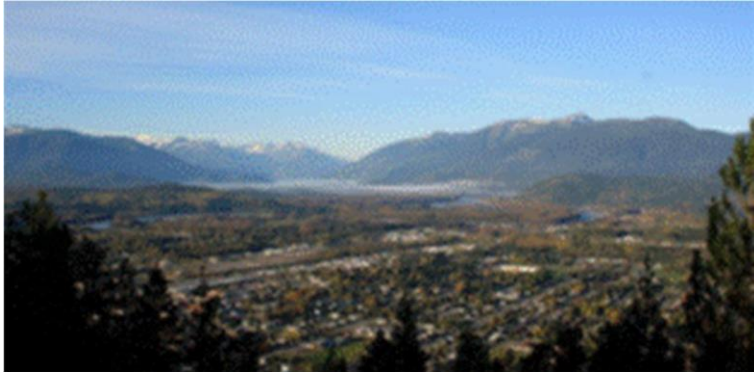


City of Terrace  
Request for Qualifications  
Civil Engineering Consultant Services  
Issue Date: March 28<sup>th</sup>, 2023



**Closing Date and Time:** April 21st, 2023 at 23:59:59 Pacific Time

City of Terrace  
5003 Graham Avenue  
Terrace, BC V8G 1B3

**RFQ Contact:**  
Ben Reinbolt  
Director of Engineering and Public Works  
Email: [breinbolt@terrace.ca](mailto:breinbolt@terrace.ca)



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# 1 GENERAL

## 1.1 INTRODUCTION

The City of Terrace is a vibrant and growing community centrally located in Northwest British Columbia and is the regional nexus for highway, rail, and air transportation routes. Terrace hosts many of the region's business, retail, post-secondary, medical and government services, it is known for its natural beauty and ease of access to outdoor recreation. Terrace's population is approximately 12,500 with an additional five to seven-thousand population in the immediately adjacent urban areas.

The purpose of this RFQ is for the City to obtain submissions from entities qualified to provide certain services to the City, including those set out in the Potential Scope of Services provided in Schedule A. The City intends to invite the highest-ranked Proponent (or more than one Proponent, at the City's absolute discretion) to enter into a Master Services Agreement substantially in the form provided in Schedule B. The Master Services Agreement(s) is intended to be valid for a period of three years during which the City may obtain any or all of the services set out in the Potential Scope of Services.

Parties interested in submitting a response to this RFQ are directed to section 2, which contains instructions and requirements regarding Submissions. Submissions received before the Closing Date and Time will be evaluated in accordance with the process and criteria described in section 3.

## 1.2 RFQ TERMINOLOGY

Throughout this RFQ, the following definitions will apply:

- a) **"Addendum"** means a written change to this RFQ issued by the City;
- b) **"BC Bid"** means the online procurement system hosted by the provincial government of British Columbia and available at <https://new.bcbid.gov.bc.ca/>;
- c) **"City"** means the City of Terrace;
- d) **"Closing Date and Time"** means the date and time indicated as such on the cover page of this RFQ;
- e) **"Evaluation Conflict of Interest"**, with reference to a Proponent, means that a person who holds a position of trust with the City with respect to the RFQ process (e.g., staff or consultant) has a financial, professional or personal relationship with a Proponent and such interest would make it difficult, whether actually or reasonably perceived, for the said person to fulfill their duty to the City;
- f) **"Master Services Agreement"** means an agreement substantially in the form provided in Schedule B;

- g) **“Performance Conflict of Interest”**, with reference to a Proponent, means that the Proponent has some financial, professional or personal interest that competes with the City’s interests and would make it difficult, whether actual or reasonably perceived, for the Proponent to fulfill its duty to the City under the Master Services Agreement;
- h) **“Potential Scope of Services”** means the services which the City may obtain from the selected Proponent(s) as set out in Schedule A;
- i) **“Proponent”** means an individual or a company that submits, or intends to submit, a Submission in response to this RFQ;
- j) **“RFQ”** means this document including all appendices, schedules and Addenda;
- k) **“RFQ Contact”** means the individual identified as such on the cover page of this RFQ. The email address of the RFQ Contact is as provided thereon;
- l) **“Services”** means any or all of the services described in the Potential Scope of Services and other similar services; and
- m) **“Submission”** means a written submission that is intended to be delivered by Proponents in response to this RFQ.

## **2 INSTRUCTIONS AND INFORMATION FOR PROPONENTS**

### **2.1 INFORMATION MEETINGS**

An information meeting will not be held. Any queries regarding this RFQ should be directed to the City strictly as provided in section 2.7.

### **2.2 SUBMISSION CONTENT**

Each Submission should contain the following information, organized in the same sequence and having the same headings as provided below.

#### **2.2.1 Cover Letter**

The cover letter should include a summary highlighting the capacity, past performance, personnel qualifications, experience, methods, procedures, quality control, safety, and proposed subconsultants. The cover letter should be signed by a person with official authority to bind the company. The letter should include the name, address, telephone number, title, and signature of the firm’s contact person for this Submission.

#### **2.2.2 Table of Contents**

The table of contents should include a list of all sections and appendices in the response and corresponding page numbers.

### **2.2.3 Firm Qualifications/References**

This section should include:

- a) Brief introduction to the Proponent (and each subconsultant) including primary line of service, specialties, locations, staff strength etc.
- b) A list of projects completed in the past five years or presently being performed with sufficient detail to allow the City to determine if the scope of such projects was similar to the Services.
- c) Contact information (name, email address and telephone number) for three individuals who the City may contact to obtain a reference for the Proponent. It is up to the Proponent's discretion to include references for any subconsultants, provided the total number of references is not more or less than three.

### **2.2.4 Project Team / Key Personnel**

This section should include:

- a) An organization chart showing the names and responsibilities of key personnel (including key subconsultant personnel), including identification of principal-in-charge and the primary contact.
- b) Resumes for the key personnel.
- c) A statement indicating that excepting circumstances outside the Proponent's reasonable control, the proposed key personnel will provide the Services to the City.

### **2.2.5 Approach**

This section should include:

- d) A description of how their Proponent will approach providing Services to the City.
- e) A description of the Proponent's approach to working collaboratively with City staff.
- f) A description of the Proponent's anticipated response time and response protocol to the City's needs, including the location of the Proponent's office that would be providing the Services as well as the intended residency of the Proponent's primary contact and liaison with the City.
- g) Any value-added services that the City would benefit from if the Proponent was selected.

### **2.2.6 Rates**

Provide hourly billing rates for each staff position that is expected to participate in provision of Services. The billing rates provided will be deemed to be valid for a period of one year following the Closing Date and Time.

### **2.3 SUBMISSION FORMAT**

Submissions must be electronic only, in PDF format. A single file containing all parts of a Submission is preferred.

### **2.4 DELIVERY OF SUBMISSIONS**

To be considered valid, a Submission must be delivered as an attachment via email to the email address of the RFQ Contact (as provided on the cover page) at or before the Closing Date and Time. The time of delivery shall be established by the time of receipt shown by the receiving email server. It is solely each Proponent's responsibility to account for unforeseen delays in email delivery, power outages, internet outages, etc. The maximum acceptable size of attachment is 10 megabytes.

### **2.5 AMENDMENT OR WITHDRAWAL**

Once a Submission has been delivered to the City, a Proponent may amend or withdraw their Submission prior to the Closing Date and Time, but not after. Any amendments or withdrawal must be in writing and delivered by the same means as Submissions are required to be delivered.

### **2.6 ADDENDA**

Before the Closing Date and Time, the City may make changes to the RFQ by issuing written Addenda. Written Addenda are the only means of varying, clarifying, or otherwise changing any of the information contained in this RFQ. The City will post all Addenda via BC Bid. Once posted, all Addenda will form part of the RFQ.

It is the responsibility of each Proponent to register itself as a bidder on BC Bid with respect to this RFQ and check for Addenda prior to submitting their Submission and up until Closing Date and Time.

### **2.7 ENQUIRIES**

All enquiries related to this RFQ must be submitted by email to the RFQ Contact at the email address (provided on the cover page). Only email enquiries will be responded to, at the City's discretion and where the City deems that time permits a response. Enquiries and responses will be recorded and may be distributed to all Proponents by way of issuing Addenda, at the City's option.

### **2.8 NO SOLICITATION**

Proponents must not attempt to contact any elected representatives or employees of the City with the intent of influencing the result of this process. Any contact between a Proponent (which

includes its employees, owners, representatives, or agents) and the City with respect to the RFQ must strictly be through the enquiry process provided herein.

## **2.9 CONFLICTS OF INTEREST**

If a Proponent is aware of an Evaluation Conflict of Interest or a Performance Conflict of Interest, the Proponent must disclose such conflict of interest in its Submission. The Proponent may propose measures that the Proponent can take to mitigate or reduce the effects of such conflict of interest. An Evaluation Conflict of Interest or a Performance Conflict of Interest involving a proposed subconsultant of the Proponent will be deemed to involve the Proponent itself.

## **2.10 TEAMING AND SUBCONSULTING**

A Submission may only have one Proponent associated with it, and such Proponent must be a distinct legal entity (e.g., a natural person, a corporation, a partnership, etc.). If two or more parties intend to provide the requested goods or services as a team or as a joint venture, they must be represented by one of the parties (“**Lead Member**”) as the Proponent. For all contractual and legal purposes, the City will recognize only the Lead Member as the Proponent and, if this Proponent is invited to negotiate the Master Services Agreement and successfully does so, the City will enter into the Master Services Agreement with only the Lead Member.

Use of subconsultants (who should be clearly identified in the Submission) is acceptable.

# **3 EVALUATION AND SELECTION**

Submissions received before the Closing Date and Time will be subject to the evaluation process which may result in selection of one or more Proponents, all in accordance with the process described below.

## **3.1 EVALUATION OF SUBMISSIONS**

### **3.1.1 Evaluators**

The evaluation of Submissions will be undertaken on behalf of the City by one or more evaluators who may be City employees, contractors, consultants or advisors.

### **3.1.2 Evaluation criteria and scoring**

Each Submission will be evaluated by awarding points to each of the criteria provided below.



	<b>Criteria</b>	<b>Points awarded</b>
1	Firm capabilities and past performance	30
2	Qualifications and experience of personnel	30
3	Proposed approach	30
4	Rates	10
<b>TOTAL</b>		<b>100</b>

For each criteria, points will be awarded on the following scale:

<b>Points</b>	<b>Relevance</b>
0	no answer or none of the requirements/expectations met
10	excellent or requirements/expectations exceeded

Rates will be awarded points on a relative scale based on a reasonable formula developed by evaluators.

### **3.1.3 References**

The evaluation team may, at its discretion, contact references provided by Proponents or any other third-party who may have knowledge of the Proponent's past performance or conduct. For clarity, if a Proponent has previously provided services to the City, the evaluation team may seek and rely on knowledge about the Proponent's past performance or conduct held by City staff or representatives. The evaluation team may consider the responses received from the references in evaluating Submissions.

### **3.1.4 Additional Information, interviews or questionnaires**

The evaluation team may, as reasonably required:

- a) request clarifications or additional information from one or more Proponents with respect to their respective Submissions;
- b) may invite one or more Proponents to attend an interview in person, on phone, or via web meeting; or
- c) invite one or more Proponents to provide a written response to a questionnaire.

The information collected through such clarification, additional information, interview or questionnaire may be used by evaluation team in evaluating Submissions.

### **3.2 RANKING OF PROPONENTS**

The Proponents will be ranked based on the scores received by their Submissions, with the top rank being assigned to the Proponent whose Submission receives the highest score. If two or more Proponents receive equal scores or receive scores that are substantially similar, the City may (but is not obligated to) do any of the following:

- a) invite the said Proponents to provide further information or attend an interview, based on which the evaluation team may adjust the previously-assigned scores; or
- b) invite the said Proponents to a separate solicitation process for which the City may define new evaluation criteria and require fresh submissions.

### **3.3 INVITATION TO ENTER INTO AGREEMENT**

Upon completion of ranking of Proponents, the City will invite (subject to the City's rights and reservations set out in this RFQ) one or more of the highest-ranked Proponent to enter into a Master Services Agreement in the form provided in Schedule B. The number of Proponents that may receive such invitation shall be entirely at the discretion of the City.

The City reserves the right to negotiate with any invited Proponents to vary the terms of the Master Services Agreement from what is provided in Schedule B.

Upon a Proponent(s) being invited to enter into a Master Services Agreement, the City may request that Proponent to provide the following within 10 business days:

- a) a clearance letter indicating that the Proponent is in "active and in good standing" with WorkSafeBC;
- b) a copy of the insurance policies as specified in the form of contract in Schedule B; and
- c) a copy of a valid City of Terrace business license.

If a Proponent fails to provide the requested documents within 10 business days or fails to execute the Master Services Agreement within 10 business days after being invited to do so (for any reason whatsoever), the City may withdraw its invitation to the Proponent and invite the next-ranked Proponent.

### **3.4 NOTIFICATION**

The City shall notify all Proponents of the result of the RFQ process after a Master Services Agreement(s) has been entered into. At the City's discretion, the result may be notified to Proponents before the Master Services Agreement has been entered into. Upon request by an unsuccessful Proponent, the City shall provide reasons to the Proponent why the City did not

invite that Proponent to enter into the Master Services Agreement. Such reasons may be provided in writing, by phone, online meeting, or in-person meeting, at the City's discretion.

## **4 RFQ TERMS AND CONDITIONS**

The following terms and conditions will apply to this RFQ process.

### **4.1 ACKNOWLEDGMENT OF TERMS AND CONDITIONS**

By delivering a Submission, each Proponent agrees to be bound by the terms and conditions contained in the RFQ.

### **4.2 THIS RFQ IS NOT A TENDER**

This RFQ is not an invitation to tender that would create any entitlements to purchase or supply goods or services whatsoever. The City is not bound to enter into a Master Services Agreement with the Proponent who achieves the highest rank in evaluation of Submissions or with any other Proponent.

### **4.3 SUBMISSION VALIDITY**

Each Submission received, including price contained therein, shall be deemed to be valid for a period of 60 days after the Closing Date and Time.

### **4.4 RIGHTS RESERVED BY CITY**

The City reserves the right, to be exercised in the City's sole discretion, to:

- a) waive non-compliance of a Submission with requirements set out in this RFQ if such non-compliance:
  - i. is not in relation to an essential or important requirement set out in the RFQ; and
  - ii. is not significant with respect to evaluation of the Submission;
- b) cancel this RFQ at any time before a Master Services Agreement is entered into, including at the following stages:
  - i. before the Closing Date and Time;
  - ii. after the Closing Date and Time but before any Proponent is invited to enter into a Master Services Agreement; and
  - iii. after one or more Proponents are invited to enter into a Master Services Agreement but before the same is executed;
- c) if this RFQ is cancelled:
  - i. issue another solicitation on the same or different terms; or
  - ii. do nothing further;

- d) rely on information from credible third parties to assess a Proponent with respect to evaluation criteria, even if such third parties have not been nominated as reference by the Proponent;
- e) disqualify a Proponent in the following circumstances:
  - i. the Proponent attempts to influence the outcome of this RFQ process in a manner prohibited in this RFQ;
  - ii. an Evaluation Conflict of Interest or a Performance Conflict of Interest exists that the Proponent knows about or should know about, but has failed to disclose in its Submission;
  - iii. an Evaluation Conflict of Interest or a Performance Conflict of Interest has been disclosed by the Proponent but the City deems that the effects of the conflict of interest cannot be mitigated with reasonable effort;
  - iv. the Proponent or its proposed sub-contractor is currently, or was within the past three years, engaged in litigation with the City; or
  - v. it is known to the City with reasonable certainty through its own experience or through that of credible third parties that the Proponent has acted in a commercially unreasonable manner or unlawful manner within the last five years;
- f) negotiate the terms of the Master Services Agreement with one or more Proponents who are ranked the highest in the evaluation process and enter into a Master Services Agreement with one or more such Proponent; and
- g) enter into a Master Services Agreement for only a part of the deliverables anticipated in the RFQ.

#### **4.5 OWNERSHIP OF SUBMISSIONS**

All documents, including Submissions, submitted to the City in connection with this RFQ shall become the property of the City. These documents will be received and held in confidence by the City, except as otherwise required by law. Proponents are advised that their Submissions will, as necessary, be disclosed, on a confidential basis, to advisors retained by the City to advise or assist with the RFQ process, including the evaluation of Submissions.

#### **4.6 PROPONENTS' EXPENSES**

Proponents are solely responsible for their own costs and expenses in preparing and submitting Submissions, and for any meetings, negotiations or discussions with the City or its representatives and consultants, relating to or arising from this RFQ.

#### **4.7 LAW**

This RFQ and the process related to it shall be governed by and construed in accordance with the laws of British Columbia and Canada, as applicable.

#### **4.8 LIABILITY FOR ERRORS**

The City has used considerable efforts to ensure an accurate representation of information in this RFQ. However, the City accepts no responsibility for the accuracy or completeness of this RFQ (including any schedules, appendices or Addenda) and no representation or warranty, express or implied, is made or given by the City with respect to the accuracy or completeness of the RFQ (including any schedules, appendices or Addenda). The information contained in this RFQ is supplied solely as a guideline for Proponents. Nothing in this RFQ is intended to relieve Proponents from the responsibility of forming their own opinions and conclusions with respect to the matters addressed in this RFQ.

#### **4.9 CONFIDENTIALITY OF INFORMATION**

Information pertaining to the City obtained by the Proponent as a result of participation in this RFQ is confidential and should not be disclosed without written authorization from the City.

#### **4.10 LIMITATION OF DAMAGES**

The City and its representatives, agents, consultants and advisors will not be liable to any Proponent for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing and submitting a Submission, or participating in negotiations for a Master Services Agreement, or other activity related to or arising out of this RFQ.

#### **4.11 TRADE AGREEMENTS**

This RFQ is subject to the following trade agreements:

- a) Canada-European Union Comprehensive Economic and Trade Agreement, chapter 19;
- b) Canadian Free Trade Agreement, chapter 5; and
- c) New West Partnership Trade Agreement.

## **SCHEDULE A: POTENTIAL SCOPE OF SERVICES**

The successful proponent would be expected to become familiar with the City of Terrace's standards and guidelines, policies, bylaws, procedures, master plans, organizational structure and operating systems. The successful proponent will be expected to work with various City of Terrace staff in different Departments to provide support, and mentorship as a professional engineer on an ongoing basis. The successful proponent must have the City's approval before engaging any sub-consultants for City projects.

Typical projects, studies, design of approved projects, and day-to-day support that may occur, but are not limited to:

- Conceptual design, budget preparation, detailed design, tender preparation, contract administration, project management, site supervision, and project reporting of approved capital projects (Roads, Drainage, Water, and Sewer).
- Miscellaneous studies and projects, grant applications and grant tracking on qualifying projects, sewer, storm, and water modelling.
- Project Management – overseeing the planning, execution, and control of projects, including budget and schedule management, risk assessment, and stakeholder communication.
- Technical Support and Consultation – provide technical expertise and advice on engineering related matters. This may include Professional Engineer oversight of engineered design work performed by City staff and mentorship as required.

## **SCHEDULE B: FORM OF MASTER SERVICES AGREEMENT**

(Next Page)

## MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT dated for reference this **Month DD**, 2023 is:

BETWEEN:

City of Terrace  
5003 Graham Avenue  
Terrace, BC V8G 1B3

(the “**City**”)

AND:

[Name of consultant]

[Address]

[Address]

(the “**Consultant**”)

GIVEN THAT:

- A. the City wishes to obtain certain services on an as-needed basis over a period of three years;
- B. the Consultant responded to the City’s procurement solicitation and was selected by the City, and
- C. the parties wish to enter into this agreement which will provide the contractual framework for the provision of services by the Consultant to the City,

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this agreement agree as follows:

### 1.0 Interpretation

In this agreement, the following terms have the meanings set out after each:

- (a) “**Claims**” has the meaning described in section 22.1;
- (b) “**Confidential Information**” has the meaning described in section 14.1;
- (c) “**Force Majeure**” means an extraordinary event of nature, an act of a public enemy, war, unforeseen and materially significant impacts from epidemic or pandemic, labour disruptions and other extraordinary causes not reasonably within the control of the Consultant or the City;
- (d) “**Indemnified Party**” has the meaning described in section 22.1;
- (e) “**Indemnifying Party**” has the meaning described in section 22.1;
- (f) “**Intellectual Property**” means all discoveries, inventions, know-how, improvements, developments, processes, technology, compositions, designs, techniques, methods,



industrial designs, compositions, prototypes, models, literary work, research, drawings, software and trade secrets whether or not capable of patent, industrial design, copyright or trademark protection, or any other type of protection;

- (g) **“Intellectual Property Rights”** means all rights available at common law, equity and statute, relating to Intellectual Property;
- (h) **“MSA”** means this agreement, including the recitals and schedules hereto, each as supplemented or amended from time to time;
- (i) **“Services”** means any or all of the services set out in Schedule A or services similar to those set out in Schedule A; and
- (j) **“Task Order”** has the meaning described in section 3.3;
- (k) **“Term”** has the meaning described in section 2.1;
- (l) **“Work Product”** means all documents, data, drawings, sketches, calculations, specifications, models, renderings, drafts, and reports in any medium or electronically prepared by or on behalf of the Consultant in the performance of the Services and includes all related Intellectual Property and Intellectual Property Rights.

## **2.0 Term**

2.1 This MSA takes effect immediately upon execution by all of the parties and will be in effect for a period of three years thereafter (**“Term”**).

## **3.0 Task Order Process**

3.1 Upon identifying a need for Services during the Term:

- (a) the City will provide in writing a description of the required Services to the Consultant;
- (b) the Consultant will, within five business days, provide its estimated time for completing the Services and, if applicable, the estimated ‘not to exceed’ price; and
- (c) the parties will negotiate performance time, compensation and any other conditions applicable to the Services in good faith.

3.2 For certainty, any ‘not to exceed’ price estimated by the Consultant under section 3.1(b) shall be based on the rates attached hereto in Schedule B. The rates provided in Schedule B shall be valid for the first year of the Term. For each subsequent year, the rates will be inflated by 2.21%, which represents the annual average change in the Consumer Price Index for the decade beginning 2013 and ending 2022.

3.3 Upon reaching agreement, the City and the Consultant will execute a document substantially in the form provided in Schedule C, which will then constitute a **“Task Order”**.

3.4 In the event of conflict between the terms herein and terms in a Task Order, the latter shall prevail.

#### **4.0 Services**

- 4.1 Upon execution of a Task Order, the Consultant will provide the Services set out therein in accordance with the terms set out in this MSA and in the Task Order.
- 4.2 The Consultant will perform the Services to a standard of care, skill and diligence maintained by person providing, on a commercial basis, services similar to the Services.
- 4.3 The Consultant will supply and pay for all labour and materials necessary or advisable to provide the Services.
- 4.4 The Consultant will be responsible for all applications, permits or other approvals necessary or advisable to provide the Services unless agreed to otherwise in the Task Order.
- 4.5 The Consultant will, upon request, fully inform the City of all work done in connection with providing the Services.
- 4.6 The Consultant will, when necessary, provide and supervise a sufficient number of workers to enable timely and proper performance and completion of the Services, and will ensure that all such workers are competent, work efficiently and are qualified by education, training and experience to carry out the tasks to which each is assigned.
- 4.7 All workers hired by the Consultant to perform the Services will be the employees or contractors of the Consultant and will not be the employees or contractors of the City. The Consultant will refrain from doing anything that would result in workers hired by the Consultant being considered the employees of the City.
- 4.8 The Consultant will comply with all City bylaws and all other applicable enactments in connection with this MSA and the delivery of the Services.

#### **5.0 Compensation**

- 5.1 The City will pay the Consultant in arrears for the Services delivered pursuant to any Task Order as per the particulars of compensation set out in the Task Order. For certainty, no compensation is payable by the City to the Consultant except pursuant to a Task Order.
- 5.2 The Consultant will submit monthly written invoices to the City in relation to Services provided under any Task Order. Each invoice should reference the date of the Task Order and particulars of the Services performed including names of personnel, time spent, hourly rate and brief description of Services performed.
- 5.3 The City will pay the Consultant the invoiced amount (to the extent it is in accordance with this MSA and the applicable Task Order) within 30 calendar days of the delivery of the invoice.
- 5.4 The City will not pay the Consultant for any fees or expenses unless agreed to by the parties in the Task Order.
- 5.5 Any expense claims provided by the Consultant to the City will be supported by proper receipts, except where expressly not required.

- 5.6 The Consultant will be responsible for the payment of all income and other taxes attributable to any payments made under this MSA. The Consultant agrees to indemnify and save harmless the City from and against any and all manner of actions, claims and demands which may be made against it in respect of any fees, assessments, levies, rates, taxes or other charges made, demanded, assessed or otherwise claimed by any provincial or federal government or other body of competent jurisdiction in respect of any monies paid to the Consultant under this MSA.
- 5.7 The Consultant will apply for and, immediately upon receipt, remit to the City any refund or remission of federal or provincial tax or duty available with respect to any items used in connection with this MSA.
- 5.8 The Consultant will maintain time records and books of account, invoices, receipts, and vouchers for all expenses incurred, in form and content satisfactory to the City and all in accordance with Public Sector Accounting Standards as applicable in British Columbia.

## **6.0 Conflict of Interest**

- 6.1 The Consultant will not provide services to any other person or organization where doing so could reasonably give rise to a conflict of interest with respect to the Consultant's duties under this MSA.

## **7.0 Subcontracting**

- 7.1 The Consultant will not subcontract any obligation under this MSA, other than to persons or firms that the Consultant has proposed to the City and the City has approved the same in writing.
- 7.2 The City may, for reasonable cause, object to the use of a proposed subcontractor and require the Consultant to retain another qualified subcontractor.
- 7.3 No subcontract, whether consented to or not, will relieve the Consultant of any obligations under this MSA.
- 7.4 The Consultant will ensure that any subcontractor fully complies with this MSA when performing the subcontracted Services.

## **8.0 Non-Compliance**

- 8.1 If the Consultant fails to observe, perform, or comply with any provision of this MSA, then the City may, at its sole discretion:
- (a) allow the Consultant to continue to provide the Services with a time limit for compliance, rectification or both; or
  - (b) suspend all or part of the Services, including payments in whole or in part, and give the Consultant a time limit for compliance, rectification or both.
- 8.2 If the City has set a time limit for compliance, rectification or both and believes that the Consultant has failed to meet the time limit, the City may employ whatever means necessary to rectify that non-compliance, including performance of the Consultant's obligations on the Consultant's behalf

and/or termination of this MSA, and the Consultant will pay an amount equal to all costs reasonably incurred by the City in rectifying the non-compliance.

## **9.0 Termination**

9.1 The City may terminate this MSA at any time, and without cause, by giving 30 calendar days' written notice of termination to the Consultant and paying the Consultant any amount owed under this MSA up to the effective date of termination. That payment will discharge the City from all liability to the Consultant under this MSA.

9.2 The City may terminate this MSA if the Consultant fails to comply with any of the terms, covenants and agreements that the Consultant must observe or perform under this MSA and that failure continues for 14 calendar days after receipt by the Consultant of notice in writing from the City specifying the failure.

9.3 Provided there are no active Task Orders in existence at the time, the Consultant may terminate this MSA for any reason by providing 90 calendar days' written notice of termination to the City.

## **10.0 Information and Intellectual Property**

10.1 The City will make available to the Consultant all information in its possession that the City considers relevant to the Consultant's performance of the Services.

10.2 Subject to any rights, title or interests expressly granted by this MSA, neither party shall acquire any right, title, or interest in or to any Intellectual Property of the other party. Notwithstanding the foregoing, to the extent that the Work Product incorporates the Intellectual Property of the Consultant, the City and any entity controlled by the City shall have an irrevocable, royalty free, non-transferable license to use the Work Product.

## **11.0 Materials and Equipment**

11.1 Any material or equipment that the City provides to the Consultant, or to a subcontractor hired by the Consultant, will remain the exclusive property of the City.

11.2 The Consultant will deliver to the City any material or equipment provided to the Consultant or the Consultant's subcontractor immediately following expiration or termination of this MSA, or as requested by the City, and the material or equipment will be returned in the same condition that it was supplied to the Consultant, except for loss or damage resulting from reasonable wear and tear associated with the performance of the Services.

## **12.0 Safety**

12.1 The Consultant will comply with all conditions of the *Workers Compensation Act* and regulations, and will be responsible for all fines, levies, penalties and assessments made or imposed under the *Workers Compensation Act* and regulations relating in any way to the Services, and will indemnify and save harmless the City, its employees and agents, from and against any such fines, levies, penalties and assessments.

12.2 The Consultant will take reasonable measures to maintain safe work conditions for its employees and contractors performing the Services.

12.3 If applicable and unless otherwise permitted by the City, the Consultant shall be designated as the prime contractor for site investigations and shall have overall responsibility for health and safety on any worksite in connection with the Services.

### **13.0 Insurance**

13.1 The Consultant will, at its own expense, maintain at all times during the term of this MSA, the following insurance coverage at its own expense and in form and substance acceptable to the City:

(a) professional liability in an amount not less than \$5,000,000.00 per any one occurrence and \$5,000,000.00 in the aggregate for all occurrences insuring the Consultant's liability resulting from errors and omission in the performance of professional services under this agreement; and

(b) comprehensive general liability in an amount not less than \$5,000,000.00 inclusive per occurrence insuring against bodily injury and property damage and including liability assumed under contract.

13.2 The Consultant will make reasonable efforts to ensure that all policies of insurance required to be maintained under this MSA provide the City with thirty calendar days' advance written notice of cancellation or material change.

13.3 The Consultant will provide the City with evidence of all required insurance in a form acceptable to the City on demand.

13.4 The City will be an additional insured on any insurance policies obtained or maintained under section 13.1(b).

13.5 The Consultant will apply to WorkSafeBC for coverage for the Consultant and any workers or other persons engaged by the Consultant to perform the Services during the term of this MSA.

### **14.0 Confidentiality**

14.1 The Consultant acknowledges that in the performance of its responsibilities hereunder, the Consultant may have access to confidential information and records and the Consultant will maintain strict confidentiality concerning any information, data, reports, instructions or directions received from or delivered by the City in connection with the providing of any Services under this MSA (the "**Confidential Information**").

14.2 Statements or materials related to the Services will not be released by the Consultant to the public without the prior written approval of the City.

14.3 During and after the term of this MSA, the Consultant will not, directly or indirectly, disclose Confidential Information to any person or use any Confidential Information, except:

- (a) as required in the course of performing the Services and then only to staff of the City on a need-to-know basis; or
  - (b) with the prior written consent of the City.
- 14.4 All Confidential Information which the Consultant will prepare or use or come in contact with will be and remains the City's sole property and will not be disclosed.
- 14.5 Subject only to the Consultant's professional obligations, the Consultant agrees to return to the City all the Confidential Information provided by the City.
- 14.6 The Consultant agrees that it will cause any worker, before commencing his or her duties, to sign a written confidentiality agreement and the Consultant will be liable to the City for any breach of any such agreement by the worker.
- 14.7 The Consultant agrees that, upon request of the City, or in the event that the Consultant ceases to require use of the Confidential Information, or upon expiration or termination of this MSA, the Consultant will turn over to the City all data, documents, specifications, drawings, reports, software, disks or other computer media, or other material in the possession or control of the Consultant that:
  - (a) may contain or be derived from ideas, concepts, creations, or trade secrets and other proprietary and Confidential Information; or
  - (b) is connected with or derived from the Consultant's Services to the City.
- 14.8 The Consultant agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any failure to maintain the confidentiality of the Confidential Information in breach of this MSA cannot be reasonably or adequately compensated for only in money damages and would cause irreparable injury to the City. Accordingly, the Consultant agrees that the City is entitled to, in addition to all other rights and remedies available at law or in equity, an injunction restraining the Consultant and any agents of the Consultant, from directly or indirectly committing or engaging in any act restricted by this MSA in relation to the Confidential Information.

## **15.0 Notices**

- 15.1 Any notice permitted or required to be given by a party hereunder will be given in writing, and may be delivered by hand, sent by email or sent by registered mail to the addresses set forth below, or to such other addresses as may from time to time be provided by the parties in writing. Any notice delivered by hand or email will be deemed to be given and received at the time of sending. Any notice that is sent by registered mail will be deemed to have been received by the party to whom it is addressed on the fourth business day (Saturdays, Sundays and statutory holidays excluded) following the date of posting, provided that Canada Post service is not interrupted by strike or lock-out at the time of posting or within four business days thereafter, in which case the notice will only be effective once it is actually delivered.
- 15.2 Notices under this MSA are to be delivered as follows:

**To the City:**

[Name of individual to be noticed]

City of Terrace  
5003 Graham Avenue  
Terrace, BC V8G 1B3  
Email: [email]

**To the Consultant:**

[Name of individual to be noticed]

[Name of consultant]

[address]

[address]

Email: [email]

or such other persons or addresses as the parties may advise in writing.

**16.0 Dispute Resolution**

16.1 In the case of any dispute arising between the City and the Consultant, a party to this MSA may give the other party notice of the dispute, and if the matter cannot be resolved, the parties may by mutual agreement submit the dispute to mediation and/or arbitration by a single arbitrator in accordance with the *Arbitration Act* (British Columbia), as amended.

**17.0 Force Majeure**

17.1 If a party is rendered unable, wholly or in part, by Force Majeure to perform its obligations under this MSA, the suffering party will deliver notice of the Force Majeure to the other party as soon as reasonably possible, and to the extent that the noticing party's performance is impeded by the Force Majeure it will not be in breach of its obligations under this MSA.

17.2 The parties acknowledge and agree that during an event of Force Majeure, the suffering party's obligations pursuant to this MSA will be reduced or suspended as the case may be, but not longer than the continuance of the Force Majeure, except for a reasonable time period after if required by that party to resume its obligations.

**18.0 No Assignment**

18.1 The Consultant may not assign any of its rights or interests in this MSA without the written agreement of the City.

18.2 The Consultant acknowledges and agrees that any change in corporate control or ownership of Consultant constitutes an assignment that will require approval of the City in accordance with section 18.1.

**19.0 Binding on Successors**

19.1 This MSA inures to the benefit of and is binding upon the parties and their respective successors and permitted assigns, notwithstanding any rule of law or equity to the contrary.

## **20.0 Remedies Cumulative**

20.1 No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this MSA. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Consultant to collect any sum not paid when due or in respect of any breach of this MSA, without exercising the option to terminate this MSA.

## **21.0 Waiver**

21.1 Waiver by the City of any breach of any term, covenant or condition of this MSA by the Consultant is not a waiver of any subsequent default by the Consultant. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this MSA is not a waiver of such term, covenant or condition.

## **22.0 Indemnity**

22.1 If a negligent act, wrongful act or omission by a party ("**Indemnifying Party**") results in liabilities, actions, damages, claims, losses, orders, fines, penalties, costs or expenses ("**Claims**") being brought against, or suffered or incurred by the other party, its officials, officers, employees, agents, contractors, successors and assigns ("**Indemnified Parties**"), the Indemnifying Party will indemnify, release and save harmless each of the Indemnified Parties to the extent the Claim arises from the negligence, wrongful act or omission of the Indemnifying Party.

22.2 Section 22.1 will survive termination of this MSA.

## **23.0 General**

23.1 Time is of the essence of this MSA.

23.2 The parties may by written agreement amend this MSA.

23.3 Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or permits.

23.4 Wherever the singular or masculine or neuter is used in this MSA, the same will be construed as meaning the plural, the feminine or body corporate where the context or the parties so require.

23.5 Unless otherwise specified in this MSA, all references to currency are in Canadian dollars.

23.6 The headings included in this MSA are for convenience only and do not form part of this MSA and will not be used to interpret, define or limit the scope or intent of this MSA.

23.7 This MSA will be construed in accordance with the laws of the Province of British Columbia.



23.8 If any portion of this MSA is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this MSA.

23.9 The provisions in this MSA, including any schedules attached hereto, constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written, between the parties with respect to the subject matter of this MSA.

**24.0 Schedules Incorporated**

24.1 The following are schedules to, and form an integral part of, this MSA:

Schedule A – Potential Scope of Services

Schedule B – Rates

Schedule C – Task Order (Template)

**IN WITNESS WHEREOF** the parties hereto have executed this MSA.

**CITY OF TERRACE,**

by its authorized signatories:

\_\_\_\_\_  
**[Authorized Signatory Name]** )  
 )  
 ) Date: \_\_\_\_\_  
 )  
 )

**[NAME OF CONSULTANT],**

by its authorized signatories:

\_\_\_\_\_  
**[Authorized Signatory Name]** )  
 )  
 ) Date: \_\_\_\_\_  
 )  
 )

**SCHEDULE A**  
**POTENTIAL SCOPE OF SERVICES**

[insert from RFQ]

**SCHEDULE B**

**RATES**

[insert rates from Proponent's Submission]

**SCHEDULE C**

**TASK ORDER** (TEMPLATE)

This Task Order has been issued pursuant to the master services agreement dated **month dd, year** (“MSA”) between the City of Terrace (“City”) and Name of consultant (“Consultant”).

**SERVICES UNDER THIS TASK ORDER**

[Enter scope of work under this Task Order]

**ESTIMATED COMPLETION TIME**

[Amount of time required or completion date]

**COMPENSATION**

The abovementioned services shall be performed by the Consultant on basis of the hourly rates set out in the MSA for a total cost not to exceed \$ **\_\_\_\_\_**.

**SUPPLEMENTARY CONDITIONS**

[Enter conditions, if any.]

**CITY OF TERRACE**

**INSERT NAME OF CONSULTANT**

\_\_\_\_\_  
**[Authorized Signatory Name]**

\_\_\_\_\_  
**[Authorized Signatory Name]**

Date: \_\_\_\_\_

Date: \_\_\_\_\_