



City of Richmond

Report to Committee

To: Public Works and Transportation Committee *To Public Works & Transportation Nov 16, 2006*
From: Robert Gonzalez, P.Eng.
 Director, Engineering **Date:** October 26, 2006
Re: **Neptune Contract Extension for the Volunteer Water Meter Program Extension** **File:** *03-1000-20-2533P*

Staff Recommendation

That the Volunteer Water Meter Program contract with Neptune Technology Group be extended from 2007 through 2009.

Robert Gonzalez, P.Eng.
 Director, Engineering
 (4150)

| FOR ORIGINATING DEPARTMENT USE ONLY | | | | | |
|-------------------------------------|-----|-------------------------------------|--------------------------|--------------------------------|-------------------------------------|
| ROUTED TO: | | CONCURRENCE | | CONCURRENCE OF GENERAL MANAGER | |
| Water Services | Y | <input checked="" type="checkbox"/> | N | | |
| Budgets | Y | <input checked="" type="checkbox"/> | N | | |
| REVIEWED BY TAG | YES | <input checked="" type="checkbox"/> | NO | REVIEWED BY CAO | YES |
| | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (ACTING) | <input checked="" type="checkbox"/> |
| | | | | | NO |
| | | | | | <input type="checkbox"/> |

Staff Report

Origin

On September 20, 2006, the Public Works and Transportation Committee adopted the “Richmond Long Range Drinking Water Management Plan: Volunteer Water Meter Program Extension” report’s first recommendation to extend the program another three years, and amended the second recommendation from “single-sourcing” Neptune Technology Group to “negotiating” a contract with this contractor, subject to Council approval. These recommendations were carried in the September 25, 2006 Council meeting.

The purpose of this report is to provide Committee and Council with results of the contract negotiations with Neptune and to make a recommendation on a single-source award of the 2007 through 2009 Volunteer Water Meter Program.

Analysis

The City contacted Neptune Technology Group to initiate negotiations of a proposed contract. Neptune reviewed the existing contract with the City that was drafted in 2003 and entered into in January 2004, and is amenable to accepting the same contract and pricing structure with minor amendments to relevant project initiation and termination dates, and the following items:

| No. | Heading | Original Contract | Proposed Amendment | Reason |
|----------|-----------------------------|--|---|---|
| 1.1.a.ii | Responsibilities and Duties | “Provide a full-time project and promotion manager who is fluent in English and Chinese to handle communications and operations,…” | “Provide a full-time project and promotion manager to handle communications and operations,…” | Neptune offers this service through its customer call centre |
| | | N/A | “Provide a bilingual Call Centre Representative, fluent in both English and Chinese to handle customer communications, booking appointments and answering questions about the program.” | To provide better, more directed service to customers in both languages |

| | | | | |
|-------|---------------------------------|--|--|--|
| 6.1. | Notice of Service Interruptions | “The Contractor must give the City and any affected property owners at least 48 hours’ notice of any scheduled interruption of water service, except in the case of an emergency,...” | “The Contractor must have a signed consent form from the homeowner, or a work order from the City or authorization from the City prior to an interruption of water service,...” | This will allow the City to maintain control over service interruptions and support the use of a homeowner consent form to ensure permission has been granted before proceeding |
| 8.2. | Testing | “The Contractor shall, within 15 days of completion of installation of each water meter, deliver to the City copies of all inspection and testing reports...” | “The Contractor shall have available to the City copies of all inspection and testing reports...” | Both the City and Neptune have in-field inspection programs in place to ensure installation quality beyond the review of written reports |
| 10.1. | Emergency Response | “Throughout the term of this Agreement, the Contractor shall maintain a 24-hour emergency paging system and will respond to emergency leaks arising out of the Work within two (2) hours.” | “Throughout the term of this Agreement, the Contractor shall maintain a 24-hour emergency paging system and will facilitate response to emergency leaks arising out of the Work within two (2) hours.” | Neptune’s paging service sends emergency calls directly to the City’s Public Works department to assess the situation, which affords City crews the opportunity to better assess the issue |

Contract Price

After extensive meetings with Neptune Technology Group staff have negotiated the proposed extension with no change to the unit rates within the existing contract, which was originally obtained through a competitive public tender process in 2003. Under the terms of the proposed extension, these rates will remain in place until the end of the contract term in 2009. Staff are confident that this proposal reflects good value to the City given that we will not be incurring the aggregate escalation in general materials and labour costs, which have increased from 2003 to 2005 by 7.1% according to the Consumer Price Index (CPI), 3.3% according to the Industrial Product Price Index (IPPI), and 123% for copper prices. If cost escalation is projected to the end of 2009, the anticipated increase would be substantial.

Furthermore, another local municipality recently advertised a tender for a Volunteer Water Meter Operator earlier in 2006. Due to the difference in rate structure and scope of their contract compared to Richmond, a direct cost comparison is difficult, however, the contract prices they received in 2006 are higher than the 2003 contract.

Financial Impact

The 2007 Capital program includes funding for the Volunteer Water Meter Program.

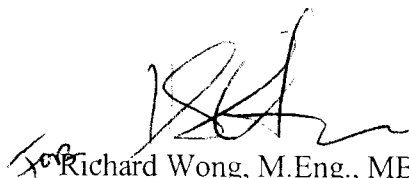
Conclusion

The current program has evolved successfully and incrementally with the contractor, Neptune Technology Group, adjusting to variations in administration and adapting to unanticipated operational challenges. Neptune Technology Group has worked closely with the City to streamline the process and improve customer service substantially since the genesis of the program. The synergy developed over the three-year contract has provided the City and its customer base an efficient and effective program to achieve the City's goals. Furthermore over the past three years Neptune Technology Group has been able to streamline their administrative and installation processes thereby gaining efficiencies, which has also enabled them to hold the 2003 contract rates.

In maintaining the same pricing structure proposed in 2003 and carried forth to the end of 2009, the City is in a good position to benefit from cost savings against market price escalation of materials and labour, once again moving the City toward our vision of becoming the most appealing, liveable and well-managed community in Canada.



Siu Tse, M.Eng., P.Eng.
Manager, Engineering Planning
(4075)



Richard Wong, M.Eng., MBA, P.Eng.
Project Engineer
(4385)

Att: Proposed Neptune contract with the City

THIS AGREEMENT dated the ____ day of _____ 2006, at the City of Richmond, in the Province of British Columbia

BETWEEN:

THE CITY OF RICHMOND
6911 No. 3 Road
Richmond, BC
V6Y 2C1

(the "City")

AND:

NEPTUNE TECHNOLOGY GROUP (CANADA) LIMITED
121 - 930 West 1st Street
North Vancouver, BC
V7P 3N4

(the "Contractor")

WHEREAS:

- A. The City is launching a Volunteer Water Metering Program for single-family dwellings within the City;
- B. The City issued a Request For Proposal inviting proponents to submit proposals for implementation of the Volunteer Water Metering Program;
- C. The Contractor submitted a proposal dated August 29, 2003 in response to the Request For Proposal and the Contractor's proposal was selected by the City;
- D. The Contractor is willing and prepared to conduct the Volunteer Water Metering Program, including providing program promotion and water meter installation, maintenance and meter reading as per its proposal;
- E. The parties wish to enter this agreement to clarify their roles and responsibilities with respect to the Volunteer Water Metering Program;

NOW THEREFORE in consideration of the mutual covenants and agreements set out below, the parties covenant and agree as follows:

1. RESPONSIBILITIES AND DUTIES

- 1.1. The Contractor agrees to carry out the following in accordance with the Request for Proposal 2533P Volunteer Water Metering Program for Single Family Dwellings (the "RFP") and the Contractor's submission dated August 29, 2003 (the "Proposal"):
 - a. Conduct program promotion comprised of all items outlined in Section 1.0 of the Proposal plus the optional water conservation devices referred to at p. 7 of the Proposal, including:
 - i. Create and implement a public education program, including developing program identification;

- ii. Provide a full-time project and promotion manager to handle communications and operations, coordinate all public education/public relation and operations activities, including sending press releases, media interviews, attending public events and open houses, and ensuring water meters are installed;
 - iii. Provide a bilingual Call Centre Representative, fluent in both English and Chinese to handle customer communications, booking appointments and answering questions about the program;
 - iv. Develop a marketing plan and submit it to the City for approval by December 31, 2006; and
 - v. Ensure completion of the deliverables set out in sections 1.5 and 1.6 of the Proposal;
- b. Provide project resources in accordance with section 2.1 of the Proposal;
 - c. Provide staff training programs in accordance with section 2.2 of the Proposal;
 - d. Maintain health, safety and training procedures in accordance with section 2.3 of the Proposal;
 - e. Undertake water meter installations as outlined in section 2.4 of the Proposal. All water meter installations shall conform to the City of Richmond's water meter installation specification (a copy of which was attached to the RFP);
 - f. Maintain a data management system in accordance with section 2.5 of the Proposal;
 - g. Maintain operational quality control/quality assurance in accordance with section 2.6 of the Proposal;
 - h. Implement a communication plan in partnership with the City as outlined in section 2.7; and
 - i. Provide water meter reading and meter maintenance services as outlined in section 3.0 of the Proposal, including reading and maintaining all of the City's water meters that serve single family dwellings, regardless of when installed or who installed them. Meters must be read on a quarterly basis and the Contractor will perform additional readings where requested by the City. Results of meter readings must be provided to the City in the form specified in the RFP or in such other form as is otherwise agreed between the parties;

(collectively, the "Work").

- 1.2. The Contractor shall provide all materials and supplies required to perform the Work.
- 1.3. The Contractor will ensure that all of its employees and representatives conduct themselves professionally and with integrity in carrying out the Work so as not to embarrass or discredit the City.
- 1.4. All media material must be approved by the City's General Manager of Engineering or designated representative prior to release to the public. Media material includes, but is not limited to items for print, radio or television media.

2. COMPENSATION AND ACCOUNTING

- 2.1. The City agrees to pay to the Contractor for work performed and materials supplied under this Agreement at the rates set out in section 4 of the Proposal based on the number of water meters installed plus the following amounts for the supply and installation of water conservation devices, not to exceed a total of \$20.75 (plus applicable taxes) for each participating household:
- | | |
|-------------------------------------|--------|
| ▪ Water efficient showerhead | \$4.95 |
| ▪ Early closure flapper | \$8.95 |
| ▪ Kitchen aerator | \$1.95 |
| ▪ Bathroom aerator | \$0.95 |
| ▪ Toilet handle and flapper adaptor | \$3.95 |
- 2.2. Once per month, commencing no sooner than January 12, 2007, the Contractor shall submit to the City a written statement of account including a detailed invoice for any work performed during the billing period (the "Statement of Account").
- 2.3. The Statement of Account must show the amount of GST charged and include the Contractor's GST registration number and City Purchase Order number.
- 2.4. The City agrees to make payments to the Contractor within ten (10) working days of receipt of the Contractor's Statement of Account.

3. APPROVAL OF INSTALLATION PLANS

- 3.1. The Contractor shall prepare and submit to the City for its approval plans and specifications for installation of water meters, such approval not to be unreasonably withheld.

4. INSTALLATION OBLIGATIONS

- 4.1. The Contractor shall, at its sole cost and expense, design, construct and complete the water meter installation work in strict compliance with the approved plans and specifications. Any material changes or variance from the approved plans or specifications must be approved in writing by the City in its sole discretion.
- 4.2. Unless otherwise stipulated in this Agreement, the Contractor shall provide and pay for labour, products, tools, construction machinery and equipment, water, heat, light, power and transportation and other facilities and services necessary for the performance of this Agreement.

5. AUTHORITY TO ENTER

- 5.1. Subject to section 5.2, the Contractor is authorized to enter onto private property for the purpose of reading water meters.
- 5.2. Where the Contractor requires access to private property for the purpose of installing a water meter, the Contractor must obtain the written consent of the owner or adult occupant of the property.

- 5.3. The Contractor or its representatives must not perform any work on private property other than that necessary to install water meters in accordance with this Agreement and must not threaten any person in any manner whatsoever for refusing to cooperate with the Volunteer Water Meter Program.
- 5.4. The Contractor is responsible for locating curb stops. The Contractor is authorized to operate curb stops on water services to facilitate installation of water meters. If a water service does not have a curb stop, the City will install a curb stop prior to water meter installation.
- 5.5. The Contractor must advise the owner or occupant of any property on which a water meter is to be installed of the issue of thermal expansion and damage that can result upon the installation of the backflow preventer.

6. NOTICE OF SERVICE INTERRUPTIONS

- 6.1. The Contractor must have a signed consent form from the homeowner, or a work order from the City or authorization from the City prior to an interruption of water service, except in the case of an emergency, and shall use its best efforts to restore service as soon as reasonably possible.
- 6.2. If a significant maintenance event occurs that affects over 30% of water meters at single-family homes that does not fall under the Contractor's warranty (as set out in the Proposal), the City reserves the right, at its own expense, to repair or replace affected meters with forces of the City's choosing.

7. INSPECTIONS

- 7.1. The Contractor shall call for inspections by the City at all stages of the work as required by the City bylaws and other applicable laws. The City shall respond promptly and diligently in connection with the conduct of all such inspections.

8. TESTING

- 8.1. After installation of each water meter, the Contractor shall test the meter according to the manufacturer's instructions, including opening all valves and running water through the meter, to check for leaks and to ensure that it is working properly. An installation is determined to have been successfully completed when a valid meter reading is obtained through ProRead receptacle unit or other device approved by the City. The Contractor shall correct any leaks detected forthwith.
- 8.2. The Contractor shall have available to the City copies of all inspection and testing reports of each such meter, provided however that the Contractor shall immediately notify the City of the result of any failed tests. The testing reports shall include the following information:
 - a. Meter reading and serial number of installed meter;
 - b. Time and date of installation; and
 - c. Name of installer and name and signature of adult owner or occupant who authorized installer to enter the property.
- 8.3. All remote receptacles installed shall be field tested for continuity by the Contractor using a ProRead Test Unit or other approved device.

9. RESTORATION

- 9.1. The Contractor shall restore any area of lands damaged or adversely affected by the Work, including all lands used for access to and egress from the sites, such restoration to be to the satisfaction of the City, acting reasonably.
- 9.2. The Contractor may, at its option, create a photographic or other record of the condition of the lands upon which the work is to be conducted prior to commencement of installation work.
- 9.3. The Contractor shall indemnify and hold harmless the City from and against all costs, expenses, damages, suits, claims or other liabilities arising out of the Contractor's failure to adequately restore any work site.
- 9.4. The Contractor shall, at its own expense, promptly remove and replace any work which is defective or which has been rejected or failed to pass inspection by the City.
- 9.5. If, in the opinion of the City, it is not expedient to correct defective work or work not done in accordance with this Agreement, the City may deduct from the contract price the difference in value between the Work as done and that called by the Agreement, the amount of which shall be determined by mutual agreement between the City and the Contractor.
- 9.6. The Contractor shall repair in a timely manner any leaks or other defects that may be caused by the installation of a water meter under this Agreement. It shall be presumed that any leaks or defects reported to the City or the Contractor within ten (10) days after completion of the installation of a water meter are the result of faulty installation and the Contractor shall repair the damage at no cost to the City or property owner. This presumption shall not apply to leaks or other pre-existent conditions noted by the Contractor and acknowledged in writing by the property owner.

10. EMERGENCY RESPONSE

- 10.1. Throughout the term of this Agreement, the Contractor shall maintain a 24-hour emergency paging system and will facilitate response to emergency leaks arising out of the Work within two (2) hours.
- 10.2. If the Contractor fails to respond to an emergency leak arising out of the Work within two (2) hours, the City will respond and the costs of such response will be charged to the Contractor, including all labour costs (including over-time), materials and supplies.

11. COMPLIANCE WITH APPLICABLE LAWS

- 11.1. The Contractor shall carry out the Work in strict compliance with all applicable federal, provincial, municipal and other laws, bylaws, regulations, and statutes.
- 11.2. The Contractor shall ensure that all required payments are made with respect to the construction and installation of all components of the Work, including without limitation all fees and charges associated with the installation of the water meters, workers compensation assessments, unemployment insurance and relevant federal and provincial taxes.

12. BUILDERS' LIENS

- 12.1. The Contractor will throughout the term of this Agreement discharge any builders' liens relating to the work carried out pursuant to this Agreement. In the event that a lien or claim is filed in regard to work done, the Contractor will discharge same within fifteen (15)

days after so requested by the City. The Contractor will indemnify and save harmless the City from and against all costs, damages, expenses and actual lawyer's costs and fees arising from or relating to any builders' liens filed or registered or made or claimed against the City in connection with the Work.

13. ENVIRONMENTAL

13.1. The Contractor is responsible for any clean-up and liability arising from any pollution due to the work carried out pursuant to this Agreement and shall bear the cost of any clean-up, criminal proceedings and fines and liability arising from pollution in connection with such work.

13.2. The Contractor declares that in entering in this Agreement, it did not and shall not rely upon any information furnished by the City respecting:

- a. the nature or conformation of the soils at the place of work;
- b. the location, character, quality or quantity of the materials to be removed or to be employed in the construction of the Work;
- c. the character of the equipment or facilities needed to perform the Work; or
- d. the general and local conditions and all other matters which could in any way affect the performance of the Work.

13.3. If the Contractor:

- a. encounters toxic or hazardous substance or materials at a property; or
- b. has reasonable grounds to believe that toxic or hazardous substances or materials are present at a property,

the Contractor shall take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials and immediately report the circumstances to the City in writing.

14. REPORTING

14.1. The Contractor shall provide a report to the City on a monthly basis documenting the status of the Volunteer Water Metering Program for Single Family Dwellings, including the following information:

- a. Number of meters installed and their locations;
- b. Number of meters read and their locations;
- c. Number of meters requiring maintenance; and
- d. Number of re-reads.

14.2. The Contractor must maintain records relating to completion of the Work for a period of at least five (5) years following the date of installation and provide access to such records to the City upon request.

15. ACCESS TO CITY RECORDS

15.1. The City shall, promptly upon request, provide the Contractor with access to copies of relevant plans, drawings, specifications and operating manuals for the City water system as well as the addresses and names of the owners of all properties eligible for the Volunteer Water Metering Program.

16. INADEQUATE OR DEFICIENT PERFORMANCE

- 16.1. Where the City gives the Contractor notice that in the opinion of the City a person performing the Work:
- a. is incompetent or disorderly;
 - b. has interfered with the ability of the Contractor or other contractors to perform the Work;
 - c. has carried on an unlawful activity;
 - d. has acted in a manner inconsistent with the timely completion of the Work;
 - e. has injured or attempted to injure any person or property;
 - f. is not using all reasonable efforts to work safely; or
 - g. does not comply with the requirements of the *Workers Compensation Act and Regulations*;

such person or persons shall be removed from the project and shall not again be employed without the City's written consent.

- 16.2. If, in the opinion of the City, the force of workers or the equipment or materials of the Contractor are not adequate or appropriate for carrying out the Contract in its entirety, the City may notify the Contractor in writing of the deficiency and the remedy required and the Contractor shall, at its sole expense, forthwith remedy the situation. Any dispute regarding deficiencies and the remedy required may be resolved pursuant to the dispute resolution provisions set out in section 30.
- 16.3. If the Contractor fails to comply with the direction of the City with respect to the performance of this Agreement, the City may, at its option, carry out the work and the expense thereof will be charged to the Contractor.

17. WARRANTY

- 17.1. The Contractor warrants that all Work shall be designed, constructed, supplied and installed in a good and workmanlike manner, in strict compliance with the approved plans and specifications, and free from defect and deficiency and will accurately measure the quantities of potable water of the capacities contemplated. This warranty extends to all aspects of design, project management, installation, functionality, and operation.
- 17.2. Where a defect or deficiency is identified during the warranty period, the Contractor will promptly remedy the defect or deficiency in accordance with the terms of this Agreement.
- 17.3. Notwithstanding sections 17.1 and 17.2, the Contractor is not responsible for damage to a property which results from any defect in the existing plumbing system on such property, including damage resulting from thermal expansion which is caused by the installation of a backflow preventer.

18. INDEPENDENT CONTRACTOR

- 18.1. The Contractor is an independent contractor and no agency, joint venture, association, partnership, employer-employee relationship is created between the City and the Contractor.
- 18.2. All persons employed by the Contractor to carry out the Work are at all times employees of the Contractor and not of the City and the Contractor is solely responsible for arranging all matters arising out of its relationship with its employees.

19. BENEFITS

- 19.1. The Contractor hereby waives all rights, claims, and entitlements whatsoever afforded to employees of the City pursuant to the Group Life Insurance Plan, Long Term Disability Plan and the Dental Plan and any other such benefits. The Contractor agrees to pay, as required by Federal or Provincial Statutes any payments for Income Tax, Workers Compensation, Unemployment Insurance, Canada Pension Plan, Superannuation and other such payments.

20. WORKERS COMPENSATION BOARD REQUIREMENTS

- 20.1. The Contractor is responsible for:
- a. carrying, at its own expense, Workers Compensation Board coverage for all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement and will ensure that any sub-contractor retained by the Contractor has such WCB coverage; and
 - b. complying with all conditions and regulations under the *Workers Compensation Act*, RSBC 1996, c. 492 as amended and for all assessments and levies which may be made thereunder.
- 20.2. The Contractor further agrees that it is the prime contractor for the purposes of the Workers Compensation Board Occupational Health and Safety Regulations for the Province of British Columbia.
- 20.3. The Contractor shall have a safety program acceptable to the Workers Compensation Board and shall ensure that all Workers Compensation Board safety rules and regulations are observed during the performance of this Agreement.
- 20.4. The Contractor shall provide the City with:
- a. the Contractor's Workers Compensation Board registration number;
 - b. written confirmation that the Contractor is registered in good standing and that all assessments payable under the *Workers Compensation Act*, RSBC 1996, c. 492 as amended, have been paid to the date thereof; and
 - c. a signed copy of the Prime Contractor Designation Document.
- 20.5. The Caretaker shall indemnify and hold harmless the City from all claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid Workers Compensation Board assessments owing from any person or corporation engaged in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the Workers Compensation Board, including penalties levied by the Workers Compensation Board.

21. ASSIGNMENT AND SUBCONTRACTING

- 21.1. The Contractor will not, without the prior written consent of the City, assign, either directly or indirectly, any right or obligation of the Contractor under this agreement.
- 21.2. No sub-contract entered into by the Contractor will relieve the Contractor from any of his obligations or impose any obligation or liability upon the City to any such sub-contractor.

22. INDEMNITY

22.1. The Contractor will indemnify, defend, hold and save harmless the City from and against all claims, losses, damages, costs, actions and other proceedings, based upon, occasioned by or attributable to any injury, including death, property damage, infringement or damage arising out of any act or omission of the Contractor, its employees, officers, volunteers, servants or agents or persons for whom the Contractor has assumed responsibility in the performance or purported performance of this Agreement.

23. INSURANCE

23.1. The Contractor shall, at its own expense, carry and keep in force during the term of this agreement the following coverage:

- a. Comprehensive general liability insurance with a minimum limit of \$5,000,000 per occurrence with a cross-liability clause;
- b. Sudden and Accidental Pollution insurance, minimum 72-hour 30-day reporting;
- c. Automobile Liability insurance for all vehicles used in the performance of this Agreement with a minimum limit of \$2,000,000.

23.2. The City shall be added as an additional named insured under both the comprehensive general liability insurance and pollution insurance.

23.3. All insurance policies must not be cancelled, lapsed or materially changed without at least 30 days' notice to the City.

23.4. Prior to the commencement of the services hereunder, the Contractor shall file with the City a copy of each insurance policy and certificate required. All such insurance shall be maintained until final completion of the Work.

23.5. The Contractor shall produce to the City no later than thirty (30) days prior to expiry of any policy of insurance placed pursuant to this Agreement, evidence of the renewal or replacement of such insurance.

23.6. The Contractor acknowledges that any requirement or advice by the City as to the amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Contractor acknowledges and agrees that it is solely responsible for obtaining and maintaining policies of insurance in adequate amounts.

24. REPRESENTATION

24.1. The parties hereto agree that for all purposes hereunder the City shall be represented by the General Manager of Engineering Services or his appointed representative.

25. OWNERSHIP OF PRODUCTS

25.1. The City shall take title to and ownership of all materials and products developed by the Contractor pursuant to this agreement, including reports, drawings, schematics, computer files, meter readings, installed equipment and designs developed, except those covered by copyright. All such materials and products produced shall be provided to the City upon expiry of this agreement.

- 25.2. Notwithstanding section 25.1, the Contractor will retain ownership of all tools and equipment required in performing the Work, including the hand-held meter reading equipment (handheld, HHIU, cradle, and software), following termination of this agreement. If the City wishes to purchase this equipment from the Contractor following termination of the agreement, the parties may negotiate the terms of such purchase and sale.
- 25.3. Notwithstanding section 25.1, the Contractor retains the copyright in the logos created pursuant to this agreement and such logos cannot be reproduced or used without the explicit written consent of the Contractor, such consent not to be unreasonably withheld, provided the materials are used exclusively within the City of Richmond by City Employees. The Contractor hereby grants to the City the right to use the logos within the City of Richmond by City Employees.

26. CONFIDENTIALITY

- 26.1. The Contractor shall not disclose any information provided to it by the City, specifically proprietary, sensitive, personal or confidential information or that developed or resulting from the performance of this Agreement, to any other party without the express written consent of the City.
- 26.2. All information provided to the Contractor or developed by the Contractor pursuant to this Agreement shall be returned to the City upon the expiration of this Agreement and such information may be used by the City for the continued operation and use of the water meters after expiry of the Term.
- 26.3. The parties acknowledge that disclosure of information pursuant to this Agreement is governed by the Freedom of Information and Protection of Privacy Act of British Columbia.

27. RELATED COMPANIES

- 27.1. The Contractor shall not during the term of this agreement, perform a service for or provide advice to any person, firm or corporation where the performance of the service or the provision of the advice may or does, in the opinion of the City, give rise to a conflict of interest between the obligations of the Contractor to the City under this agreement and the obligations of the Contractor to such other person, firm or corporation.

28. TERM

- 28.1. This agreement is valid for the period commencing January 12, 2007 and ending January 11, 2010 (the "Term").

29. TERMINATION

- 29.1. Notwithstanding any other provisions of this agreement, either party may terminate this agreement at any time upon giving at least three months' written notice, or such shorter period as may be agreed upon by the parties.
- 29.2. In the event that the City terminates this Agreement pursuant to subsection 29.1 within the first year of the Term, the City will pay \$20,000 as liquidated damages to the Contractor as compensation for any damages, losses or expenses that the Contractor may incur as a result of termination of the contract. In the event of termination by the City within the first two (2) months of year 2 or the first two (2) months of year 3 of this agreement, the City will pay \$5,000 as liquidated damages to the Contractor.

29.3. If the Contractor defaults in the performance of the covenants and conditions of this Agreement and fails to remedy such default within ten (10) days of notice from the City, the City may terminate this Agreement immediately.

29.4. In the event of termination, the City will pay the Contractor all amounts due and payable pursuant to this Agreement up to the date of termination.

30. DISPUTE RESOLUTION

30.1. Both parties agree that, both during and after the Term, each of them shall use their best efforts to resolve any disputes through good faith negotiation.

- 30.2. In the event that the parties are unable to resolve a dispute regarding the performance of this Agreement within 30 days of commencing negotiation under section 30.1, either party may deliver a notice to mediate to the other party and the dispute will be submitted to a mediator to be mutually agreed upon by the parties within 14 days of the delivery of the notice to mediate. If the parties are unable to agree on a mediator, the mediator will be appointed by the BC International Commercial Arbitration Centre (BCICAC). Any mediation under this Agreement will be conducted under the Commercial Mediation Rules of the BCICAC, unless otherwise agreed by the parties.
- 30.3. In the event that the parties are unable to resolve a dispute regarding the performance of this Agreement, the dispute will be referred to arbitration by an arbitrator, to be mutually agreed upon by the parties, failing which an arbitrator will be appointed by the BCICAC. Any arbitration under this Agreement will be conducted pursuant to the BC *Commercial Arbitration Act* and the rules of the BCICAC, unless otherwise agreed by the parties.
- 30.4. The parties may agree that any unresolved disputes referred to arbitration under this Agreement may be held in abeyance until the earlier of completion or termination of this Agreement and/or consolidated into a single arbitration.
- 30.5. Any arbitration under this Agreement will be held in Vancouver, British Columbia unless otherwise agreed by the parties.
- 30.6. Each party shall bear its own costs of mediation and arbitration.

31. NOTICES

- 31.1. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered, or if sent by prepaid regular mail, to the addresses of the parties set out on the first page of this agreement, or to such other addressees as the parties may advise. Any such notice or communication shall be deemed to have been given, if delivered, and if mailed in Canada, on the fourth business day after the date of mailing.

32. WAIVER

- 32.1. Any condoning, excusing, or overlooking by either party of any default by the other party in observing or performing its obligations under this Agreement will not operate as a waiver of such obligation in respect of any subsequent default except where expressly waived in writing.

33. FEMININE/MASCULINE

- 33.1. Wherever the singular or masculine is used throughout these Terms the same shall be construed as meaning the plural, the feminine or body corporate or politic where the context or the parties hereto so require and vice versa.

34. GENERAL

- 34.1. This Agreement may be amended upon mutual agreement of the parties in writing.
- 34.2. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of British Columbia.
- 34.3. If any term of this Agreement is held to be unenforceable by a court, that term is to be severed from this Agreement and the rest of this Agreement remains in force, unaffected by the severance of that term.

34.4. Time is of the essence in this Agreement.

34.5. This Agreement sets out the entire agreement of the parties and no representations, warranties or conditions have been made other than those expressed or implied herein. No agreement collateral hereto shall be binding upon the City unless made in writing and signed by the City.

THE PARTIES have executed this Agreement the day and year first above written.

The Corporate Seal of the **CITY OF RICHMOND** was affixed in the presence of:

Mayor)

City Clerk)

Signed by the duly authorized signatories of **NEPTUNE TECHNOLOGY GROUP (CANADA) LIMITED** in the presence of:

Signature)

Name)

Address)

Address)

Authorized Signatory

Authorized Signatory

| |
|---|
| CITY OF RICHMOND |
| APPROVED for content by originating dept. |
| APPROVED for legality by Solicitor |
| DATE OF COUNCIL APPROVAL (if applicable) |