



REQUEST FOR PROPOSAL (“RFP”) No. PS09086

**PROFESSIONAL SERVICES - PUBLIC INPUT SURVEY FOR DOWNTOWN
CAPACITY AND VIEW CORRIDOR STUDY**

Proposals will be received in the Purchasing Services Office, 3rd Floor, Suite #320, East Tower, 555 West 12th Avenue, Vancouver, British Columbia, Canada, V5Z 3X7 prior to the Closing Time: 3:00:00 P.M. Vancouver Time (as defined in Note 2 below), Tuesday, April 21, 2009 and publicly opened at 11:00:00 A.M. Wednesday April 22, 2009.

NOTES:

1. Proposals are to be submitted in sealed envelopes or packages marked with the Proponent's Name, the RFP Title and Number.
2. The Closing Time and Vancouver Time will be conclusively deemed to be the time shown on the clock used by the City's Purchasing Services Office for this purpose.
3. The City's Purchasing Services Office is open on Business Days 8:30 A.M. to 4:30 P.M. Vancouver Time and closed Saturdays, Sundays, and holidays.
4. DO NOT SUBMIT BY FAX.

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

**Jim Lowood
Contracting Specialist**

FAX: **604-873-7057** E-MAIL: purchasing@vancouver.ca

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PART A - INTRODUCTION

1.0 Overview

- 1.1 This Request for Proposal identifies a business opportunity for the successful Proponent to create and complete two public input surveys for the Planning Department of the City of Vancouver ("Planning Department"), as specified herein.
- 1.2 The City of Vancouver ("City") is requesting Proposals from interested individuals and firms with expertise in drafting and completing complex, multilingual surveys, utilizing existing phone lists/phone banks, leading to statistically valid results of the surveys to present to Planning Department staff.
- 1.3 The City will consider Proposals that meet either all or part of the requirements as described in Schedule A - *Requirements* (the "Requirements"). The successful Proponent will be the Proponent who offers the best value, which will be assessed as a combination of experience, pricing, scope, duration and level of services offered.
- 1.4 Key dates to be noted are:

Event	Dates
Deadline for All Enquiries	April 14, 2009
RFP Closing	April 21, 2009
Award by Purchasing	April 28, 2009
Part One Completion and Completion Report	June 30, 2009
Part Two Completion and Completion Report	September 30, 2009
Project Completion and Completion Final Report	October 15, 2009

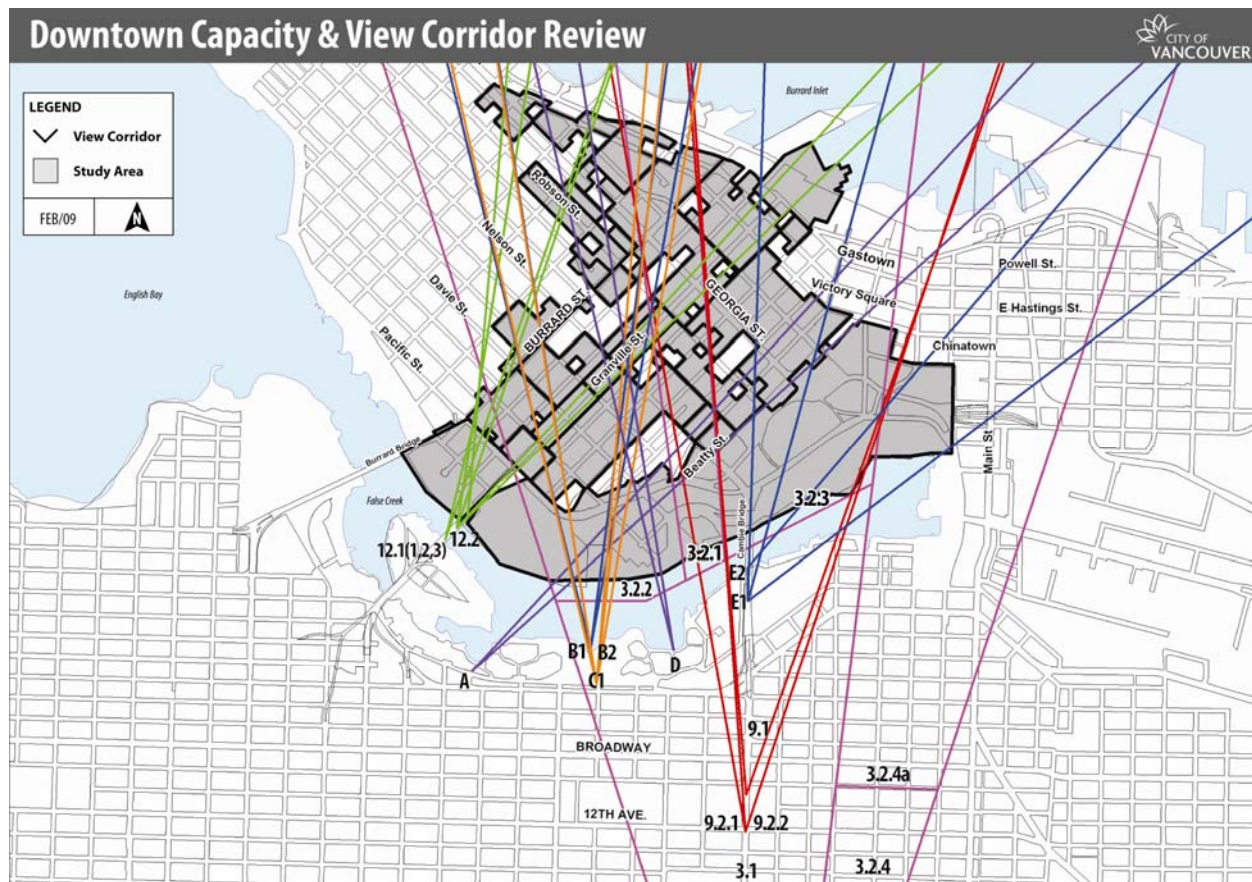
- 1.5 Proponents are encouraged to read this RFP and submit any questions relating to this RFP document to the contact person listed on the cover page.
- 1.6 Formal written questions/responses will be issued by the City as soon as possible and will be posted on the website as an addendum to this RFP.

2.0 Site Description

Map 1: Downtown Capacity and View Corridor Review

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PART A - INTRODUCTION



View Corridors in Review:

- 12.1.1 - Granville Bridge above Granville Island to Crown/Grouse Mountain
- 12.1.2 - Granville Bridge at mid-point to Crown/Grouse Mountain
- 12.1.3 - Granville Bridge above north shore edge to Crown/Grouse Mountain
- 12.2 - Granville Bridge at mid-point to Mount Seymour

- A - Alder Terrace viewing platform below Lamey's Mill Road to Mount Seymour
- B1 - Charleson Seawall below Charleson Park to the Lions
- B2 - Charleson Seawall below Charleson Park to Crown/Grouse
- C1 - Laurel Landbridge (north end) to the Lions
- C2 - Laurel Landbridge (north end) to Crown/Grouse (includes C2.1 & C2.2)
- D - Heather Bay water's edge at Leg in Boot Square
- E1 - Cambie Bridge from mid point to Crown/Grouse
- E2 - Cambie Bridge above the south shore of False Creek to Mount Seymour (includes E2.1 & E2.2)
- 9.1 - Cambie Street between 10th and 11th Avenues to North Shore Mountains
- 9.2 - Cambie Street at 12th Avenue to North Shore Mountains (includes 9.2.1 & 9.2.2)
- 3.1 - Queen Elizabeth Park viewing area north of conservatory to Downtown Skyline
- 3.2 - Queen Elizabeth Park viewing area north of conservatory to North Shore Mtns. (includes 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.4a & 3.2.4b)

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PART A - INTRODUCTION

3.0 Background

- 3.1 The City of Vancouver, with a population of approximately 560,000 lies in a region of more than two (2) million people. Vancouver is the largest city in the province of British Columbia and the third largest in Canada. As the main western terminus of Canada's transcontinental highway and rail routes, as well as home to the Port of Vancouver, Vancouver is the primary city of western Canada and one of the nation's largest industrial centres. Vancouver is consistently rated as one of the most liveable cities in the world and is host city of the 2010 Olympic and Paralympic Winter Games.
- 3.2 Downtown Vancouver ("Downtown") (see 2.0 Site Description, Part A - Introduction) has a limited capacity for development due to constraints from geography and Vancouver City Council (City Council) approved heights limits and protected view corridors. However, additional development capacity could support other important public benefits such as heritage, affordable housing, community/cultural facilities, or parks and recreation. The purpose of the Downtown Capacity and View Corridors Study is to review the adopted policies on height limits and view corridors and recommend changes to achieve additional development capacity in the Downtown.
- 3.3 A key component of the study is to balance public values between views/heights and other public objectives that might benefit from additional benefit capacity. Benefit capacity is the additional building height, density or other development allowance, beyond the base zoning of a site, which has been approved by City Council. While City staff and Project resources are sufficient to understand the desirability of these trade-offs from directly impacted groups (e.g. heritage groups, developers, residents who benefit from protected views), a Contractor is required to complete a public input survey to establish a similar understanding from a statistically valid cross section of all Vancouver residents who also benefit from these protected views.

4.0 Scope

- 4.1 The scope of the RFP is to create and complete a two (2)stage public input survey and to provide services including analyzing information from these surveys. This public input survey will be a systematic collection of public opinions, attitudes, responses on facts, and value through questionnaires to determine priorities and levels of support for proposed changes. The survey will be pertaining to the issues of public attitudes and values towards public views, view corridors modifications, revised building height limits, alternative downtown development scenarios and additional development potential to achieve public benefits for the citizens of Vancouver. The areas that will be affected will primarily be the study area (Section 2.0, Site Description, Part A-Introduction).

5.0 Objectives of the Public Survey

- 5.1 The main objectives of the public survey are to:
- a) prioritize the importance of individual view corridors;
 - b) test the acceptability of modifications to view corridors;

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PART A - INTRODUCTION

- c) test the suitability of Downtown development models through informed consultation where the models presented for evaluation will be accompanied by quantified benefit capacity estimates for comparison; and
- d) make use of this information to understand where the broad public stand on the issues being explored and the solutions proposed.

The survey shall:

- i) be a statistically valid sample size of 500;
- ii) feature a margin of error of +/-4.5% at the 95% level of confidence;
- iii) allow for the Projection of findings to the broader public;
- iv) provide an understanding as to the relative value of individual views;
- v) indicate levels of support for modification to view corridors; and
- vi) indicate levels of support for a preferred downtown development capacity scenario.

6.0 Purpose

- 6.1 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.

7.0 Contractual Requirements

- 7.1 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 1. Proponents are requested to review and confirm as part of their Proposal that they are agreeable to 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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PART B - INSTRUCTIONS TO PROPONENTS

NOTE: The definitions set out in Attachment A - *Legal Terms and Conditions of the Proposal Form (Part D)* or in the other parts of this RFP 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 The Proponent is to submit its Proposal in accordance with instructions identified on the cover page and as provided within this Part B - Instructions to Proponents.

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 the Proponent to thoroughly examine these documents and satisfy itself as to the full requirements of this RFP. Inquiries are to be in written form only, faxed to 604-873-7057 or e-mailed to purchasing@vancouver.ca to the attention of the contact person shown on the cover page before the deadline date. If required, an addendum will be issued as noted in Part A - *Introduction*.

3.0 Contract Requirements - Professional Services Agreement

- 3.1 The Term of the Professional Services Agreement shall be as per timeline set out in Appendix 1 - *Professional Services Agreement*, Section 12.0.
- 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 As set out above, the successful Proponent will be requested to enter into a Professional Services Agreement substantially in accordance with the sample provided as Appendix 1 - *Professional Services Agreement* for Part One and Part Two of the Requirements. If any of the Terms set out in the Professional Services 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*).

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.

4.0 Pricing

- 4.1 Prices quoted are to be exclusive of GST and PST, except where otherwise expressly requested.
- 4.2 Prices are to be quoted in Canadian currency.

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5.0 Consortium Proposals

- 5.1 The City will consider a Proposal from two 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.
- 5.2 A single person or company is to be identified as the Key Contact Person on the Proposal Form (Part D – Proposal Form), 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 the consortium as proposed or choose to negotiate a Professional Services Agreement with individual consortium members separately. Each component of the consortium Proposal should be priced out individually.

6.0 Submission of Proposal

- 6.1 Proponents are to submit four (4) copies of their Proposal, in three-ring binders with each section tabbed and including all accompanying schedules, appendices or addenda in a sealed envelope or package marked with the 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. The City may or may not elect to extend the Closing Time.
- 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 Purchasing Services Office, Suite #320, East Tower, City Square, Vancouver, B.C., V5Z 3X7 and signed by the authorized signatory for the Proponent(s).
- 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.

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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 is discouraged.

7.2 Proponent(s) should complete all forms included in this RFP, attaching any additional appendices that may be required. Proposals should be arranged as follows:

Title Page: The title page should show the RFP title and number, Closing Time and Date, Proponent's name, address, telephone number and the name and title of the contact person.

Table of Contents: Page numbers should be indicated.

Executive Summary: A short summary of the key features of the Proposal demonstrating the Proponent's understanding of the scope of the Requirements.

Proposal Form: The Proponent(s) should complete the Proposal Form and attached Attachment A included in this RFP in accordance with the instructions.

Schedules: The Proponent(s) should complete and provide the information within the respective schedules included in this RFP. If additional space is required to respond to the requirements as outlined, then additional pages can be attached.

Alternate Solutions: Proponents may submit alternative solutions and should identify same as additional appendices within their Proposal.

8.0 Bid and Performance Security

8.1 No Bid Security is required since no irrevocable binding legal offer is required in this RFP.

9.0 Conflict of Interest/Solicitation

9.1 Proponents are to ensure that any and all conflicts or potential conflicts and any and all collusion are fully and properly disclosed in Section 6.0 of Part D - 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.

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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. Dissemination of Proposal information will be as follows:

- a) Upon opening of the Proposals, the name of each Proponent will be announced.
- b) Upon completion of the evaluation of the Proposals, the salient features of each Proposal and the recommended Proposal will be summarized and publicly reported on to the City's Council.

11.0 Evaluation of Proposals

11.1 Proposals will be evaluated on the basis of the overall best value to the City based on quality, service, price and any other criteria set out in this RFP including, but not limited to:

- a) the Proponent's ability to meet the Requirements and the cost/expense for same;
- b) the Proponent's ability to deliver the Requirements when and where required;
- c) the Proponent's qualifications, skills, knowledge and previous experience;
- d) experience of the personnel that will be assigned to this Project;
- e) the proposed plan of approach, methodology and work schedule;
- f) compliance with City's insurance requirements;
- g) willingness to enter into a Professional Services Agreement with the City (see attached sample Professional Services Agreement);
- h) environmental issues considered by the Proponent;
- i) quality of Proposal, including any innovative concepts; and
- j) any other criteria set out in the RFP or otherwise reasonably considered relevant.

11.2 Proponent(s) 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.

11.3 Samples of items, when required, should be submitted within the time specified and must be supplied at no expense to the City. They will be returned at the Proponent's request and expense.

11.4 Prior to approval of a Proposal, the City must be satisfied as to the Proponent's financial stability. The Proponent(s) may be asked to provide annual financial reports

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or a set of financial statements prepared by an accountant and covering the Proponent's last two (2) fiscal years.

- 11.5 The City may request that any or all Sub-contractors of the Proponent(s) undergo the same evaluation process.

12.0 Deviation from Requirements or Conditions

- 12.1 Any deviation from the Requirements or the conditions specified in this RFP should be clearly stated in the Proponent's Proposal within Schedule C - *Deviations and Variations*. The City will be the sole judge as to what constitutes an acceptable deviation. If no deviations are indicated in the Proponent's Proposal, the City will assume that the Proponent is proposing full compliance with the Requirements and conditions of this RFP.

13.0 Proposal Approval

- 13.1 Proposal approval is contingent on funds being approved and the Proposal being approved by City Council. The successful Proponent(s) and City can then proceed to settle, draft and sign the necessary Professional Services Agreement.
- 13.2 The City will notify the successful Proponent(s) in writing that its Proposal has been approved in principle and invite the Proponent(s) to proceed with discussions to settle, draft and sign the Professional Services Agreement.
- 13.3 The City is not under any obligation to approve any Proposal and may elect to terminate this RFP at anytime.

14.0 Quantities - Intentionally Omitted

15.0 Brand Names - Intentionally Omitted

16.0 Alternates and/or Variations to Specifications

- 16.1 Proponents should clearly indicate any variances from the City's Requirements or conditions no matter how slight. The attachment of descriptive literature from which variations may be gleaned will not be considered as a sufficient statement of variations.
- 16.2 If in addition to proposing goods and/or 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.
- 16.3 The City will, during its evaluation process, determine what constitutes allowable or acceptable variations or alternatives.

17.0 Environmental Responsibility

- 17.1 The City is committed to preserving the environment. Proponent(s) should provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Proponent supplies materials, and where such materials may

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cause adverse effects, the Proponent shall indicate the nature of the hazard in its Proposal.

18.0 Freedom of Information and Protection of Privacy Act

18.1 Proponents should note that the City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

19.0 Confidentiality

19.1 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.

19.2 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.

20.0 No Promotion of Relationship

20.1 The Contractor 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 Contractor to perform the Contractor's obligations under the Terms of the Contract). The Contractor 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 Contractor undertakes not to disclose or promote its relationship with the City in any communication or matter whatsoever as a basis to create an association, express or implied, between the Contractor and the IOC, the Olympics or the Olympic Movement.

21.0 Special Conditions

21.1 Proponents should note that if Part C - *Special Conditions* of this RFP conflict with Part A - Introduction and Part B - Instructions to Proponents of this RFP, the Part C - *Special Conditions* will govern over Parts A and B.

22.0 Non-Resident Withholding Tax

22.1 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.

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PART B - INSTRUCTIONS TO PROPONENTS

23.0 Legal Terms and Conditions

- 23.1 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.

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PART C - SPECIAL CONDITIONS

1.0 Pricing

- 1.1 The Proponent(s) should submit pricing information as per the requirements outlined in Schedule B – *Pricing*. Failure to follow these instructions may deem the Proposal to be non-compliant or incomplete, and may or may not result in its disqualification.

2.0 Insurance Requirements

- 2.1 Proponents are requested to review and ensure that they fully understand the City's insurance requirements as outlined within Appendix 1, Professional Services Agreement (Section 8.0 – *Insurance*) and in Appendix 4, Professional Liability Insurance Certificate.
- 2.2 Proponents should include in their Proposal the amount of Professional Liability (in the form set out as Appendix 1[Errors and Omissions], Professional Service Agreement, and in Appendix 4, Professional Liability Insurance Certificate) insurance currently carried by their proposed Sub-contractor(s). Depending on the amount of such coverage for a particular Sub-contractor(s), the City may want to negotiate the minimum limits for such coverage carried by a particular Sub-contractor(s) for the Project.
- 2.3 Proponents are to submit with their Proposals a Certificate of Existing Insurance (in the form set out as Appendix 2) 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 as outlined within Appendix 1, Professional Agreement (Section 8.0 - *Insurance*) and within Appendix 4, Professional Liability Insurance Certificate .
- 2.4 The successful Proponent will be required to file Certificates of Insurance (in the forms set out as Appendix 3 and Appendix 4) with the City showing proof of all insurances as outlined within Appendix 1, Professional Services Agreement (Section 8.0 - *Insurance*).

3.0 Council Approval

- 3.1 Proponents should note that City Council must approve contracts where the value exceeds \$300,000.

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PART D - PROPOSAL FORM

Proponent's Name: _____
"Proponent"

Address: _____

Telephone: _____ **Fax:** _____

Key Contact Person: _____

E-mail: _____ **Incorporation Date:** _____

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 2)	Yes	

To be initialled at Proposal Opening:

Manager, Supply Management or designate

Witness

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PART D - PROPOSAL FORM

2.0 Compliance

By initialling each item, the Proponent acknowledges it has read and understands the Requirements, has submitted the required addenda, has identified deviations or alternatives, and provided an explanation of where it does not comply with the Requirements.

Section Title	Understands Requirements	Will Comply	Does Not Comply	Variations, Alternatives or Explanation for Non-Compliance
<u>Part A</u> Introduction				
<u>Part B</u> Instructions to Proponents				
<u>Part C</u> Special Conditions				
<u>Part D</u> Proposal Form				

By initialling each item, the Proponent confirms it has completed and enclosed the following Schedules and any required addenda in its Proposal and has identified any deviations or items of non-compliance, providing an explanation of where it does not comply.

Section Title	Submitted	Variations, Alternatives or Explanation for Non-Compliance
<u>Part D - Attachment A,</u> Legal Terms and Conditions		
<u>Schedule A</u> Requirements		
<u>Schedule B</u> Pricing		
<u>Schedule C</u> Deviations and Variations		
<u>Schedule D</u> Sub-contractors		

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3.0 Proponent's Declaration and Acknowledgment

- 3.1 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:

Authorized Signatory for the Proponent

Date

Name and Title (*please print*)

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PART D - 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 the professional services 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) "Contractor" means the successful Proponent who enters into a Contract with the City.
- (d) "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).
- (e) "Planning Department" means the City of Vancouver Planning Department.
- (f) "Project" means the Professional Services – Public Input Survey for Downtown Capacity and View Corridor Study.
- (g) "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.
- (h) "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.
- (i) "RFP" means the documents issued by the City as Request for Proposal No. PS09086, including all addenda.
- (j) "Services" means the services and work noted in *Project Tasks* of Schedule A – *Requirements*, that the Contractor will provide under the Contract.

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- (k) "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
- (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.

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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.

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;

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- (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
- (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 one hundred dollars (\$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

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arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- (a) The arbitrator will be selected by the City's Manager – Supply Management.
- (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

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

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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:

- (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 Conflict of Interest

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

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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 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].

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.

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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

Print Name and Title

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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 Requirements Overview

- 1.1 In support of the objectives as outlined in this RFP, the City has identified key requirements, which the Proponent is to address in its Proposal.
- 1.2 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 favorably considered in evaluating all Proposals.

2.0 Company Profile

- 2.1 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.

3.0 Key Personnel

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 Include a list of the members of your staff and any Sub-contractors staff who would be assigned to the Project and their resumes. If a Proponent intends to team up with another Contractor, company names, past experiences and team members should be detailed.

4.0 Project Timeline

- 4.1 The Project is anticipated to begin on or before May 4, 2009. Project duration of approximately six (6) months is anticipated by the City of Vancouver Planning Department ("Planning Department"). Proponents should include a detailed work plan and schedule.
- 4.2 Part One and Part Two will form separate sections in the Professional Service Agreement between the City and the Proponent, to be substantially in accordance with

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SCHEDULE A - REQUIREMENTS

the sample Professional Services Agreement attached as Appendix 1. This RFP shall be separated into the work of Part One and Part Two. In responding to this RFP, Proponents are asked to provide Proposals that address work in both Part One and Part Two.

5.0 Communications

5.1 The Contractor(s) shall:

- a) communicate regularly with Planning Department staff to report progress and seek possible direction;
- b) attend working sessions with Planning Department staff and other stakeholders as the work progresses; and
- c) provide professional quality reports summarizing the results of the surveys to the Planning Department staff. Hard copies of the report will be required plus an electronic copy for each survey.

5.2 The Planning Department shall provide the following reports, drawings and briefings to the Contractor(s) for reference:

- a) maps and drawings of the areas and view affected;
- b) photographs, illustrations and CAD output providing three dimensional information pertaining to development scenario options; and
- d) any other relevant information required to adequately communicate concepts contained in the Part One and Part Two surveys.

5.3 The City will coordinate required the Project meetings.

5.4 The Contractor shall provide regular updates to the Planning Department throughout the Project. These updates shall be through various means including phone conversations, written communications, meetings and any other forms of communication.

5.5 The Contractor shall provide written results of Part One and Part Two to the City as those results become available. Results shall be provided in draft form to allow the City to comment on the results of Part One and Part Two.

5.6 For all meetings, the Contractor shall be required to prepare written meeting minutes for the City's review prior to distribution to participants.

6.0 Project Deliverables (and Milestones)

6.1 Submission requirements are a plan of approach and schedule, including:

- a) A project completion Final written report documenting the work completed and a summary of survey findings for Part One and Part Two of the consultancy. The documentation should include a description of the survey methodology

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including sample metrics and the survey questions used. Survey findings should be presented in both tabular and visual formats. The following dates must be adhered to:

- b) Part One completion report to be submitted no later than June 30, 2009; and
 - c) Part Two completion report to be submitted no later than September 30, 2009.
 - d) Project completion Final Report to be submitted no later than October 15, 2009
- 6.2 As part of the steps and activities outlined above, the Contractor will be required to draft and submit a Project completion Final written report documenting the work fcompleted.
- 6.3 For each report, there should be two (2) hard copies and one (1) electronic copy. The electronic file should be in a PDF format. It is expected that the findings of the study and the analysis will be supported by graphics such as maps, photos and images where necessary. Graphics should be provided as separate electronic files in JPEG format.

7.0 Project Tasks

7.1 Part One: Views, Heights and Public Benefits Survey

The Contractor(s) shall:

- a) with advice and assistance from City staff, shall develop a general understanding of the view corridor, skyline and building heights policy framework; then
- b) prepare a survey to allow a City-wide understanding of:
 - i) attitudes towards public views;
 - ii) relative importance of individual views;
 - iii) preferences for building height increases in Downtown;
 - iv) levels of support for modifications to established view corridors; and
 - v) levels of support for view modifications to support benefit capacity and the provision of public benefits;
- c) The Contractor shall:
 - i) secure final approval from the City for survey use;
 - ii) conduct the Part One survey per agreed upon format;
 - iii) prepare and submit a draft report documenting the work completed and the findings of for the Part One survey to City staff;

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- iv) revise draft report per City feedback; and
- v) submit the survey findings report and summary.

The survey shall follow the following criteria and processes:

- a) In addition to English, the Contractor shall be capable of providing translation services to meet the needs of Vancouver's multi-cultural community.
- b) The Contractor must have a methodology that will obtain results from a geographical cross-section of Vancouver.
- c) Five hundred (500) completed calls to residents will be required for these surveys. A process for verification for this requirement is required.
- d) The survey shall feature a margin of error of +/-4.5% at the 95% level of confidence

7.2 Part Two: Integrated Downtown Development Scenario Survey

The Contractor(s) shall:

- a) Meet with staff and develop an understanding of the differences amongst the short-listed integrated downtown development scenarios (Projected to be up to five scenarios) and the associated benefit capacity implications of each scenario; then
- b) The Contractor shall prepare a survey to:
 - i) Communicate the benefit capacity implications of a range of downtown development scenarios or specific aspects of a variety of development scenarios provided.
 - ii) Collect public preferences towards each of the downtown development scenarios provided or specific aspects of a variety of development scenarios provided.
 - iii) Understand and communicate within a report how the public perceives the value of the physical implications of each downtown development scenario, or aspects thereof, against the available benefit capacity contained in each development scenario, or aspects thereof.
 - iv) Understand and communicate within a report the public's perception of the value of each downtown development scenario, or aspects thereof, with regard to the additional benefit capacity provided.
 - v) Understand and communicate within a report the public's perception of value of each downtown development scenario, or aspects thereof, with regard to the physical implications of each scenario.

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- c) The Contractor shall:
 - i) liaise with Planning Staff and secure approval from the City for survey use;
 - ii) conduct the Part Two survey per agreed upon format, following the criteria and processes performed in the Part One survey;
 - iii) after the survey is complete prepare and submit a draft report documenting the work completed and the findings of the Part Two survey, and present the draft report to Planning Staff;
 - iv) revise draft report per Planning Staff of the City feedback; and
 - v) submit the survey findings report and summary to the Planning Staff.
- d) The Contractor shall submit a Project Completion Final Report that summarizes the findings from Part One and Part Two and provides discussion and analysis of any links or observations about the two project parts. The report will serve as a single point of reference for the Part One and Part Two survey outcomes and analysis.

8.0 Value Added Services

- 8.1 Within its response to Schedule A, the Contractor 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*.

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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) estimated time in person-hours to be dedicated to each activity in the work program for each member, as well as the estimated fees and disbursements for each activity, in a Project task and fee schedule;
- e) maximum total upset fees, including reimbursables;
- f) a description of all disbursements, including a maximum amount for each;
- g) a description of all costs associated with Sub-contractors;
- h) 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; and
- i) anticipated Project budget and estimated breakdown of the costs based on the proposed work schedule separated into Part One and Part Two.

1.2 Payment is subject to Assistant Director of Central Area Planning and the (or their designates') satisfaction with the work.

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SCHEDULE B - PRICING

2.0 SCHEDULE OF QUANTITIES AND PRICES:

Item	Qty.	Description	Total
1	1 Lot	To conduct the Part One survey and analysis and provide a Part One Completion Report, by June 30, 2009 in accordance with the Schedule A Requirements.	\$ _____
SUB TOTAL FOR ITEM 1			\$ _____
2	1 Lot	To conduct the Part Two survey and analysis and provide a Part Two Completion Report, by September 30, 2009, in accordance with the Schedule A Requirements.	\$ _____
SUB TOTAL FOR ITEM 2			\$ _____
3	1 Lot	To complete the analysis and provide a Final Report, by October 15, 2009, in accordance with the Schedule A Requirements.	\$ _____
SUB TOTAL FOR ITEM 3			\$ _____
TOTAL COST FOR ITEMS 1-3			\$ _____

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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 1), 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. 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. 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. (For contractual requirements, Proponents should note the relevant sections of the sample Professional Services Agreement.)

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

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

CITY OF VANCOUVER**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made as of the ____ day of _____, 2009

BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

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

(the "Contractor")

OF THE SECOND PART

BACKGROUND:

- A. By way of Request for Proposals No. PS09086 Professional Services – Public Input Survey for Downtown Capacity and View Corridor Study (the "RFP"), the City requested Proposals for the provision of Services (hereinafter defined) for Professional Services – Public Input Survey for Downtown Capacity and View Corridor Study.
- B. In response to the RFP, the Contractor submitted a detailed Proposal (the "Proposal").
- C. After evaluating the Contractor's Proposal and other Proponents' Proposals, City Council authorized City staff to enter into negotiations with the Contractor for a legal Agreement based on both the RFP and the Proposal and on such other Terms and conditions considered acceptable to the City and the Contractor.
- D. The City and the Contractor have now completed those negotiations and have agreed to the following Terms and conditions.

THE CITY AND CONTRACTOR NOW AGREE AS FOLLOWS:**1.0 INTERPRETATION**

- 1.1 Capitalized Terms and expressions defined in the body hereof and used herein (including in the recitals) shall have those meanings, and the following Terms and expressions, unless the context otherwise requires, shall have the meanings set out below:

"Agreement" means the Agreement between the City and the Contractor as set out in

the Contract Documents;

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

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

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

“Contract Documents” means this Professional Services Agreement, the Contractor’s Proposal, the RFP and such other documents as listed in this Professional Services Agreement, including all addenda issued therewith and amendments agreed to between the parties;

“Deliverables” means each component of the Services (the “Project Tasks”) to be provided by the Contractor, as further defined in Schedule A – *Requirements*, Section 6.0, of the RFP;

“Project” means the Professional Services – Public Input Survey for Downtown Capacity and View Corridor Study;

“Term” means the Term of this Agreement as specified in Section 12;

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

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

1.2.1 this Professional Services Agreement;

1.2.2 the Contractor’s Proposal; and

1.2.3 the RFP.

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

2.0 CONTRACTOR’S SERVICES TO THE CITY

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

- 2.1.1 Services as described in Part [], Section [] of the RFP attached as Appendix [];
- 2.1.2 Services as described in Part [], Section [] of the Proposal attached as Appendix [];
- 2.1.3 [List all other relevant documentation describing Services].
- 2.2 The Contractor will be fully responsible for:
 - 2.2.1 taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Section 8.0 – *Insurance*;
 - 2.2.2 obtaining all permits, licenses and approvals necessary for the completion of the Project;
 - 2.2.3 adhering to the Project schedule and Deliverable deadlines for the Services as described in Part [], Section [] of the Contractor's Proposal (the "Project Schedule");
 - 2.2.4 maintaining and supervising the Project team members as described in Part [], Section [] of the Contractor's Proposal (the "Project Team"); and
 - 2.2.5 scheduling, requesting and maintaining the stated requirements and resources to be provided by the City in order to facilitate the Contractor's performance of the Services as described in Part [], Section [] of the Contractor's Proposal (the "City Resources").
- 2.3 The Contractor represents and warrants to the City that the Contractor possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the satisfaction of the City.
- 2.4 The Contractor will perform the Services: (a) with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered; (b) in accordance with sound current professional practices and design standards; and (c) in conformance with any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, and courts having jurisdiction (collectively, "Laws and Regulations") applicable at the time of design.
- 2.5 The Contractor will commence the Services promptly and will use every reasonable endeavour to carry out the Services in such a manner so as to fulfil the completion dates (a) set out in this Agreement, (b) the Project Schedule (as defined in Section 2.2 above), and (c) where no such dates are set out in this Agreement, such completion dates as are reasonably specified from time to time by the City.
- 2.6 The Contractor agrees that in the event the Contractor does not complete the Services to the satisfaction of the City during the Term of this Agreement, the Contractor will spend such additional time (at its own expense) as is reasonably required to complete the Services.

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

3.0 PROJECT TEAM/MANAGEMENT

- 3.1 Subject to Section 3.2 below, the Contractor will utilize only the Project Team members named in the Contractor's Proposal for the provision of the Services.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Contractor may not make substitutions of Project Team members without the prior written consent of the City, whose consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or Termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Contractor or its affiliates.
- 3.4 The City may, with stated reasons and acting reasonably, request that the Contractor replace a Project Team member. The Contractor 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 Contractor for any replacement Project Team member.

4.0 SUB-CONTRACTORS

- 4.1 Except as expressly permitted pursuant to Section 3.0 above, the Contractor confirms that it does not intend to utilize any Sub-contractors or Sub-contractors for the performance of any part of the Services, except for the individual Project Team members named in the Contractor's Proposal, who may be retained by the Contractor on an independent or dependent contractor basis (the "Sub-contractors") rather than a contract of employment basis.
- 4.2 Except as expressly permitted pursuant to Sections 3.0 and 4.1 above, the Contractor may not engage Sub-contractors or Sub-contractors for the performance of any part of the Services, unless the Contractor has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.3 The Contractor 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 Contractor.
- 4.4 Where a Sub-contractor is used by the Contractor under this Agreement, the Contractor will legally bind the Sub-contractor to comply with this Agreement.

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

5.0 BASIS OF PAYMENT TO THE CONTRACTOR

- 5.1 In consideration of the Services performed by the Contractor to the satisfaction of the City and in strict conformity with the Terms of this Agreement, the City will pay the Contractor the fees and reimbursable expenses set out in this Agreement, plus the Goods and Services Tax as applicable.
- 5.2 Subject to the other Terms of this Agreement, payment to the Contractor will be based on:
- 5.2.1 hours worked by the Project Team members in providing the Services multiplied by the hourly charge-out rates set out in Appendix [], and
 - 5.2.2 the direct out-of-pocket expenses necessarily incurred in providing the Services and expressly permitted to be charged separately under this Agreement.
- 5.3 Despite anything to the contrary in this Agreement,
- 5.3.1 the maximum total of the fees and disbursements to be paid by the City to the Contractor for each Deliverable will not exceed the amounts set out in Table 1 below for that Deliverable, and
 - 5.3.2 as this is a “time and materials” contract (subject to a maximum fees and disbursements limit) and no portion of this Agreement is a “fixed price” contract for Services, accordingly:
 - 5.3.2.1 where the aggregate of the time and materials utilized by the Contractor to deliver each Deliverable is less than the maximum amounts set out in Table 1 below, the City will only pay for the aggregate of the time and materials at the hourly rates and reimbursable disbursement amounts set out in this Agreement; and
 - 5.3.2.2 where the aggregate of the time and materials utilized by the Contractor to deliver each Deliverable exceeds the maximum amounts set out in Table 1 below, the City will only pay the maximum amount applicable for that Deliverable in Table 1 below.

However, where some Deliverables are “under budget” and other Deliverables are “over budget”, the Contractor may be permitted (subject to approval by the City’s Project Manager) to transfer its time or material expenses between any of the different Deliverables referred to in Table 1 below.

TABLE 1: Fees & Disbursements for Services

DESCRIPTION OF DELIVERABLE	SUB-COMPONENTS OF DELIVERABLE	SUB-COMPONENT DELIVERY DATE	MAXIMUM FEES & DISBURSEMENTS AMOUNT OF DELIVERABLE
Complete Services Delivery Date (Firm)			
Total Amount for Complete Services =			\$[_____], not including GST or PST

- 5.4 Despite anything to the contrary contained in this Agreement, except for Section 6.0, the maximum liability of the City for all fees and disbursements for the complete Services will be the "Total Amount for Complete Services" set out in the last line of Table 1 above.
- 5.5 Where additional fees or disbursements are to be paid by the City to the Contractor for increases in the scope of the Services provided by the Contractor, they will not exceed the amount mutually agreed to in writing pursuant to Section 6.0. The maximum amounts on fees and disbursements as set out in Table 1 above will in no way diminish the duties and obligations of the Contractor to provide the Services covered by this Agreement.
- 5.6 Subject to the maximum liability of the City under Table 1 above, disbursements for which the City will reimburse the Contractor will be limited to the following:
- 5.6.1 Transportation costs, including travel time, for all the Project Team members to meetings requested by the City at locations other than the Contractor's offices to a maximum of \$0.41 per kilometre.
 - 5.6.2 Long distance telephone calls, telegrams and telex.
 - 5.6.3 Photocopies to a maximum of \$0.20 per page.
 - 5.6.4 Delivery of drawings, specifications or correspondence by courier, where this method of delivery has been requested by the City.
 - 5.6.5 Provision of office space and related services at a job site (but only if first approved in writing by the City) where the Project Team members are performing management, inspection, construction supervision, administration or other field services as part of the Services.

- 5.6.6 Sub-contractor fees and disbursements for drilling and soil sampling or other work, if first approved in writing by the City, which are required for the Contractor to carry out its duties under this Agreement.
- 5.6.7 AutoCAD licensing and other costs to a maximum of \$[] per hour when operated by a Project Team member in performing the Services.
- 5.6.8 Engineering software licensing and other costs for only the following engineering software, and only to a maximum of the following limits:
- [] and \$[] per run;
[] and \$[] per run; and
[] and \$[] per run.
- 5.6.9 Printing costs, but only for the following: (a) large format plots, checkplots, and scanning to file at maximum of \$0.60 per square foot; and (b) large format colour plots at maximum of \$2.75 per square foot.
- 5.6.10 Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit.
- 5.6.11 All other expenses not listed above are now deemed to be expressly included in the Contractor's fees.
- 5.7 If the Contractor has engaged Sub-contractor(s) pursuant to Sections 3.0 and 4.0 above, then the Contractor will make full payment to those Sub-contractor(s) for work performed in relation to the Services.
- 5.8 Where the City and Contractor have expressly stated in Table 1 (or by subsequent written Agreement or amendment to Table 1) that certain Services to be performed by a Sub-contractor are to be paid for separately from the other Services, the City will reimburse the Contractor for payments made to such Sub-contractor(s) at amounts equal to the actual payments made to that Sub-contractor by the Contractor without any additions for overhead and profit.
- 5.9 The Contractor will submit invoices to the City on or before the 10th day of each month. Each invoice will list the names, hours worked and pay rates of all Project Team members that have provided services for each Deliverable during the previous month, the total amount of previous payments made by the City for that Deliverable, and the percentage completion for each Deliverable. Each invoice will show separately the applicable amount of the Goods and Services Tax and the Provincial Sales Tax.

Attached to each invoice will be copies of: (a) invoices for all disbursements claimed categorized according to Deliverable; (b) confirmation of payments made to Sub-contractor(s) for the previous month for each Deliverable; and (c) a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete each Deliverable.

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

- 5.10 Despite anything to the contrary in this Agreement, the City will never be obligated to pay the Contractor a greater percentage of total fees and disbursements than the degree of percentage completion of each Deliverable as set out in Table 1.
- 5.11 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Contractor'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.
- 5.12 The Contractor will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed. All such accounts and records will not be disposed of by the Contractor without the prior written consent of the City. The City will be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Contractor and by such other means as will be reasonably necessary or advisable.

6.0 CHANGES TO SCOPE OF SERVICES

- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Contractor, vary the scope of Services to be provided by the Contractor. In that case and where this Agreement contains a delivery date(s) and/or limit(s) as to the maximum fees and disbursements to be paid to the Contractor in Table 1 for all or any part of the Services, such delivery date(s) and/or limit(s) will be adjusted as agreed to by both parties in writing, and failing Agreement, as reasonably deTermined by the City's Project Manager.
- 6.2 Should the Contractor consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Contractor shall so advise (in writing) the City's Project Manager within ten (10)days of such request or instruction. Without said written advice within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Contractor.

7.0 RELEASE AND INDEMNIFICATION

- 7.1 The Contractor now releases the City, its officers, officials, 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 Contractor, 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 Contractor acknowledges that the Contractor has inspected the Work Site, agrees to accept the Work Site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Contractor to perform the Services.

- 7.3 Despite the provision of insurance coverage by the City, the Contractor hereby agrees to indemnify and save harmless the City, its successors, assigns and authorized representatives and each of them from and against losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that the City may sustain, incur, suffer or be put to at any time either before or after the expiration or Termination of this Agreement, that arise out of errors, omissions or negligent acts of the Contractor, 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 the City or its officers, employees or agents.
- 7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.
- 7.5 The release and indemnity set out above will survive the expiry or sooner Termination of this Agreement.

8.0 INSURANCE

8.1 General

- (a) Required Coverage - The Contractor will comply at all times with the insurance provisions set out in this Section 8.0.
- (b) Limitations - The requirements set out in this Section 8.0 do not limit any insurance requirements imposed on the Contractor by municipal, provincial or federal law.
- (c) Additional Coverage - It will be the sole responsibility of the Contractor to determine what additional insurance coverage, if any, is necessary or advisable for the Contractor's own protection and/or to fulfill the Contractor's obligations under this Agreement. Any additional insurance will be provided and maintained by the Contractor at its own expense.

8.2 Requirements for All Policies

- (a) Minimum Limits - Without limiting any of its obligations or liabilities under this Agreement, the Contractor and its Sub-contractors and subcontractors will obtain and continuously carry during the Term of this Agreement, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below.
- (b) Premiums - The Contractor will pay all premiums and deductible costs for all insurance required to be effected under this Agreement provided always that under no circumstances does the payment of such premiums give the Contractor any interest in the proceeds of such insurance or any control over such policies as they relate to the City's interests.
- (c) Insurers - All policies must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *Best Rating Guide on Property and Casualty Insurance Companies*.
- (d) Form of Policy - All insurance policies must be in a form acceptable to the City's Director of Risk Management. Self-funded, policy fronting or other non-

risk transfer insurance mechanisms are not permitted.

- (e) Notice to City - All insurance policies must provide the City with 60 days' prior written notice of material change, lapse or cancellation. The policy must provide that the notice will identify the Contract title, number, policy holder, and be delivered in accordance with Section 18.0 - *Notices* of this Agreement.
- (f) Insurance Obligations Separate - Neither the providing of insurance by the Contractor in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Contractor from any other provisions of this Agreement with respect to the liability of the Contractor or otherwise.
- (g) Primary Coverage - The insurance coverage will be primary insurance in respect to the City. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees or agents will be excess to the insurance effected by the Contractor under this Agreement and will not contribute with it.
- (h) Properly Disclose - The Contractor will properly disclose all risks in each insurance application, ensure that it does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers and underwriters.
- (i) Failure to Provide - If at any time the Contractor fails to provide a certificate of insurance or certified copies of all insurance policies as required in Section 8.3 - *Evidence of Insurance*, the City may (but is not obligated to or liable for the manner in which it does so) effect such insurance on behalf of the Contractor and the cost of doing so will be paid by the Contractor to the City upon request and, in any event, within five (5) calendar days of such a request.

8.3 Evidence of Insurance

- (a) Proof of Insurance - Prior to commencement of this Agreement, the Contractor will provide the City with evidence of all required insurance to be taken out in the form of a detailed Certificate of Insurance (Appendix 4). The certificate of insurance must identify the Contract Title, number, policy holder and contract subject-matter, and must not contain any disclaimer. Proof of insurance, in the form of a certificate of insurance or certified copies of all insurance policies, will be made available to the City's Director of Risk Management at any time upon request.
- (b) Cause Sub-contractors to Carry - The Contractor will ensure that those Sub-contractors of the Contractor named below will place and maintain the same type of Professional Liability (Errors and Omissions) insurance, and for the same period of time, as is required of the Contractor, except that the policy limits must be no less than the amounts indicated below for each respective Sub-contractor:

[PURSUANT TO PART C - SPECIAL CONDITIONS, SECTION 2.1(a), PROPONENTS SHOULD PROVIDE IN THEIR PROPOSAL THE AMOUNT OF PROFESSIONAL LIABILITY INSURANCE CARRIED BY THEIR SUB-CONTRACTORS. SUCH COVERAGE MAY BE SUBJECT TO REVIEW AND NEGOTIATION (IF REQUIRED) BY THE CITY.]

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

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

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

[THE LIMITS IN THIS SUBSECTION WILL DEPEND ON THE NATURE AND VALUE OF EACH SUB-CONTRACTOR'S WORK.]

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

8.4 Commercial General Liability ("CGL") Insurance

- (a) Must Carry CGL - The Contractor will maintain insurance in sufficient amounts and description to protect the Contractor, its Sub-contractors, the City and their respective officers, officials, employees and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement.
- (b) \$2,000,000 - The limit of commercial general liability insurance must be not less than two million dollars (\$2,000,000) per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations.
- (c) Form of Policy - The policy of insurance will:
 - i. be on an occurrence form,
 - ii. add the City and its officials, officers, employees and agents as additional insureds,
 - iii. contain a cross-liability or severability of interests clause, and
 - iv. extend to cover non-owned automobiles, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.
- (d) Primary Insurance

Pursuant to Section 8.2(g) - *Primary Coverage*, the Contractor's commercial general policy will be primary insurance in respect to the City.

8.5 Motor Vehicle Liability Insurance

The Contractor will maintain motor vehicle liability insurance for owned and leased or licensed vehicles with limits of five million dollars (\$5,000,000) inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Whether or not the policy has been issued pursuant to a government operated automobile insurance system, the Contractor will provide the City's Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Contractor and its permitted Sub-contractors used in connection with this Agreement.

9.0 WorkSafeBC

- 9.1 The Contractor agrees that it will at its own expense procure and carry or cause to be procured and carried and paid for, full WorkSafeBC coverage for itself and all workers, employees and others engaged in or upon the Services. The Contractor 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 money owing by the City to the Contractor. The City will have the right to withhold payment under this Agreement until the WorkSafeBC premiums, assessments or penalties in respect of the Services have been paid in full.
- 9.2 The Contractor will have a safety program acceptable to the WorkSafeBC and will ensure that all City and WorkSafeBC safety policies, rules and regulations are observed during any performance of the Services at the Work Site, not only by the Contractor but also by all Sub-contractors.
- 9.3 Prior to the start of the Term, the Contractor will provide the City with the Contractor's and all Sub-contractor's WorkSafeBC registration numbers.
- 9.4 Prior to the start of the Term, and concurrently with making any application for payment under this Agreement, the Contractor will provide the City with written confirmation that the Contractor and all Sub-contractors are registered in good standing with WorkSafeBC and that all assessments have been paid to date.
- 9.5 The Contractor will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to:
- 9.5.1 unpaid WorkSafeBC assessments of the Contractor or Sub- Contractors;
 - 9.5.2 the acts or omissions of any person engaged directly or indirectly by the Contractor in the performance of this Agreement, or for whom the Contractor is liable pursuant to the Contractor's obligations, and which acts or omissions are or are alleged by the WorkSafeBC to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of WorkSafeBC, including any and all fines and penalties levied by the Workers' Compensation Board; or
 - 9.5.3 any other breach of the Contractor's obligations under this Section 9.0.

10.0 CITY INFORMATION/APPROVALS

- 10.1 The City acknowledges that the Contractor's ability to provide the Services in accordance with this Agreement will be dependent on the City providing the City Resources in a prompt and timely manner as reasonably required by the Contractor. To the extent that the City fails to provide the City Resources, the Contractor will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will this delay or failure to provide City Resources constitute a breach of this Agreement by the City, nor will the Contractor be entitled to extra compensation for same.

- 10.2 No reviews, approvals or inspections carried out or information supplied by the City Resources will derogate from the duties and obligations of the Contractor (with respect to investigations, design or otherwise), and all responsibility related to the Services will be and remain with the Contractor.

11.0 COMMUNICATION BETWEEN CONTRACTOR AND CITY

- 11.1 The City appoints _____, of the _____ Department, as the City's Project Manager for the purposes of this Agreement.
- 11.2 The Contractor appoints _____, of the _____ Department, as the Contractor's Project Manager for the purposes of this Agreement.
- 11.3 All material communication between the Contractor and the City regarding this Agreement, including performance of the Services, will be between the City's Project Manager and the Contractor's Project Manager.

12.0 TERM OF AGREEMENT

- 12.1 The Term of this Agreement will commence on _____, 2006 and will expire on _____, 200_, unless Terminated earlier in accordance with the Terms hereof.

13.0 TERMINATION

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

14.0 ASSIGNMENT

- 14.1 The Contractor 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 Contractor will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Contractor have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Contractor, provided always that the Contractor:
- 14.1.1 first provides the City with reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and
- 14.1.2 first provides the City with a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

15.0 CONFIDENTIALITY

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

16.0 NO PROMOTION OF RELATIONSHIP

- 16.1 The Contractor 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 Contractor to perform the Contractor's obligations under the Terms of this Agreement). The Contractor 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 Contractor 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 Contractor and the International Olympic Committee, the Olympics or the Olympic Movement.

17.0 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

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

18.0 NOTICES

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

19.0 NON-COMPETITION

- 19.1 The Contractor agrees that during the Term of this Agreement and at all times thereafter, the Contractor will not, without the express consent of the City's Project Manager, assist any person to become acquainted with the clients of the City, and will not divulge or disclose the name or address of a client of the City and, without limiting the generality of the foregoing, will not take any advantage, directly or indirectly, of contacts established between the Contractor and the clients of the City during the Term of this Agreement.
- 19.2 The Contractor agrees that during the Term of this Agreement and for a period of twenty-four (24) months after the Termination of this Agreement, the Contractor will not, without the express consent of the City's Project Manager, directly or indirectly, as an individual, as a member, employee, or agent of a firm, as a shareholder, director, officer, employee or agent of a corporation, or as part of any other organization or group, participate in, assist, engage in, advise or consult for, permit the Contractor's name to be used by, or be in any way connected with any business similar in nature to all or any part of the City's business or which competes in any way with the City's business.

20.0 NO CONFLICT OF INTEREST

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

- 20.2 The Contractor now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Contractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is (a) an elected official or employee of the City or (b) related to or has any business or family relationship with an elected official or employee of the City, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.

21.0 NON-RESIDENT WITHHOLDING TAX

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

- 21.1.1 25% of all monies payable under this Agreement; and
- 21.1.2 sums required to be withheld and remitted by the *Income Tax Act* of Canada as amended.

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

22.0 COMPLIANCE WITH LAW

- 22.1 The Contractor will comply with the City of Vancouver License By-law and maintain a valid Business License throughout the duration of the Agreement.
- 22.2 The Contractor agrees that it will obey all laws and by-laws whether municipal, provincial or federal.

23.0 RESOLUTION OF DISPUTES

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

24.0 INDEPENDENT CONTRACTOR

- 24.1 This Agreement is a contract for services and the Contractor, its permitted Sub-contractors, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Contractor and its permitted Sub-contractors are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.
- 24.2 The Contractor will not represent to anyone that the Contractor has any authority to bind the City in any way or that the Contractor is an employee of the City.

25.0 INDEPENDENT LEGAL ADVICE

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

26.0 LEGALLY BINDING AGREEMENT

- 26.1 This Agreement will benefit and be legally binding on the parties and their successors and permitted assigns.
- 26.2 This is the entire Agreement between the Contractor and the City regarding its subject, and it Terminates or nullifies any negotiations, other Agreements or representations made by or between the Contractor and the City. Any modification of this Agreement must be in writing and executed by both the Contractor and the City.

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

CITY OF VANCOUVER by its authorized signatories:

Name:
Title:

Name:
Title:

Name:
Title:

[**CONTRACTOR**] by its authorized signatories:

Authorized Signatory

Print Name and Title



**CERTIFICATE OF EXISTING INSURANCE
TO BE COMPLETED AND SUBMITTED ALONG WITH
PROPOSAL/TENDER**

Section 2 through 8 – to be completed 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 been issued to the Named Insured and is in full force and effect as of the effective date of the Agreement described below.

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 DBA 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 Improvement \$ _____
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 Tenant's 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



CERTIFICATE OF INSURANCE

Section 8 b) – to be completed by City staff. Select # of days Written Notice is required.
 Section 2 through 7 – to be completed 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 either an individual or a legally incorporated company)*

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 (All Risks Coverage including Earthquake and Flood)

INSURED VALUES: (Replacement Cost)

INSURER: _____

Building and Tenants Improvement: \$ _____

TYPE OF COVERAGE: _____

Contents and Equipment: \$ _____

POLICY NUMBER: _____

Deductible Per Loss: \$ _____

POLICY PERIOD: From _____ to _____

4. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)

Including the following extensions:

LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)

✓ Personal Injury

Per Occurrence: \$ _____

✓ Products and Completed Operations

✓ Cross Liability or Severability of Interest

Aggregate: \$ _____

✓ Employees as Additional Insureds

✓ Blanket Contractual Liability

All Risk Tenant's Legal Liability: \$ _____

✓ Non-Owned Auto Liability

INSURER: _____

POLICY NUMBER: _____

Deductible Per Occurrence: \$ _____

POLICY PERIOD: From _____ to _____

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 _____

If vehicles are insured by ICBC, complete and provide Form APV-47.

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. 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:

- 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;*
- 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;*
- 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

Dated: _____

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



PROFESSIONAL LIABILITY INSURANCE CERTIFICATE

Section 4 – to be completed by City staff. Select # of days Written Notice is required.

Section 2 & 3 – to be completed 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 as listed herein has been issued to the Named Insured(s) and is in full force and effect as of the effective date of the Agreement described below.

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

MAILING ADDRESS:

LOCATION ADDRESS:

DESCRIPTION OF OPERATION/CONTRACT:

3. PROFESSIONAL LIABILITY INSURANCE

LIMITS OF LIABILITY:

INSURER: _____

Per occurrence/claim: \$ _____

POLICY NUMBER: _____

Aggregate: \$ _____

POLICY PERIOD: From _____ to _____

Deductible per occurrence/claim: \$ _____

If the policy is in a "Claims-made Form", please specify the applicable Retroactive Date: _____

4. POLICY PROVISIONS:

Where required by the governing contract, Agreement, permit or license, it is understood and agreed that SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to the policy listed herein, either in part or in whole, will be given by the Insurer to the Holder of this Certificate. The exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply.

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated: _____

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