



The City of Saint John

**Request for Proposals**

**for**

**Forestry Expertise Advisory Services**

**Saint John, New Brunswick**

Request for Proposals No.: 2021-091005P

Issued: Friday, April 9<sup>th</sup>, 2021

Submission Deadline: Thursday, April 29<sup>th</sup>, 2021

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## PART 1 – INTRODUCTION

### 1.1 INVITATION TO PROPONENTS

- 1) This Request for Proposals (“RFP”) is an invitation to prospective proponents to submit proposals for the service of providing forestry advice and the review / creation of forestry management plans for the watershed lands owned and managed by Saint John Water as outlined in the attached supplemental material.

### 1.2 BACKGROUND INFORMATION

#### 1) *Executive Summary*

Saint John Water plans to continue to proactively manage the forests in the watersheds in order to preserve and enhance the quality of the water and the overall health of the land and the ecosystems. We are seeking experts in forestry and watershed management to assist City staff to properly implement various forestry and silviculture treatments on the land. The goal is to develop and deliver an implementation plan for all City watershed lands, to achieve the best possible watershed forests for the citizens of Saint John. We seek to engage one or potentially multiple individuals/firms to work together to sustainably manage the forest lands and wetlands in the blocks of land owned by the City.

Team will be responsible for field surveys, assessments, research, planning, creating management and operational plans, advising the owner, engaging contractors, supervising and inspecting the work of contractors, and updating the existing operational plans if conditions change. The team is expected to write specifications for only the highest quality forestry and environmental practices that ensures protection of the overall watershed lands.

#### 2) *About Saint John*

Located along the shores of the Bay of Fundy, Saint John is Canada’s oldest incorporated city and, through past amalgamations, covers a land mass of 315 square kilometres, supporting a population of 70,785 (2017). Over the past 235 years, Saint John has transformed itself from a maritime / shipbuilding centre to the region’s industrial engine and technology / commerce centre.

Watersheds east and west: On the east side of Saint John, the Loch Lomond Watershed is 104 square kms and the city owns 48 square kms of land. The Latimer Lake watershed is only 2 square kms and the city owns 1 square km of land. On the west side, the Spruce Lake Watershed is 20.6 square kms and the city owns 13.5 square kms of land. Total area of land owned by Saint John Water in these watershed areas is 62.5 square kms or 6,250 ha.

#### 3) *Past Forestry Reviews*

Saint John Water has received a Forest Management Plans from the UNB forestry students and professors back in April of 2013 for the Loch Lomond Watershed as well as the Spruce Lake Watershed in 2014. We would like the new advisor(s) to review the plan and advise if changes should be made

before implementation is carried out. In 2016 the city engaged a forestry company to harvest a couple plots north of Third Lake and there has been no activity since then.

There are other reports on forestry and watersheds from the 70's, 80's and 90's that will be made available to the successful advisors for review and comments. No sharing of reports will be done during this selection process.

4) **2021 and Beyond**

The long-term goal of the watershed forest management program is to proactively manage small sections of the city lands every year in a continuous cycle in perpetuity. Sustainable lands that are resilient to climate change, extreme weather events, natural or manmade disasters are essential for the ongoing use of the lands as a drinking water and industrial water source for the centuries to come. In fact, the prosperity of the city is linked to the preservation of its water source.

Our intention is to engage experienced people for at least a 5-year term, and then review again (seek interested experts) after that to engage the best available people. The City will always have the right to terminate services at any point as you will see as you keep reading.

In order to keep the program financially stable, the advisors must make sure that the city receives all eligible funding meant to encourage sustainable forestry / land stewardship and that it receives top dollar for the extracted forest products.

**1.3 RFP CONTACT PERSON**

- 1) For the purposes of this procurement process, the “**City Contact**” shall be:

Monic MacVicar, CCLP, CPPB  
Supply Chain Management  
City of Saint John  
Email: [supplychainmanagement@saintjohn.ca](mailto:supplychainmanagement@saintjohn.ca)  
Fax: (506) 658-4742

**1.4 TYPE OF CONTRACT FOR DELIVERABLES**

- 1) The City will issue a contract to the successful proponent for the scope of services detailed in this request for proposal.

**1.5 NO GUARANTEE OF VOLUME OF WORK OR EXCLUSIVITY OF CONTRACT**

- 1) The City makes no guarantee as to the value or volume of the Deliverables. The contract to be negotiated with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The City may contract with others for the same as or similar to the Deliverables or may obtain the same as or similar to the Deliverables internally.

## **1.6 BASIS OF AWARD**

- 1) It is the City's intention to evaluate the deliverables as described in Part 2 – The Deliverables (the "Deliverables") as well as Appendix E. The City reserves the right to split the award of this proposal and enter into multi-year agreements with multiple firms to carry out the work depending on expertise, availability, and rates. Proponents will be required to work together to coordinate the required activities.
- 2) Any resulting agreement from this RFP for the Forestry Advisory Expertise Services is expected to be valid for five (5) years. The City with the consultant's mutual agreement may choose to extend this agreement for up to two (2) additional two (2) year periods.

**[End of Part 1]**

## PART 2 – THE DELIVERABLES

### 2.1 DESCRIPTION OF DELIVERABLES

- (1) This RFP is an invitation to submit offers for advice and assistance in managing the forest and lands in the city's watersheds. It is expected that the preparation of plans and reports for the use of Saint John Water will be a large portion of the work. The successful proponent(s) will give strategic advice on all aspects of forest management practices. Some of the work that proponents will be asked to do may include some of the following. Also note that work may be divided among two or more firms depending on expertise, workload, and costs.
- Survey of lands and forest assessments
  - Complete a review of the current state of the watershed lands and forests, including those City lands outside the watershed boundary.
  - Field visits to educate city staff on forestry or environmental conditions
  - Advice on the sale of logs
  - Review of old reports for valuable information
  - Assist with establishing contracts for forestry field services
  - Inspect cut blocks before, during, and after field activities
  - Inspect environmental enhancements and controls.
  - Advice on best management practices for wetlands and sensitive ecosystems.
  - Review and recommendation on how to proceed with the **Loch Lomond** and the **Spruce Lake** plans.
  - Update above plans to reflect current needs and best practices if necessary.
  - Suggest the best treatments for a healthy forest and optimized water quality
  - Identify and map wetlands and sensitive ecosystems as required.
  - List of considerations for management plans:
    - Reduce fire risk even though we don't get many forest fires in SJ
    - Reduce risk of spruce budworm infestations
    - Reduce risk of wind damage
    - Reduce erosion and sedimentation in the water (and other water quality parameters)
    - Minimize illegal dumping with smart planning of roads and gates
    - Modernize signage for good stewardship of citizens
    - Allow for recreational use while minimizing litter left behind.
    - Proposal and design of forestry roads that are smart and easy to manage.
    - Protection of plants and animals while also managing beaver and deer populations when necessary.
  - Monitor the actions of the forestry contractors and enforce standards established for work
  - Desktop analysis of available mapping, data and air photos.
  - Monitoring for illegal activity and encroachments with desktop data.

- Prepare 5-year operations plans with details stemming from the approved management plans.
- Coordinate funding and subsidy programs for forest enhancements and etc.
- Help in the selection of contractors
- Always give the best advice in the interest of the watershed owner
- Set the standards and prescriptive requirements for those doing the field work after discussing the specific goals of Saint John Water.
- Respond to issues in the watershed and advise SJW.
- Suggest tree planting to improve water quality after researching the issue.
- Other standard forestry or environmental science practices or methods as required

Refer to Appendix E – RFP Particulars for some more specifics.

**[End of Part 2]**

## PART 3 – SUBMISSION AND EVALUATION OF PROPOSALS

### 3.1 TIMETABLE

- 1) The RFP timetable is tentative only and may be changed by the City at any time.

Milestones	Dates
Issue Date of RFP	Friday, April 9 <sup>th</sup> , 2021
Deadline for Questions	Wednesday, April 21 <sup>st</sup> , 2021 4:00 pm, Atlantic Time
Deadline for Issuing Addenda	Thursday, April 22 <sup>nd</sup> , 2021, 4:00 pm, Atlantic Time
Submission Deadline	Thursday, April 29 <sup>th</sup> , 2021, 4:00 pm, Atlantic Time
Rectification Period	Three (3) Business Days
Anticipated Award Date	Monday, June 14 <sup>th</sup> , 2021

### 3.2 SUBMISSION INSTRUCTIONS

#### A. Proposals Shall Be Submitted at the Prescribed Location

- 1) Proposals shall be submitted at:

The City of Saint John  
Supply Chain Management, 1<sup>st</sup> Floor  
175 Rothesay Avenue  
Saint John, New Brunswick, E2J 2B4 (the “**Prescribed Location**”)

Attention: Monic MacVicar, Procurement Specialist of Supply Chain Management

#### B. Proposals Should Be Submitted in Prescribed Manner

- 1) Proponents should submit one signed original and four bound copies along with one electronic copy (on a properly labeled USB key in PDF format) of the technical proposal and supporting information, and one signed original copy and four bound copies along with one electronic copy (on a properly labeled USB key in PDF format) of the financial proposal and supporting information.
- 2) The technical proposal should be sealed in an envelope, clearly indicating the proponent’s name and address and marked: “**Technical Proposal: 2021-091005P - Forestry Expertise Advisory Services**”.
- 3) The financial proposal should be sealed in a separate envelope, clearly indicating the proponent’s name and address and marked: “**Financial Proposal: 2021-091005P - Forestry Expertise Advisory Services**”.



- 4) In the event of a conflict or inconsistency between the hard copy and the electronic copy of the proposal, the hard copy of the proposal shall prevail.
- 5) Proposals sent by fax or email will be rejected.

**C. Proposals Shall Be Submitted on Time**

- 1) Proposals submitted after the Submission Deadline will be rejected.
- 2) In light of the pandemic, there will be no public opening. The names of the Proponents shall be published on the City’s website following the proposal closing.

**D. Amendment of Proposals**

- 1) Proponents may amend their proposals prior to the Submission Deadline by submitting an email in the same fashion as the proposal submissions. Any amendment should clearly indicate which part of the proposal the amendment is intended to affect.

**E. Withdrawal of Proposals**

- 1) At any time throughout the RFP process, a proponent may withdraw a submitted proposal. To effect a withdrawal, a notice of withdrawal must be sent to the City Contact and must be signed by an authorized representative.

**3.3 STAGES OF PROPOSAL EVALUATION**

- 1) The City may conduct the evaluation of proposals and selection of the top-ranked proponents in the following four stages described in further detail below:

Stage I – Mandatory Requirements and Rectification;  
Stage II – Evaluation of Rated Criteria and Pricing;  
Stage III – Selection and Final Negotiation.

**A. Stage I – Mandatory Requirements and Rectification**

**Submission and Rectification Period**

Stage I will consist of a review to determine which proposals comply with all of the mandatory requirements. Proposals failing to satisfy the mandatory requirements as of the Submission Deadline will be provided an opportunity to rectify any deficiencies. Proposals satisfying the mandatory requirements during the Rectification Period, as described in Part 3 – Section 3.1 – Timetable will proceed to Stage II. Proposals failing to satisfy the mandatory requirements within the Rectification Period will be excluded from further consideration. The Rectification Period will begin to run from the date and time that the City issues its rectification notice to the proponents.

### **Mandatory Submission Forms**

Other than inserting the information requested on the mandatory submission forms set out in this RFP, a proponent may not make any changes to any of the forms.

### **Submission Form (Appendix B)**

Each proponent must complete the Submission Form and include it with their technical proposal. The Submission Form must be signed by an authorized representative of the proponent.

### **Pricing Form (Appendix C)**

Each proponent must complete the Pricing Form and include it with their financial proposal. The Pricing Form must be completed according to the instructions contained in the form. Rates must be provided in Canadian funds, inclusive of all costs, applicable duties, overhead, and insurance costs, except for HST/GST.

### **Reference Form (Appendix D)**

Each proponent must complete the Reference Form and include it with its technical proposal.

### **Other Mandatory Requirements**

Each proposal must:

- (a) Be in English.
- (b) Be for the entire or partial scope of work as described in Part 2 – The Deliverables as well as Appendix E – Section A - The Deliverables.

### **B. Stage II – Evaluation of Rated Criteria and Pricing**

Stage II will consist of a scoring by the City of each qualified proposal on the basis of the rated criteria and the pricing in accordance with Appendix E – Section B – Evaluation Criteria.

### **C. Stage III – Selection and Final Negotiation**

Once the proposals have been evaluated as per Stage II, the top-ranked proponent will be selected to enter into direct negotiations.

During the negotiation, the City will provide the top-ranked proponent with any additional information and will seek further information and proposal improvements. After the negotiation, the top-ranked proponent will be invited to revise its initial proposal and submit its BAFO to the City.

**[End of Part 3]**

## **PART 4 – TERMS AND CONDITIONS OF THE RFP PROCESS**

### **4.1 GENERAL INFORMATION AND INSTRUCTIONS**

#### **A. Proponents to Follow Instructions**

- 1) Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable part, section, subsection or paragraph numbers of this RFP.

#### **B. Information in RFP Only an Estimate**

- 1) The City and its representatives shall not be liable for any information or advice or any discrepancies or errors or omissions that may be contained in this RFP or an Addenda, appendices, data, materials or documents (electronic or otherwise) attached or provided to the proponents pursuant to this RFP.
- 2) The City and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to proponents the general scale and scope of the work. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

#### **C. Proponents Shall Bear Their Own Costs**

- 1) The proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews, or costs of negotiation and submission of BAFO.

### **4.2 COMMUNICATION AFTER ISSUANCE OF RFP**

#### **A. Proponents to Review RFP**

- 1) Proponents shall promptly examine all of the documents comprising this RFP, and
  - (a) Shall report any errors, omissions or ambiguities; and
  - (b) May direct questions or seek additional information in writing by email to the City Contact on or before the Deadline for Questions. All questions submitted by proponents by email to the City Contact shall be deemed to be received once the email has entered into the City Contact's email inbox. No such communications are to be directed to anyone other than the City Contact. The City is under no obligation to provide additional information, and the City shall not be responsible for any information provided by or obtained from any source other than the City Contact.

- 2) It is the responsibility of the proponent to seek clarification from the City Contact on any matter it considers to be unclear. The City shall not be responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

**B. All New Information to Proponents by Way of Addenda**

- 1) This RFP may be amended only by an addendum in accordance with this subsection. If the City, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addenda. Each addendum forms an integral part of this RFP.
- 2) Such addenda may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the City. Addenda may be obtained from the City's website ([www.saintjohn.ca](http://www.saintjohn.ca)) under City Menu, option "Tender and Proposals". In Appendix B, proponents should confirm their receipt of all addenda by setting out the number of each addendum in the space provided.

**C. Post-Deadline Addenda and Extension of Submission Deadline**

- 1) If any addendum is issued after the Deadline for Issuing Addenda, the City may at its discretion extend the Submission Deadline for a reasonable period of time.

**D. Verify, Clarify and Supplement**

- 1) When evaluating responses, the City may request further information from the proponent or third parties in order to verify, clarify or supplement the information provided in the proponent's proposal. The City may revisit and re-evaluate the proponent's response or ranking on the basis of any such information.

**E. No Incorporation by Reference**

- 1) The entire content of the proponent's proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the proponent's proposal will not be considered to form part of its proposal.

**F. Proposal to Be Retained by the City**

- 1) The City will not return the proposal or any accompanying documentation submitted by a proponent.

### **4.3 DEBRIEFING**

#### **A. Debriefing**

- (1) Upon written request from any proponent, the City may provide a more detailed oral debriefing either by phone or in person, as required by the proponent. The written request shall be submitted to the City Contact no later than 15 calendar days after such notification.
- (2) The acceptance of the successful proposal shall not be discussed during a debriefing.

#### **B. Procurement Protest Procedure**

- 1) The parties shall attempt to negotiate all disputes in good faith.
- 2) In the event the parties are unable through good faith negotiations to mutually resolve any dispute, controversy or claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this RFP, such dispute, controversy or claim shall be referred to the dispute resolution procedure in accordance to Part 4 – Section 4.8 – Dispute Resolution Procedure.

### **4.4 CONFLICT OF INTEREST AND PROHIBITED CONDUCT**

#### **A. Conflict of Interest**

- 1) The City may disqualify a proponent for any conduct, situation, or circumstances, determined by the City, in its sole and absolute discretion, to constitute a Conflict of Interest. For the purposes of this section, “Conflict of Interest” has the meaning ascribed thereto in Appendix B – Section H – Conflict of Interest.
- 2) Forestry consultant advisors and forestry contractors must not have a direct connection that would be a conflict.

#### **B. Prohibited Proponent Communications**

- 1) A proponent shall not engage in any Conflict of Interest communications and should take note of the Conflict of Interest declaration set out in Appendix B.

#### **C. Proponent Not to Communicate with Media**

- 1) A proponent may not at any time directly or indirectly communicate with the media or make any public comment in relation to this RFP, or any contract entered into pursuant to this RFP, without first obtaining the written permission of the City’s project manager. Proponents will notify the project manager of any requests for information or interviews from the media.

#### **D. No Lobbying**

- 1) A proponent may not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful proponent(s).

#### **E. Illegal or Unethical Conduct**

- 1) Proponents shall not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud or collusion. Proponents shall not engage in any unethical conduct, including other inappropriate communications, offering gifts to members of Common Council, employees, officers or other representatives of the City, deceitfulness, submitting proposals containing misrepresentations or other misleading or inaccurate information, or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.

#### **F. Past Performance or Inappropriate Conduct**

- 1) The City may prohibit a proponent from participating in the procurement process based on past performance or based on inappropriate conduct in a prior procurement process.
- 2) Such inappropriate conduct shall include, but not be limited to the following:
  - (a) All the conducts as described in Part 4 – Section 4.4;
  - (b) The refusal of the proponent to honour its pricing or other commitments made in its proposal;  
or
  - (c) Any other conduct, situation or circumstance determined by the City, in its sole and absolute discretion, to constitute a Conflict of Interest.

### **4.5 CONFIDENTIAL INFORMATION**

#### **A. Confidential Information of City**

- 1) All information provided by or obtained from the City in any form in connection with this RFP either before or after the issuance of this RFP:
  - (a) Is the sole property of the City and must be treated as confidential;
  - (b) Is not to be used for any purpose other than replying to this RFP and the performance of any subsequent contract;
  - (c) Must not be disclosed by the proponent to any person, other than persons involved in the preparation of the proponent's proposal or the performance of any subsequent contract, without prior written authorization from the City; and
  - (d) Shall be returned by the proponents to the City immediately upon the request of the City.

**B. Confidential Information of Proponent**

- 1) A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The confidentiality of such information will be maintained by the City, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to the City’s advisors retained for the purpose of evaluating or participating in the evaluation of their proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the City Contact.

**4.6 PROCUREMENT PROCESS NON-BINDING**

**A. No Contract A and No Claims**

- 1) The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by the law applicable to direct commercial negotiations.
- 2) For greater certainty and without limitation:
  - (a) This RFP shall not give rise to any Contract A based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
  - (b) Neither the proponent nor the City shall have the right to make any claims (in contract, tort, equity or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a response to this RFP.

**B. No Contract until Execution of Written Contract**

- 1) The RFP process is intended to identify prospective proponents for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service shall be created between the proponent and the City by the RFP process until the successful negotiation and execution of a written contract for the acquisition of such goods and/or services.

**C. Non-Binding Price Estimates**

- 1) While the pricing information provided in responses will be non-binding prior to the execution of a written contract, such information will be assessed during the evaluation of the responses and the ranking of the proponents. Any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation, ranking or contract award.

**D. Disqualification for Misrepresentation**

- 1) The City may disqualify the proponent or rescind a contract subsequently entered into if the proponent’s response contains misrepresentations or any other inaccurate, misleading or incomplete information.

**E. Cancellation**

- 1) The City may cancel or amend the RFP process without liability at any time.

**4.7 GOVERNING LAW AND INTERPRETATION**

**A. Governing Law**

- 1) The terms and conditions in this Part 4:
  - (a) Are included for greater certainty and are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision);
  - (b) Are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and
  - (c) Are to be governed by and construed in accordance with the laws of the province of New Brunswick and the federal laws of Canada applicable therein.

**4.8 DISPUTE RESOLUTION PROCEDURE**

- 1) Any disputes and controversies arising out of, or in any manner relating to this RFP shall be subject to the following dispute resolution procedure:
  - (a) All disputes arising out of, or in connection with, this RFP, shall within two Business Days of notice to the City Contact be referred for resolution to the dispute resolution monitor.
  - (b) If the dispute resolution monitor cannot resolve a dispute within ten consecutive days, such dispute shall be documented in writing and identical copies shall be submitted for resolution to a qualified mediator agreeable to both parties.
  - (c) The mediator shall be entitled to establish his or her own practices and procedures. Each party shall co-operate fully with the mediator and shall present its case to the mediator orally and/or in writing within ten consecutive days following the mediator's appointment. The mediation shall not be in the nature of arbitration as contemplated by the *Arbitration Act* (1992), New Brunswick, and the mediator's decision shall not be binding upon the parties, but shall be considered as a *bona fide* attempt by the mediator to judiciously resolve the dispute.
  - (d) The decision of the mediator shall be rendered in a written report, not to exceed two pages in length, delivered to the parties within ten consecutive days following the last of such presentations. The fees of the mediator shall be shared equally by the parties.



- (e) The mediation shall be terminated upon: (i) the execution of a settlement agreement by the parties; (ii) a written declaration of one or more parties that the mediation is terminated; or (iii) a written declaration by the mediator that further efforts at mediation would not be useful.
  
- (f) The place of mediation shall be the City of Saint John and Province of New Brunswick.
  
- (g) If mediation is unsuccessful either party shall be entitled to pursue such other remedies as permitted by law.

**[End of Part 4]**

## APPENDIX A – CONTRACT TERM SHEET

*The following terms, but not limited to, are to be included in the contract between the City and successful proponent (the “Vendor”). Although the final wording of the provisions may be subject to negotiation, proponents responding to this RFP should be prepared to enter into a contract for the provision of the Deliverables that includes the provisions as described below:*

### **Article 1 – Interpretation and General Provisions**

#### **No Indemnities from the City**

The City will not provide an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City, whether at the time of execution of the contract or at any time during the term of the contract or any extensions thereof.

#### **Governing Law**

The contract will be governed by and construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein.

### **Article 2 – Term**

#### **Term**

The term of the Contract will commence on the date of award. The City may extend the Contract upon mutual consent of the City and the Vendor.

### **Article 3 – Status of Vendor**

#### **No Partnership, Agency etc.**

The contract will not create an employment, partnership or agency relationship between the City and the Vendor (or any of the Vendor’s directors, officers, employees, agents, partners, affiliates or subcontractors).

#### **Acts and Omissions**

The Vendor will acknowledge and agree that it will be liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates and subcontractors.

In addition to any other liabilities of the Vendor pursuant to the contract or otherwise at law or in equity, the Vendor will be liable for all claims arising from any breach of the contract resulting from the actions of the above mentioned individuals and entities.

### **No Subcontracting or Assignment**

The Vendor will not subcontract or assign the whole or any part of the contract or any monies due under it without the prior approval of the City (which approval may be arbitrarily withheld) except to approved subcontractors.

### **Conflict of Interest**

The Vendor will avoid any actual or potential conflict of interest in its performance of the contract, will disclose any such conflict of interest, will comply with any instruction from the City to deal with any conflict of interest, and that the Vendor's conflict of interest will give the City the right immediately terminate the contract.

**Example** – Forestry consultant advisors and forestry contractors must not have a direct connection that would be a conflict.

### **Article 4 – Performance by the Vendor**

#### **Performance Warranty**

The Vendor will represent and warrant that the Deliverables will be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations and furthermore that all Deliverables will be provided in accordance with contract terms, good industry practice and applicable laws.

#### **No Waiver**

Any failure by the City to insist in one or more instances upon strict performance by the Vendor of any of the terms or conditions of the contract shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions or any other terms or conditions, and the obligations of the Vendor with respect to such performance will continue in full force and effect.

#### **Change Requests**

Either the City or the Vendor may, without invalidating the contract, at any time during the term, submit a change request to the other party.

#### **Notice of Change**

The City will promptly notify the Vendor in writing if the City considers that any notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the fees, and except with respect to insurances obtained and maintained by the Vendor with respect to the Deliverables, the Vendor will seek instructions as to whether to proceed to implement such change which will impact the fees.

## **Pricing for Changes**

Where a party's change request includes an increase or decrease in the scope of the previously contemplated cost of the fees, the Vendor will set out, in a notice of change, the proposed costs or savings for the contemplated changes.

## **Non-Exclusive Contract, Work Volumes**

The Vendor will be providing the Deliverables to the City on a non-exclusive basis, and that the City makes no representation regarding the volume of goods and services required under the contract. The City may contract with others for the same as or similar to the Deliverables or may obtain the same as or similar to the Deliverables internally.

## **Replacement of Identified Individuals**

If specific individuals are identified in the contract as being responsible for providing the Deliverables, only those individuals are to provide the Deliverables and the Vendor will not be permitted to remove or replace any of the individuals identified in the contract without the City's consent.

## **Remedies Cumulative**

No reference to or exercise of any specific right or remedy by a party will prejudice or preclude such party from exercising or invoking any other remedy, whether allowed under the contract or generally at law or in equity.

## **Article 5 – Payment for Performance**

### **Payment According to Contract**

The City will be required to pay the Vendor for the Deliverables provided in accordance with the provisions of the contract at the rates established under the contract.

### **Hold Back and Set Off**

The City may hold back payment or set off against any payment to the Vendor hereunder if, in the opinion of the City, the Vendor has failed to comply with any requirements of the contract.

### **No Other Expenses**

There will be no other charges payable by the City under the contract to the Vendor other than the rates established under the contract unless such charges and/or rates are first approved by the City.

### **Taxes and Duties**

The Vendor will pay all applicable taxes, including sales and excise taxes incurred by or on behalf of the Vendor's behalf with respect to the contract.

### **Withholding Tax**

The City will withhold any applicable withholding tax from amounts due and owing to the Vendor under the contract and shall remit it to the appropriate government in accordance with applicable tax laws.

### **No Late Payment Charges**

The City will endeavour to pay invoices when due to the Vendor, but shall not be required to pay interest on any late payments.

### **Document Retention and Audit**

The City will have the right to audit the Vendor's performance of the contract for a period of seven years and the Vendor must retain all relevant documents to substantiate its performance of all Deliverables.

### **Article 6 - Confidentiality**

#### **Publicity**

Any publicity or publications related to the contract shall be at the sole discretion of the City.

#### **Confidentiality**

The Vendor will maintain the confidentiality of the City's confidential information in accordance with the specific restrictions prescribed by the City and, to the extent that the contract includes handling personal information, will comply with all of the prescribed requirements to protect that personal information.

#### **Injunctive Relief**

The Vendor agrees that the City is entitled to obtain injunctive relief (without proving any damage or harm sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of Article 6.

### **Article 7 – Intellectual Property**

#### **City Intellectual Property**

The City will retain sole ownership of all intellectual property in all materials provided to the Vendor.

#### **Ownership of Intellectual Property**

The presumption governing the contract will be that the City shall be the sole owner of any intellectual property in any form contained in any of the Deliverables. If the Vendor's intellectual property forms any part of the Deliverables, the Vendor will notify the City as such prior to the delivery of the particular Deliverable.

## **Grant of License**

For those parts of the Deliverables that are the Vendor intellectual property, the Vendor will grant to the City, including each client, a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty-free, fully paid-up right and license over those parts of the Deliverables.

## **Moral Rights**

The Vendor will execute and agrees to cause any of its employees, directors, partners, officers, agents, boards, departments, commissions, representatives, advisors, persons or subcontractors to execute an irrevocable written waiver of any moral rights or other rights of integrity in the applicable Deliverable(s) in favour of the City.

## **Article 8 – Insurance and Indemnity**

### **Vendor’s Liability Insurance**

The Vendor, at no expense to the City, shall obtain and maintain in full force and effect during the term of this Contract, a policy or policies of insurance with the following minimum limits of liability:

(a) Professional Errors and Omissions Liability Insurance

The Insurance Coverage shall be in the amount of Two Million Dollars (\$2,000,000.00) per claim and in the aggregate.

(b) Comprehensive General Liability and Automobile Insurance

The Insurance Coverage shall be of not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate for general liability and Two Million Dollars (\$2,000,000.00) for automobile insurance. This policy of insurance shall name the City as an additional insured and shall contain a cross-liability clause.

The City will be given 30-days notice in case of cancellation or material change of the policy.

### **Vendor Indemnity**

The Vendor will indemnify and save harmless the City from all claims, or other proceedings by whomsoever claimed, made, brought or prosecuted in any manner and whether in respect of property owned by others or in respect of damage sustained by others based upon or arising out of or in connection with the performance of the contract or anything done or purported to be done in any manner hereunder, but only to the extent that such claims, or other proceedings are attributable to and caused by the Vendor’s negligence, errors or omissions or that of its controlled affiliates or other persons for whom it is responsible at law.

## **Participation in Proceedings**

The Vendor shall, at its expense, to the extent requested by the City, participate in or conduct the defence of any proceeding against any indemnified parties referred to Article 8 and any negotiations for their settlement.

## **Article 9 – Termination and Default**

### **Termination for Default**

The City will have the right to immediately terminate the contract upon giving notice to the Vendor where:

- (a) The Vendor makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Vendor under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation.
- (b) The Vendor's default in performing and observing any of the terms, covenants, warranties or conditions of the contract.
- (c) The Vendor breaches any material provision of the contract or any provision of confidentiality.
- (d) The Vendor breaches the conflict of interest provision in the contract.
- (e) In the City's reasonable opinion, the Vendor, prior to or after executing the contract, makes a material misrepresentation or omission or provides materially inaccurate or misleading information to the City.
- (f) The Vendor undergoes a change of control which, in the reasonable opinion of the City, adversely affects the Vendor's ability to satisfy some or all of its obligations under the contract.
- (g) The Vendor subcontracts for the provision of part or all of the services or assigns the contract without first obtaining the approval of the City.
- (h) In the City's reasonable opinion, the Vendor's acts or omissions constitute a substantial breach of the Vendor's obligations under the Contract.

## **Article 10 – Dispute Resolution**

### **Dispute Resolution Procedure**

The City and the Vendor will attempt to negotiate all disputes in good faith. In the event the City and the Vendor are unable through good faith negotiations to mutually resolve any dispute, controversy or claim arising out of, in connection with, or in relation to the interpretation, performance or breach of the contract, such dispute, controversy or claim shall be referred to dispute resolution.

## **Retention of Rights**

It is agreed that no act by either the City or the Vendor will be construed as a renunciation or waiver of any rights or recourses provided either the City or the Vendor has given the notices required under this Article 10 and has carried out with the instructions within the contract.

## **Article 11 – Miscellaneous Provisions**

### **Survival of Obligations**

All of the obligations, representations and warranties of a party accruing during the existence of the contract or any renewal or extension thereof shall survive the termination or expiration of the term.

### **Force Majeure Event**

No party will be responsible for any force majeure event or by any other cause which is unavoidable or beyond its reasonable control. The party whose performance of the contract is or may reasonably be expected to be affected by a force majeure event will promptly notify the other party of the existence of such circumstances and will use its best efforts to resume and complete performance.

### **Time**

The contract will not be enforced or bind the City or the Vendor until executed by all the parties named in it.

### **Further Acts**

The City and the Vendor will at all times and from time to time and upon every reasonably written request to do execute and deliver all such further acts, deeds, assurances and things as may be required to more effectively implement and carry out the true intent and meaning of the contract.

### **Counterparts**

The contract may be executed in any number of counterparts.

## **Article 12 – Defined Terms**

### **Definitions**

A list of definitions will be placed in alphabetical order by defined term.



## APPENDIX B – SUBMISSION FORM

### A. Proponent Information

Please fill out the following form, and name one person to be the contact for your response to this RFP and for any clarifications or amendments that might be necessary.	
Full Legal Name of Proponent:	
Any Other Relevant Name under which the Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code/Zip Code:	
Phone Number:	
Fax Number:	
Company Website (If any):	
RFP Contact Person and Title:	
RFP Contact Phone:	
RFP Contact Facsimile:	
RFP Contact E-mail:	

### B. Acknowledgment of Non-Binding Procurement Process

The proponent acknowledges that the RFP process will be governed by the terms and conditions of this RFP, and that, among other things, such terms and conditions confirm that this procurement

process does not constitute a formal legally binding bidding process, and that there will be no legal relationship or obligations created until the City and the selected proponent have executed a written contract.

**C. Ability to Provide Deliverables**

The proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required under this RFP. The proponent represents and warrants its ability to provide the Deliverables required under this RFP in accordance with the requirements of this RFP for the rates set out in Appendix C and has provided a list of any subcontractors to be used to complete the proposed contract.

**D. Mandatory Forms**

The proponent encloses as part of the proposal the mandatory forms set out below:

FORM	INITIAL TO ACKNOWLEDGE
Submission Form	
Pricing Form (in separate envelope marked "Financial Proposal")	
Reference Form	

**Notice to proponents:** There may be forms required in this RFP other than those set out above. See the Mandatory Requirements section of this RFP for a complete listing of mandatory forms.

**E. Non-Binding Price Estimates**

The proponent has submitted its rates in accordance with the instructions in this RFP and in Appendix C. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work.

**F. Addenda**

The proponent is deemed to have read and accepted all addenda issued by the City prior to the Deadline for Issuing Addenda. The onus remains on proponents to make any necessary amendments to their proposal based on the addenda. The proponent confirms that it has received all addenda by listing the addenda numbers or, if no addenda were issued, by writing the word "None" on the following line: \_\_\_\_\_ . Proponents who fail to complete this section will be deemed to have received all posted addenda.

**G. No Prohibited Conduct**

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

**H. Conflict of Interest**

For the purposes of this RFP, the term “**Conflict of Interest**” means:

- (a) In relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the City in the preparation of its proposal that is not available to other proponents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process (including, but not limited to, the lobbying of decision makers involved in the RFP process); or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the RFP process; or
  
- (b) In relation to the performance of its contractual obligations contemplated in the contract that is the subject of this procurement, the proponent’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

If the box below is left blank, the proponent will be deemed to declare that:

- (a) There was no Conflict of Interest in preparing its proposal; and
  
- (b) There is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in this RFP.

Otherwise, if the statement below applies, check the box.

- The proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in this RFP.

If the proponent declares an actual or potential Conflict of Interest by marking the box above, the proponent must set out below details of the actual or potential Conflict of Interest:

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**I. Disclosure of Information**

The proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or if required by order of a court or tribunal. The proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the City to the City's advisors retained for the purpose of evaluating or participating in the evaluation of this proposal.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Proponent Representative

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

I have the authority to bind the proponent.



## APPENDIX D – REFERENCE FORM

Each proponent is requested to provide three references from clients who have obtained services similar to those requested in this RFP from the proponent in the last three years.

### Reference #1

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment, including deliverables:</b>	

### Reference #2

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment, including deliverables:</b>	

### Reference #3

<b>Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Date Work Undertaken:</b>	
<b>Nature of Assignment, including deliverables:</b>	

## APPENDIX E – RFP PARTICULARS

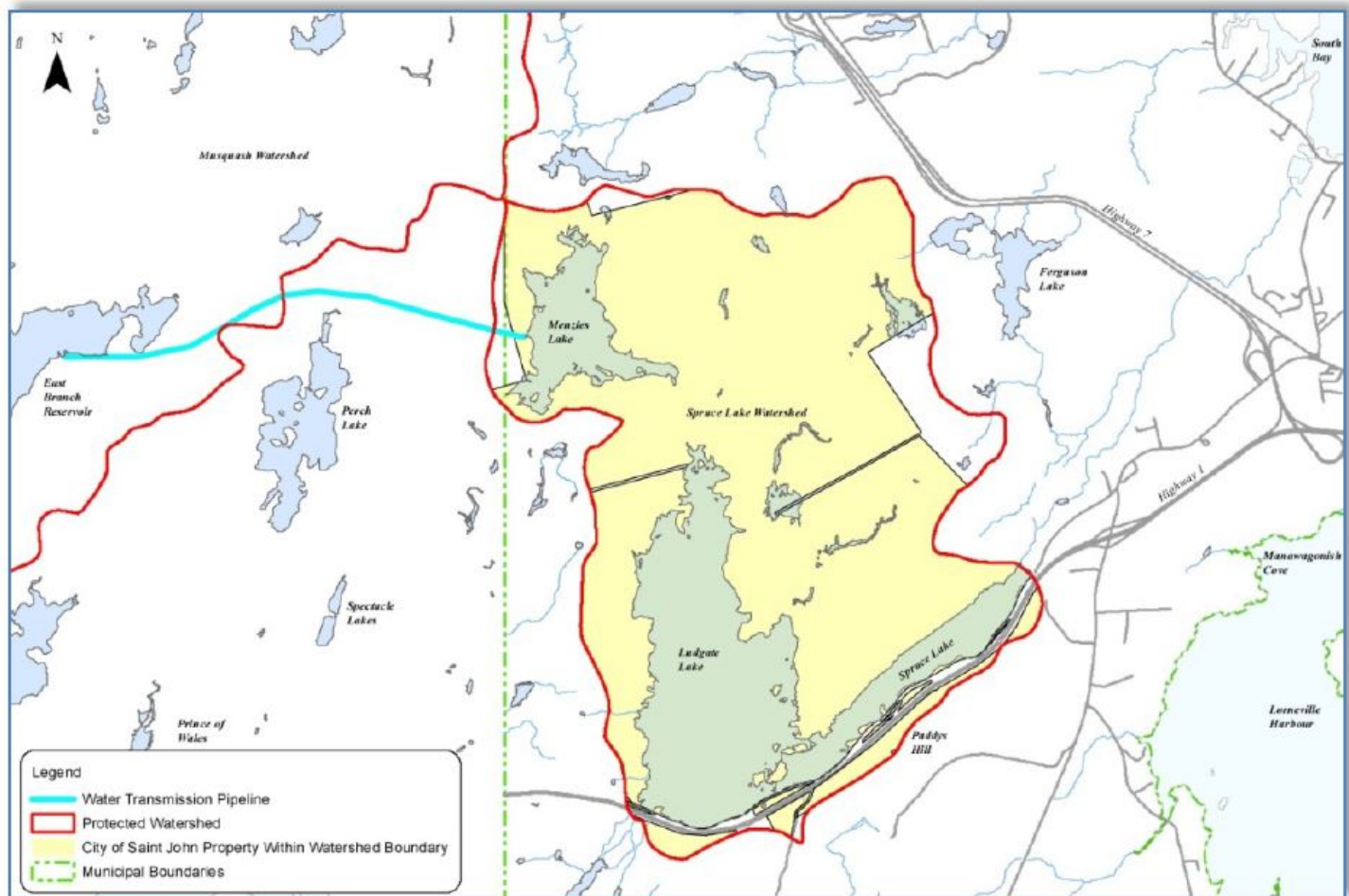
### A. The Deliverables

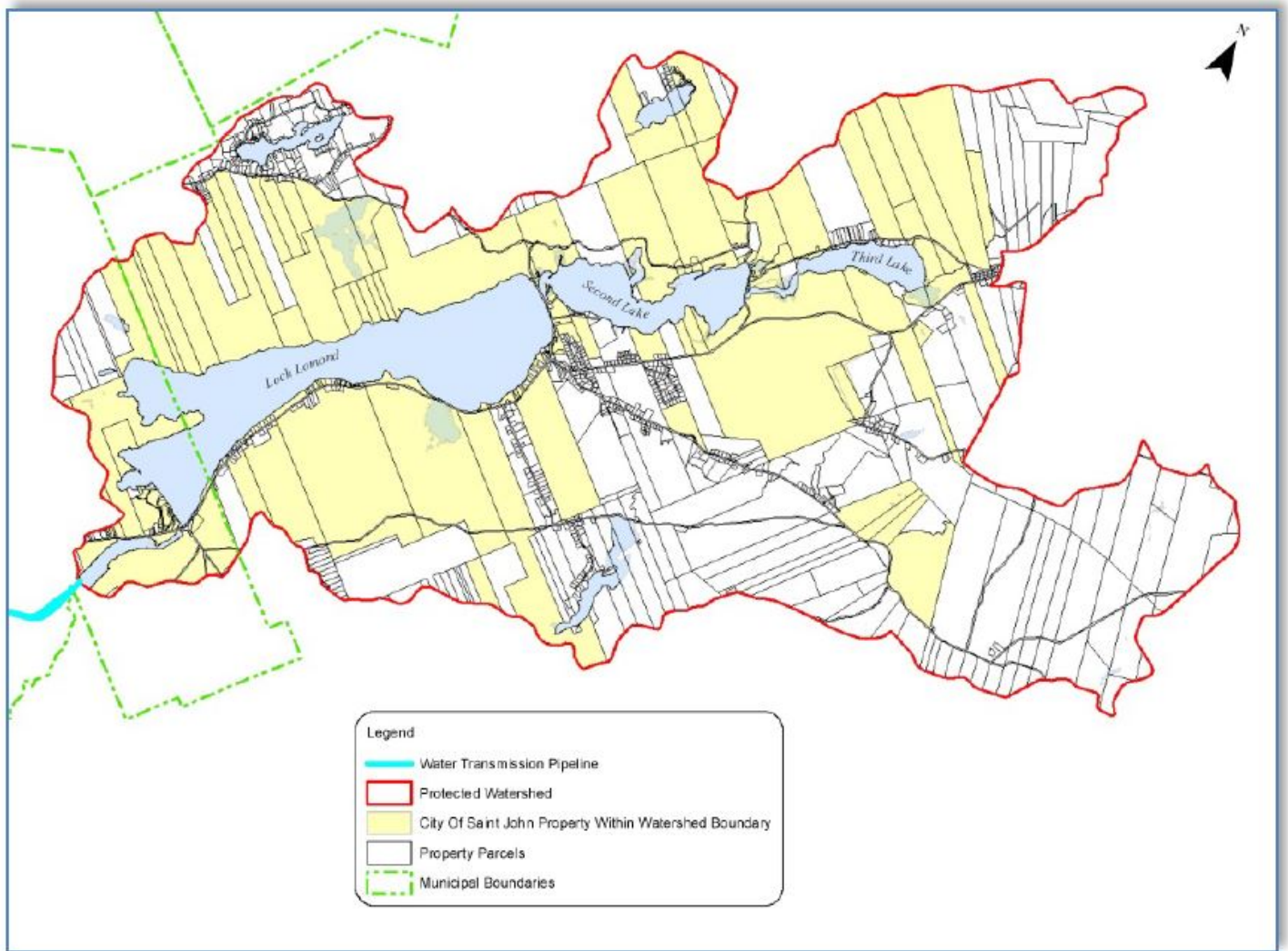
The proponent shall conduct various forestry and environmental science activities with the objective of establishing a continuous program of watershed forest maintenance and enhancement for the City of Saint John and the Saint John Water Department.

### Background Information

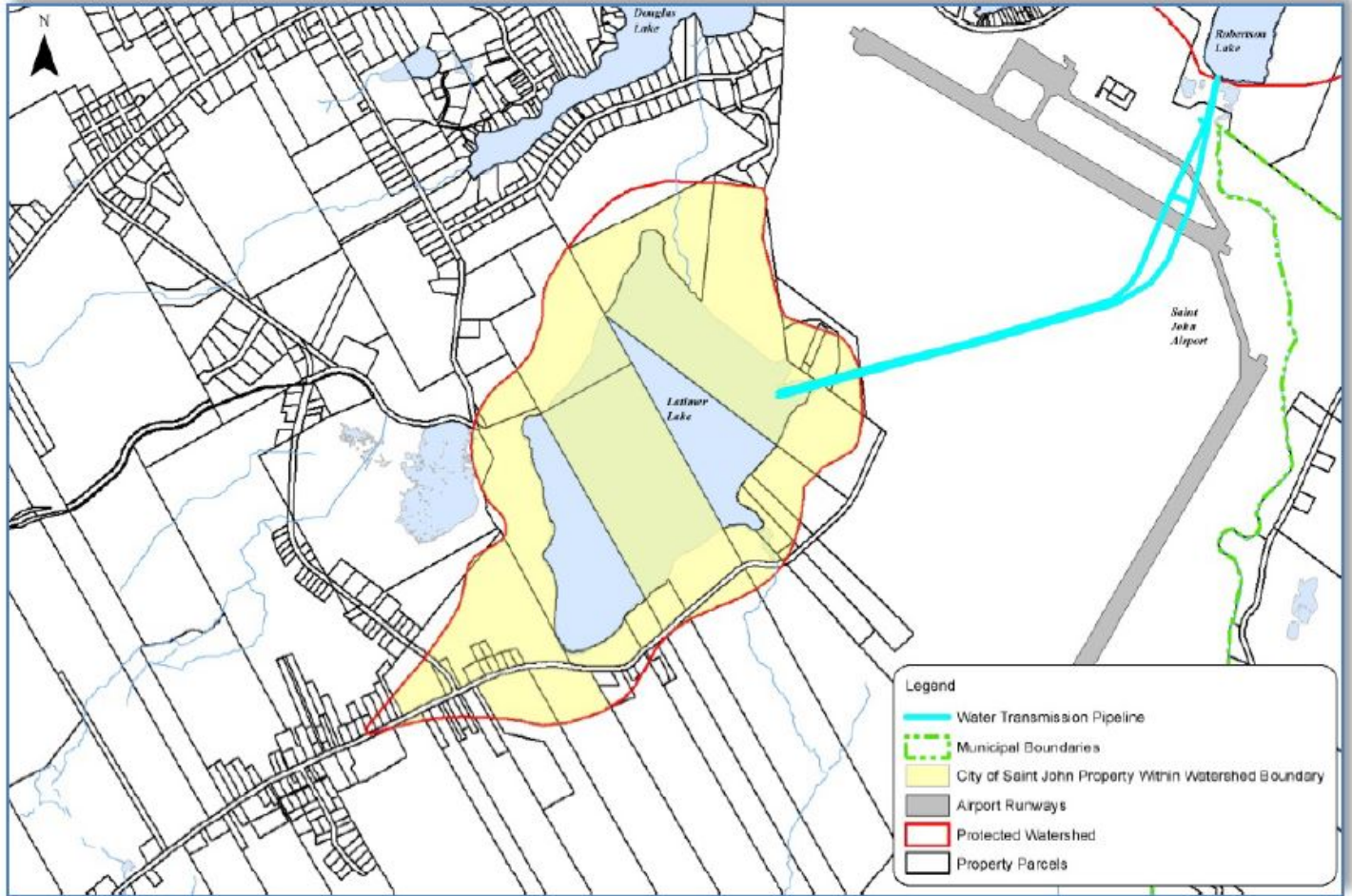
The existing forestry plans will not be made available during this procurement phase.

Please see the attached 3 maps of the three watersheds below.









**SCOPE OF WORK and Charge-out Rates**

The project does not have a quantifiable amount of work or a finish date, so proponents will be asked to submit hourly and daily rates for various work activities that they want to offer the City.

The City reserves the right to split the award of this proposal and enter into multi-year agreements with multiple firms to carry out the work depending on expertise, availability, and rates. Proponents will be required to work together to coordinate the required activities.

Any resulting agreement from this RFP for the Forestry Advisory Expertise Services is expected to be valid for five (5) years. The City with the consultant’s mutual agreement may choose to extend this agreement for up to two (2) additional two (2) year periods

Every organization charges their clients in different ways and we are willing to be flexible depending on the services being conducted.

**For example:**

- Hourly rates and full day rates.
- Office work and fieldwork, are their two rates for the same people or not?
- Is there a per day rate for food and expenses while working in the field?
- What do you charge for use of vehicles, including ATV's if required?
- When driving between your office and Saint John, a reduced consulting hourly rate is best.
- Are there any other typical fees or disbursement rates that you would charge us, please let us know.
- City staff reserve the right to negotiate rates that they see are out of balance.
- State your inflation escalators after one year of service.

**STATEMENT OF NEEDS**

**Please refer to 1.3 Background Information and 2.1 Description of Deliverables for the most likely services and advice that will be required by the proponents.**

**B. Evaluation Criteria**

- 1) The following is an overview of the categories and weighting for the rated criteria relevant to the evaluation of proposals under this RFP.

<b>EVALUATION CRITERIA</b>	<b>SCORING (POINTS)</b>
<b>Meets the deliverables / objectives as listed in Part 2 and Appendix E</b>	30
<b>Experience and Expertise of Proponent:</b> <ul style="list-style-type: none"><li>• Time providing deliverables of a similar nature</li><li>• Reference checks</li></ul>	40
<b>Financial Proposal:</b> <ul style="list-style-type: none"><li>• Pricing Form tables</li><li>• Compensation model</li></ul>	30
<b>TOTAL POINTS FOR STAGE II</b>	<b>100</b>

**C. Submission Requirements**

- 1) Proponents should include the following information in respect of each of the rated criteria:
- (a) How the proposed solution meets the deliverables listed in Part 2 and Appendix E – 30 Points
    - i. Effectively shows how each of the Appendix E deliverables are or are not met
  - (d) Experience and Expertise of Proponent – 40 Points
    - i. A history of the organization and time producing similar work
    - ii. A description of experience in the forestry industry
    - iii. References
  - (e) Financial Proposal – 30 Points
    - i. completed Pricing Form as provided in Appendix C.
    - ii. proposed Compensation Model for Deliverables:
      - o proponents should provide information and details with respect to the compensation model(s) that it considers most suitable for delivery of the services (ex. fixed fees, hourly rates, volume discounts, capped fees, etc) and specific details with respect to its billing policies, including charging of travel expenses and other disbursements.

- 2) The City is interested in compensation models that provide best value for money for the City. In assigning points in this category, the evaluation team will engage in a comparative evaluation of Appendix C, proposed compensation models and estimates for total costs received and evaluate them based on considerations which, in the sole opinion of the City, are relevant to a determination of best value for money. For greater certainty, the lowest estimate of total costs will not necessarily be found to offer the best economic value over the term of contract.