding and Work Plan (maximum 6 pages)**

A well organized and comprehensive narrative to elaborate:

- 1) Project understanding including objectives and requirements, site constraints and challenges, opportunities and innovations for better project outcomes;
- 2) A detailed work plan to achieve the project objectives and deliverables, including:
  - Approaches to project requirements, schedule, budget, quality control, conflict resolution, and Covid-19 management;
  - A Schedule in Gantt or Bar format detailing the critical path and key milestones/deliverables;
  - Integration of any sub-consultants or specialist services;
  - Clear identification of included and excluded services, and optional services.

#### **6.6 Relevant Experience and Past References (maximum 3 pages)**

Project references for work done in the past five years that is similar in nature to this project including references, project description, scope of work, year completed, project team and sub-consultants, key challenges, opportunities and successes and size of the project.

#### **6.7 Fee Submission**

The proposal shall include a detailed fee schedule (in PDF) for the services requested and clearly outline any assumptions, exclusion and provisional/value-added items. Services are to be broken down into tasks identified in Section 3.0 Scope of Work in Part C Terms of Reference (TOR), and hours identified per task and per team member.

Estimate efforts by type of work, and class of employee using a form similar to the "Schedule of Prices" template in Excel, which is attached to this RFP as Appendix A. The City will pay all applicable Goods and Services and/or Sales taxes. These taxes are not to be included in charge out rates, disbursement, etc., but shown as a separate charge.

Remuneration will be on a monthly basis, or as alternatively agreed upon in writing by both the City and the Operator, subject to the receipt of an invoice from the operator, up to the maximum fee limit based on the estimated effort to complete tasks outlined in the "Schedule of Prices". No additional payment will be permitted without prior written consent of the City. The Operator is required to notify the City in advance, if any additional costs will be incurred, as a result of changes to the project scope.

**6.8 Appendix and References (no page limit)**

This section is for any references to the proposal, such as resumes, sub-consultants fee proposals, graphic visuals identifying project issues or articulating an idea, etc.

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## **Part B - GENERAL TERMS AND CONDITIONS**

The following terms and conditions will apply to this RFP. The submission of a Proposal in response to this RFP indicates acceptance of all the terms and conditions contained herein and included in any addenda issued by the City for this RFP. Proposals that contain provisos which contradict or alter any of the terms and conditions of this RFP may be disregarded and deemed to have not been written in the Proposal.

### **1.0 City's Rights and Reservations**

This RFP is not a tender and does not commit the City in any way to select the lowest priced offer, or to proceed to negotiations for a Contract with any Proponent, or to award any Contract. This RFP does not constitute an offer and should not be construed as an agreement to purchase any services.

The City may postpone or cancel this RFP at any time prior to or after the Closing Date and Time. In the event the City cancels this RFP, the City shall have the right to seek to procure the same services or similar services at any time through any means the City deems appropriate. No Proponent shall acquire any rights or interests in any subsequent procurement process undertaken by the City.

The City reserves the right at any time in its sole discretion:

- 1) to modify the terms of the RFP. (Should be modifications significant, the City may provide the opportunity for Proponents to adjust their Proposals or re-submit altogether, as determined).
- 2) to require clarification and rectification of the information set out by one or more of the Proponents in respect of the Proposals submitted.
- 3) to waive any material non-compliance with this RFP and may elect to retain for consideration Proposals which do not contain the content or form requested by this RFP or which have not strictly complied with the process for submission set out herein.
- 4) to reject any or all Proposals, any Proposal that incomplete, that contains erasures or correction that is not signed by an authorized signatory of the Proponent or that fails to comply with the mandatory requirements of this RFP. (In the event that only one Proposal is submitted, the City reserves the right to return the Proposal unopened).
- 5) to communicate with, meet with or negotiate with the preferred Proponent, or any Proponent, on any details, including changes to specifications and price.

### **2.0 Proponents' Cost and Compensation**

Each Proponent is solely responsible for its own costs and expenses associated with its participation in this RFP, including but not limited to, conducting investigations, attending briefings, preparing and delivering its Proposal, communicating with the City prior to the Closing Date and during Proposal evaluation, and for any subsequent processes or negotiations with the City that may occur. Each Proponent shall be deemed to have agreed that it has no claim.

By submitting a Proposal, the Proponent agrees that should it be identified as the Preferred Proponent, it will enter into negotiations, if required, for the purpose of concluding an Agreement

### **3.0 Conflict of Interest**

Proponents shall disclose any actual or potential conflict of interest and existing business



relationship they may have with the City, its elected or appointed officials or employees in the form of Conflict of Interest attached in Part C.

#### **4.0 No Lobbying**

Proponents and their agents are not permitted to contact any member of the City Council or staff with respect to this RFP, except as expressly provided for herein. Proponents will not offer entertainment, gifts, gratuities, discounts, or special services, regardless of value, to any employee or elected official of the City. The City reserves the right to disqualify any Proponent from participation in this RFP that acts in contravention of this requirement.

#### **5.0 Amendment to or Withdrawal of Proposals**

Proponents will be deemed to have carefully examined the RFP documents, including all attachments, schedules, and the site (as applicable) prior to preparing and submitting a Proposal with respect to any and all facts which may influence the Proposal.

Proponents may amend or withdraw their Proposal in writing any time prior to the Closing Date and Time. Upon such Closing Date and Time, all Proposals become irrevocable. The City will be under no obligation to receive further information after such Closing Date and Time, whether written or verbal, from any Proponent.

Proposals will be open for acceptance by City for at least sixty (60) days after the Closing Date.

#### **6.0 Evaluation and Selection**

##### **6.1 Submission Eligibility**

To be eligible, proposals must be submitted with a complete Proposal Signatory Form in the submission on or before the stipulated Established Closing Date and Time at the correct Closing Location or via email.

If a Proposal submitted on time fails to meet any procedural compliance associated with provisions of a compliant Submission, the City will permit the Proponent a 48- hour to clarify or to rectify. The Submission must be substantially complete and compliant and received before the Established Closing Date and Time for the City to initiate this process. The City will not waive the mandatory Established Closing Date and Time.

##### **6.2 Evaluation Criteria**

The evaluation of this RFP may be conducted by an Evaluation Team formed by the City and may include, at the City's sole discretion, employees, consultants and contractors. The City reserves the right to select the Proponent that is best suited for the Services based on the Proponent's financial offering (60%) consisting of pricing and payment terms and technical submission (40%) consisting of project understanding and work plan, team qualifications and past performance.

##### **6.3 Agreement for Services**

The City shall not be under any obligations to enter into an agreement with any Proponent in connection with this RFP and the Proposals received, unless the City delivers a copy of the Agreement, in writing, duly approved and executed, which Agreement shall be substantially in the form attached hereto as Sample Consultant Agreement in Part C. If a written Agreement cannot be negotiated and executed by both the City and the Preferred Proponent within 30 days of notification of the Preferred Proponent, or such longer period as the parties may mutually agree, the City may,

at its sole discretion any time thereafter, terminate negotiations with the Preferred Proponent, enter into negotiations with any other Proponents or terminate the RFP process and not enter into an Agreement with any of the Proponents. At its sole discretion, the City may divide any Agreement for the Services between two or more proponents.

### **7.0 Confidentiality**

All Proposal Submissions submitted under this RFP become the property of the City and will not be returned to Proponents. All Proposals will be held in confidence by the City, subject to the City's obligations for disclosure pursuant to the Province of British Columbia's Freedom of Information and Protection of Privacy Act and the Community Charter.

### **8.0 Dispute Resolution**

All claims, disputes, or issues in dispute between the City and the Consultant shall be decided by mediation or arbitration, if the parties agree, or failing Agreement, in a Court of competent jurisdiction within the Province of British Columbia and be governed by the laws of British Columbia.

### **9.0 Errors and Omissions**

While the City has used considerable efforts to ensure information in this RFP and otherwise provided directly in association with this RFP is accurate, the information is supplied solely as a guideline for Proponents. The information is not guaranteed or warranted to be accurate by the City, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve Proponents from the responsibility for conducting their own investigation and forming their own opinions with respect to the subject matter of this RFP.

### **10.0 Limitation of Liability**

By submitting a proposal, each Proponent irrevocably agrees that the City shall not be liable to any Proponent or any person whatsoever, for any claims of any nature (in contract, in tort, or otherwise), for any costs, expenses, compensation, damages, or anything whatsoever, including without limitation, costs and expenses associated with the Proponent's preparation and submission of their Proposal, their participation in this RFP, for loss of revenue, opportunity or anticipated profit, arising in connection with its Proposal, this RFP, any subsequent processes or opportunity, any contract, or any matter whatsoever.

### **11.0 Mandatory Requirements**

The successful Proponent should submit the following documentation within seven (7) calendar days of being notified of the acceptance of their Submission. A Contract is not formed, and no Work should commence until this Requirement is satisfied and a purchase order is issued. This Requirement applies to all successful Proponents and any and / or all sub-consultants engaged by the successful Proponent.

#### **11.1 City of White Rock Business License**

The Preferred Proponent will be required to obtain and provide proof of a City of White Rock Business License for the term of any Contract resulting from this RFP process. The cost of obtaining this license is to be borne by the Preferred Proponent.

#### **11.2 Liability Insurance**

The Preferred Proponent will be required to provide proof of Comprehensive General Liability

Insurance in the amount of not less than \$5,000,000 inclusive per occurrence, insuring against bodily injury, personal injury, and property damage and including liability assumed under Contract.

In all policies of insurance providing coverage called for in this clause (except for motor vehicle insurance), the City shall be named as an additional insured, and all such insurance shall contain a provision that the insurance shall apply as though a separate policy had been issued to each named insured. The insurance policy(ies) referred to herein shall not be cancelled or materially changed without the insurer giving not less than thirty (30) days written notice to the City of White Rock.

### **11.3 Automobile Liability Insurance**

The Operator must provide proof of Automobile Liability Insurance, with respect to owned and leased vehicles used directly or indirectly in the performance of the Work, covering liability for bodily injury, death and damage to property with a limit of not less than two million dollars (\$2,000,000) per occurrence.

### **11.4 WorkSafe BC**

The preferred Proponent must submit to the City recent Clearance Letter and all persons performing the Work who are not covered by the Workers Compensation Act are covered under personal optional protection coverage available through the Workers' Compensation Board.

### **11.5 Professional Liability Insurance**

The Operator shall obtain and maintain for the duration of the Services and for a minimum of 2 years thereafter, at its own cost, Professional Liability Insurance on terms and from an insurer satisfactory to the City. The Professional Liability Insurance policy shall insure the Operator's legal liability for errors, omissions and negligent acts, to the extent of no less than \$2,000,000 per claim.

## **PART C – TERMS OF REFERENCE**

### **1.0 Purpose of This RFP**

The City is seeking to retain qualified providers (Operators) for the safe operation of an emergency daytime warming centre for the winter 2024/25 period, specifically between October 2024 and the end of March 2025, when winter conditions reach levels that would endanger the lives of those who do not have adequate shelter otherwise available. The City is currently working to establish a temporary location for the centre and expects more details to be available by September, however the scope and scale of the proposal should be consistent with the City's previous daytime warming centre operations in 2022/23 and 2023/24. The City is seeking proposals that would include both the following two options:

- Daily operation between October 2024 to the end of March 2025
- Operation only during periods when the weather is or feels like zero (0) degrees Celsius, between October 2024 to the end of March 2025.

The Operator will provide services in accordance with the information provided within this Terms of Reference document including, but not limited to, the following:

- 1) Extreme Weather response services;
- 2) Project Management;
- 3) Background Review;
- 4) Data Collection, with daily stats collected, supplied to the City on a weekly basis;
- 5) Security services
- 6) Site fencing (if required based on location)
- 7) Cleaning services
- 8) Value added services including, but not limited to, food/hot meals & beverages, medical care (emergency first aid & physician/nurse directed medical services), personal hygiene supplies, connections to community health and social services;
- 9) Final Report with Presentation to Council.

### **2.0 Background**

The City of White Rock is a unique and vibrant seaside community on Semiahmoo Bay in the southwest corner of Metro Vancouver. With a total land area of approximately 5 square kilometres, the City of White Rock is one of the most compact Cities in Metro Vancouver, with a population of 21,939 according to Statistics Canada (2021).

In light of the housing crisis in British Columbia and recognizing that those individuals experiencing homelessness need to find safe, clean opportunities to stay warm during the day following the closure of area nighttime shelters, the City of White Rock has facilitated an emergency daytime warming centre each winter since February 2022.

### **3.0 Scope of Work**

The City requires a service provider (the operator) to operate a daytime warming centre to operate

open to the public from approximately 7am to 10pm. Two different proposal options are requested:

- Daily operation between October 2024 to the end of March 2025
- Operation only during periods when the weather is or feels like zero (0) degrees Celsius, between October 2024 to the end of March 2025.

In addition to the provision of the services listed in Section 1.0 (Purpose of the RFP) this will include hourly sweeps of the site and surrounding area for garbage and drug paraphernalia, prohibition of onsite drug and alcohol consumption, liaising with RCMP, Bylaw Enforcement & City Management on issues as they arise, and responding to staff and public concerns, and the provision of transportation to and from nighttime shelters where possible. Issues relating to the facilities provided by the City must be reported immediately.

#### 4.0 Project Timeline

The successful Operator team shall be fully committed to the team members and to the project schedule. The anticipated timing for the award of this assignment is shown below.

1. RFP Closure	As noted on the cover page
2. Appointment of Operator	September 2024
3. Kick-off Meeting	September 2024
4. Centre Opening	October/November 2024
5. Centre Closure	March 2024
6. Site Vacancy	April 2024
7. Final Report	May/June 2024

The Operator is to provide a detailed schedule in the proposal for the above milestones, and all other milestones that the Operator deems appropriate.

#### 5.0 Available Information

- 1) City GIS (available at [WROMS \(surrey.ca\)](https://wroms.surrey.ca))
- 2) Council reports summarizing past year's operations:
  - 2023/24 Summary Report to Council [2023-2024 DAYTIME WARMING CENTER SUMMARY REPORT - Regular Council Meeting - June 10, 2024 \(escribemeetings.com\)](#)
  - 2022/2023 Summary Report to Council [2022 – 2023 Daytime Warming Centre Summary Report \(escribemeetings.com\)](#)
  - 2022 February/March Summary Report to Council [Regular Council Meeting - May 09, 2022 \(escribemeetings.com\)](#) (item 6.2.e)

**Appendix A - Proposal Signatory Form**

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**Proposal Signatory Form**

RFP Project Title: \_\_\_\_\_

RFP Reference No. \_\_\_\_\_

Legal Name of Proponent: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

I/We, the undersigned duly authorized representative of the Proponent, having received and carefully reviewed all of the Proposal documents; including the RFP and any issued addenda and submit this Proposal in response to the RFP.

This Proposal is submitted this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_

(Name of Proponent)

\_\_\_\_\_

(Name of Proponent)

\_\_\_\_\_

(Signature of Authorized Signatory)

\_\_\_\_\_

(Signature of Authorized Signatory)

\_\_\_\_\_

(Print Name and Position of Authorized Signatory)

\_\_\_\_\_

(Print Name and Position of Authorized Signatory)

**Appendix B – Conflict of Interest**

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**DISCLOSURE OF INTEREST**

In accordance with the approved policy of the City of White Rock (City), all proponents shall, as a condition of supplying services to the City as a result of this proposal make full disclosure of any business relationships within the last FIVE (5) years including any donations/gifts in excess of ONE HUNDRED Dollars (\$100), with any members of the City and Council, or immediate relatives of any members of the City and Council.

If the proponent fails to disclose an interest and/or the interest is falsely or insufficiently reported, the City reserves the right to terminate or cancel any Agreement of any kind which may have been entered into with a proponent.

As part of the proposal process, completion and return of the Disclosure of Interest form is mandatory. Sign and return the form even if there is nothing to disclose.

If additional space is required, please add an attachment to this form.

Disclosure

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Company Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Print Title \_\_\_\_\_

**Appendix C - Sample Consultant Agreement**

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**CONSULTANT AGREEMENT**

BETWEEN:

**THE CITY OF WHITE ROCK**

(the "City")

and

(the "Consultant")

**INTRODUCTION:**

WHEREAS the *Consultant* is in the business of \_\_\_\_\_ services;

AND WHEREAS the *City* wishes to retain the services of the *Consultant*, as more particularly specified in Schedule "A" hereto in connection with such consulting services;

NOW THEREFORE, the City and the Consultant mutually covenant and agree as follows:

**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this *Agreement*, the following words and phrases, when italicized, shall have the following meanings:

- (a) **Additional Services** means services provided by the *Consultant* which are outside the scope of the *Services* under this *Agreement*.
- (b) **Agreement** means the recitals, Articles 1 through 18 inclusive and the *Schedules*.
- (c) **Business Day** means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia

- (d) **Charges of the Subconsultant** means that portion of the Contract Price that is attributable to the work undertaken in any month of the Term by the Subconsultant or the Subconsultants, as the case may be.
- (e) **City** means the City of White Rock.
- (f) **Claim** or **Claims** means, as the case maybe, any one or more of the following: claims, demands, losses, costs, liabilities, damages, liens, encumbrances, actions, suits or proceedings, whether first party or third party, together with legal costs on a solicitor-and-own-client basis.
- (g) **Commencement Date** means the first day of the Term, as set out in Schedule "A".
- (h) **Completion** means completion of the *Services and the Additional Services, if any*, and the date on which *Completion* occurs which will be determined by the City and shall be set out in a *Notice* to the *Consultant* from the City.
- (i) **Completion Targets** means a schedule provided by the Consultant of key milestone dates in the provision of the *Services* during the Term, as set out in Schedule "F".
- (j) **Confidential Information** means all information (including information in writing and transmitted orally, visually or by other means) which one *Party* directly or indirectly, acquires from the other *Party* or through performance of the *Services* (including information regarding the *Services*) or any other information concerning or relating to the *Parties*, including without limitation its business, affairs, financial position, assets, operations, activities, prospects, trade secrets, technology or technical information, and all personal information as defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia), together with all compilations, notes, or other documents prepared by the *Parties* containing or based upon such information, but shall not include: (a) information which is or becomes available to the public, other than as a result of disclosure by the other *Party* or its representatives; or (b) information which the *Party* can prove was, at the time of disclosure, already in its possession on a non-confidential and lawful basis.
- (k) **Consultant** means the *Person* who has been retained by the City to perform the *Services* and is the entity identified as the *Consultant* on the first page of this *Agreement* and includes any of the *Consultant's* personnel that will perform the *Services*, including the *Key Personnel*.
- (l) **Consultant Fees** means the hourly rates charged by the *Consultant* for the

performance of the *Services* as set out in Schedule "B".

- (m) **Contract Price** means the total amount payable by the *City* to the *Consultant* for the timely and proper performance of the *Services* as set out in Article 5 - CONTRACT PRICE and PAYMENT and Schedule "B", as may be adjusted by a *Notice* issued by the *City* in accordance with Article 7 -CHANGES TO SERVICES AND ADDITIONAL SERVICES.
- (n) **Designated Contact** means the Person designated by each Party to act as that Party's liaison and principle point of contact with the other Party for the purposes of this Agreement as set out in Schedule "E", which may change from time to time during the Term by one Party given the other Party prior written notice.
- (o) **Governmental Authority** means any federal, provincial or municipal government, including the *City*, or other administrative, regulatory, or legislative authority, commission, tribunal or court or any of the respective agencies or departments thereof having jurisdiction over any aspect of the *Services*, this *Agreement*, or any matters related to them.
- (p) **GST** means the applicable goods and services tax.
- (q) **Intellectual Property** means all discoveries, inventions, know-how, improvements, developments, processes, technology, compositions, designs, techniques, methods, industrial designs, compositions, prototypes, models, literary work, research, drawings, software and trade secrets whether or not capable of patent, industrial design, copyright or trademark protection, or any other type of protection.
- (r) **Intellectual Property Rights** means all rights available at common law, equity and statute, relating to *Intellectual Property*.
- (s) **Key Personnel** means the *Consultant's* personnel who will be directly involved in providing the *Services* as set out in Schedule "D".
- (t) **Law** means the common law and all applicable decrees, statutes, laws, by-laws, rules, orders, codes, directives and regulations in effect from time to time and made or issued by any *Governmental Authority* having jurisdiction over any aspect of the *Services*, this *Agreement*, the *City*, the *Consultant* and the *Subconsultants*, and includes any applicable replacement, amendment or supplementary legislation, and any applicable regulations.

- (u) **Notice** means a notice made in writing and delivered to one of the *Parties* at the address stipulated for, and in the method required for delivery.
- (v) **Party** means one of the parties to this *Agreement* and *Parties* means the *City* and the *Consultant*, collectively.
- (w) **Person** means any one of an individual, partnership, limited liability partnership, limited liability company, corporation, sole proprietorship, trust, unincorporated organization, association, society or *Governmental Authority*.
- (x) **Records** means the records of the *Consultant* and its *Subconsultants* relating to this *Agreement* and/or the performance of the *Services*, and which must include, paper and electronic copies, as the case may be, of:
  - (i) original invoices and accounts showing all of the *Consultant Fees* and *Reimbursable Expenses* submitted by the *Consultant*;
  - (ii) supporting documentation for all Charges of the Subconsultant and *Consultant Fees* for hourly projects, itemizing the names and positions of all personnel, including the Key Personnel, the hours worked by each, the type of services performed and the hourly rate charged, and for all *Reimbursable Expenses* with copies of all relevant documentation, agreements and receipts to substantiate same; and
  - (iii) correspondence, minutes of meetings, notes, reports, and all other documentation created or produced in connection with this *Agreement* including information relating to the *Consultant's* compliance with this *Agreement* and the use of *Confidential Information*.
- (y) **Reimbursable Expenses** are limited to the expenses shown in Schedule "B" incurred and paid by the Consultant and its Subconsultants to third parties in the performance of the *Services*, there will be no percentage mark-up of such actual expenditures.
- (z) **Schedules** means:
  - (i) Schedule "A"- Commencement Date and the *Services*;
  - (ii) Schedule "B" -Payment of Contract Price and Reimbursable Expenses;

- (iii) Schedule "C" - Terms of Payment;
  - (iv) Schedule "D" – List of Subconsultant(s) and Key Personnel;
  - (v) Schedule "E" – Designated Contact; and
  - (vi) Schedule "F" – Completion Targets
- (aa) **Scope of Services Documents** means all of the documents describing the scope of the *Services* to be performed by the *Consultant*, including but not limited to the *Schedule "A"*.
- (bb) **Services** means the services and deliverables that the *City* has requested that the *Consultant* perform and the *Consultant* has agreed to perform, as set out in *Schedule "A"*, in accordance with the *Completion Targets* set out in *Schedule "F"* hereof and includes the *Work Product*.
- (cc) **Subconsultant** means a *Person* engaged by the *Consultant* in connection with the performance of the *Services* in accordance with this *Agreement*.
- (dd) **Term** means the time stipulated in Section 2.1.1 as the period between the *Commencement Date* and *Completion* and applicable deadlines for specific deliverables listed in *Schedule "F"*, as may be adjusted by a *Notice* issued by the *City* in accordance with Article 7 - CHANGES TO SERVICES AND ADDITIONAL SERVICES.
- (ee) **Work Product** means all documents, data, drawings, sketches, calculations, specifications, models, renderings, drafts, and reports in any medium or electronically prepared by or on behalf of the *Consultant* in the performance of the *Services* and includes all related *Intellectual Property* and *Intellectual Property Rights*.

## 1.2 Interpretation

- 1.2.1 Whenever this *Agreement* requires an action to be performed or an obligation to be undertaken, unless otherwise specified, such action or obligation shall be performed in a prompt and commercially reasonable manner by the *Party* taking the action or fulfilling its obligation.
- 1.2.2 Documents comprising and incorporated into this *Agreement* are complementary, and what is required by any one shall be binding as if required by all.

### 1.3 Precedence of Documents for Interpretation

1.3.1 If there is a conflict within the documents that are incorporated herein, the order of priority, from highest to lowest, shall be:

- (a) this *Agreement*;
- (b) applicable policies of the *City*; and
- (c) any other *Scope of Services Documents* not referred to above.

## GENERAL PROVISIONS

### 2.1 Performance of the Services

2.1.1 The *Consultant* shall perform the *Services during the Term*:

- (a) commencing on the *Commencement Date* and continuously thereafter until *Completion* or earlier termination;
- (b) in a professional, highly competent and safe manner with the degree of care, skill and diligence which performance meets or exceeds the standards for services and projects of a similar nature in the Province of British Columbia;
- (c) in accordance with the requirements of the *Scope of Services Documents* and in a manner consistent with and in all respects within the approved scope, cost, time and quality parameters stipulated and/or reasonably inferable by the *Scope of Services Documents*;
- (d) for the *Contract Price* and within the *Term in accordance with the Completion Targets set out in Schedule "F"*; and
- (e) diligently and in accordance with the terms and conditions of this *Agreement*.

2.1.2 The *Consultant* shall ensure that its performance of the *Services* and the *Work Product* complies with the *Law*.

2.1.3 The *Consultant* shall manage, and be liable for, all *Subconsultants* and the *Services*



performed by them.

- 2.1.4 The *Consultant* does not have any exclusive right to perform any services for the *City*.
- 2.1.5 The *Consultant* represents that it is knowledgeable and experienced in the type of work to be performed by the *Consultant*. The *Consultant* is being retained by the *City* specifically because of its knowledge and experience.
- 2.1.6 The *Consultant* represents and warrants that it is in compliance with the *Law* relating to the conduct of its business and has obtained and maintained all required approvals, permits, business licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations under this *Agreement* and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said approvals, permits, business licenses, certificates or authorizations.
- 2.1.7 The *Consultant* shall, with reference to the Project Targets, submit to the *City* monthly progress reports, with respect to the *Services* provided by the *Consultant* under this *Agreement*. If the *City*, acting reasonably, deems additional progress reports necessary, the *City* give *Notice* for additional progress reports and the *Consultant* shall, at no additional cost, supply all additional progress reports requested within five (5) business days of the *Notice*.
- 2.1.8 The *City* shall make reasonable efforts to furnish the *Consultant* with the necessary information to perform the *Services* which the *City* has available. It shall be the *Consultant's* responsibility to:
- (a) advise the *City* if any further or additional information is required; and
  - (b) obtain and assemble adequate information to permit the *Services* and *Work Product* to be completed in a proper and expeditious manner as required by and in accordance with the *Scope of Services Documents*.
- 2.1.9 The *Consultant* shall be in, and remain in, good standing with its constating legislation and licensing authorities, as applicable, while performing the *Services*.
- 2.1.10 The *Consultant* shall:
- (a) supply and pay for all labour and materials necessary or advisable to provide the *Services*; and

- (b) be responsible for all applications, permits and other approvals necessary or advisable to provide the *Services*.

## REPRESENTATIONS OF THE CONSULTANT

### 3.1 Representations

- 3.1.1 The *Consultant* represents to the *City* that all reports and invoices rendered to the *City* under this *Agreement* shall properly reflect all activities and may be relied upon by the *City* as being complete and accurate.
- 3.1.2 The *Consultant* shall conduct its business in accordance with all applicable *Law* to reflect a high standard of ethics in all its business transactions.
- 3.1.3 The *Consultant* shall cooperate with the *City* and use the *Consultant's* professional knowledge, efforts and judgment in furthering the interests of the *City* which includes possessing the necessary skills, competence, resources, including personnel, finances, expertise and time to completely perform all of the *Services*.

## PERFORMANCE OF THE SERVICES BY A SUBCONSULTANT

### 4.1 Subconsultants

- 4.1.1 Subject to Article 4.1.5, *Subconsultants* shall not be used for the performance of the *Services* without the prior written consent of the *City*.
- 4.1.2 The *City*, may with reasonable cause, at any time during the performance of the *Services*, require by *Notice* to the *Consultant* the replacement of any of the *Subconsultants*, or other personnel assigned to the *Services*. Upon receipt of the *Notice*, the *Consultant* will as soon as practical appoint a replacement acceptable to the *City*.
- 4.1.3 The *Consultant* shall be responsible for all *Services* under this *Agreement* even if the *Subconsultants* are approved by the *City*.
- 4.1.4 The *Consultant* shall enter into a written agreement, the terms of which shall be in accordance with this *Agreement*, with each *Subconsultant* approved by the *City* before such *Subconsultant* is eligible to begin performing the *Services*.

4.1.5 The Subconsultants approved by the City, at the time of execution of this Agreement, are set out in Schedule "D".

## **CONTRACT PRICE AND PAYMENT**

5.1 Subject to only adjustments by a *Notice* issued by the *City*, the *Contract Price*, being the total amount payable by the *City* to the *Consultant* for the timely and proper performance of the *Services*, consists of the following:

5.1.1 *Consultant Fees*; and

5.1.2 *Reimbursable Expenses*, as set out in Schedule "B"; and

5.1.3 Charges of the Subconsultant(s), if any.

5.2 Subject to the *Consultant* complying with this *Agreement* and specifically Schedule "C", payments shall be made on account of the *Contract Price* upon the prompt and faithful performance of the *Services* to the satisfaction of the *City* in its sole discretion.

5.3 Payments for *Reimbursable Expenses* and *Consultant Fees* shall be made monthly upon submittal of the *Consultant's* invoice together with all related *Records*, to the *City's* satisfaction.

5.4 An invoice submitted by the *Consultant* under this *Agreement* shall be paid by the *City* within 30 days after approval of the invoice by the *City*, unless the *Consultant* is in default of this *Agreement* or an adjustment or a set-off is made by the *City*.

5.5 No payment by the *City* under this *Agreement* shall constitute an acceptance of any portion of the *Services* which is not in accordance with the requirements of this *Agreement*. Nor shall the *City* be required to make payment for *Services* or *Reimbursable Expenses* under this *Agreement* to remedy errors or omissions, including but not limited to, costs associated with redesign or additional time required to complete the *Services* for which, in the opinion of the *City* at its sole discretion, the *Consultant* is responsible.

### **5.6 Reimbursable Expenses**

5.6.2 All *Reimbursable Expenses* having a value of \$200.00 or more must be pre-authorized in writing by the *City*, and the *City* may refuse payment for any *Reimbursable Expense* that have not been pre-authorized in writing.

5.6.3 For all *Reimbursable Expenses*, the *Consultant* shall provide to the *City*, as a precondition to payment, all *Records* relating to such *Reimbursable Expenses*.

**5.7 Time Limit for Submitting Claims for Payment of the Contract Price**

5.7.1 The *Consultant* must submit all claims for payment or reimbursement to the *City* in accordance with this *Agreement* within two (2) months of *Completion*. Failure by the *Consultant* to submit claims for payment or reimbursement in this period will result in the *Consultant* forfeiting any and all *Claims* to such payment or reimbursement and the *Consultant* shall be deemed to have released the *City* of its obligations to pay the same.

**TAXES**

6.1 The *Consultant* shall be responsible for and pay:

6.1.1 all taxes in relation to the *Services* in compliance with the *Law*; and

6.1.2 the costs of all contributions, assessments and deductions, including, without limitation, those required for professional associations, workers' compensation contributions, employment insurance contributions, employees' income tax deductions, Canada Pension Plan, disability benefits, other benefits not specified, together with all taxes as may be required by *Law*.

6.2 The *Consultant* is a GST registrant and its GST number is to be provided in accordance with Schedule "C".

6.3 All amounts payable by the *City* to the *Consultant* pursuant to this *Agreement* will be exclusive of any GST and the *City* will, in addition any amounts payable, pay to the *Consultant* all amounts of GST applicable thereon.

6.4 The *Consultant* shall indemnify and save harmless the *City* from any and all *Claims* which may be made or assessed against the *City* in respect of the taxes, including GST, for which the *Consultant* is responsible.

**CHANGES TO SERVICES AND ADDITIONAL SERVICES**

**7.1 Changes and Additional Services**

7.1.1 The *City* may make changes to the *Services* performed by the *Consultant*, at

any time by subtracting from the *Services* or adding *Additional Services*.

7.1.2 The *Consultant* shall not change the *Services* without *Notice* from the *City*.

## 7.2 **Notice of Change**

7.2.1 When a change to the *Services* is proposed or required, the *City* shall provide a *Notice* proposing the same to the *Consultant*.

7.2.2 Promptly after receipt of a *Notice* as set out in 7.2.1, the *Consultant* shall present, in a form acceptable to the *City*, a method of proposed adjustment or an amount of proposed adjustment to the *Contract Price*, if any, and the adjustment in *Term* and the *Completion Targets*, if any. If no alteration in the *Term* and/or the *Contract Price* is identified by a proposed adjustment, the proposed change to the *Services* will not extend the *Term* or increase the *Contract Price* or entitle the *Consultant* to any additional compensation or damages of any nature whatsoever.

7.2.3 The *City* shall make the final determination as to whether any change to the *Services* is to be implemented.

7.2.4 When the *Consultant* and the *City* agree to adjustments to the *Contract Price* or the *Term*, or both, a *Notice* signed by the *City* shall be issued revising the *Contract Price* or the *Term*, or both, as applicable. The value of *Services* performed as the result of a *Notice* shall be included in the *Consultant's* monthly invoice as a separate line item.

7.2.5 All direct and indirect costs and impacts related to or resulting from the implementation of a change to the *Services* shall be deemed to be included in the amount stated in the *Notice* as the sum by which the *Contract Price*, if any, and the *Term*, if any, will be adjusted.

7.2.6 The *City* reserves the right to withdraw any *Notice* describing a proposed change to the *Services* without additional compensation to the *Consultant*, if such withdrawal occurs prior to commencement of performance of the change to the *Services*.

## INFORMATION

- 8.1 Ownership of the *Work Product*, including but not limited to, any information, *Records* or materials, regardless of form, any copyright, patent, industrial design process or trademark, acquired or produced by the *Consultant*, or provided by the *City* for use by the *Consultant*, vests solely in the *City*. The *Work Product* is not to be used for other work and is not to be copied or altered in any manner without the prior written authorization of the *City*. The *Consultant* waives all moral rights that it has or may have in the *Work Product* and shall obtain waivers of moral rights from every *Subconsultant* and all of their respective personnel in respect to the *Work Product*.
- 8.2 Subject to any rights, title or interests expressly granted by this *Agreement*, neither *Party* shall acquire any right, title, or interest in or to any *Intellectual Property Rights* of the other *Party*. Notwithstanding the foregoing, to the extent that the *Work Product* incorporates the *Intellectual Property* of the *Consultant*, the *Consultant* shall provide the *City* and any entity *Controlled* by the *City* with an irrevocable, royalty free, non-transferable license to use same in connection with the *Work Product*.
- 8.3 Upon expiration or earlier termination of this *Agreement*, the *Consultant* shall provide the original copies of the *Work Product*, all *Records*, and any copies of same received, created or compiled by the *Consultant* in accordance with this *Agreement*, to the *City* at the *Consultant's* sole expense.
- 8.4 The *City* shall, during the Term of this *Agreement*, and upon the written request of the *Consultant*, furnish to the *Consultant* such information or records as are in its possession and are reasonably required for the proper performance of the *Services*, and shall, provide such cooperation as is reasonable in order for the *Consultant* to be able to perform the *Services* required pursuant to this *Agreement*.
- 8.5 All *Confidential Information* provided to the receiving party (the "*Recipient*") by the disclosing party (the "*Discloser*") is confidential to the *Recipient*, its employees, directors, officers, legal advisors, auditors and any *Subconsultants* and may not be disclosed to any other *Person* except:
  - (a) with the consent of the *Discloser* (which consent may be withheld in the discretion of the *Discloser*);
  - (b) if required by law;
  - (c) in connection with legal proceedings relating to this *Agreement*;

- (d) if the *Recipient* demonstrates the information is generally and publicly available;
- (e) to an entity *Controlled* by the receiving party, provided such entity undertakes to observe this Section 8.5; or
- (f) in the case of disclosure to any lender, to any assignee, actual or potential, of such lender;

but in any situation referred to in clauses (b) and (c) above; (i) the *Recipient* shall provide written notice to the *Discloser* prior to making such disclosure and provide details of the proposed form, nature and purpose of such disclosure so that the *Discloser* may seek a protective order or other remedy or waive compliance with this *Agreement*, and (ii) if a protective order or other remedy is not obtained or the *Discloser* waives compliance with this *Agreement*, the *Recipient* shall disclose only that portion of the *Confidential Information* which is required.

Upon expiration or earlier termination of this *Agreement*, the *Consultant* shall provide all *Confidential Information* and any copies of same received, created or compiled by the *Consultant* in accordance with this *Agreement* to the *City* at the *Consultant's* sole expense.

- 8.6 The *Consultant* shall not include any reference to the *City*, the *Services*, the *Work Product* or the existence of this *Agreement* in any advertisement, public announcement or statement, or promotional materials without the prior written consent being obtained from the *City*.

## **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

- 9.1 Notwithstanding Article 8.3 of this *Agreement* and notwithstanding the termination or expiry of this *Agreement*, the *Consultant* acknowledges that information and records compiled or created under this *Agreement* which are in the custody of the *Consultant* and/or any *Subconsultant* are subject to the Freedom of Information and Protection of Privacy Act (British Columbia). If a request is received for any of these records, the *Consultant* shall forward the information and records, at the *Consultant's* expense, to the *City* within five (5) business days of *Notice* by the *City*.

## **SUSPENSION OR TERMINATION OF AGREEMENT**

### **10.1 Suspension**

10.1.1 The *City* may, at any time in the *City's* sole discretion, by notice in writing, suspend the *Services* forthwith or on a date set out in the *Notice* of Suspension.

10.1.2 The *City* shall pay all fees, disbursements or costs currently due to the *Consultant* at the time of suspension of the *Services*, but payment of all other fees, disbursements or costs under this *Agreement* that have yet to accrue shall be suspended for the same time period as the suspension of the *Services*.

10.1.3 During any period of suspension, the *City* shall not be responsible, for any fees, disbursements, or costs incurred by the *Consultant* unless the *Consultant* receives the prior written approval from the *City*, which may be arbitrarily withheld, before the fees, disbursements, or costs are incurred. In order to receive such approval from the *City*, the *Consultant* will provide such documentation as may be requested by the *City* in support of the claim for fees, disbursements, and costs.

10.1.4 Upon a suspension of *Services*, the *Consultant* shall resume and complete the *Services* in accordance with the terms of this *Agreement* upon written notice from the *City*. The *City* shall make an equitable adjustment to terms of this *Agreement* which are affected by the suspension, including time requirements for the *Services* and the payment associated with such *Services*.

## 10.2 Termination

10.2.1 The *City* may terminate this *Agreement* effective immediately by *Notice*, if the *Consultant*:

- (a) in sole opinion of the *City*, fails to complete the *Services*, or any portion thereof, within the *Term* and/or for the *Contract Price*, or
- (b) becomes insolvent, or
- (c) commits an act of bankruptcy, or
- (d) abandons the performance of the *Services*, or
- (e) assigns this *Agreement* in whole or in part without the required prior written consent, or
- (f) fails to observe or perform any of the provisions of this *Agreement*, or
- (g) has any conflict of interest which may, in the opinion of the *City*, have



an adverse effect on the *Services*. Such termination shall be effective immediately upon *Notice* to the *Consultant*.

10.2.2 This *Agreement* may be terminated by the *City* for any reason whatsoever upon seven (7) days' *Notice* to the *Consultant*.

10.2.3 The *Consultant*, upon termination of this *Agreement* for any of the reasons set out in Section 10.2.1, shall be liable to, and upon demand, shall pay to the *City* an amount equal to all loss or damage suffered, either directly or indirectly, by the *City* as a result of the non-completion of any of the *Services* by the *Consultant*. If the *Consultant* fails to pay the *City* for any such loss or damage on demand, the *City* shall be entitled to deduct the same from any payments due and payable to the *Consultant*, as well as exercise any other remedies available to the *City*.

10.2.4 The *Consultant* agrees that termination of the *Services*, or any portion thereof, does not operate so as to relieve or discharge the *Consultant* from any obligation under this *Agreement* or imposed by *Law* in respect to the *Services* or any portion thereof that has been completed.

10.2.5 The *City* shall, in the event of termination of this *Agreement*, pay to the *Consultant* all amounts for completed *Services* due to the *Consultant* in accordance with this *Agreement* as well as all reasonable fees, disbursements, or costs incurred up to the date of termination. The *City* shall have no further liability of any nature whatsoever to the *Consultant* for any loss of profit or any other losses suffered, either directly or indirectly, by the *Consultant* as a result of the termination of this *Agreement*.

## **INDEMNITY AND INSURANCE**

### **11.1 Indemnity**

The *Consultant* shall at all times and without limitation, be fully liable for, and shall indemnify and save harmless the *City*, its elected officials, insurers, directors, officers, employees, contractors, agents and representatives from and against all liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands, and proceedings, all of whatever nature and kind which any of the *City*, its elected officials, insurers, directors, officers, employees, contractors, agents and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, relating to, resulting from or

arising out of all or any of the following:

- (a) the misconduct, negligent action or negligent failure to act, as the case may be, of the *Consultant* and/or any of those persons for whom the *Consultant* is responsible at law (including, without limitation, any of its employees or *Subcontractors*);
- (b) the costs of repairs, clean-up or restoration paid by the City and any fines levied against the City or the *Consultant*;
- (c) third party claims of infringement of Intellectual Property Rights alleged to have occurred;
- (d) any breach, violation or non-performance of any representation, warranty, obligation,
- (e) covenant, term, condition or agreement in this Agreement set forth and contained on the part of the *Consultant* to be fulfilled, kept, observed or performed, as the case may be; or
- (f) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act or breach of contract of the *Consultant* and/or any of those persons for whom the *Consultant* is responsible at law (including, without limitation, any of its employees or subcontractors).

The provisions of this Section are in addition to and shall not prejudice any other rights of the *City* at *Law* or in equity. This Section shall survive the termination or expiry of this *Agreement* for any reason whatsoever.

## 11.2 Insurance

Without in any way limiting the liability of the *Consultant* under this *Agreement*, the *Consultant* shall, prior to the commencement of the Services obtain and maintain in force during the Term the following insurance, all satisfactory to the *City*, acting reasonably;

11.2.1 standard automobile, bodily injury and property damage insurance providing coverage of at least **FIVE MILLION (\$5,000,000.00) DOLLARS** inclusive and in respect of any one claim for the injury to or death of one or more persons or damage to or destruction of property;

11.2.2 commercial general liability insurance policy providing coverage of at least **FIVE MILLION (\$5,000,000.00) DOLLARS** inclusive and in respect of any one claim for

injury to or death of any one or more persons or damage to or destruction of property. Coverage to include:

- (a) non-owned automobiles;
- (b) independent subconsultants;
- (c) contractual liability;
- (d) broad form property damage endorsement;
- (e) products and completed operations coverage; and
- (f) such other coverage as the *City* may from time to time reasonably require.

11.2.3 Errors and omissions coverage for professional services liability with limits of not less than **TWO MILLION (\$2,000,000.00) DOLLARS** per claim;

11.2.4 Workers' Compensation coverage for all employees, if any, engaged by the *Consultant* in accordance with the laws of the Province of British Columbia; and

11.2.5 Employer's liability insurance respecting employees, of the *Consultant* with limits of liability of not less than **TWO MILLION (\$2,000,000.00) DOLLARS** per employee for each accident, accidental injury or death of an employee or any *Subcontractor* engaged by the *Consultant*;

The *Consultant* shall ensure that, except for automobile, and except for workers' compensation coverage, commercial general liability insurance coverage maintained by the *Consultant* in accordance with this *Agreement* shall name the *City* as an additional insured, contain a severability of interests or cross liability clause, a waiver of any subrogation rights which the *Consultant's* insurers may have against *City*, its elected officials, directors, officers, employees, contractors, agents and representatives, and shall provide that no such insurance policy may be cancelled without the insurer providing no less than thirty (30) days' written notice of such cancellation to the *City*. The *Consultant* shall, upon the request of the *City*, furnish written documentation, satisfactory to the *City*, evidencing the required insurance coverage. The cost of all of the insurance required to be held by the *Consultant* as set forth herein shall be borne by the *Consultant*.

## PROCUREMENTS

12.1 The *Consultant* shall provide written Notice, in advance to the *City* of its intention to

respond to, or participate in, as a primary party, as a consultant to any other party or in any other capacity, a procurement initiated by the *City* or an entity *Controlled* by the *City* or by any entity on behalf of the *City*, which procurement is related to or arises out of any *Services*, or is related to or arises out of the *City*, an entity *Controlled* by the *City*, or an entity acting on behalf of the *City*, acting on the *Services*, arising therefrom or any recommendations made therein. The *Consultant* shall not participate in any such procurement without the prior written consent of the *City*, which may be arbitrarily withheld. The term "*Control*" or "*Controlled*" means any entity in which the *City* owns securities which are attached to fifty percent (50%) or more of the votes that may be cast to elect directors or the *City* otherwise has the right to appoint the majority of the directors of the entity.

## LEGAL REQUIREMENTS

- 13.1 In carrying out its obligations under this *Agreement*, the *Consultant*, and all of its employees, agents, and *Subconsultants* shall be bound by and observe all applicable *Law*. In the event the *Consultant* fails to comply with any applicable *Law*, and the *City* is required to take steps or pay any sums to rectify such noncompliance, the *City* may subtract the cost of such rectifications from any monies owed to the *Consultant*.
- 13.2 The *Consultant* shall familiarize itself, its staff and *Subconsultants* with the terms of the *Law* to ensure complete understanding respecting the responsibilities given and compliance required, as applicable. The *Consultant* acknowledges that it may have responsibilities as the "prime contractor".
- 13.3 Prior to commencing any *Services*, the *Consultant* shall provide evidence of compliance with all requirements of the Workers' Compensation Act (British Columbia), including, but not limited to, payment due thereunder. At any time during the Term of this *Agreement*, when requested by the *City*, the *Consultant* shall provide evidence of compliance, by the *Consultant* and/or any *Subconsultant* with all requirements under the Workers' Compensation Act (British Columbia).

## FORCE MAJEURE

- 14.1 If the parties shall fail to meet their respective obligations hereunder within the time prescribed, and such failure shall be caused or materially contributed to by force majeure (and for the purposes of this *Agreement*, force majeure shall mean any act of God, strike, lockout or other industrial disturbances, act of the Queen's enemies, sabotage, war, blockades, insurrections, riots, epidemics, lightning, earthquakes, floods, storms, fires, washouts, nuclear and radiation activity or fallout, arrests and distraints of rules and people, civil disturbances, explosion, breakage or accident to machinery or stoppage

thereof for necessary maintenance or repairs, inability to obtain labour, materials or equipment, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable means, any act, omission or event whether of the kind herein enumerated or otherwise not within the control of such party, and which by the exercise of due diligence such party could not have prevented, but lack of funds on the part of such party or parties shall be deemed not to be a force majeure) such failure shall be deemed not to be a breach of the obligations of such party but such party shall use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.

## GENERAL

- 15.1 This *Agreement* shall be governed by the laws of the Province of British Columbia and the *Parties* agree to attorn to the exclusive jurisdiction of the Courts of the Province of British Columbia.
- 15.2 Time shall be of the essence of this *Agreement*.
- 15.3 The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this *Agreement* have been inserted as a matter of convenience and for reference only and in no way, define, limit, construct or enlarge the scope or meaning of this *Agreement* or any provisions hereof.
- 15.4 Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.
- 15.5 Except as may from time to time be expressly stated in writing by the one party, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever.
- 15.6 This *Agreement* constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this *Agreement* save as expressly set out in this *Agreement*.

- 15.7 Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this *Agreement* in accordance with their true intent.
- 15.8 This *Agreement* may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.
- 15.9 No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- 15.10 Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.
- 15.11 If any term, covenant or condition of this *Agreement* or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this *Agreement* or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this *Agreement* shall be valid and shall be enforceable to the fullest permitted by law.
- 15.12 The provisions of this *Agreement* which expressly state or naturally imply that they survive the termination, cancellation, completion, suspension or expiration of this *Agreement*, including any other provision that is necessary for the interpretation or enforcement of the same, shall continue as valid and enforceable notwithstanding any such termination, cancellation, completion, suspension or expiration.
- 15.13 Mention in this *Agreement* of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this *Agreement*. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one of more of such remedies generally or in

combination, such remedies being cumulative and not alternative.

- 15.14 The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds.
- 15.15 Wherever the singular, plural, masculine, feminine or neuter is used throughout this *Agreement* same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof.
- 15.16 This *Agreement* shall ensure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.
- 15.17 The *Consultant* shall not assign its interest in this *Agreement*, or any part hereof, in any manner whatsoever without having first received written consent from the *City*, which consent may be arbitrarily withheld.
- 15.18 Each party shall provide any decision with regard to a request for consent in a timely manner.
- 15.19 This *Agreement* shall be interpreted according to its fair construction and shall not be construed as against any party hereto.

#### **RECEIPT OF NOTICES AND ADDRESSES FOR SERVICE**

- 16.1 Any *Notice* to be given by either *Party* in accordance with this *Agreement* shall be in writing and delivered personally, by commercial courier, or sent by email, to the following addresses the *City's* Designated Contact and the *Consultant's* Designated Contact as set out in Schedule "E":
- 16.2 A *Notice* shall be deemed to have been given and received on the date on which it was delivered or transmitted, if delivered or transmitted on a *Business Day* during the regular business hours of the recipient. If a *Notice* is delivered or transmitted on a day that is not a *Business Day* or outside the regular business hours of the recipient, the *Notice* shall be deemed to have been delivered or transmitted on the following *Business Day*.
- 16.3 A *Party* may change its address for receipt of *Notice* at any time by giving *Notice* of the change to the other *Party* in accordance with this Article. Such changed address for receipt of *Notices* will be effective 5 *Business Days* after receipt of the *Notice* by the recipient.

#### **RECORDS AND AUDIT**

- 17.1 At all times during the Term of the Agreement and for a period of two years following the expiry of the Term or the Renewal of the Agreement, the Consultant shall keep and maintain all Records for all Services performed pursuant to the Agreement and the Consultant shall make all such Records available to the RMWB for inspection and audit forthwith upon notice and the RMWB shall be entitled to take and retain a copy of all such Records for auditing purposes.

#### **DESIGNATED CONTACT FOR THE PARTIES**

- 18.1 The Designated Contact for each of the Parties is set out in Schedule "E". The Designated Contact for either Party may be changed with prior written notice to the other Party.

#### **DISPUTE RESOLUTION**

- 19.1 In the case of any dispute arising between the City and the Consultant, as to their respective rights and obligations under the terms and conditions of this Agreement and subsequent documents, either party shall be entitled to give the other written notice, within ten (10) working days of that party's awareness of such a dispute.
- 19.2 If a mutually agreeable resolution is not reached under Section 19.1, the parties agree to the following procedure:
- (a) disputes will be referred to the parties respective Designated Contact who will meet and work to resolve the dispute. If a resolution cannot be reached within ten (10) days, or such time as agreed to by both parties, the dispute will be escalated to the second level detailed in subsection (b);
  - (b) the City's Chief Administrative Officer and the Consultant's designated senior executive will work to resolve the dispute. If a resolution still cannot be reached the dispute will be escalated to the third level detailed in subsection (c);
  - (c) the matter in dispute may be referred to the British Columbia International Commercial Arbitration Centre ("BCICAC") for commercial mediation, pursuant to its rules; and
  - (d) in the event the commercial mediation process is unsuccessful, the parties may agree to have the BCICAC will appoint an arbitrator and if so agreed by the parties, the decision of any arbitrator shall be final and binding upon the parties, including any decision of the arbitrator with respect to the costs of arbitration.



19.3 Unless the parties agree to binding arbitration under subsection 19.2(d), any efforts by the parties to resolve a dispute shall not preclude either of them from commencing legal proceedings or in accessing any other rights under law.

**IN WITNESS WHEREOF** the parties have caused to be hereto affixed their respective corporate seals attested by the signatures of their duly authorized signing officers.

**THIS AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, 202\_ (“Reference Date”)

**THE CITY OF WHITE ROCK**

Signature: \_\_\_\_\_

\_\_\_\_\_  
(Print Name/Title)

INSERT NAME OF CITY’S SGNATORY (IES)

**INSERT NAME OF CONSULTANT**

Signature: \_\_\_\_\_

\_\_\_\_\_  
(Print Name/Title)

INSERT NAME OF CONSULTANT’S  
AUTHOURIZED SIGNATORY (IES).

**SCHEDULE "A"**

**COMMENCEMENT DATE AND THE SERVICES**

The Commencement Date of the Term **is : [Insert date]**

The Consultant shall perform the following Services:

**[insert full details of services]**

**SCEHDULE "B"**  
**CONTRACT PRICE, CONSULTANT FEES, CHARGES OF THE SUBCONTRACTOR(S) and**  
**REIMBURSABLE EXPENSES**

The Contract Price is as follows:  
**[Insert total cost of the Contract]**

The Consultant Fees are:

**[Insert name, position and hourly rate of each of the Consultant's Key Personnel]**

The Charges of the Subcontractor(s) for the Services is as follows:

Reimbursable Expenses are as follows:

**[insert all approved Reimbursable Expenses]**

**SCHEDULE "C"**  
**TERMS OF PAYMENT**

Invoicing for Contract Price

All invoices for the Services:

- are to be submitted monthly;
- refer to the **purchase order number** that assigned to this work;
- must be submitted according to the detailed breakdown as per the purchase order;
- set out the Consultant's Fee;
- set out the Consultant's GST #.
- provide all necessary documentation to support claims for Reimbursable Expenses.

All original invoices are to be sent directly to the City's Designated Contact.

All invoices are to be paid Net 30 from correct invoice received by the City's Designated Contact.

**SCHEDULE "D"**

**SUBCONSULTANTS AND KEY PERSONNEL**

Key Personnel for the Consultant are:

Subconsultants approved by the City, as the date of execution of this Agreement are:

**[Insert name of all Subconsultants]**

SAMPLE

**SCHEDULE "E"**

**DESIGNATED CONTACT**

Designated Contact I for the City is:

**[Insert name of City primary contact person]**

Designated Contact for the Consultant is:

**[Insert name of Consultant's primary contact person]**

SAMPLE

**SCHEDULE "F"**

**COMPLETION TARGETS OF THE CONSULTANT**

SAMPLE