

A G R E E M E N T

THIS AGREEMENT is made the _____ day of _____, 2020,

BETWEEN:

CITY OF BURNABY
4949 Canada Way
Burnaby B.C. V5G 1M2

(the “**City**”)

AND:

[CONSULTANT’S NAME]
[Consultant’s Address]
[Consultant’s Address]

(the “**Consultant**”)

Whereas the City has requested the Consultant to perform the consulting services hereinafter set out and the Consultant has agreed to perform such services on and subject to the terms and conditions hereinafter contained.

Now in consideration of the mutual promises hereinafter contained it is hereby agreed as follows:

ARTICLE I - PROJECT

1.1 The Consultant shall perform the consulting services set out in Article II hereof for the following project and branches thereof (the “**Project**”):

[PROJECT DESCRIPTION]

ARTICLE II - CONSULTING SERVICES

2.1 The Consultant shall perform the following consulting services for the Project (the “**Services**”):

Consulting services for field survey, drafting, designing, estimating, tendering, contract administration and inspection as outlined in the City’s Request for Proposal dated **[date]**, together with all addenda, and the Consultant's proposal dated **[date]**, both of which are attached and form an integral part of this Agreement.

- 2.2 In the event of a conflict or inconsistency between the terms of the Consultant's proposal and the terms of either the City's Request for Proposal or this Agreement, the terms of the City's Request for Proposal or this Agreement, as the case may be, shall prevail.
- 2.3 Immediately upon execution of this Agreement, the Consultant shall designate in writing a representative to act as its representative, for the purposes of all communications with the City under this Agreement, such representative to have authority to provide instructions to, and receive information from, the City. The representative shall be available on a reasonably continuous basis during the performance of the Services, and for any periods when the representative is absent or unavailable a replacement with equivalent expertise and authority shall be appointed by the Consultant.
- 2.4 The Consultant shall undertake and perform all Services with such degree of care, skill and diligence as would reasonably be expected from a Consultant qualified in British Columbia to perform services similar in scope, nature and complexity to the Services. The Consultant warrants and represents that the Consultant is qualified and has sufficient expertise and experience to perform expeditiously and efficiently all of the Services in a proper and professional manner to the standard set out above.

ARTICLE III – FEES AND PAYMENT

- 3.1 The City shall pay to the Consultant the following fees for the performance of the Services set out in section 3.2.
- 3.2 Fees shall be in accordance with the statement contained in the Consultant's proposal dated [date]. The fees for the required Services are estimated to be \$[amount], including sub-consultants, disbursements and the G.S.T. and shall not exceed this amount without the prior written approval of the City.
- 3.3 Disbursements which are included within the Consultant's fees set-out in section 3.2 include the following:
 - (a) reproduction of information, drawings and documents;
 - (b) travel expenses and living expenses for personnel where authorized by the City;
 - (c) long distance fax and telephone calls;
 - (d) advertising on behalf of the City in connection with applications for permits, approvals, licenses or substantial completion;
 - (e) actual fees and expenses of special consultants when retained with the approval of the City;
 - (f) actual costs of messenger and courier services;

- (g) actual rental costs of specialized equipment of a kind not normally rented or owned by the Consultant; and
- (h) fee paid to obtain any required record information or data.

The cost of all disbursements may be increased up to a maximum of 5 percent to cover office services and cost of handling.

3.4 Payment

- (a) Each month, the Consultant shall submit to the City an invoice for the Consultant's fees and disbursements, and any charges of sub-consultants retained by the Consultant upon the City's request as provided in this Agreement. Each invoice will be accompanied by supporting documentation as may reasonably be required by the City.
- (b) The City shall pay such invoices in full within thirty (30) calendar days of receipt. If the City reasonably determines that the full amount of an invoice is not owing, then the City will pay the amount it determines is owing, and forthwith provide the Consultant with written reasons for any deduction in the amount of the invoice.
- (c) Accounts unpaid by the City thirty (30) calendar days after presentation shall bear monthly interest calculated at 2% per annum which amount shall be due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.
- (d) The payment of the Consultant's fees and disbursements shall not be contingent upon the construction or installation of the work designed by the Consultant or upon the outcome of any proceedings pending before a Court, arbitration tribunal or similar body to which the Consultant is not a party.
- (e) Any fees due to the Consultant shall be paid to the Consultant whether or not any payment is made to or withheld from any contractor.

3.5 Compensation for Extra Work and Changes to the Scope of Services

If it shall become necessary for the Consultant to make any changes in any designs, drawings, plans, or specifications for any part of the work for reasons over which the Consultant has no control, or if the Consultant is put to any extra work, cost or expense by reason of any act or matter over which the Consultant has no control, the Consultant shall be compensated for such changes or extra work either on a "Per Diem Rate" basis or a "Time" basis at the option of the City; provided that prior to the commencement of such changes or extra work the Consultant shall notify the City in writing of the Consultant's intention to make such changes or to carry out such extra work and that the Consultant shall keep separate cost records in respect to such changes or extra work.

3.6 Special Services

- (a) The City shall reimburse the Consultant for all permit and examination fees paid out by the Consultant.
- (b) In the event it is necessary for the Consultant to engage any sub-consultants or sub-contractors to perform any part of the Services, the Consultant will require each and every sub-consultant or sub-contractor to be insured in the exact same manner as described in Appendix A of the City's Request for Proposal, with both the Consultant and the City as additional insureds; however, if the sub-contracted works will involve drilling or other sub-surface investigations the Consultant will so advise the City and seek instructions from the City as to what further insurance may be required of the sub-consultant or sub-contractor.
- (c) If the Consultant considers it necessary to engage a specialist, the City shall reimburse the Consultant for the specialist's fee and out-of-pocket expenses, provided that the Consultant shall not engage any specialist without first obtaining the City's approval in writing.
- (d) The Consultant shall not be required to prepare for nor to appear in any litigation on behalf of the City unless the Consultant is compensated therefor either on a "Per Diem Rate" basis or on a "Time" basis at the option of the Consultant.

ARTICLE IV - GENERAL TERMS AND CONDITIONS

4.1 Living Wage

- (a) The parties acknowledge and agree that the City is a certified Living Wage Employer by the Living Wage for Families Campaign and, in connection with such certification, the City requires the Consultant and its sub-consultants, sub-contractors and other employers with workers carrying out any portion of the Services on the Project Site (as defined in Schedule "A") to comply with the City's Living Wage Policy for Service Providers.
- (b) During the term of this Agreement, the Consultant shall comply with the terms of the Consultant's Living Wage Obligations as set out in Schedule "A" of this Agreement. Schedule "A" of this Agreement is attached hereto and forms an integral part of this Agreement.

4.2 Cooperation

- (a) The City shall give due consideration to all plans, drawings, specifications, reports, tenders, proposals and other information provided by the Consultant and shall make any decisions which the City is required to make in connection therewith within a reasonable time.

- (b) The City shall at the request of the Consultant provide the Consultant with the following information, and with any documents relating thereto, except insofar as the Consultant is expressly required to furnish the same under the terms hereof:
 - (i) all pertinent information which may affect the work to be done, including a correct survey of the site existing facilities;
 - (ii) accurate information, plans and specifications regarding any other existing or proposed buildings or works which are involved, and insofar as such information is not available, the cost of obtaining the same shall be borne by the City; and
 - (iii) copies of all bids and contracts for the work for which the Consultant is responsible and copies of all quotations, certificates for payment and final accounts in connection with the work insofar as they do not originate in the Consultant's office.

4.3 Abandonment or Suspension

If the Project or any part thereof is abandoned at any stage prior to completion of the design, or if any stage of the Consultant's work is unduly delayed for reasons beyond the Consultant's control, the City shall compensate the Consultant for his Services from the inception of the work on a "Per Diem Rate" basis or on a "Time" basis, or on the basis of the Consultant's estimate of the proportion of the Consulting work completed, as agreed to by the City and the Consultant. If the Project or any part thereof is abandoned at any stage subsequent to the completion of the design, or if any stage of the Consultant's work is unduly delayed for reasons beyond the Consultant's control, the City shall compensate the Consultant for the Consultant's Services from inception of the work to the completion of design as provided in this Agreement, and shall compensate the Consultant for the Consultant's Services subsequent to the completion of design on a "Per Diem Rate" basis or on a "Time" basis or on the basis of the Consultant's estimate of the proportion of the Consulting work completed, as agreed to by the City and the Consultant.

4.4 Plans, Specifications and Designs

- (a) The Consultant hereby sells, assigns and transfers to the City the right, title and interest required for the City to use and receive the benefit of all the reports, drawings, plans, designs, models, specifications, computer software, concepts, products, designs or processes or other such work product produced by or resulting from the Services rendered by the Consultant. This section does not give the City the right to sell any such work product to any third party and the City may sell the product only with the prior approval of the Consultant. The Consultant may retain copies of the work product.
- (b) If the City requests the Consultant to provide reproductions of any plans, drawings, or designs, the City shall reimburse the Consultant for the cost thereof.

4.5 Construction Emergencies

In the event of any emergency which in the reasonable opinion of the Consultant requires immediate action in the City's interests, the Consultant shall have authority to issue such orders and to take such steps on behalf, and at the expense of the City as the Consultant shall deem necessary or expedient.

4.6 Variations in Designs

The Consultant shall be entitled to make such deviations, alterations, additions or omissions in carrying out the work as the Consultant may reasonably consider desirable in the City's interests, provided that no additions to the cost of the work are caused thereby.

4.7 Compliance with Laws

In performing the Services, the Consultant shall in all respects comply with all applicable laws, rules, codes, regulations, bylaws, orders and ordinances of authorities having jurisdiction.

4.8 Professional Liability Insurance

The Consultant shall provide, at its own expense, and maintain at all times while this Agreement is in force all of the insurance as further described in Appendix A of the City's Request for Proposal. Prior to the commencement of any of the Services herein, the Consultant shall provide the City with satisfactory evidence that the insurance required to be provided by the Consultant is in full force and effect. Coverage must contain reasonable deductibles and be continuous and remain in full force and effect from commencement of the Services and for a period not less than twelve (12) months following completion.

If the Consultant neglects or fails to obtain and/or maintain any of the required insurance or to deliver suitable evidence that it has all of the required insurance at any time, then it shall be lawful for the City to obtain and/or maintain such insurance and the Consultant hereby appoints the City its true and lawful attorney to do all things necessary for this purpose. All monies expended by the City for insurance premiums under the provisions of this clause shall be charged to the Consultant and may be withheld by the City from payment for Services rendered under this Agreement.

4.9 Workers' Compensation Act Compliance

The Consultant shall comply with the provisions of the B.C. *Workers Compensation Act* and regulations thereto in respect of the performance of the Services under this Agreement. Where the Consultant or its officers or employees are performing any of the Services in conjunction with or in the presence of any employees of the City or of any consultant, sub-consultant or agent of the Consultant, the Consultant shall be the prime contractor for the purposes of that Act unless and until a contractor is hired by the City to

construct the works and commences such construction and the Consultant has commenced the contract administration phase of the Services.

4.10 Indemnity

The Consultant shall indemnify and save harmless the City and its elected officials, officers, servants, employees, volunteers and agents from and against all claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing in respect of death, injury, loss or damage to any person or property) that arise out of, or are attributable to, any negligent or malicious act, error, or omission of the Consultant, the Consultant's agents, employees, subcontractors, or suppliers arising out of or connected with the Services by the Consultant under this Agreement, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the City.

4.11 Termination by the City for Own Reasons

The City has the right to suspend or terminate further performance of all or any portion of the Services at any time, for convenience or any other reason, by written notice to the Consultant. Upon receipt of such notice, the Consultant shall immediately discontinue the performance of the Services as instructed, whether being performed by the Consultant or any other sub-consultants, except to the extent that those Services are reasonably necessary to comply with the City's instructions, and shall preserve and protect all work in progress and all completed work. Any contracts relating to the Services entered into by the Consultant with a third party including a sub-consultant, shall, at the written request of the City, be assigned to the City.

In the event of suspension or termination as noted above, the City shall, in addition to any other rights or remedies the Consultant may have, pay the Consultant for the portion of the Services satisfactorily performed or completed to the date of the notice, including disbursements incurred as provided under this Agreement plus termination expenses.

4.12 Independent Consultant

The Consultant shall be, and in all respects be deemed to be, an independent contractor and nothing in this Agreement shall be construed to mean that the Consultant is an employee of the City or that any joint venture or partnership exists between the Consultant and the City.

4.13 Non-Resident Withholding Tax

If the Consultant is, at any time during the term of this Agreement, a non-resident of Canada, within the meaning of the *Income Tax Act of Canada* as amended (the "**Act**"), then the City shall deduct from all monies payable under this Agreement and remit to Canada Customs and Revenue Agency ("**CRA**") sums required to be withheld and remitted by the Act. The City shall receive full credit under this Agreement for monies withheld as of and from the date of the withholding. The City shall provide an

information slip to the Consultant in accordance with the Act for the amount of non-residence tax withheld.

Notwithstanding the foregoing, if the Consultant provides the City a non-resident tax exemption letter (the “**Exemption Letter**”) issued by CRA to the City’s satisfaction, then the City will not deduct and remit such non-resident tax except in accordance with the Exemption Letter.

4.14 Governing Law

This Agreement shall be interpreted and construed according to the laws of British Columbia.

4.15 Confidentiality

The Consultant shall maintain the confidentiality of any information, documentation or data provided to it by the City which is expressly identified as being confidential or proprietary or which by its nature is confidential or proprietary, and except with the written consent of the City, no such information, documentation or data shall be divulged or disclosed by the Consultant to any third party unless required to do so by law, or be used for any purpose other than as required under this Agreement in connection with the Project.

4.16 Amendment

This Agreement represents the entire agreement between the parties regarding the subject of this Agreement and may only be modified or amended by a written instrument executed by both parties.

ARTICLE V - SUCCESSORS AND ASSIGNMENT

5.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and, except as hereinafter otherwise provided, their executors, administrators, successors and assigns.

5.2 If the Consultant is an individual and dies or becomes incapacitated before the Consultant’s Services hereunder have been completed, this Agreement shall automatically terminate as of the date of the Consultant’s death or incapacity, and the City shall pay for the Services rendered and disbursements made to the date of such termination.

5.3 If a party to this Agreement who is an individual should desire to bring in a partner or partners, or if a party which is a partnership should desire to bring in a new partner or partners to share the benefit and burden of this Agreement the Consultant or City may do so but shall promptly notify the other party of such action.

5.4 Except as aforesaid neither party shall assign this Agreement without the written consent of the other.

5.5 This Agreement shall be deemed not to be an asset of the Consultant in the event of bankruptcy.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above by the hands of their proper officers duly authorized in that behalf.

CITY OF BURNABY, by its Authorized Signatory:

Name: _____

Title: _____

[CONSULTANT'S NAME], by its Authorized Signatory:

Name: _____

Title: _____

SCHEDULE “A”

CONSULTANT’S LIVING WAGE OBLIGATIONS

1. **Living Wage Schedule** - The Consultant shall comply with the terms and conditions of the City of Burnaby's Living Wage Schedule as set out in Appendix 1 - Living Wage Schedule.
2. **Subcontract Terms** - Where the Consultant enters into a contract with a sub-consultant or sub-contractor, the Consultant shall incorporate the requirements of the Living Wage Schedule into the contract and require the sub-consultant or subcontractor, as applicable, to incorporate the requirements of the Living Wage Schedule into any further contract with a sub-consultant or sub-contractor or other employer with workers carrying out any portion of the Services in or on City-owned or City-leased land, buildings, roadways, parks and public rights of way (the “**Project Site**”).
3. **Work Records** - On request of the City, the Consultant shall provide the City with a copy of the records required to be maintained by the Consultant, sub-consultants or sub-contractors under the Living Wage Schedule.
4. **Living Wage Schedule Enforcement** - Notwithstanding any other provision of the Agreement, if the Consultant or any sub-consultant, sub-contractor or other employer with workers carrying out any portion of the Services in or on the Project Site fails to comply with any form or condition of the Living Wage Schedule, the City may do one or more of the following:
 - (a) terminate this Agreement prior to the expiry date;
 - (b) suspend any or all payments due to the Consultant until the Consultant, sub-consultant or sub-contractor or employer is in compliance with the Living Wage Schedule;
 - (c) withhold payment from the Consultant of a sum equal to the difference between the amount paid as wages or other compensation and the amount that should, pursuant to the Living Wage Schedule, have been paid as such wages or other compensation until the Consultant, sub-consultant or sub-contractor or employer has demonstrated, to the City’s satisfaction, compliance with the Living Wage Schedule;
 - (d) deduct and retain from any payments due to the Consultant under this Agreement any amounts which in the opinion of the City should have been paid as wages or other compensation under the Living Wage Schedule; or
 - (e) if all payments under this Agreement has been paid to the Consultant, seek recovery as a debt owing to the City the sum equal to the difference between the amount paid as wages or other compensation and the amount that should, pursuant to the Living Wage Schedule, have been paid as such wages or other compensation.

APPENDIX 1

LIVING WAGE SCHEDULE

1. This Living Wage Schedule shall constitute and shall form part of the Agreement. The purpose of this Schedule is to implement the City's Living Wage Policy for Service Providers.
2. For the purposes of this Schedule, "**Living Wage**" shall be the living wage rate for Metro Vancouver published by the Living Wage for Families Campaign, or any successor entity.
3. Subject to section 4 below, any Consultant, sub-consultant, sub-contractor or employer doing or contracting to do the whole or any part of the Services shall, during the continuance of the Services, pay its workers carrying out any portion of the Services in or on City-owned or City-leased land, buildings, roadways, parks and public rights of way (the "**Project Site**") not less than the Living Wage.
4. If the Living Wage is increased during the continuance of the Services, the Consultant, sub-consultants, sub-contractors or other employer shall within six (6) months increase wages for its workers carrying out any portion of the Services in or on the Project Site to not less than the increased Living Wage.
5. Upon request by the City, the Consultant shall continuously display in a conspicuous location at the Project Site a copy of this Living Wage Schedule in its entirety.
6. The Consultant shall maintain up-to-date records and accounts which clearly document its satisfaction of the requirements under this Schedule, and obligate its sub-consultants, sub-contractors and other employers doing or contracting to do the whole or any part of the Services to do the same, during the continuance of the Services and to retain such records and accounts for a period of two (2) years after expiration or earlier termination of this Agreement.
7. Upon request by the City, the Consultant will produce, or cause its sub-consultants, sub-contractors or other employers with workers engaged at the Project Site to produce, all records and accounts maintained and retained pursuant to section 6 of this Living Wage Schedule.
8. If the City receives a complaint from a worker or other person about non-compliance with this Living Wage Schedule, the Consultant will cooperate, or cause its sub-consultant, sub-contractor or other employer that is the employer of the complainant to cooperate, fully with any investigation in respect to the complaint. The City may deduct from any payment to the Consultant under this Agreement all applicable staff, consultant and other costs required to investigate and resolve issues pertaining to non-compliance with this Living Wage Schedule.
9. Upon request by the City, the Consultant shall prepare and submit to the City, in a format established or acceptable to the City, before January 31st of each calendar year of the term of this Agreement and within thirty (30) days of expiration or earlier termination of this Agreement, a Living Wage report in the form or substantially in the form attached to this Living Wage Schedule.
10. It is the Consultant's responsibility to ensure the Consultant, its sub-consultants, sub-contractors or other employers with workers carrying out any portion of the Services in or on the Project Site comply with this Living Wage Schedule.



Living Wage Reporting Form

Please provide the information on this form for the following agreement with the City of Burnaby:

1. Consultant Name

2. Consultant Description/Number

3. Are you a certified Living Wage Employer?

Yes

No

4. For the period _____ to _____, number of employees and workers (including employees and workers of sub-consultants and sub-contractors) who would have been paid less than a Living Wage rate if the City of Burnaby did not have a Living Wage Policy:

5. I declare that all employees and workers at the Project Site (as defined in the Living Wage Schedule in the Agreement), including sub-consultants' and sub-contractors' employees and workers, have been paid a Living Wage rate or greater.

Consultant Signature:

Date:

Submit form to:

City of Burnaby, Purchasing Department
West Building-1st Floor
6161 Deer Lake Avenue
Burnaby, BC, V5G 4A3
purchasing@burnaby.ca