



REQUEST FOR PROPOSAL NO. PS10051

DEMAND ANALYSIS STUDY FOR CULTURAL PERFORMANCE / EVENT SPACES IN NORTHEAST FALSE CREEK AND HASTINGS PARK

Proposals will be received in the City of Vancouver's ("City's") Purchasing Services Office, 3rd Floor, Suite #320, East Tower, 555 West 12th Avenue, Vancouver, British Columbia, Canada, V5Z 3X7 prior to the Closing Time: 3:00:00 P.M., Purchasing Services Office Clock Time (as defined in Note 2 below), Tuesday, April 13, 2010 and publicly opened and registered at 11:00 Wednesday, April 14, 2010

NOTES:

1. Proposals are to be submitted in sealed envelopes or packages marked with the Proponent's Name, the RFP Title and Number.
2. 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 from 8:30 am to 4:30 pm Vancouver Time and closed Saturdays, Sundays, and holidays.
4. DO NOT SUBMIT BY FAX OR E-MAIL.

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

Eamonn Savage, CPP
Contracting Specialist

FAX: 604.873.7057

E-MAIL: purchasing@vancouver.ca

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1.0 Overview

- 1.1 This Request for Proposal (“RFP”) identifies a business opportunity for the successful Proponent to provide consulting services related to a cultural performance and event demand analysis for two (2) sites within the City of Vancouver (the “City”). The City is requesting Proposals from interested firms with expertise in cultural performance and event venues including demand analysis.
- 1.2 The City is currently pursuing long-range development plans for two (2) key sites within the City:
- a) North East False Creek (“NEFC”) (vancouver.ca/nefc); and
 - b) Hastings Park (vancouver.ca/hastingspark).

Each of these sites provides an opportunity to deliver spaces for cultural performance and event use. Different constraints and opportunities define each site, and each is undergoing an independent planning process.

- 1.3 In considering cultural performance and event space for these two (2) sites, a thorough understanding of demand is required and the successful Proponent’s work on this project will include, but will not be limited to, assisting the City by reporting on the following:
- a) What audience markets might exist for cultural performance and event spaces within the city;
 - b) What the projected demand is for the two (2) proposed spaces including current and future demand, timing, volume, size and type of demand;
 - c) How these two (2) identified sites fit within the context of other performance/event spaces within the city and similar spaces in other cities;
 - d) What attributes should such spaces have to ensure they will be multi-use, dynamic, and sustainable; and
 - e) What operational models exist for cultural performance and event space and what might be the recommended model for these two sites.

While the two (2) sites have different complexities and considerations, there is value in undertaking a combined demand analysis to better understand the market need and opportunity for cultural performance and event space at these two (2) different sites. A goal of the combined demand analysis is to capitalize on efficiencies in data collection and analysis.

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- 1.4 The City will consider Proposals that meet either all or part of the requirements (the "Requirements" as described in Schedule A - Requirements). The successful Proponent will be the Proponent who offers the best value, which will be assessed as a combination of experience and expertise, pricing, scope, duration, level of services offered, and innovation of approach.

2.0 Background

- 2.1 Anticipated uses for the proposed performance/event spaces at NEFC and Hastings Park include, but are not limited to:

- a) Festivals;
- b) Cultural performances (music, theatre, dance, interdisciplinary, media/film);
- c) Civic gatherings and celebrations;
- d) Races, sporting and other events, and
- e) Day-to-day reoccurring passive or un-programmed use such as casual walking, sitting, socializing, and recreation.

*Note, this project does not seek to measure or project passive or day-to-day usage, however if data is available through the comparative analysis, the Consultant will be requested to report on it.

- 2.2 The goals for cultural performance and event spaces at NEFC and/or Hastings Park are:

- a) Sociable, inviting, accessible spaces that provide a year-round destination and access for all;
- b) Spaces that enable dynamic programming and use;
- c) Spaces that are flexible, multi-use (ie. work well for a variety and scale of activities; passive, active and programmed) and multi-disciplinary (ie. used by a broad range of community groups from cultural to sporting, environmental and other);
- d) Spaces that support community and professional events and activities, and free as well as ticketed access;
- e) Sustainable operations, environmentally and organizationally, with key support infrastructure such as power, water, sewer/washrooms, storage and other appropriate back of house systems; and
- f) Spaces that positively impact surrounding spaces, neighbourhoods and communities.

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2.3 Goals for NEFC:

In the fall of 2009, City Council adopted a new “Directions for the Future” Report (“Directions”) for NEFC. This policy report outlined the role for the area, land use mix, built form, density, public open space and parks, public benefits and amenities in NEFC. In summary, the Directions called for:

- a) a high density mixed use neighbourhood built around two existing event venues (BC Place Stadium and GM Place) and a new event venue/civic plaza;
- b) sustainability objectives to assist the City emerging as the Greenest City in the World by 2020;
- c) provision of 1.8 million square feet (“sf”) of ‘job space’;
- d) provision of attractive public open spaces on the waterfront with a high degree of vibrancy and opportunities for a wide array of activities;
- e) provision of approximately four (4) million sf of residential floor space;
- f) introduction of measures to mitigate noise impacts including building design requirement and changes to the Noise Control Bylaw (clearly communicating the special role of the area in the City and the region);
- g) improvements to housing affordability;
- h) provision of housing opportunities for citizens interested in locating in a busy, vibrant area;
- i) encouragement of innovative architecture and built form;
- j) provision of funding for new public amenities and improvements to existing amenities;
- k) improved pedestrian routes; and
- l) support for retention and preservation of heritage buildings.

The vision for the area includes a mix of uses such as retail, restaurants, office, residential and major event venues enabling a high energy and dynamic regional hub for culture, sports, events and entertainment activities. The Directions work also called for the replacement of the existing Plaza of Nations performance space with equal to or better spaces for cultural performance and event activities.

2.4 Goals for Hastings Park/PNE

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One of the key objectives of the Hastings Park Pacific National Exhibition (“PNE”) Master Plan is to transform Hastings Park into a great, regional urban park that is active, green and rebalances the concept to be a “fair within a park” rather than its historic role as a “park within a fairgrounds”. Key to this will be the creation of a year-round, accessible, dynamic destination park that is multi-faceted and multi-purpose. New spaces designed for the park are intended to flex easily between programmed and passive uses, have animated edges with consideration for the interface between buildings and open space, and have performance/event spaces areas that can fluctuate in size.

One of the deliverables of the Hasting Park/PNE Master Plan will be an Illustrated Concept Plan. It will be important for the Plan to demonstrate how the site maximizes the use of open or park space by ensuring that all areas work in a variety of modes; non-program times when passive park uses dominate and times when the PNE fair, festival and special events transform the park into active celebration and event spaces. It will be important to understand the needs of various performance and event programs in developing the concepts for these spaces.

2.5 Purpose

The purpose of this study is to assess the demand for outdoor cultural performance and event spaces at NEFC and Hastings Park. This assessment is to include consideration of the range of performances and events (volume, scale and type) that could be held in a new civic plaza/performance space or various outdoor celebration and event spaces, and the attributes necessary for those spaces and possible associated support spaces to facilitate a sustainable and dynamic cultural performance and event program. Operational considerations are also part of this study.

Information gathered through the NEFC/Hastings Park Performance/Event Space Demand Analysis will be used to inform the next stages of long range planning for both sites.

2.6 Site Description - NEFC Context

NEFC encompasses a large section of land on the north side of False Creek—in the east, located next to designated lands for Creekside Park and in the west, in proximity to the Cambie Bridge. Formerly industrial lands, in 1986, Vancouver hosted Expo 86 on these lands. Although little remains from Expo ‘86 (beyond the facility that is now housing Science World, the BC Enterprise Hall and a semi-defunct Plaza of Nations performance space), the site maintains its identity as central to the entertainment, sports and cultural zone of NEFC.

The structures that comprise the Plaza of Nations, with the exception of Enterprise Hall, were designed as temporary facilities for Expo ‘86. The outdoor performance venue and adjacent structures have been used over the

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years for entertainment and business purposes and are privately owned by Canadian Metropolitan Properties Corp.

In 2006, the glass roof over the performance space in the Plaza was deemed unsafe by the City's Chief Building Official when extensive corrosion was discovered. In January 2007, the City granted a permit to demolish the glass canopy roof and adjacent structures within the Plaza of Nations. Enterprise Hall, home of Edgewater Casino was not affected.

The Terms of Reference for the NEFC High Level Review ("HLR") direct the Plan to "replace the Plaza of Nations public outdoor performance space with an equal or better facility; consider locations in the Plaza of Nations or elsewhere, and create a major civic plaza that will be the premier public gathering space in Vancouver." Since work on the High Level Review began, staff has been evaluating various locations for a new major public open space along the waterfront of NEFC. The current location of Enterprise Hall has been identified as having many desirable location attributes for public open space. Simultaneous to the Demand Analysis study, the Planning Dept will be undertaking a review of the Enterprise Hall to assess its building condition and suitability for adaptive reuse, and/or removal. A decision on the performance/event space will be made by Council following a full evaluation of the Demand Analysis and the feasibility of retaining Enterprise Hall within the context of public objectives for the site.

A site feasibility report on the proposed new Art Gallery site (which includes the Plaza of Nations and Enterprise Hall site) was commissioned by the City and included a Geotechnical Feasibility Study. The Vancouver Art Gallery has since decided not to locate in Northeast False Creek.

2.7 Site Description - Hastings Park Context

Hastings Park has a long history of hosting a variety of events, most notably the Pacific Nation Exhibition (PNE), which in 2010 will have been on-site for 100 years. A complete summary of the history, existing buildings/uses in the Park, and current planning initiatives can be found at vancouver.ca/hastingspark.

In 2007, Council directed City Staff to undertake a Master Plan process for Hastings Park. Since early 2009, Staff and a team of consultants have analyzed the site, developed preliminary planning directions, received feedback from the public, and obtained approval from Council on the Master Plan's key Planning Directions. A complete summary of the Planning Directions approved by Council can be found at vancouver.ca/hastingspark/MasterPlan.htm

There are several key Planning Directions in the Hastings Park/PNE Master Plan that relate to performance space. One of the overall goals of the Plan is to create better pedestrian and bicycle connections to and inside Hastings Park. This is planned to be achieved through: improved street crossings, an overhead pedestrian/bike overpass over McGill to New Brighton Park, new greenways,

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and better transit connections. Access and parking issues will be improved by consolidating parking to the northeast and northwest corners of the site. Miller Drive will be the only access road through the site (providing service access, drop-off area, and potential transit loop) into the site so that the southern portion of the park is pedestrianized.

Additional green space, designed to accommodate a range of flexible uses such as cultural events and passive use will be added to Hastings Park. Playland will be pulled back off Hastings St., creating a corridor of park space along the southern edge of the Park to connect the Sanctuary and Empire Fields. An existing stream that is currently piped under the site to New Brighton Park and the waterfront will be day-lighted and naturalized with landscaping.

Art Deco and Art Modern buildings in Hastings Park (Forum, Garden Auditorium and Rollerland) will be retained, upgraded and integrated into the program of the park and PNE. The plan also contemplates re-instating the importance of the Livestock Building as an exhibition and celebration hub of Hastings Park. This building will be retro-fitted for flexible interior use and large overhead doors added to provide access to a new hard-surface Festival Plaza (currently a parking lot). This retrofit will allow indoor events such as music concerts, multicultural celebrations, and farmers markets to also spill outdoors. In the long-term, a new 150,000 sq. ft. multi-purpose building is being considered for construction between the Agrodome and Rollerland for year-round Fair, festival, commercial and community uses.

In early 2009, several site analysis reports on Hastings Park's open spaces, PNE, Fair, Playland and market opportunities were conducted. These are all available on the City's website and are described in brief below.

- a) The Open Space Report summarizes the existing physical conditions of Hastings Park, as well as the connections and context at both a local and City-wide level. Details of the report are available at the following website: <http://vancouver.ca/pnepark/pdf/masterplan/openspaceanalysis.pdf>
- b) The PNE, Fair, and Playland Report provides a brief overview of the evolution of the PNE, Playland, and Park components and a summary of the studies and planning efforts of the past 30 years. The report provides extensive survey and inventory of current activities, parking, circulation, Playland and building capacity and utilization, all in both the non-Fair and Fair periods. Details are available at the following website: <http://vancouver.ca/pnepark/pdf/masterplan/PNEFairPlayland.pdf>
- c) The Market Review and Opportunities Report focuses on the current user group types and space requirements, reviews local growth factors, attendance and revenue, provides an overview of competitive facilities, and provides a series of emerging activity opportunities. The report can

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be viewed at the following website:
<http://vancouver.ca/pnepark/pdf/masterplan/marketreview.pdf>

The detailed Master Plan process is currently underway and the project team will provide the most up-to-date concept plans of the proposed changes to the site to the successful Proponent.

3.0 Objectives

- 3.1 The purpose of this RFP is to select a Proponent(s) with the capability and experience to efficiently and cost-effectively supply the RFP Requirements as set out in Schedule A - Requirements. The Requirements stated in this RFP are as envisioned by the City at the time of writing, but may change or be refined in the course of the evaluation and award process.

4.0 Contractual Requirements

- 4.1 A sample of the City's Professional Services Agreement outlining the City's contractual requirements for payment, deliverables, professional liability, insurance, WorkSafeBC coverage and compliance, change orders, and all other relevant business issues and risk allocations is attached as Appendix 3. Proponents are requested to review and confirm as part of their Proposal that they are agreeable to and can meet the requirements of all of the terms of the sample Professional Services Agreement or if they consider any part of the sample Professional Services Agreement to be inconsistent with their Proposal, to suggest alternative contractual language in Schedule C - Deviations and Variations.

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

1.0 Administrative Requirements

- 1.1 It is the sole responsibility of all Proponents to check the City's website at: <http://www.vancouver.ca/fs/bid/bidopp/openbid.htm> regularly for amendments, addenda, and questions and answers to this RFP.
- 1.2 Proponents are to submit their Proposal in accordance with instructions identified on the cover page and as provided within this Part B.

2.0 Conduct of RFP - Inquiries and Clarifications

- 2.1 The City's Manager of Supply Management will have conduct of this RFP, and all communications are to be directed only to the contact person named on the cover page.
- 2.2 It is the responsibility of all Proponents to thoroughly examine these documents and satisfy themselves as to the full requirements of this RFP. Inquiries are to be in written form only e-mailed to purchasing@vancouver.ca or faxed to 604.873.7057 to the attention of the contact person shown on the cover page no less than five (5) Business Days prior to the Closing Time. If required, an addendum will be issued and posted on the City's website.

3.0 Contract Requirements

- 3.1 The term of the Contract shall be as per timeline set out in the sample agreement attached as Appendix 3 - Article 12.
- 3.2 Where the head office of the successful Proponent is located within the City of Vancouver and/or where the successful Proponent is required to perform any work at a site located within the City of Vancouver, the successful Proponent is required to have a valid City of Vancouver business license prior to Contract execution.
- 3.3 The successful Proponent will be requested to enter into a Contract substantially in accordance with the sample agreement provided as Appendix 3. If any of the terms set out in the sample agreement are unacceptable to the Proponent, the Proponent should identify such terms and provide suggested alternatives in its Proposal Form (Schedule C - Deviations and Variations).
- 3.4 While the City is not obligated to accept any alternatives, deviations or variations to the sample Professional Services Agreement, all suggested alternatives will be considered during the evaluation process, but may or may not be acceptable to the City.

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4.0 Pricing

- 4.1 Prices quoted are to include all fees and disbursements.
- 4.2 Prices quoted are to be exclusive of GST and PST, except where expressly requested.
- 4.3 Pricing shall be held firm for the term of the Contract, unless otherwise expressly agreed to by the City.
- 4.4 Prices are to be quoted in Canadian currency.

5.0 Consortium Proposals

- 5.1 The City will consider 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 RFP, provided they disclose the names of all members of the joint venture or consortium and all members sign the Proposal Form. While the City will 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.
- 5.2 A single person or company is to be identified as the Key Contact Person on the Proposal Form (Part C), and be prepared to represent the consortium to the City. The Key Contact Person will serve as the primary contact and take overall responsibility for all communications with the City during the Proposal submission, evaluation, and any negotiation process.
- 5.3 Consortium Proposals are to include proposed contract language describing each consortium member's roles and responsibilities and the proposed legal contract structure.
- 5.4 The City reserves the right to accept or reject any consortium as proposed or choose to negotiate a contract with individual consortium members separately, or to negotiate for the selection of one consortium member as a prime contractor with the other members acting as Sub-contractors or Sub-consultants. Each component of the consortium Proposal should be priced out individually.

6.0 Submission of Proposal

- 6.1 Proponents are to submit four (4) hard copies of their Proposal in three-ring binders, with each section tabbed and including all accompanying schedules, appendices and addenda each binder. Proponents should also submit one (1) electronic copy of their Proposal in the same format described above on CD. All copies are to be submitted in a sealed envelope or package marked with the

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Proponent's name, the RFP title and number, prior to the Closing Time set out on the date and at the location shown on the title page of this RFP.

- 6.2 Only the English language may be used in responding to this RFP.
- 6.3 Proposals received after the Closing Time or in locations other than the address indicated, may or may not be accepted and may or may not be returned.
- 6.4 Amendments to a Proposal are to be submitted in writing in a sealed envelope or package, marked with the Proponent's name and the RFP title and number.
- 6.5 Proposals may be withdrawn at any time before or after the Closing Time and are to be withdrawn by written notice delivered to the office of the Purchasing Office, #320-555 West 12th Ave., East Tower, V5Z 3X7 and signed by the authorized signatory for the Proponent.
- 6.6 All costs associated with the preparation and submission of the Proposal, including any costs incurred by the Proponent after the Closing Time, will be borne solely by the Proponent.

7.0 Format of Proposal

- 7.1 Unnecessarily elaborate Proposals, beyond that sufficient to present a complete and effective response, are not required and unless specifically requested, the inclusion of corporate brochures and narratives are discouraged.
- 7.2 Proponents should complete all forms included in this RFP, attaching any additional appendices that may be required. Proposals are to be arranged as follows:
 - a) **Title Page:** The title page will show the RFP title and number, Closing Time and Date, Proponent name, address, telephone number and the name and title of the contact person.
 - b) **Executive Summary:** A short summary of the key features of the Proposal demonstrating the Proponent understands the scope of the Requirements.
 - c) **Proposal Form:** The Proponent is to complete the Proposal Form and attached Attachment A - Legal Terms and Conditions included in this RFP in accordance with the instructions.
 - d) **Required Documents:** The Proponent is to attach any required documents described in Section 1.0 - Required Documents of the Proposal Form.
 - e) **Schedules:** The Proponent is to complete and provide the information within the respective schedules included in this RFP. If additional space

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is required to respond to the requirements as outlined, then additional pages can be attached.

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

8.0 Bid and Performance Security

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

9.0 Conflict of Interest

- 9.1 Proponent's are to ensure that:

- a) any and all conflicts or potential conflicts;
- b) any and all collusion, or appearance of collusion; and
- c) any and all corporate, individual and other entities affiliated with the Proponent who are registered as lobbyists under any lobbyist legislation in any jurisdiction in Canada or the United States of America, are fully and properly disclosed in Section 6.0 of Part C - Attachment A - Legal Terms and Conditions.

- 9.2 Failure to disclose this information may result in the rejection of the Proposal, the associated entity's Proposal, and/or the immediate cancellation of any contract should one be awarded in reliance on the information contained in the submitted Proposal.

- 9.3 If any director, officer, employee, agent or other representative of a Proponent makes any representation or solicitation to any officer, employee, agent or elected official of the City with respect to its Proposal, whether before or after the submission of the Proposal, the City will automatically disqualify such Proponent.

10.0 Opening of Proposals

- 10.1 The City reserves the right to open all Proposals in a manner and at the time and place determined by the City.

11.0 Evaluation of Proposals

- 11.1 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 set out herein including, but not limited to:

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- a) the Proponent's ability to meet the Requirements and the cost /expense for same;
 - b) proven experience in delivering a similar scope of work including experience and involvement of the firm's principal and other personnel assigned to the project;
 - c) the Proponent's ability to deliver the Requirements when and where required;
 - d) the proposed plan of approach and work schedule;
 - e) compliance with the City's insurance requirements;
 - f) the Proponent's business and technical reputation and capabilities; experience and where applicable, the experience of its personnel, financial stability, track record, and references of current and former customers;
 - g) environmental issues considered by the Proponent;
 - h) quality of Proposal, including any innovative concepts; and
 - i) any other criteria set out in the RFP or otherwise reasonably considered relevant.
- 11.2 The City may elect to short list Proponents in stages as deemed necessary.
- 11.3 Short-listed Proponents may be asked to provide additional information or details for clarification, which may include attending interviews, making a presentation, supplying sample drawings, performing demonstrations, and/or furnishing additional technical data.
- 11.4 The City may request than any or all Sub-contractors of the Proponent undergo the same evaluation process.

12.0 Proposal Approval

- 12.1 Proposal approval is contingent on funds being approved and the Proposal being approved by Vancouver City Council. Only then may the successful Proponent and the City proceed to settle, draft and sign the necessary legal agreement.
- 12.2 Proponents should note that internal award authority must be obtained prior to awarding of a Contract. The maximum fees for this consultancy are anticipated to be forty five thousand dollars (\$45,000.00) Canadian and including GST and all disbursements.

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- 12.3 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.
- 12.4 The City is not under any obligation to approve any Proposal and may elect to terminate this RFP at any time.
- 12.5 Notwithstanding any other provision in the RFP documents, the City has in its sole discretion, the unfettered right to:
- a) accept any Proposal;
 - b) reject any Proposal;
 - c) reject all Proposals;
 - d) accept a Proposal which is not the lowest Proposal;
 - e) accept a Proposal that deviates from the Requirements, Specifications or the conditions specified in this RFP;
 - f) reject a Proposal even if it is the only Proposal received by the City;
 - g) accept all or any part of a Proposal; and
 - h) split the Requirements between one or more Proposals.

13.0 Quantities - Intentionally Omitted

14.0 Brand Names - Intentionally Omitted

15.0 Alternate Solutions

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

16.0 Environmental Responsibility

- 16.1 The City is committed to preserving the environment. Proponents are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Consultant supplies materials, and where such materials may cause adverse effects, the Proponent is to indicate the nature of the hazard in its Proposal.
- 16.2 The Proponent is to advise the City of any known alternatives or substitutes for such materials that would mitigate the effects of any adverse conditions on the environment.

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17.0 Freedom of Information and Protection of Privacy Act

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

18.0 Confidentiality

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

18.2 This RFP is the property of the City. Copies may not be made or distributed without the prior written approval of the City's Manager of Supply Management.

19.0 Advertising

19.1 The approval of any Proposal and the signing of an Agreement does not allow a Proponent to advertise its relationship with the City, nor with the 2010 Olympics, in any way without the City's prior written authorization.

20.0 Non-Resident Withholding Tax

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

21.0 Legal Terms and Conditions

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

**REQUEST FOR PROPOSAL NO. PS10051
DEMAND ANALYSIS STUDY FOR CULTURAL PERFORMANCE / EVENT SPACES IN
NORTHEAST FALSE CREEK AND HASTINGS PARK
PART C - PROPOSAL FORM**

Proponent's Name: _____
"Proponent"

Mailing Address: _____

Cheque Payable/Remit to Address: _____

Telephone No.: _____ Fax No.: _____

Key Contact Person: _____ E-mail: _____

GST Registration No.: _____ Incorporation Date: _____

City of Vancouver Business License Number: _____
(If your office is located in Vancouver or N/A if not applicable)

WorkSafeBC Account Number: _____

Dunn and Bradstreet Number: _____
(or N/A if not applicable)

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

To the City of Vancouver Supply Management Department,

The Proponent, having carefully examined and read the RFP, including the sample Professional Services Agreement and its Appendices (if any), now submits the following Proposal:

1.0 Required Documents

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

Description	Required	Received
Certificate of Existing Insurance (Appendix 1)	Yes	
Letter from insurance broker or agent as per Schedule A - Section 9.1	Yes	

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To be initialled at Proposal Opening:

Manager, Supply Management or designate

Witness

2.0 Proponent's Declaration and Acknowledgment

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

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

Authorized Signatory for the Proponent

Date

Name and Title (*please print*)

REQUEST FOR PROPOSAL NO. PS10051
DEMAND ANALYSIS STUDY FOR CULTURAL PERFORMANCE / EVENT SPACES IN
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PART C - ATTACHMENT A - LEGAL TERMS AND CONDITIONS

1.0 LEGAL TERMS AND CONDITIONS OF PROPOSAL PROCESS

1.1 Application of These Terms and Conditions

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

1.2 Definitions

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

- a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- b) "Contract" means any legal agreement, if any, entered into between the City and the successful Proponent following the conclusion of the RFP process, approval of the Contract by City Council, and the settlement, execution and delivery of same by each party to the Contract.
- c) "Losses" means in respect of any matter all
 - i) direct or indirect, as well as
 - ii) consequential,claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- d) "Project" means the RFP "No. PS10051 Demand Analysis Study for Cultural Performance / Event Spaces in Northeast False Creek and Hastings Park".
- e) "Proponent" means the legal entity(ies) who has (have) signed and delivered this Proposal Form, and "proponent" means any proponent responding to the Instructions to Proponents, excluding or including the Proponent, depending on the context.
- f) "Proposal" means the package of documents consisting of this Proposal Form, as well as all Schedules, once completed and submitted to the City by the Proponent, and "proposal" means any proposal submitted by any other proponent, excluding or including the Proponent, depending on the context.

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- g) "RFP" means the documents issued by the City as Request for Proposal No. PS10051 including all addenda.
- h) "Services" means the services and work noted in Section 6.0 Project Tasks and Section 7.0 Communications of Schedule A - Requirements, that the Consultant will provide under the Contract.
- i) "Sub-contractors" includes any or all third parties listed in Schedule D of this Proposal Form.

All other terms (capitalized or not) have the meanings given to them in the RFP.

2.0 GENERAL TERMS AND CONDITIONS OF PROPOSAL PROCESS

2.1 No Legal Obligation Assumed by City

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

2.2 Legal Rights and Obligations Suspended

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

a) No Duty

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

b) Proponent's Risk

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

- i) a contract or tort law duty of care, fairness, impartiality or procedural fairness in the proposal process; or

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ii) any contract or tort law duty to preserve the integrity of the RFP process,

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

c) **Proponent's Cost**

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

3.0 EVALUATION OF PROPOSALS

3.1 Compliance/Non-Compliance

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

3.2 Reservation of Complete Control over Process

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

3.3 Discussions/Negotiations

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

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4.0 PROTECTION OF CITY AGAINST LAWSUITS

4.1 Release

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

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

4.2 Indemnity

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

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

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- c) liability on any other basis related to this RFP or the proposal process.

4.3 Limitation

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

4.4 Dispute Resolution

Any dispute relating in any manner to this RFP or the proposal process (except only and to the extent that the City breaches Section 4.3 - Limitation, Section 4.4 - Dispute Resolution, Section 5.2 - Proponent's Submission Confidential, or Section 5.5 - Declaration of Confidentiality, and also excepting any disputes arising between the City and any Proponent with whom the City has entered a Contract) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- a) The arbitrator will be selected by the City's Director of Legal Services.
- b) This Section 4.0 - Protection of City against Lawsuits will:
 - i) bind the City, Proponent and the arbitrator; and
 - ii) survive any and all awards made by the arbitrator.
- c) The Proponent will bear all costs of the arbitration.

5.0 ACCESS/OWNERSHIP OF PROPOSAL INFORMATION

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

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

5.2 Proponent's Submission Confidential

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

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

5.3 All City Data/Information is Confidential

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

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

5.4 Disclosure Requires Prior Consent

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

5.5 Declaration of Confidentiality

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

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

6.0 DECLARATION - NO CONFLICT OF INTEREST / NO COLLUSION

6.1 Declaration as to no Conflict of Interest in RFP Process

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

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

except as set out below:

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

6.2 Declaration as to no Conflict of Interest Respecting Proposed Services

The Proponent now confirms and warrants that neither the Proponent nor its proposed Sub-contractors

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- a) are currently engaged in providing (or are proposing to provide) demand analysis for cultural performance and event venues of any kind to the Federal Government, Provincial Government, the Greater Vancouver Regional District (also known as Metro Vancouver), or any member local governments of Metro Vancouver,
 - i) such that entering into the Professional Services Agreement pursuant to this RFP would create a conflict of interest or the appearance of conflict of interest between the Proponent's duties to the City and the Proponent's or its Sub-Contractors' duties of loyalty to the organizations noted in (a) above, except as set out below:

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

6.3 Declaration as to Collusion

The Proponent now confirms and warrants that:

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

except as set out below:

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

6.4 Declaration as to Lobbyist Status

The Proponent now confirms and warrants that neither it nor any officer, director, shareholder, partner, or employee of the Proponent or any of its proposed Sub-Contractors is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America, except as set out below:

[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any or all lobbyist registrations of the type described above]

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7.0 NO PROMOTION OF OLYMPIC RELATIONSHIP

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

8.0 SURVIVAL/LEGAL EFFECT OF PROPOSAL CONTRACT

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

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

Authorized Signatory for the Proponent

Date

Name and Title (*please print*)

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SCHEDULE A - REQUIREMENTS**

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

1.0 Company Profile

- 1.1 Provide a description of the Proponent's company, purpose and history of successes including number of years in business, major projects, and what is most responsible for the Proponent's success to date. Include a company brochure or resume for each member of any consortium as well as each key personnel employed by any named proposed Sub-contractor to the Proponent.

2.0 Key Personnel

- 2.1 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.
- 2.2 Include a list of at least three (3) relevant and successfully completed projects, with references and telephone numbers for each. By submitting a Proposal, the Proponent consents to the City contacting these references at its discretion, and consents to the City also contacting any other organization for the purposes of evaluating the Proposal.
- 2.3 Include an organization chart for the Proponent's proposed Project team, identifying the team leader or project manager, and all roles and areas of responsibility.
- 2.4 Preference will be given to Proponent's consulting teams that demonstrate knowledge and experience involving demand analysis for cultural performance and event venues. Proponents must state the knowledge and experience of each proposed team member. For team members with limited or no knowledge and experience, Proponents must describe these team members' roles in the Project, and how the rest of the team will support these team members.

3.0 Project Timeline

- 3.1 Proponents should develop a schedule to ensure that the Project is completed by July 30, 2010.
- 3.2 No additional payments will be made to the Consultant as a result of any delays in implementing the Project.

4.0 Requirements Overview

- 4.1 The City has identified key requirements, which the Proponent is to address in its Proposal.

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SCHEDULE A - REQUIREMENTS

- 4.2 Although it is necessary that the Proponent submit a detailed response to the following requirements, including, but without limitation to, a work program and maximum total fee for the scope of services described in this RFP, the City is interested in Proposals that will add value to the Project. Innovative ideas will be favourably considered in evaluating all Proposals.

5.0 General Methodology and Work Program

- 5.1 Section 6.0 - Project Tasks describes the scope of the Proponent's work for the Demand Analysis Study for Cultural Performance / Event spaces in North East False Creek and Hastings Park as contemplated by the City. Proposal submissions should comment on the scope of work, indicate any proposed changes, and outline the resources expected to be devoted by the Consultant.
- 5.2 Proponents are to provide a detailed plan of approach and description of the services proposed, including the details of the services, if any, that the Proponent intends to obtain by using Sub-contractors.
- 5.3 Proponents are to include in their Proposal an itemized work program grouped by Project Task (as hereinafter defined) with a description of each task and City approval proposed. Project Tasks must include all of the tasks outlined in Section 6.0 below. Activities identified in this section should be carried forward to a Gantt chart and task/cost schedule, to be included in the "Schedule and Financial Proposal" sections of the submission.
- 5.4 In the Proposal, the Proponent should provide the following:
- a) A breakdown of the sub-tasks necessary to complete each of the Project Tasks as described in Section 6.0 and a detailed plan of approach and description of the services proposed;
 - b) A work schedule outlining milestone dates for completion of each sub-task and each Project Task as described in Section 6.0, as well as all dates of meetings, workshops and consultations described in this RFP or referred to in the Proponent's Proposal. The work schedule should incorporate a two week review period for City staff to provide comments on draft versions of all deliverables;
 - c) A description of the methods to be employed to perform and co-ordinate the work, and to control the scope, quality, schedule and cost of the services provided by the Consultant for the Project; and
 - d) A brief indication of special challenges or considerations foreseen by the Proponent and proposed solutions for each.
- 5.5 Proponents are to identify activities that the City is expected to undertake in the description of each Project Task.

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- 5.6 The following will be provided to the successful Consultant:
- a) Start up meeting and site tour with Cultural Services and Planning staff;
 - b) Access to the property background and data on past usage of Plaza of Nations event space by Daison Gee-Wing (Canadian Metropolitan Properties Corp.);
 - c) False Creek North Official Development Plan (1990), Northeast False Creek Urban Design Plan (2001) and NEFC: Directions for the Future document (2009) (Planning Dept);
 - d) Plaza of Nations Statement of Significance (Planning Dept);
 - e) Northeast False Creek Site Feasibility / Assessment (Henriquez Partners, et al.);
 - f) False Creek North: Land Use Policy for Special Events, Festivals and Entertainment Functions (2005);
 - g) Background studies on event/performance space at NEFC (Peter Giles, Bob Eberle, Phillips, Farevaag, etc) (Cultural Services);
 - h) Event/Performance research, Roy Yen (Cultural Services);
 - i) NEFC Event/performance data projections (Cultural Services);
 - j) Event/performance usage data (Board of Park and Recreation);
 - k) Event/performance usage data (Film and Special Events office);
 - l) Vancouver Cultural groups contact information (Cultural Services); and
 - m) Hastings Park Specific Resources:
 - i) Open Space Analysis Report (Phillips Farevaag Smallemberg);
 - ii) PNE, Fair, and Playland Facilities Report (Economic Research Associates);
 - iii) Market Review and Opportunities Report (Forrec Ltd.);
 - iv) Heritage Building Assessment Report (Robert Lemon);
 - v) Previous Hastings Park/PNE Master Plan Council Reports;
 - vi) Site plans of Hastings Park (in Autocad format) and;

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- vii) Draft illustrative concept plans for the Hastings Park/PNE Master Plan.

5.7 In addition to the Project Tasks as outlined in Section 6.0 the Consultant will be required to:

- a) Communicate regularly and meet as needed with the Project Manager to report progress and seek direction;
- b) Attend a NEFC and Hastings Parks technical team meeting to explain findings and provide advice (maximum four (4) team meetings); and
- c) Meet with Stakeholder groups and individuals.

5.8 Proponents are required to state deviations from the scope of services specified in these RFP documents.

6.0 Project Tasks

The following are the specific issues that the City requires the Consultant to investigate as part of the Project to be provided by the Consultant. These issues are the Project Tasks (the "Project Tasks", individual "Project Task"), and the City expects that completing each Project Task will require a combination of review of existing data, field investigations, and analysis.

Each Project Task should be considered a project milestone. Draft conclusions for each Project Task are to be provided to the City in writing once the Project Task has been completed. Some of the Project Tasks may need to be completed sequentially, while others do not rely on the results of other Project Tasks and can be completed in parallel.

In their Proposal, the Proponent should state their understanding of the Project Tasks and comment on the feasibility of meeting the City's objectives and requirements.

The following sections describe specific issues that have been identified by the City and the City's consultants for review by the Proponent as part of this Project.

6.1 Scope of Work and Study Approach

- a) Phase I - Demand/Market Analysis:

Questions that the Consultant will be required to answer include, but are not limited to the following:

- i) What audience markets are anticipated to make use of cultural performance and events spaces at NEFC or Hastings Park? Including:
 - A) Overview of available markets (resident and visitor); and

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- B) Economic and demographic profiles and trends.
- ii) What is the demand for cultural performance and event spaces in NEFC and Hastings Park vis a vis development plans for the areas? Including:
 - A) Current demand;
 - B) Potential future demand; and
 - C) Timing, volume, size and type of demand (ie. Seasonal use, volume of use, size of events/performance, types of performance/events including community and professional) taking into consideration base attributes of the two sites including scale, transportation access and neighbourhood adjacencies issues.
- iii) How does the projected demand for a cultural performance and event space at NEFC or Hastings Park fit within the context of other performance/event spaces in other areas of the City and similar spaces in other cities? Including:
 - A) Analysis and comparison of local competitive market including public plazas and street usage; and
 - B) Analysis and comparison against similar spaces in other cities.
- iv) Based on the demand profile, what attributes would a NEFC or a Hasting Park performance/event space require? Including
 - A) Facility concepts;
 - B) Potential site issues;
 - C) Front and back of house specifications for audience, performer, presentation, support spaces; and
 - D) Comparison of key attributes by type of use (event or performance) and size (small, medium and large).
- v) Where applicable, Consultants will be requested to separate recommendations for NEFC and Hastings Park so that they may be reported on independently.
- b) Phase II - Operational Analysis:

Questions that the Consultant will be required to answer include, but are not limited to the following:

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- i) Based on an analysis (strengths/weaknesses) of various operational models at other City sites and other comparable sites in other cities, what are the options and the recommended models for the operation of a performance/event space in NEFC and in Hastings Park? Including:
 - A) Governance;
 - B) Operational considerations including personnel and volunteer needs;
 - C) Non profit / community involvement;
 - D) Lead organizations/champions;
 - E) Projected utilization and growth rates;
 - F) Financial/business analysis for five (5) year projected operating costs including start-up;
 - G) Financial/business analysis for capital infrastructure costs including benchmark square foot projected cost for event space vs performance space^{*1}; and
 - H) *Private/public support required.
 - ii) Consultants will be requested to separate recommendations for NEFC and Hastings Park so that they may be reported on independently.
- c) Deliverables:
- i) Preparation:
 - A) Review background materials;
 - B) Review and refine the Statement of Work; and
 - C) Prepare a work plan.

The Consultant should plan on consultation with stakeholders including City staff and arts/culture/event groups. Contact information for stakeholder groups and individuals will be provided to the successful Consultant.

- ii) Phase I - Demand/Market Analysis:

¹ Further detailed costing will be completed at a later stage once detail conceptual plans are prepared (not part of this RFP)

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- A) Preliminary report on audience markets, cultural performance and event space demand and comparative analysis of similar spaces in Vancouver and elsewhere with reference to variations per site (if any); and
 - B) Based on the outcome of #1, a report recommending front and back of house attributes and specifications for both sites.
- iii) Phase II - Operational Analysis:
- A) preliminary report on operational models and issues;
 - B) Based on the outcome of #3, a report recommending models of operation for both sites;
 - C) Draft final report; and
 - D) Final report.

6.2 Health and Safety

The Consultant will be responsible for the health and safety of all the Consultants' and Sub-contractors' staff, either directly or indirectly. The Consultant will develop a health and safety plan for the Project and specify health and safety requirements.

6.3 Project Wrap-Up Report

- a) Once all investigations and analysis are completed, the Consultant will be required to prepare a detailed Project Wrap-Up Report. The Project Wrap-Up Report will at a minimum include:
 - i) summaries of Project Tasks and all investigations and findings;
 - ii) a detailed photographic log of the Project;
 - iii) a summary and explanation of all Project expenditures compared to the budget;
 - iv) a detailed written summary of the Project; and
 - v) Appendices.
- b) The Consultant will be required to provide to the City:
 - i) three (3) copies of the draft Project Wrap-Up Report for the City's review and recommendations regarding revisions/changes;

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- ii) five (5) copies of the final Project Wrap-Up Report;
- iii) one (1) electronic copy (in both Word and pdf format) of the final Project Wrap-Up Report;
- iv) one (1) electronic copy (in AutoCAD format) of all plans and drawings, if applicable; and
- v) graphics such as maps, drawings, photos and images as necessary should provided as separate electronic files in JPEG format.

7.0 Communications

- 7.1 The Consultant will provide regular updates to the City's Project Manager throughout the Project. These updates will be through various means including phone conversations, written communications, face-to-face meetings and the like.
- 7.2 For all meetings, the Consultant will be required to prepare written meeting minutes for the City's review prior to distribution to participants.
- 7.3 The Consultant will provide written results of each Project Task to the City for approval prior to proceeding to the next Project Task, unless otherwise agreed to in writing by the City.
- 7.4 For the duration of the Project, the Consultant must maintain a Project website or ftp site with access limited to Project participants, with all relevant Project information.

8.0 Value Added Services

- 8.1 Within its response to Schedule A, the Proponent has the opportunity to offer and describe any value added services, products or items not specifically asked for and detail as to what the Proponent is prepared to supply as part of the Contract. Unless otherwise stated, it is understood that there are no extra costs for these services; however, if there are any additional costs pertaining thereto, the summary and explanation of those costs should be appended to the Schedule B - Pricing Sheet.

9.0 Insurance Requirements

- 9.1 Proponents are to submit with their Proposals a Certificate of Existing Insurance (in the form set out as Appendix 1) 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 requirements set out in this section should they be selected as the successful Proponent.

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9.2 The successful Proponent will be required to file certificates of insurance with the City showing proof of all insurance requirements described utilizing the "General Certificate of Insurance" attached as Appendix 2. These certificates must be received and reviewed and approved by the City prior to or concurrently with the City entering into any Contract with the successful Proponent.

9.3 Required Types/Amounts

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

a) a Comprehensive General Liability insurance policy with limits of not less than \$2,000,000 per occurrence, and a deductible of not more than \$5,000, protecting the Consultant and Consultant's Personnel against all claims for personal injury, death, bodily injury or property damage arising out of the operations of the Consultant or the actions of the Consultant or Consultant's Personnel. The policy will contain a cross liability clause in favour of the City and will name the City and City's Personnel as additional insured.

9.4 Required Policy Terms

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

- a) be obtained and issued by insurance companies authorized to carry on business in British Columbia, on terms satisfactory to the City's Director of Risk Management,
- b) be primary insurance in respect to the City and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute to such policies,
- c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least thirty (30) days' prior written notice by registered mail,
- d) contain a clause that waives the insurer's right of subrogation against the City and City's Personnel.
- e) 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.
- f) Neither the providing of insurance by the Consultant or Sub-Consultants in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be

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held to relieve the Consultant from any other provisions of the Contract Documents with respect to liability of the Consultant or otherwise.

9.5 Insurance Certificate

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

9.6 Sub-Consultant's Insurance

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

10.0 WorkSafeBC Requirements

10.1 Maintain Coverage - General

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

10.2 Provide Evidence of Coverage - General

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

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

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requirements.

11.0 Dun & Bradstreet

11.1 The Consultant should provide the City with the Consultant's D-U-N-S registration number.

12.0 References

12.1 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. The Proponent may, at its own discretion, expand on the number of references and information that it deems necessary to support its Proposal. 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.

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

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SCHEDULE B - PRICING**

1.0 Pricing

1.1 The Proponent should provide the following information:

- a) a total maximum fee for the Services, inclusive of all disbursements and taxes (except GST, which is to be shown separately), showing all costs associated with the Project Tasks and deliverables as outlined in Schedule A - Requirements;
- b) the hourly charge out rates for Project team members;
- c) a breakdown of the total maximum Project fee into the costs associated with each team member, inclusive of fees, disbursements and taxes (except GST);
- d) a description of all disbursements, including a maximum amount for each;
- e) a description of all costs associated with Sub-contractors; and
- f) a description of all costs, organized as above, for any additional proposed scope of work related to this Project. For example, where additional meetings are requested by the City, describe how these would be charged to the City.

1.2 The Proponent should copy and customize the Pricing Table set out below for inclusion in their RFP submission:

Estimated Fees/Disbursements						
Work Task/Phase/ Deliverable	Team Members	Activity/Role	Estimated Hours	Hourly Rate	Estimated Fee	Estimated Disbursements
Maximum Fees/Disbursements (Proponents to note Article 5.0 [Appendix 3, Basis of Payment] Maximum Price Limits)						

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SCHEDULE B - PRICING

2.0 Terms of Payment

2.1 The City's standard payment terms are Net 30 days after receipt of approved invoice; however 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.

A cash discount allowance of _____% will be allowed if accounts are:

(a) paid within _____ days; or

(b) paid by the _____th of the month following.

(a) or (b) shall be clear days from date of acceptance by the City, or receipt of invoice by the City, whichever is later.

(15th of the month following, or later is preferred by the City).

2.2 Describe if Electronic Funds Transfer (EFT) is available.

3.0 Alternative Pricing Solutions

3.1 Proponents may offer alternative pricing options.

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SCHEDULE C - DEVIATIONS AND VARIATIONS**

Proponent(s) should use this Schedule C to detail any deviations and/or variations from the terms and conditions set out in this RFP and if applicable, detail proposed amendments.

Where the Proponent is proposing the use of contract language or clauses other than those set out in the sample Professional Services Agreement (Appendix 3), such clauses should be attached to this Schedule C. The City will assume such clauses are in addition to those in the sample Professional Services Agreement unless otherwise indicated by the Proponent.

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 SCHEDULE D - SUB-CONTRACTORS**

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

The City reserves the right to object to any of the Sub-contractors listed in a Proposal. If the City objects to a listed Sub-contractor then the City will permit a Proponent to, within seven (7) calendar days, propose a substitute Sub-contractor acceptable to the City. A Proponent will not be required to make such a substitution and, if the City objects to a listed Sub-contractor, the Proponent may, rather than propose a substitute Sub-contractor, consider its Proposal rejected by the City and by written notice withdraw its Proposal.

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

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



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

Appendix 1

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.

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

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



APPENDIX 2
GENERAL CERTIFICATE OF INSURANCE

RFP PS10051

Section 8 b) – City staff to select the required # of days Written Notice before sending the certificate out for completion
 Section 2 through 6 – 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 policies as listed herein have been issued to the Named Insured(s) and are in full force and effect as of the effective date of the agreement described below.

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

MAILING ADDRESS: _____

LOCATION ADDRESS: _____

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

3. **PROPERTY INSURANCE** naming the City of Vancouver as a Named Insured and/or Loss Payee with respect to its interests and shall contain a waiver clause in favour of the City of Vancouver.
 (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:

<input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Products and Completed Operations <input checked="" type="checkbox"/> Cross Liability or Severability of Interest <input checked="" type="checkbox"/> Employees as Additional Insureds <input checked="" type="checkbox"/> Blanket Contractual Liability <input checked="" type="checkbox"/> Non-Owned Auto Liability	LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)
INSURER: _____	Per Occurrence: \$ _____
POLICY NUMBER: _____	Aggregate: \$ _____
POLICY PERIOD: From _____ to _____	All Risk Tenants' Legal 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**

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

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

8. **POLICY PROVISIONS:**
 Where required by the governing contract, agreement, lease, permit or license, it is understood and agreed that:

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

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

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

Dated: _____

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made as of the [day] day of [month, year] (the "Effective Date")
BETWEEN:

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

(the "City")

AND:

[CONSULTANT NAME AND ADDRESS]

(the "Consultant")

(the City and the Consultant are hereinafter sometimes referred to individually as "Party"
and collectively as "Parties")

BACKGROUND:

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

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

ARTICLE 1 INTERPRETATION

1.1 In this Agreement, including the recitals, schedules and appendices to this Agreement, the following words and terms, unless the context otherwise requires, shall have the meanings set out below:

1.1.1 "Agreement" means this Professional Services Agreement inclusive of all schedules, appendices or exhibits attached hereto, as amended from time to time;

1.1.2 "Applicable Laws" means all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Consultant, any Sub-contractor and the Services, including the Vancouver Building By-law, the British Columbia Building Code, and the British Columbia Fire Code, all as may be in force from time to time;

- 1.1.3 "City's Site" means any land and/or premises owned by the City on which or in respect of which the Services are performed by the Consultant;
- 1.1.4 "City's Project Manager" means the City's employee, or his/her delegate, who is authorized in writing to deal with the Consultant on behalf of the City in connection with the Services, or to make decisions in connection with this Agreement;
- 1.1.5 "Confidential Information" has the meaning set out in Article 15;
- 1.1.6 "Contract Documents" means this Agreement, the Proposal and the RFP;
- 1.1.7 "Deliverables" has the meaning set out in Article 17;
- 1.1.8 "GST" means the goods and services tax administered under the Excise Tax Act (Canada) and any successor tax or levy therefor in force from time-to-time, including for further certainty any increased GST pursuant to any harmonized sales tax legislation;
- 1.1.9 "Project Team" has the meaning set out in subsection 2.2.3;
- 1.1.10 "Proposal" means the proposal submitted by the Consultant in response to the RFP, a copy of which is attached hereto as Appendix B;
- 1.1.11 "PST" means provincial sales tax administered under the *Social Services Tax Act* (British Columbia) and any successor tax or levies therefor in force from time-to-time;
- 1.1.12 "RFP" means Request for Proposal [insert RFP # and title] and all addenda;
- 1.1.13 "Services" has the meaning set out in Section 2.1;
- 1.1.14 "Sub-contractor" has the meaning set out in Section 4.1; and
- 1.1.15 "Term" means the term of this Agreement as specified in Section 12.1.
- 1.2 The terms and conditions of the Contract Documents, whether or not attached to this Agreement will be deemed to be incorporated into this Agreement. The Contract Documents are complementary and what is called for by any one will be as binding as if called for by all. In the event of any conflict or inconsistency between or among any of the Contract Documents, the Contract Documents will be interpreted in the following order of priority, from highest to lowest:
- 1.2.1 this Agreement, excluding Appendix B;
- 1.2.2 the Proposal and
- 1.2.3 the RFP.
- 1.3 In this Agreement, including the recitals, schedules and appendices to this Agreement, except as expressly stated to the contrary or the context otherwise requires:
- 1.3.1 the recitals and headings to sections, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement;
- 1.3.2 the terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer, unless otherwise specified, to this Agreement taken as a whole (including any

and all attached appendices) and not to any particular section, subsection or other subdivision;

- 1.3.3 each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- 1.3.4 each reference to a rule, guideline, policy, regulation or directive is deemed to be a reference to any successor or replacement of such rule, guideline, policy, regulation or directive;
- 1.3.5 words importing the singular include the plural and vice versa and words importing gender include all genders;
- 1.3.6 references to time of day or date mean the local date or time in Vancouver, British Columbia;
- 1.3.7 all references to money mean lawful currency of Canada;
- 1.3.8 the word "written" includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and "in writing" has a corresponding meaning; and
- 1.3.9 the words "include" and "including" are to be construed as meaning "including, without limitation".

ARTICLE. 2 CONSULTANT'S SERVICES TO THE CITY

- 2.1 The Consultant will provide and be fully responsible for the following services (the "Services"):
 - 2.1.1 the services described in the RFP;
 - 2.1.2 the services which the Consultant agreed to provide in the Proposal; and
 - 2.1.3 all services not specifically included in Articles 2.1 and 2.1.1 but which are necessary or incidental to the completion of the Services.
- 2.2 The Consultant will be fully responsible for:
 - 2.2.1 coordinating the Services with the City's Project Manager, or her delegate, and ensuring that the performance of the Services does not adversely impact the design or construction schedule for the project or the work and/or services provided by the City's other consultants;
 - 2.2.2 taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Appendix A - Insurance Requirements; and
 - 2.2.3 maintaining and supervising its employees and Sub-contractors (the "Project Team") described in Section 3.1.
- 2.3 The Consultant represents and warrants to the City that the Consultant possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the reasonable satisfaction of the City.
- 2.4 The Consultant will perform the Services:

- 2.4.1 with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered;
 - 2.4.2 in accordance with sound current professional practices and design standards; and
 - 2.4.3 in conformance with any and all Applicable Laws.
- 2.5 The Consultant will commence the Services promptly and will use every reasonable effort to carry out the Services in accordance with:
- 2.5.1 the requirements and appendices of this Agreement, or
 - 2.5.2 where no date is specified for the provision of any component of the Services by this Agreement, such completion dates as are reasonably specified from time to time by the City.
- 2.6 The Consultant will not permit, do or cause anything to be done at any time which could allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the City's Site or any other City property.

ARTICLE. 3 PROJECT TEAM

- 3.1 Subject to Section 3.2 below, the Consultant will utilize only the Project Team members noted in the Proposal.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Consultant may not make substitutions of Project Team members without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section 3, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Consultant, its Sub-contractor or their affiliates.
- 3.4 The City may, with stated reasons and acting reasonably, request that the Consultant replace a Project Team member. The Consultant will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.
- 3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Consultant for any replacement Project Team member.

ARTICLE. 4 SUB-CONTRACTORS

- 4.1 Unless expressly permitted pursuant to Article 3 above, the Consultant may not engage any contractor or consultant (in each case a "Sub-contractor") for the performance of any part of the Services, unless the Consultant has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.2 The Consultant will administer, coordinate, and manage all Services provided by any Sub-contractors, and will assume full responsibility to the City for all work performed by the Sub-contractors in relation to the Services and will pay all fees and disbursements of all Sub-

contractors, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Consultant.

- 4.3 Where a Sub-contractor is used by the Consultant under this Agreement, the Consultant will legally bind the Sub-contractor to comply with this Agreement.
- 4.4 Nothing in this Agreement will create any contractual relationship between a Sub-contractor and the City.

ARTICLE. 5 BASIS OF PAYMENT TO THE CONSULTANT

- 5.1 In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms hereof, the City will pay the Consultant the fees and reimbursable expenses prescribed herein, plus GST and/or PST, as applicable.
- 5.2 Subject to Section 5.3, payment to the Consultant will be based on hours worked by employees of the Consultant or by the Sub-contractors multiplied by the applicable hourly charge-out rates in the Proposal.
- 5.3 If there are limiting amounts for fees and disbursements indicated below for the Services or parts thereof, then notwithstanding anything to the contrary in this Agreement the maximum fees and disbursements to be paid by the City to the Consultant for the Services or portions of the Services will not exceed those amounts. Where additional fees are to be paid by the City to the Consultant for increases in the scope of the Services provided by the Consultant, they will not exceed the amount of said fees mutually agreed upon under Article 6. This limit on the fees to be paid by the City to the Consultant will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement. The fees for the Services are set out in **[reference section of the Proposal or schedule to this Agreement]**. Subject to Article 6, the total professional fees payable to the Consultant for the Services (not including GST or disbursements) will not exceed **[\$[insert amount]]**. Subject to Article 6, the total disbursements for which the City will reimburse the Consultant in respect of the Services will not exceed **[\$[insert amount]]** (the "Fixed Disbursement Amount"). Notwithstanding anything to the contrary contained in this Agreement, save for Article 6, the maximum liability of the City hereunder (the "Maximum Fees and Disbursements") will be **[\$[insert amount]]**, plus GST, as applicable. Subject to the Fixed Disbursement Amount, the City will reimburse the Consultant for disbursements reasonably incurred by the Consultant in the performance of the Services. Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit. **[NTD: If there are specific monetary limits for specific categories of disbursements then modify this section accordingly.]**
- 5.4 If the Consultant has engaged Sub-contractors, then the Consultant will make full payment to said Sub-contractors for work performed in relation to the Services. Subject to Section 5.3, the City will reimburse the Consultant for payments made to Sub-contractors at amounts equal to such actual payments without any additions for overhead and profit to the Consultant.
- 5.5 The Consultant will submit invoices to the City on or before the 10th day of each month. Each invoice will list the names, hours worked and pay rates of all employees of the Consultant and Sub-contractors that have worked on the Services during the previous month, the total amount of previous payments made by the City, and the percentage of the Services that are complete. Each invoice will show separately the amount of GST applicable. Attached to each invoice will be:
- 5.5.1 copies of invoices for all disbursements claimed;

- 5.5.2 confirmation of payments made to Sub-contractors for the previous month; and
- 5.5.3 a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete the Services.

Notwithstanding anything to the contrary contained in this Agreement, the City will never be obligated to pay the Consultant a greater percentage of the Maximum Fees and Disbursements than the degree of percentage completion of the total of the Services.

- 5.6 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Consultant's invoices, for whatever reason, the City will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to have the review, audit or clarification resolved within a sixty (60) day period. The City will, if it approves the amount of such invoices, cause the respective invoices to be paid within thirty (30) days of approval.
- 5.7 The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed. 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.

ARTICLE. 6 CHANGES TO SCOPE OF SERVICES

- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Consultant, vary the scope of Services to be provided by the Consultant. In that case and where this Agreement contains delivery dates and/or limits as to the Maximum Fees and Disbursements to be paid to the Consultant pursuant to Section 5.3 for all or any part of the Services, such delivery dates and/or limits will be adjusted as agreed to by both Parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.
- 6.2 Should the Consultant consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Consultant will provide the City's Project Manager with notice in writing within ten days of such request or instruction. If the Consultant does not deliver written notice to the City within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Consultant.
- 6.3 The City's Project Manager will consider the Consultant's written notice within a further ten days of receipt of the Consultant's notice and determine and advise as to whether the request constitutes a change in the scope of the Services and, if necessary, the method by which the variation will be scoped and reimbursed. If the City determines that the professional fees payable to the Consultant should be increased due to an increase in the scope of the Services then any such increases will be based on the hourly rates set out in Section [insert] of the Proposal.

ARTICLE. 7 RELEASE AND INDEMNIFICATION

- 7.1 The Consultant now releases the City, its officials, officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Consultant, its Sub-contractors, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.

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

ARTICLE. 8 INSURANCE

- 8.1 The Consultant will comply with the insurance requirements set out in Appendix A - Insurance Requirements.

ARTICLE. 9 WORKSAFEBC

- 9.1 The Consultant agrees that it will procure and carry and pay for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafeBC coverage against any monies owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until the WorkSafeBC premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement have been paid in full.
- 9.2 The Consultant will provide the City with the Consultant's and each Sub-contractor's WorkSafeBC registration number and clearance letters from WorkSafeBC confirming that the Consultant and each Sub-contractor are registered in good standing with WorkSafeBC and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged by the Consultant in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.
- 9.3 Whenever the Consultant is required or permitted to perform any Services on any City sites, the Consultant is now appointed and now accepts appointment as the Prime Contractor in connection with such Services.

[NTD: If the types of services contemplated by this form of Agreement are to be performed in a multi employer workplace, a "Prime Contractor" agreement should be requested from Legal Services and should be executed by the Consultant.]

ARTICLE. 10 CITY INFORMATION/APPROVALS

10.1 No reviews, approvals or inspections carried out or information supplied by the City will derogate from the duties and obligations of the Consultant (with respect to designs, reviews, inspections, approvals or otherwise), and all responsibility related to the Services will be and remain with the Consultant. For greater certainty, any information provided by the City to the Consultant, whether under the RFP or under this Agreement, including any studies, reports, plans, drawings, or specifications, is provided to the Consultant for information purposes only and may not be relied upon by the Consultant.

ARTICLE. 11 COMMUNICATION BETWEEN CONSULTANT AND CITY

11.1 The City appoints [insert name] as the City's Project Manager for the purposes of this Agreement.

In the event of the revocation in writing of [insert name]'s appointment as the City's Project Manager by the City, [insert name] will have no further authority under this Agreement, except as may be specifically designated in writing by the City and agreed to in writing by [insert name], and all references to the City's Project Manager in this Agreement will thereafter be deemed to be a reference to the City or to such other person designated in writing by the City to the Consultant.

The City's Project Manager may from time to time delegate to a representative the performance of or the authority to perform the duties, responsibilities, rights and obligations of the City in respect of which the City's Project Manager has been designated and appointed its sole and exclusive agent.

11.2 The Consultant appoints [insert name] as its representative for the purposes of this Agreement (the "Consultant's Project Manager").

11.3 Unless otherwise agreed to in writing by the Parties, all material communication between the Consultant and the City regarding this Agreement, including performance of the Services, will be between the City's Project Manager and the Consultant's Project Manager.

ARTICLE. 12 TERM OF AGREEMENT

12.1 This Agreement will commence on the Effective Date and will expire on the completion of the Services, which Services must be completed by [insert date] (the "Term").

[Note: If specific phases must be completed by specific dates then insert a more detailed timetable or reference timetable in Proposal.]

ARTICLE. 13 TERMINATION

13.1 The City at any time, in its sole judgment, may, whether or not cause exists, terminate the services of the Consultant in whole or in part by giving 10 days prior written notice (signed by the City's Project Manager) to the Consultant. If termination is not for cause, the Consultant will be paid for all Services properly performed to the date of the delivery of the said notice (subject to the terms of this Agreement) plus all necessary and reasonable wind up costs incurred, if any, in closing out the Services or the part terminated.

13.2 Despite Section 13.1, in no event and under no circumstances will the Consultant's "necessary and reasonable wind up costs incurred" pursuant to Section 13.1 exceed \$ [insert amount] [NTD: calculate as amount of ten business days' pay] (including all taxes).

ARTICLE. 14 ASSIGNMENT

14.1 The Consultant will not assign this Agreement in whole or in part except with the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.

Any attempt to assign this Agreement without such consent will be void and of no effect. However, the Consultant will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Consultant have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Consultant, provided always that the Consultant first provides the City with:

- 14.1.1 reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and
- 14.1.2 a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

ARTICLE. 15 CONFIDENTIALITY

- 15.1 In the course of or for the purpose of performing the Services, the Consultant will obtain or have access to information, including but not limited to technical information, financial information and business information, which is confidential to the City, and is the exclusive, world-wide property of the City and/or its suppliers and customers (collectively "Confidential Information"). Excluded from the definition of Confidential Information is:
 - 15.1.1 information which is in, or becomes part of, the public domain, not due to the Consultant's breach of this Agreement or the Consultant's actions;
 - 15.1.2 information which was previously in the Consultant's possession and did not originate from the City; and
 - 15.1.3 information which lawfully becomes available to the Consultant from a third party not under an obligation of confidence to the City regarding such information.
- 15.2 The Consultant will not use or reproduce the Confidential Information other than as reasonably required for the performance of the Services under this Agreement. The Consultant will not, without the prior written consent of the City given on such terms and conditions as it prescribes in its sole discretion, disclose or allow access to the Confidential Information to any person, except to only those of its own employees who have a need to know the Confidential Information solely for the provision of the Services, and who have been advised of its confidential nature and have agreed to be bound by the confidentiality and restricted use provisions in this Article 15. The Consultant will take all reasonable precautions against the Confidential Information being used by or disclosed to any unauthorized person.
- 15.3 If the Consultant is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, the Consultant shall limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that prior to any disclosure the Consultant will promptly notify the City in writing of the existence and the terms, and conditions of the required disclosure and, at the City's request and expense, cooperate in obtaining a protective order or other assurance that confidential treatment and restricted use will be accorded such Confidential Information.
- 15.4 The City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's contractors to protect all personal information acquired from the City in the course of providing services to the City. The Consultant confirms and acknowledges its obligations to comply with all obligations imposed on it pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia) with respect to all personal information received from the City whether as part of the Confidential Information or otherwise.

- 15.5 The Consultant acknowledges that in the event of a breach by the Consultant or any of its employees of their respective confidentiality obligations pursuant to this Article 15, damages alone would not be an adequate remedy. The Consultant therefore agrees with the City that, in addition to and without limiting any other right or remedy it may have, the City will have the right to an immediate injunction or other available equitable relief in any court of competent jurisdiction enjoining any threatened or actual breach of such obligations.
- 15.6 The Consultant shall return all copies of the Confidential Information to the City, in all tangible forms and media, and delete all Confidential Information resident in any databases or systems, upon the earliest of the following dates:
- 15.6.1 completion of the Services;
 - 15.6.2 expiration or earlier termination of this Agreement; and
 - 15.6.3 written request of the City for return of the Confidential Information; provided that the Consultant shall have the right to retain one copy of the Confidential Information solely for archival purposes or as otherwise may be required by law, subject to its ongoing confidentiality and restricted use obligations.
- 15.7 This Article 15 shall survive the expiration or earlier termination of this Agreement.

ARTICLE. 16 NO PROMOTION OF RELATIONSHIP

- 16.1 The Consultant will not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, websites, internet domain names, press releases, brochures or other written materials (the "Communications") without the express prior written consent of the City (except as may be necessary for the Consultant to perform its obligations under this Agreement).
- 16.2 Furthermore, the Consultant undertakes and will cause all of its Sub-contractors to undertake not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between the Consultant and the City, the International Olympic Committee ("IOC"), the 2010 Olympic and Paralympic Winter Games, the Olympic Movement or the Vancouver Organizing Committee for the 2010 Olympic & Paralympic Winter Games ("VANOC"). Without limiting the generality of the foregoing, the Consultant will not refer to "VANOC", "Vancouver 2010", the "2010 Games", the "Games", the "IOC", "Host City", "Olympic Village", "Athlete's Village", the "Village" or "Olympics" and will not use any website, domain name, official emblem, logo or mascot of the City of Vancouver, VANOC, or the 2010 Olympic and Paralympic Winter Games in any Communications, without the express prior written consent of the City.

ARTICLE. 17 DELIVERABLES

- 17.1 As a result of or as part of providing the Services, the Consultant may receive, create, produce, acquire or collect one or more of the following:
- 17.1.1 products, goods, equipment, supplies, models, prototypes and other materials;
 - 17.1.2 information and data;
 - 17.1.3 reports, drawings, plans, designs, depictions, specifications and other documentation; and
 - 17.1.4 any other items identified in this Agreement as deliverables; (collectively, the "Deliverables").

- 17.2 Deliverables are deemed not to include:
- 17.2.1 any item not required to be produced by the Consultant or supplied to the City as part of or together with the Services, provided that if the City has paid or is liable to pay for any portion of such item's creation, production, acquisition or collection then such item shall be deemed to be a Deliverable;
 - 17.2.2 any item produced as a result of the Services, which is specified in this Agreement as being excluded from the Deliverables category; and
 - 17.2.3 any item which pre-existed the effective date of this Agreement, that is owned by a third party or that is used by the Consultant as part of the services provided to any of its other customers (the "Pre-Existing Materials").
- 17.3 All Deliverables will be owned solely by the City unless otherwise expressly provided herein. The City shall have the complete and unfettered right to use and deal with the Deliverables for its own benefit in any way it sees fit without limitation, and without accounting in any way to the Consultant.
- 17.4 The Consultant will keep accurate records and provide regular reports to the City about the Deliverables as they are created or acquired, and grant to the City access to the Deliverables at all times on reasonable notice. The Consultant will treat each Deliverable as subject to the confidentiality provisions set out section [insert] unless advised otherwise by the City.
- 17.5 Each Deliverable, as to the whole or that portion of the Deliverable then existing, will be delivered by the Consultant to the City on the earliest of each of the following events:
- 17.5.1 the date specified in this Agreement for the delivery of such Deliverable;
 - 17.5.2 immediately on the date of expiration or sooner termination of this Agreement; or
 - 17.5.3 the date specified by written notice of the City requesting delivery of all or any part of the Deliverable.
- 17.6 The Consultant transfers to the City, free of all liens and encumbrances, ownership of each Deliverable, and assigns all of its world-wide present and future rights, title and interest in and to each Deliverable, including copyright, effective as of the date of creation or acquisition of such Deliverable by the Consultant. The Consultant irrevocably waives, in favour of the City, all moral rights in the Deliverables. The Consultant will obtain from its employees and any independent contractors, all required assignments and releases of intellectual property, and waivers of moral rights, in the Deliverables. The Consultant will not assert any rights to or interests in, or apply for or register any copyright or other rights or interests in, the Deliverables, or assist any other person in doing so. The Consultant shall provide to the City, during and after the term of this Agreement, any reasonable assistance required for the City to obtain, perfect and enforce its ownership of and rights in the Deliverables, including without limitation execution of assignments and transfers of the Deliverables. This Section does not apply to Pre-Existing Materials.
- 17.7 The Consultant will not incorporate any Pre-Existing Materials in any Deliverable without first:
- 17.7.1 advising the City, in writing, of the nature of the Pre-Existing Materials and their proposed use and obtaining the City's written consent to do so;
 - 17.7.2 acquiring from each third-party owner of such Pre-Existing Materials, a fully paid-up, perpetual, non-exclusive license, in writing, for the City to use the Pre-Existing Materials as part of the Deliverable; and

- 17.7.3 granting, in writing, to the City with respect to such Pre-Existing Materials that the Consultant owns, a fully paid-up, perpetual, non-exclusive license to use the Pre-Existing Materials as part of the Deliverable.
- 17.8 The Consultant represents and warrants that the Deliverables will not infringe, misappropriate or misuse any copyright, patent, trade-mark, trade secret, or confidential or proprietary information of a third party. The Consultant shall defend, indemnify and hold the City harmless from and against any and all damage, liability, cost and expense incurred by the City in connection with any claim by a third party that a Deliverable infringed, misappropriated or misused its copyright, patent, trade-mark, trade secret, or confidential or proprietary information.

ARTICLE. 18 NOTICES

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

ARTICLE. 19 NO CONFLICT OF INTEREST

- 19.1 The Consultant agrees that during the Term the Consultant will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person, whether or not a client of the Consultant's. Without limiting the general scope of this Section 19.1 and by way of example only, the Consultant is prohibited from and will not provide any services which assist or could be seen to be assisting any person in responding to a request for proposal or invitation to tender, or otherwise giving that person an unfair competitive advantage over other Proponents or tenderers responding to a request for proposal or invitation to tender by the City. The Consultant now acknowledges that a breach of this Section 19.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act* (Canada) and *Criminal Code* of Canada, and accordingly, could be punishable as a crime (as well as a breach of contract).
- 19.2 The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is (a) an elected official or employee of the City or (b) related to or has any business or family relationship with an elected official or employee of the City, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.

ARTICLE. 20 NON-RESIDENT WITHHOLDING TAX

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

20.1.1 25% of all monies payable under this Agreement; and

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

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

ARTICLE. 21 COMPLIANCE WITH LAW

21.1 The Consultant will comply with the City of Vancouver License By-law and maintain a valid business license throughout the duration of this Agreement.

21.2 The Consultant agrees that it will during the Term comply with all Applicable Laws.

ARTICLE. 22 GOVERNING LAW AND RESOLUTION OF DISPUTES

22.1 This Agreement will be governed by the laws of the Province of British Columbia and the courts of British Columbia will have exclusive jurisdiction to determine all disputes arising under this Agreement and the Parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution.

ARTICLE. 23 INDEPENDENT CONSULTANT

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

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

ARTICLE. 24 INDEPENDENT LEGAL ADVICE

24.1 The Consultant acknowledges that the Consultant has been given the opportunity to seek independent legal advice before executing this Agreement.

ARTICLE. 25 TIME FOR PERFORMANCE

25.1 **Time of the Essence.** Time shall be of the essence of this Agreement.

25.2 **Unavoidable Delay.** Notwithstanding Section ARTICLE. 25, except for the performance of obligations to pay money, the time periods for the City and the Consultant to perform under this Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this Section, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform

(such as, for example, strikes/lockouts, acts of God, war or other strife or governmental action) but expressly excludes any and all delays caused by the Consultant's lack of financial resources or insolvency or strikes, lockouts or other withdrawals of services arising out of a labour dispute (including a strike, lockout, or other labour dispute involving the Vancouver Board of Parks and Recreation and/or the City of Vancouver and their respective employees) or labour affiliations of the Consultant's employees or Sub-contractor's employees, or governmental action taken in the enforcement of law specifically against the Consultant or its Sub-Consultants. If an Unavoidable Delay occurs, the non-performing party will, as soon as possible after the occurrence of the Unavoidable Delay, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of its obligations under this Agreement.

ARTICLE. 26 GENERAL

- 26.1 **No Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing by the City.
- 26.2 **Severability.** The invalidity, illegality or unenforceability of any portion or provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken position.
- 26.3 **Remedies Cumulative.** The remedies of the Parties provided for in this Agreement are cumulative and are in addition to any remedies available to the Parties at law or in equity. No remedy will be deemed to exclude or restrict the right of a Party to any other remedies against the other Party and a Party may from time to time have recourse to one or more of the remedies specified in this Agreement or at law notwithstanding the termination of this Agreement.
- 26.4 **Further Assurances.** Each Party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 26.5 **Entire Agreement.** The Contract Documents constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof.
- 26.6 **Amendment.** This Agreement shall not be amended except as specifically agreed in writing by both the City and the Consultant.
- 26.7 **Joint and Several Liability of Joint Venture Participants.** If the Consultant is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, claims, rights, powers, privileges and liabilities of the entities who comprise the Consultant shall be joint and several.
- 26.8 **Schedules and Appendices.** The schedules and appendices attached hereto are incorporated by reference in and form an integral part of this Agreement.
- 26.9 **Set-Off.** The City may at its option, withhold and set-off against any amount owing to the Consultant (whether under this Agreement or otherwise) any amounts payable by the

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

- 26.10 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the City and the Consultant and their respective successors and permitted assigns.

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SAMPLE

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

By: _____
Director of Legal Services

[NAME OF CONSULTANT]

BY: _____
Authorized Signatory

Print Name and Title

SAMPLE

APPENDIX A - INSURANCE REQUIREMENTS

SAMPLE

APPENDIX B - PROPOSAL

SAMPLE