



REQUEST FOR PROPOSALS

Desktop Hydrogeological Study for Broadway Corridor and
Millennium Line Broadway Extension

RFP No. PS20181832

Issue Date: December 19, 2018

Issued by: City of Vancouver (the "City")

REQUEST FOR PROPOSAL NO. PS20181832
DESKTOP HYDROGEOLOGICAL STUDY: BROADWAY CORRIDOR AND
MILLENNIUM LINE BROADWAY EXTENSION

PART A - INSTRUCTIONS AND INFORMATION

1.0 INSTRUCTIONS

1.1 The City is interested in selecting an entity (each, a “Proponent”) that submits a proposal (each, a “Proposal”) with the capability and experience to efficiently and cost-effectively meet the requirements described in this RFP. The City expects to select a Proponent to enter into contract negotiations.

However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any agreement; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.

1.2 Proponents should submit their proposals on or before 3:00pm on the 22ND day of January, 2019 (the “Closing Time”) by email in accordance with the following:

- Subject of the file to be: PS# - Vendor name.
- Document format for submissions:
 - RFP Part C in PDF format - 1 combined PDF file,
 - Appendix 3 (pricing tab) in Excel format, and;
 - Any other attachments if necessary
- Zip the files to reduce the size or email separately if needed.
- Send your submissions to Bids@vancouver.ca; do not deliver a physical copy to the City of Vancouver.
- If you did not receive an automated email within few minutes, check your junk folder first, and then contact Purchasing@vancouver.ca.
- Submitting the files via Drop box, FTP, or similar programs, is not acceptable.

1.3 To be considered by the City, a Proposal must be submitted in the form set out in Appendix 1 (the “Proposal Form”), completed and duly executed by the relevant Proponent.

1.4 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time. Proposals are revocable and may be withdrawn at any time before or after the Closing Time.

1.5 Proposals that are submitted after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City’s sole discretion.

2.0 CHANGES TO THE RFP AND FURTHER INFORMATION

2.1 The City may amend the RFP or make additions to it at any time. It is the sole responsibility of Proponents to check the City’s website at: <http://vancouver.ca/doing-business/open-bids.aspx> regularly for amendments, addenda, and questions and answers in relation to the RFP.

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PART A - INSTRUCTIONS AND INFORMATION

3.0 EVALUATION OF PROPOSALS

3.1 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated to determine overall best value to the City. The City expects to evaluate: (i) financial terms; (ii) Proponents' skills, knowledge, reputations and previous experience(s), including experience(s) with the City (if any); and (iii) Proponents' approach to meeting the City's requirements.

| Evaluation Criteria | Evaluation Weighting |
|---------------------|----------------------|
| Financial | 30 |
| Technical | 70 |
| Total | 100% |

4.0 CITY'S DISCRETION

4.1 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to: (a) accept any Proposal; (b) reject any Proposal; (c) reject all Proposals; (d) accept a Proposal which is not the lowest-price proposal; (e) accept a Proposal that deviates from the Requirements or the conditions specified in the RFP; (f) reject a Proposal even if it is the only Proposal received by the City; (g) accept all or any part of a Proposal; (h) split the Requirements between one or more Proponents; and (i) enter into one or more agreements respecting the subject matter of the RFP with any entity or entities at any time. Without limiting the foregoing, the City may reject any Proposal by a Proponent that has a conflict of interest, has engaged in collusion with another Proponent or has otherwise attempted to influence the outcome of the RFP other than through the submission of its Proposal.

5.0 LEGAL TERMS AND CONDITIONS

5.1 The legal obligations of a Proponent that will arise upon the submission of its Proposal are stated in Appendix 5. Except where expressly stated in these Legal Terms and Conditions: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City. **EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 5: (I) NO PART OF THE RFP CONSISTS OF AN OFFER BY THE CITY TO ENTER INTO ANY CONTRACTUAL RELATIONSHIP; AND (II) NO PART OF THE RFP IS LEGALLY BINDING ON THE CITY.**

POTENTIAL PROPONENTS MUST REVIEW THESE LEGAL TERMS AND CONDITIONS CAREFULLY BEFORE SUBMITTING A PROPOSAL.

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PART B - CITY REQUIREMENTS

1.0 Introduction

1.1 This Request for Proposal (RFP) sets out consulting efforts required to complete a Desktop Hydrogeological Study for the Broadway Corridor and Millennium Line Broadway Extension (MLBE). This study involves review of relevant information to summarize existing hydrogeological conditions, and an assessment of the potential impacts to the existing hydrogeology resulting from construction of the MLBE and future growth within the Broadway Corridor. This study will also provide an overview of best practices for groundwater management and recommendations/actions relative to City initiatives and requirements related to groundwater. This study will create a baseline understanding of the hydrogeology within the Broadway Corridor to inform future groundwater management planning and decision making within the City.

2.0 Background

2.1 The City of Vancouver is currently in the midst of a major planning initiative in the Broadway Corridor area, generally between Clark Drive and Vine Street, between approximately 16th Avenue and 2nd Avenue. This initiative is focused on integrating new development along, and surrounding, the MLBE. This initiative is aimed at supporting the City's goals of creating housing affordability, job space, social and cultural amenities, while achieving environmental sustainability, and livability goals.

2.2 The Broadway Corridor is a regionally important area that connects the largest university (UBC) and the largest hospital (Vancouver General Hospital) in Western Canada. Broadway is the second largest job centre in the province, and a key source of employment for residents throughout Metro Vancouver.

2.3 City staff are currently undertaking a comprehensive review of growth scenarios and patterns for change in land uses in the Broadway Corridor area. This development shall compliment the MLBE, a direct extension of the existing Millennium Line. The MLBE will continue from VCC-Clark Station on an elevated guideway for 800 metres, after which the extension will then travel for approximately 5 km beneath Broadway. The project includes six (6) new stations, ending at Arbutus Street (see Figure 1).

2.4 Construction and operation of the MLBE and the new development are expected to alter and influence the existing hydrogeological regime in a number of ways. These changes may impact the existing hydrogeological regime; for example, subsurface infrastructure may displace groundwater and cause changes to groundwater levels, geochemistry, hydraulic gradients, etc.

2.5 The City has recently begun implementing more stringent requirements for managing groundwater on private property. Central to these efforts is preventing groundwater from being discharged into the sewer system post-construction. City staff is also looking for ways to ensure that groundwater is treated as a precious resource rather than a nuisance across the city. This approach is being implemented through the [Cambie Corridor Groundwater Management Bulletin](#) and amendments to the Zoning and Development By-law passed by council on July 11, 2018 and July 24, 2018, respectively. It is likely that the requirements in the Groundwater Management Bulletin will be extended to the Broadway Corridor, or superseded with a bespoke bulletin informed through recommendations by the successful bidder.

2.6 Land elevations generally decrease from south to north across the Broadway Corridor. The east portion of the corridor near False Creek is relatively flat. The area was historically drained by a series of ravines and streams, aligned north-south draining to False Creek, shown in Figure 2.

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These have since been filled in and some are known to have been historically directed through pipe infrastructure. Surface water drainage in the corridor is collected in the City's sewer network.

- 2.7 The surficial geology in the area is comprised of glacio-fluvial sediments (VCa & Cb, estimated less than 10 m thick), bedrock (T), and landfill material (SAa) in the False Creek area, shown in Figure 3. Only a small portion of the corridor intersects a major known aquifer, the Quadra Sands aquifer, in the south east portion near Main Street (see Figure 2).
- 2.8 Limited knowledge is available regarding the hydrogeological regime and how groundwater is managed on private property. The City is aware of construction dewatering at several sites within the corridor, long-term pumping of groundwater at sites across the city, and the historical practice of diverting buried streams through pipes at various locations. It is assumed that some sites may be pumping and discharging groundwater to the sewer system on a continuous basis. False Creek is also a receptor for stormwater drainage and combined sewer overflows (CSOs) from the sewer system. The City is looking to gain a better understanding of the current state of the hydrogeological regime, and the potential changes or impacts that will arise with the MLBE construction as well as the growth and development that will occur throughout the Broadway Corridor.

3.0 Summary of Requirement

- 3.1 The Consultant will conduct a background review of available data and information to inform an overview of the current state of the hydrogeological regime in the Broadway Corridor, and complete an assessment of potential impacts to the existing hydrogeological regime in the context of the MLBE construction and future growth throughout the Broadway Corridor. Additionally, the consultant will provide an overview of best practices and recommendations/actions for the City to use moving forward, based on groundwater-related City initiatives and requirements related to groundwater management.

4.0 Work Scope

- 4.1 The Consultant will conduct a desktop hydrogeological study, per 4.2 to 4.6, including at a minimum:
- Collection, analysis, and synthesis of collected data and information (4.2);
 - Assessment of the current state of the hydrogeological regime within the Broadway Corridor, summarized with cross-sections, maps, and other visual aids (4.3);
 - Assessment of the potential impacts to the current state hydrogeological regime as a result of construction of the MLBE and future growth in the Broadway Corridor (4.4); and,
 - Conclusions and recommendations for the City, including an overview of best practices for groundwater management (4.5).

These items must be provided in a technical memorandum with appendices (4.6).

- 4.2 Complete a background review to collect and organize existing data and information from relevant available sources (e.g. City and Provincial databases, reports, well records, and any other sources identified by the successful proponent);

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4.3 Based on the information available, provide regional and local review and detailed outline of the current state of the hydrogeological regime in the Broadway Corridor, with consideration for:

- Hydrologic setting (e.g. natural watershed, surface drainage, etc.);
- Groundwater levels (static and perched);
- Topography;
- Bedrock and surficial geology;
- Aquifer characteristics (e.g. extent, confined/unconfined, lithology, etc.);
- Groundwater flow directions;
- Groundwater-surface water interaction and hydraulic connectivity;
- Old/buried streams and preferential pathways;
- Areas of recharge and discharge;
- Hydraulic conductivities, transmissivities;
- Infiltration rates;
- Geochemistry;
- Major contaminated sites; and
- Environmentally sensitive areas.

Hydrogeological cross-sections, maps, and other visual aids must be provided to summarize the background information on the hydrogeological regime.

4.4 Assess potential future impacts to the current state hydrogeological regime in the context of the MLBE construction and future growth/development expected in the Broadway Corridor. This assessment must include estimations and/or considerations for, at a minimum:

- Groundwater quantity;
- Changes in water table;
- Stormwater infiltration potential and groundwater mounding;
- Construction dewatering & permanent site dewatering (e.g. pumped groundwater flow, volume);
- Potential for subsidence, geotechnical issues, or other risks to property;
- Groundwater use, withdrawal rates;
- Contaminated sites and impact to groundwater quality;
- Impacts to water users; and
- Impacts to fish & wildlife, waterbodies, and the environment.

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4.5 Provide an overview of data gaps and recommended field work for the City to pursue in order to better understand the hydrogeology within Broadway Corridor. Additionally, provide an overview of best practices for groundwater management and any other recommendations with consideration for the following related City requirements and initiatives:

- Rainwater management requirements for developments, with preference for infiltration techniques;
- Groundwater management requirements for developments;
- Groundwater as a potential emergency supply and/or future source; and
- Groundwater use to offset potable water use.

Information on these City initiatives will be provided in the City-Provided documentation (Section 5.0).

4.6 Prepare a report that summarizes the background review, current state hydrogeology, assessment of potential future impacts, overview of best practices, and actions/recommendations for the City in the context of the future MLBE construction and development throughout Broadway Corridor, as described in Sections 4.1-4.5 above.

5.0 City Provided

5.1 The Project Team will provide the successful proponent with the relevant data, reports, plans, and other information in COV possession that is required within the scope of this project. This includes the following reports:

- Klohn-Crippen (1997) Underground Percolation of Stormwater.
- Groundwater Management Bulletin:
<https://vancouver.ca/docs/bulletins/Cambie%20Corridor%20Groundwater%20Bulletin.pdf>
- Broadway Planning Program and Associated Interim Policies Council Report:
<https://council.vancouver.ca/20180620/documents/pspc3.pdf>
- GVRDD (1963) Geotechnical Profile Information for 8th Avenue Interceptor
- GVRDD (1662) Well Logs for 8th Avenue Interceptor
- Golder Associates (2016) Broadway Skytrain Extension Geotechnical Site Investigation Report.
- Additional background information, as available

6.0 Proposal Requirements

The Proposal must include:

- A description of the proposed methodology to deliver the requirements in this document;
- A task schedule showing task duration and start and end dates. At a minimum, the schedule should include each item in the Deliverables section;
- Total fees and disbursements to complete this work;

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- A list of key personnel assigned to each task and a resume or brief description of their qualifications and related experience;
- A list of relevant previously completed preliminary hydrogeological studies, and the participating team members, completed;
- A brief indication of any special problems or considerations foreseen (risks to scope, schedule, and/or budget), and how they would be addressed; and
- A clear and thorough description of all assumptions made for the completion of the work. These include, but are not limited to, a listing of all services the Consultant would require from the City throughout the term of the project.

7.0 Deliverables

- The Consultant will provide the following to the City as part of this study:
- One (1) in-person project initiation meeting with City staff to confirm scope, intent, and approach;
- One (1) in-person meetings with City staff to review background information, reports, and data inputs;
- Allow for up to one (1) additional optional in-person meeting;
- A draft report that summarizes background information, current state hydrogeology, assessment of impacts due to MLBE construction and growth throughout the area, an overview of best practices, and conclusions/recommendations, which respond to each item in Summary of Requirement and Work Scope in Sections 3.0 and 4.0 above;
- One (1) in-person meeting with City staff to review the draft report; and
- A final report that addresses City feedback, provided in paper and electronic form.
- Acceptance Criteria
- Acceptance will occur after the Consultant has provided to the City with the Proposal, and acceptance criteria will follow the Work Scope outlined in Section 4.0, to the satisfaction of the Project Team, subject to modifications of the work scope and/or deliverables agreed in writing by the Project Team and the Consultant.

8.0 Schedule

The schedule anticipates:

- One in-person project initiation meeting immediately following award of project, in January 2019;
- One in-person meeting, following the project initiation meeting, for the Consultant to discuss project scope, intent, and approach with the Project Team;
- A minimum of one (1) in-person meeting as the study progresses, to review background information and project expectations, as well as address Consultant questions and concerns. Allow for up to one (1) additional in-person meeting;
- The study duration is estimated at approximately 3 months, commencing January 2019. The Consultant should aim to deliver the draft technical memorandum as soon as possible as this work is needed to inform development planning underway, but no later than April 30, 2019.

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- The Schedule is a guideline and may be adjusted by mutual agreement of the Project Team and the Consultant due to contingencies that may arise during the progress of the Study, such as timing of data delivery, holiday periods, or reconsideration of methodology.
- Proponents should estimate the hours to complete the study to reflect an efficient and well balanced work plan that meets the Work Scope outlined in Section 4.0.

9.0 Attachments: Figures



Figure1 Millennium Line Broadway Extension (<https://www.translink.ca/Plans-and-Projects/Rapid-Transit-Projects/Broadway-SkyTrain-Extension.aspx>)

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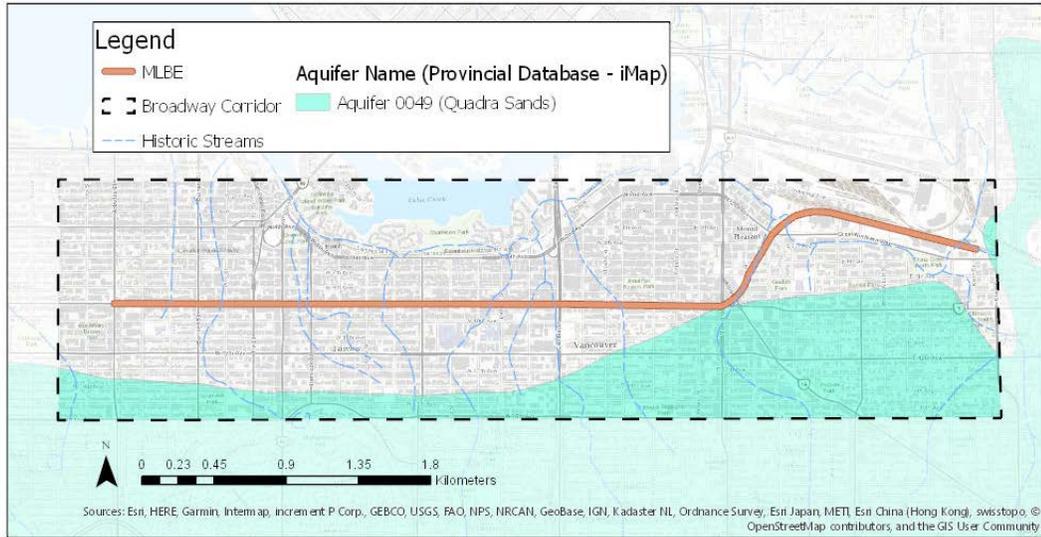


Figure 2: Broadway Corridor Map

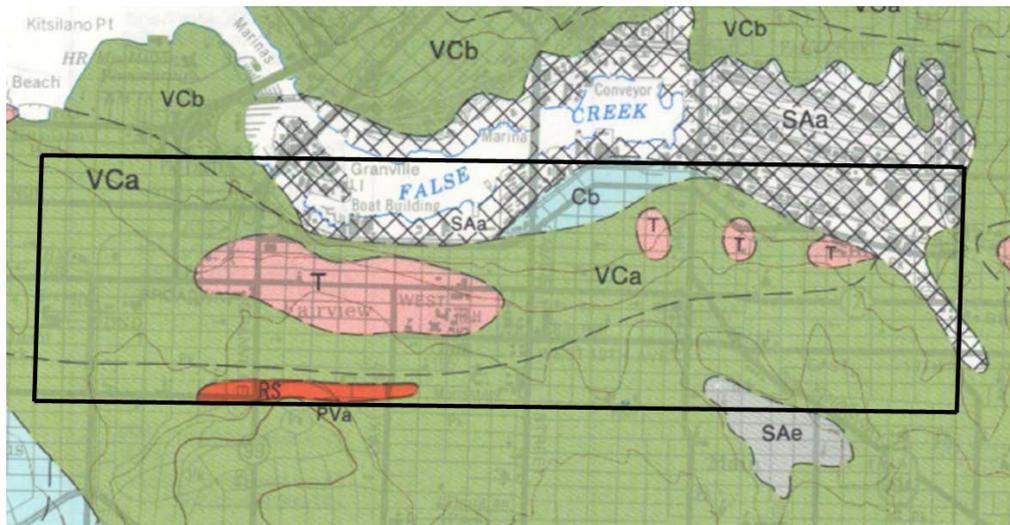


Figure 3: Surficial Geology (Geological Survey of Canada)

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PART C - FORM OF PROPOSAL

APPENDIX 1 - PROPOSAL FORM

RFP No. PS20181832 - DESKTOP HYDROGEOLOGICAL STUDY: BROADWAY CORRIDOR AND
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Proponent's Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Date of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

The Proponent, having carefully examined and read the RFP, including all amendments thereto, if any, and all other related information published on the City's website, hereby acknowledges that it has understood all of the foregoing, and in response thereto hereby submits the enclosed Proposal.

The Proponent further acknowledges that it has read and agrees to the Legal Terms & Conditions attached as Appendix 5 to the RFP.

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

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APPENDIX 1 - PROPOSAL FORM

Executive Summary

Provide a brief executive summary of your Proposal.

Project Understanding

Describe your proposed approach to providing the required services.

Approach to Meeting Requirements (Methodology)

Describe your proposed approach to providing the required services.

Project Schedule

Describe your project timeline.

Value Added

Describe value added being proposed.

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APPENDIX 1 - PROPOSAL FORM

Key Personnel

Identify and provide professional biographical information for the key personnel that would perform the required services.

References

| | |
|---|--|
| Client Name # 1 | |
| Address (City and Country) | |
| Contact Name | |
| Title of Contact | |
| Telephone No. | |
| E-mail Address | |
| Length of Relationship | |
| Type of Goods and/or Services provided to this Client | |

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APPENDIX 1 - PROPOSAL FORM

| | |
|---|--|
| | |
| Client Name # 2 | |
| Address (City and Country) | |
| Contact Name | |
| Title of Contact | |
| Telephone No. | |
| E-mail Address | |
| Length of Relationship | |
| Type of Goods and/or Services provided to this Client | |
| | |
| Client Name # 3 | |
| Address (City and Country) | |
| Contact Name | |
| Title of Contact | |
| Telephone No. | |
| E-mail Address | |
| Length of Relationship | |
| Type of Goods and/or Services provided to this Client | |

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APPENDIX 1 - PROPOSAL FORM

Subcontractors

List all of the subcontractors that the Proponent proposes to use in carrying out the required services and described the scope of subcontracted work (or write "None" if no subcontractors are proposed).

Conflicts, Collusion, Lobbying

See Article 9 of Appendix 5 for instructions.

Pricing

Pricing table is attached as a separate and fillable excel document posted on City's bid website. All prices are to be quoted in in Canadian currency and exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.

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APPENDIX 2 - DECLARATION OF SUPPLIER CODE OF CONDUCT

Declaration of Supplier Code of Conduct

The City of Vancouver expects each supplier of goods and services to the City to comply with the supplier performance standards set out in the City's Supplier Code of Conduct ("SCC") <http://vancouver.ca/policy_pdf/AF01401P1.pdf>, which defines minimum labour and environmental standards for City suppliers and their subcontractors. To give effect to these requirements, an authorized signatory of each proposed vendor must complete the following declaration.

As an authorized signatory of _____ (*vendor name*), I declare that I have reviewed the SCC and to the best of my knowledge, _____ (*vendor name*) and its proposed subcontractors have not been and are not currently in violation of the SCC or convicted of an offence under national and other applicable laws referred to in the SCC, other than as noted below (include all violations/convictions that have occurred in the past three years as well as plans for corrective action). I understand that a false declaration and/or lack of a corrective action plan may result in no further consideration being given to the submission of

_____ (*vendor name*).

Signature: _____

Name and Title: _____

Exceptions to Declaration:

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APPENDIX 3 - PRICING TABLE

PRICING TABLE IN EXCEL FORMAT
IS POSTED SEPARATELY ON THE WEBSITE FOR DOWNLOAD

(Note: Must use and follow the fillable form provided in excel format.
Do not include any pricing in the proposal form and do not pdf the pricing table)



Non-Disclosure Agreement

WHEREAS, (Reason for this Non-Disclosure Agreement), the City shall disclose to (the name of Contractor/Consultant/Person to receive City information) (the "Recipient"), certain Confidential Material of the City for the sole purpose of (description of why the City is providing the information) (the "Purpose") and on the terms and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the mutual premises and covenants herein, the receipt and sufficiency of which is hereby acknowledged, the City and the Recipient hereby agree as follows:

1.0 Definitions

- 1.1 "Affiliate" means an affiliate as defined in the *Business Corporations Act* (British Columbia), as may be amended.
- 1.2 "Agreement" means this Non-Disclosure Agreement.
- 1.3 "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter, and includes, but is not limited to, the Vancouver Police Board, the City's Board of Parks and Recreation, the Vancouver Fire and Rescue Service, and the Vancouver Library Board;
- 1.4 "Recipient's Team" means any person who is a member of the Recipient's team, whether such member is an employee, sub-contractor or agent of the Recipient, or any employee or agent of such person.
- 1.5 "Confidential Material" means all information, in any form or medium, known or used by City or an Affiliate of the City which is not known to the general public, including, but not limited to, the know-how, trade secrets, strategic plans, technical information, product information, supplier information, customer information, financial information, marketing information and information as to business opportunities, methods and strategies and research and development of the City and its Affiliates. If and to the extent any Confidential Material is included in any report, assessment, diagram, memorandum or other document or copied or reproduced in any other form or medium, such report, assessment, diagram, memorandum, document or Confidential Material in such other form or medium will be deemed to be Confidential Material.

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APPENDIX 4 - NON-DISCLOSURE AGREEMENT

2.0 Title

- 2.1 All right, title and interest in and to Confidential Material will be and remain vested in the City. Nothing in this Agreement obliges the City to disclose Confidential Material to the Recipient or grants the Recipient any license or right of any kind with respect to Confidential Material, except the limited right to use such information solely for the Purpose.

3.0 Recipient's Obligations

- 3.1 The Recipient will use Confidential Material only as strictly required for the Purpose and only in the manner and upon the terms specified in this Agreement.
- 3.2 The Recipient will deal in utmost good faith with the City in its use of the Confidential Material provided by the City.
- 3.3 The Recipient will hold and keep, and will ensure that all of the Recipient's Team will hold and keep, the Confidential Material in confidence and in trust for the City, using at least the same degree of care, but no less than a reasonable degree of care, as the Recipient uses to protect its own similar confidential information of like importance, and will,
- (a) prevent any access, reproduction, disclosure or use of the Confidential Material not expressly authorized herein,
 - (b) disclose the Confidential Material only to those of the Recipient's Team who have a definable need to know such information for Purpose, provided that such Recipient's Team are bound by a confidentiality agreement with the Recipient no less restrictive than this Agreement, and in the event the employment or appointment of any such person is terminated, the Recipient agrees to use its best efforts to recover any of the Confidential Material in such person's custody or control. The Recipient will be responsible for all damages arising from any disclosure of all or part of the Confidential Material or any act in contravention of this Agreement by a person to whom such Confidential Material was given by the Recipient as if the disclosure were made or the act performed directly by the Recipient,
 - (c) not, and will ensure that each of the Recipient's Team will not, copy or reproduce any of the Confidential Material, except as strictly necessary in order to carry out the Purpose, and
 - (d) promptly notify the City in writing of any unauthorized copying, reproduction, use or disclosure of the Confidential Material of which the Recipient is or becomes aware, and such notice will include a detailed description of the circumstances of the copying, reproduction, use or disclosure and the parties involved.

4.0 Exceptions to Confidentiality Obligations

- 4.1 This Agreement imposes no obligation upon the Recipient with respect to the City's Confidential Material received hereunder that

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- (a) the Recipient can promptly demonstrate with documentary evidence was already legitimately known to the Recipient without a duty of confidentiality prior to the disclosure thereof by the City,
- (b) is lawfully received by the Recipient from a third party, other than a supplier introduced to the Recipient by the City, without a duty of confidentiality,
- (c) has become general public knowledge through no act or fault on the part of the Recipient or the Recipient's Team, or
- (d) the Recipient can promptly demonstrate with documentary evidence was independently developed by or for the Recipient without the use of any Confidential Material.

5.0 Legal Requirement to Disclose

- 5.1 If the Recipient or any of the Recipient's Team is or becomes legally required to disclose any Confidential Material to a government body or court of law, the Recipient agrees, to the extent permissible by law, to give, and will ensure that the Recipient's Team give, the City sufficient advance notice to enable the City the opportunity to contest the disclosure or obtain a protective order.

6.0 Warranty Disclaimer

- 6.1 All Confidential Material is provided on an "as is" basis, and all representations and warranties, express or implied, including as to its accuracy or completeness, fitness for purpose, merchantability, and non-infringement, are hereby disclaimed.

7.0 Injunctive Relief

- 7.1 The Recipient acknowledges and agrees with the City that
- (a) the secrecy of the Confidential Material is of the utmost importance to the City, and the Confidential Material is of a sensitive and confidential nature such that monetary damages alone may be inadequate to protect the City's interests against any actual or threatened breach of this Agreement
 - (b) the covenants and conditions of this Agreement are reasonable and necessary for the protection of the City's business and security and all defences to the strict enforcement thereof by the City are hereby waived by the Recipient to the fullest extent permitted by law, and
 - (c) a violation of any of the provisions of this Agreement will result in immediate and irreparable damage to the City, and so the City will, in addition to any other rights to relief, be entitled to the remedies of specific performance and injunctive or other equitable relief in respect of any actual or threatened breach of this Agreement, without proof of actual damages or the inadequacy of monetary damages.

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PART C - FORM OF PROPOSAL

APPENDIX 4 - NON-DISCLOSURE AGREEMENT

8.0 General

- 8.1 Upon the request at any time of the City, the Recipient will promptly **destroy** all Confidential Material and any copies or reproductions thereof in the Recipient's possession or under its control or in the possession or under the control of any of the Recipient's Team, and will certify in writing such destruction or return of all Confidential Material. If compliance with the foregoing would violate any applicable law or regulation, then such information may be retained provided that it is not used for any purpose other than to evidence the Recipient's compliance with such law or regulation, and such retained information must be maintained in confidence as set forth in this Agreement.
- 8.2 Neither party has an obligation under this Agreement to enter into any other business relationship with the other party.
- 8.3 The Recipient will not, without the written consent of the City, disclose to any third party either the fact that discussions or negotiations are taking place concerning the Transactions or any of the terms, conditions or other facts with respect to the Transactions including the status thereof or the subject matter of this Agreement, provided, however, that nothing herein will prevent the Recipient from making such disclosure
- (a) on a confidential basis to any of the Recipient's Team to the extent such person needs to know such information strictly for the Purpose, or
 - (b) in order to comply with the requirements of applicable securities or other laws.
- 8.4 No waiver, addition to or amendment of this Agreement will be effective unless made in writing signed by authorized signatories of the parties and expressly stated to be a waiver, addition to or amendment of this Agreement. This Agreement states the entire agreement between the parties as to its subject matter and merges and supersedes all previous communications with respect to their obligations hereunder, and the provisions hereof will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 8.5 This Agreement will be governed by and interpreted and construed in accordance with the laws prevailing in the Province of British Columbia and the Recipient irrevocably attorns to the exclusive jurisdiction of the courts of British Columbia and all courts having appellate jurisdiction thereover in relation to the interpretation and enforcement of this Agreement.

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APPENDIX 4 - NON-DISCLOSURE AGREEMENT

- 8.6 If the Recipient agrees to the terms and conditions of this Agreement the Recipient is required to sign and return this Agreement to the City of Vancouver Purchasing Services Office, fax number 604-326-4735, attention (Name of CS/Buyer), prior to (Time) Vancouver Time, (Day), (Date).

Signed by:

[Print name in full with title]

[Print Recipient's company name in full]

Date

cc: Purchasing

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APPENDIX 5 - LEGAL TERMS AND CONDITIONS OF RFP

1. APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

These legal terms and conditions set out the City's and the Proponent's legal rights and obligations only with respect to the RFP proposal process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix 5 apply to, or have the effect of supplementing, any Contract formed between the City and the Proponent, or otherwise apply as between the Proponent and the City following the signing of any such Contract.

2. DEFINITIONS

In this Appendix 5, the following terms have the following meanings:

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent following and as a result of the Proponent's selection by the City in the City's RFP process.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 5), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means Appendix 5 of the RFP, as completed and executed by the Proponent.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20181832, as amended from time to time and including all addenda.

3. NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFP or the Proposal Form, including this Appendix 5 (except only Sections 7, 8.2 and 10 of this Appendix 5, in each case to the extent applicable), the City assumes no legal duty or obligation to the Proponent or to any proposed subcontractor in respect of the RFP, its subject matter or the Proposal unless and until the City enters into a Contract, which the City may decline to do in the City's sole discretion.

4. NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP

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APPENDIX 5 - LEGAL TERMS AND CONDITIONS OF RFP

process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

5. EVALUATION OF PROPOSALS

5.1 Compliance / Non-Compliance

Any proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion. The City may also invite a proponent to adjust its proposal to remedy any such problem, without providing the other proponents an opportunity to amend their proposals.

5.2 Reservation of Complete Control over Process

The City reserves the right to retain complete control over the RFP and proposal processes at all times. Accordingly, the City is not legally obligated to review, consider or evaluate the proposals, or any particular proposal, and need not necessarily review, consider or evaluate the proposals, or any particular proposal, in accordance with the procedures set out in the RFP, and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation processes in respect of any or all proposals at any time without further explanation or notification to any proponents.

5.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss or negotiate changes to the scope of the RFP, any proposal or any proposed agreement with any one or more of the proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of such discussions or negotiations with other proponents or changes to the RFP or such proposals or proposed agreements, and, without limiting the general scope of Section 6 of this Appendix 5, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

5.4 Acceptance or Rejection of Proposals

The City has in its sole discretion, the unfettered right to: accept any proposal; reject any proposal; reject all proposals; accept a proposal which is not the lowest-price proposal; accept a proposal that deviates from the requirements of the RFP or the conditions specified in the RFP; reject a proposal even if it is the only proposal received by the City; accept all or any part of a proposal; enter into agreements respecting the subject matter of the RFP with one or more proponents; or enter into one or more agreements respecting the subject matter of the RFP with any other person at any time.

6. PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

Except only and to the extent that the City is in breach of Section 8.2 of this Appendix 5, the Proponent now releases the City, its officials, its agents and its employees from all liability for any Losses incurred in connection with the RFP or the Proposal, including any Losses in connection with:

- (a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation

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- or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process,
 - (c) the Proponent preparing and submitting the Proposal;
 - (d) the City accepting or rejecting the Proposal or any other submission; or
 - (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2 Indemnity by the Proponent

Except only and to the extent that the City breaches Section 8.2 of this Appendix 5, the Proponent indemnifies and will protect, save and hold harmless the City, its officials, its agents and its employees from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its proposed subcontractors or agents alleging or pleading:

- (a) any alleged (or judicially determined) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process, or
- (c) liability on any other basis related to the RFP or the proposal process.

6.3 Limitation of City Liability

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the City breaches Section 8.2 of this Appendix 5), the City or its officials, agents or employees are found to have breached (including fundamentally breached) any duty or obligation of any kind to the Proponent or its subcontractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its subcontractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

7. DISPUTE RESOLUTION

Any dispute relating in any manner to the RFP or the proposal process (except to the extent that the City breaches this Section 7 or Section 8.2 of this Appendix 5, and also excepting any disputes arising between the City and the Proponent under a Contract (or a similar contract between the City and a proponent other than the Proponent)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

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- (a) The arbitrator will be selected by the City's Director of Legal Services;
- (b) Section 6 of this Appendix 5 will: (i) bind the City, the Proponent and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and
- (c) The Proponent will bear all costs of the arbitration.

8. PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFP and Proposal Documents City's Property

- (a) All RFP-related documents provided to the Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.

8.2 Proponent's Submission Confidential

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's right to publicly disclose information about or from the Proposal, including without limitation names and prices, in the course of publicly reporting to the Vancouver City Council about the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

8.3 All City Information Confidential

- (a) The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (b) The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

9. NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFP Process

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is: (i) an official or employee of the City; or (ii) related to or has any business or family relationship with an elected official or employee of the City, in each case, such that

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there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.

- (b) The Proponent confirms and warrants that there is no person having an interest (as defined above) who is a former official, former employee or former contractor of the City and who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City, except as set out, in all material detail, in the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.

9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

The Proponent confirms and warrants that neither the Proponent nor any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party, except as set out, in all material detail, in the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.

9.3 Declaration as to No Collusion

The Proponent confirms and warrants that:

- (a) the Proponent is not competing within the RFP process with any entity with which it is legally or financially associated or affiliated, and
- (b) the Proponent is not cooperating in any manner in relation to the RFP with any other proponent responding to the RFP,

in each case, except as set out, in all material detail, in the section titled "Conflicts, Collusion, Lobbying" in the Proposal Form.

9.4 Declaration as to Lobbying

The Proponent confirms and warrants that:

- (a) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; and
- (b) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of the Proposal, to influence the outcome of the RFP process,

in each case as set out, in all material detail, in the section titled "Conflicts, Collusion, Lobbying" in the Proposal Form.

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10. GENERAL

- (a) All of the terms of this Appendix 5 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.
- (b) The legal invalidity or unenforceability of any provision of this Appendix 5 will not affect the validity or enforceability of any other provision of this Appendix 5, which will remain in full force and effect.
- (c) The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP process.

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APPENDIX 6- CERTIFICATE OF INSURANCES

Appendix 6 is to be duly completed and signed by the Proponent's insurance agent or broker as evidence of its existing insurance, along with a letter from its insurance broker or agent indicating whether or not (and, if not, then to what extent) it will be able to comply with the insurance requirements set out in the Form of Agreement, should the Proponent be selected as a successful Proponent. (Any successful proponent will also be required to provide proof of the satisfaction of all insurance requirements prior to our concurrently with the City entering into any Agreement.)

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APPENDIX 6- CERTIFICATE OF INSURANCES



**CERTIFICATE OF EXISTING INSURANCE
TO BE COMPLETED AND APPENDED TO THE PROPOSAL/TENDER**

Section 2 through 8 – to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.

2. **NAMED INSURED** (must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**

| | | |
|-----------------------------------|---------------------------------------|----------|
| INSURER _____ | Insured Values (Replacement Cost) - | |
| TYPE OF COVERAGE _____ | Building and Tenants' Improvements \$ | _____ |
| POLICY NUMBER _____ | Contents and Equipment | \$ _____ |
| POLICY PERIOD From _____ to _____ | Deductible Per Loss | \$ _____ |

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**

| | | |
|---|---|----------|
| Including the following extensions: | INSURER _____ | |
| ✓ Personal Injury | POLICY NUMBER _____ | |
| ✓ Property Damage including Loss of Use | POLICY PERIOD From _____ to _____ | |
| ✓ Products and Completed Operations | Limits of Liability (Bodily Injury and Property Damage Inclusive) - | |
| ✓ Cross Liability or Severability of Interest | Per Occurrence | \$ _____ |
| ✓ Employees as Additional Insureds | Aggregate | \$ _____ |
| ✓ Blanket Contractual Liability | All Risk Tenants' Legal Liability | \$ _____ |
| ✓ Non-Owned Auto Liability | Deductible Per Occurrence | \$ _____ |

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles

| | | |
|-----------------------------------|---|-------|
| INSURER _____ | Limits of Liability - | |
| POLICY NUMBER _____ | Combined Single Limit \$ | _____ |
| POLICY PERIOD From _____ to _____ | <i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i> | |

6. **UMBRELLA OR** **EXCESS LIABILITY INSURANCE** Limits of Liability (Bodily Injury and Property Damage Inclusive) -

| | | |
|-----------------------------------|------------------------|----------|
| INSURER _____ | Per Occurrence | \$ _____ |
| POLICY NUMBER _____ | Aggregate | \$ _____ |
| POLICY PERIOD From _____ to _____ | Self-Insured Retention | \$ _____ |

7. **PROFESSIONAL LIABILITY INSURANCE**

| | | |
|-----------------------------------|---------------------------------|----------|
| INSURER _____ | Limits of Liability | |
| POLICY NUMBER _____ | Per Occurrence/Claim | \$ _____ |
| POLICY PERIOD From _____ to _____ | Aggregate | \$ _____ |
| | Deductible Per Occurrence/Claim | \$ _____ |

If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date: _____

8. **OTHER INSURANCE**

| | | |
|-----------------------------------|---------------------|----------|
| TYPE OF INSURANCE _____ | Limits of Liability | |
| INSURER _____ | Per Occurrence | \$ _____ |
| POLICY NUMBER _____ | Aggregate | \$ _____ |
| POLICY PERIOD From _____ to _____ | Deductible Per Loss | \$ _____ |

| | | |
|-----------------------------------|---------------------|----------|
| TYPE OF INSURANCE _____ | Limits of Liability | |
| INSURER _____ | Per Occurrence | \$ _____ |
| POLICY NUMBER _____ | Aggregate | \$ _____ |
| POLICY PERIOD From _____ to _____ | Deductible Per Loss | \$ _____ |

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated _____

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

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PART D - FORM OF AGREEMENT



PROFESSIONAL SERVICES AGREEMENT

**DESKTOP HYDROGEOLOGICAL STUDY BROADWAY CORRIDOR AND
MILLENNIUM LINE BROADWAY EXTENSION**

THIS AGREEMENT is made as of the [day] day of [month/year] (the "Effective Date")

BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

[CONSULTANT NAME]
[address]

(the "Consultant")

OF THE SECOND PART

(the City and the Consultant are hereinafter sometimes referred to individually as "Party" and collectively as "Parties")

BACKGROUND:

- A. The City requires the professional services described herein, and desires to engage the Consultant to perform said services.
- B. The Consultant has agreed to perform the said services in accordance with the terms and conditions of this Agreement.

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NOW THEREFORE, in consideration of the mutual covenants and promises made by the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1.0 INTERPRETATION

1.1 In this Agreement, including the recitals, schedules and appendices to this Agreement, the following words and terms, unless the context otherwise requires, shall have the meanings set out below:

- (a) **"Agreement"** means this Professional Services Agreement inclusive of all schedules, appendices, exhibits or other documents attached hereto or incorporated herein by reference, as amended from time to time;
- (b) **"Applicable Laws"** means all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Consultant, any Sub-contractor and the Services, including the Vancouver Building By-law, the British Columbia Building Code, and the British Columbia Fire Code, all as may be in force from time to time;
- (c) **"City's Site"** means any land and/or premises owned by the City on which or in respect of which the Services are performed by the Consultant;
- (d) **"City's Project Manager"** means the City's employee, or his/her delegate, who is authorized in writing to deal with the Consultant on behalf of the City in connection with the Services, or to make decisions in connection with this Agreement;
- (e) **"Confidential Information"** has the meaning set out in Section 15.1
- (f) **"Contract Document"** refers to each of the individual documents composing the Agreement, including this Professional Services Agreement (exclusive of the documents attached hereto or incorporated herein by reference) and each schedule, appendix, exhibit or other document attached to this Professional Services Agreement or incorporated into the Agreement by reference;
- (g) **"Deliverables"** has the meaning set out in Section 17.1;
- (h) **"GST"** means the tax payable and imposed pursuant to Part IX of the Excise Tax Act (Canada), as amended or replaced from time to time;
- (i) **"Project Team"** has the meaning set out in subsection 2.2(c);
- (j) **"Proposal"** means the proposal submitted by the Consultant in response to the RFP, a copy of which is attached hereto, or incorporated by reference herein by operation of, Appendix B;
- (k) **"PST"** means the provincial sales tax payable and imposed pursuant to the *Provincial Sales Tax Act* (British Columbia), as amended or replaced from time to time;
- (l) **"RFP"** means Request for Proposal - ps20181673 - Hydrogeological Consulting Services for Oakridge Groundwater Management Project, together with all addenda and

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questions and answers attached hereto, or incorporated by reference herein by operation of, Appendix C;

- (m) "Services" has the meaning set out in Section 2.1;
 - (n) "Sub-contractor" has the meaning set out in Section 4.1; and
 - (o) "Term" means the term of this Agreement as specified in Section 12.1.
- 1.2 The Contract Documents are complementary and what is called for by any one will be as binding as if called for by all. In the event of any conflict or inconsistency between or among any of the Contract Documents, the Contract Documents will be interpreted in the following order of priority, from highest to lowest:
- (a) this Agreement, excluding Appendices B and C;
 - (b) the Proposal; and
 - (c) the RFP.
- 1.3 In this Agreement, including the recitals, schedules and appendices to this Agreement, except as expressly stated to the contrary or the context otherwise requires:
- (a) the recitals and headings to sections, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement;
 - (b) the terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer, unless otherwise specified or the context otherwise requires, to this Agreement taken as a whole (including any and all attached schedules and appendices) and not to any particular section, subsection or other subdivision;
 - (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
 - (d) each reference to a rule, guideline, policy, regulation or directive is deemed to be a reference to any successor or replacement of such rule, guideline, policy, regulation or directive;
 - (e) words importing the singular include the plural and vice versa and words importing gender include all genders;
 - (f) references to time of day or date mean the local date or time in Vancouver, British Columbia;
 - (g) all references to money mean lawful currency of Canada;
 - (h) the word "written" includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and "in writing" has a corresponding meaning; and

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- (i) the words "include" and "including" are to be construed as meaning "including, without limitation".

2.0 CONSULTANT'S SERVICES TO THE CITY

2.1 The Consultant will provide and be fully responsible for the following services (the "Services"):

- (a) the services described in the RFP;
- (b) the services which the Consultant proposed to provide in the Proposal; and
- (c) all services not specifically included in subsections 2.1(a) and 2.1(b), but which are necessary or incidental to the completion of such other Services.

2.2 The Consultant will be fully responsible for:

- (a) coordinating the Services with the City's Project Manager, or his/her delegate, and ensuring that the performance of the Services does not adversely impact any design or construction schedule for any project or work and/or services provided by the City's other consultants, in each case to which the Services relate;
- (b) taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Appendix A - Insurance Requirements; and
- (c) maintaining and supervising its employees and Sub-contractors (the "Project Team") described in Section 3.1.

2.3 The Consultant represents and warrants to the City that the Consultant possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the reasonable satisfaction of the City.

2.4 The Consultant will perform the Services:

- (a) with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered;
- (b) in accordance with sound current professional practices and design standards; and
- (c) in conformity with any and all Applicable Laws.

2.5 The Consultant will commence the Services promptly and will use every reasonable effort to carry out the Services in accordance with:

- (a) the requirements and appendices of this Agreement, or
- (b) where no date is specified for the provision of any component of the Services by this Agreement, such completion dates as are reasonably specified from time to time by the City.

2.6 The Consultant will not permit, do or cause anything to be done at any time which could allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage

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charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the City's Site or any other City property.

3.0 PROJECT TEAM

- 3.1 Subject to Section 3.2, the Consultant will utilize only the Project Team members noted in the Proposal.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Consultant may not make substitutions of Project Team members without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section 3, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Consultant, its Sub-contractor or their affiliates.
- 3.4 The City may, with stated reasons and acting reasonably, request that the Consultant replace a Project Team member. The Consultant will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.
- 3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Consultant for any replacement Project Team member.

4.0 SUB-CONTRACTORS

- 4.1 Unless expressly permitted pursuant to Section 3.0, the Consultant may not engage any contractor or consultant (in each case a "Sub-contractor") for the performance of any part of the Services, unless the Consultant has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.2 The Consultant will administer, coordinate, and manage all Services provided by any Sub-contractors, and will assume full responsibility to the City for all work performed by the Sub-contractors in relation to the Services and will pay all fees and disbursements of all Sub-contractors, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Consultant.
- 4.3 Where a Sub-contractor is used by the Consultant under this Agreement, the Consultant will legally bind the Sub-contractor to comply with this Agreement.
- 4.4 Nothing in this Agreement will create any contractual relationship between a Sub-contractor and the City.

5.0 BASIS OF PAYMENT TO THE CONSULTANT

- 5.1 In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms hereof, the City will pay the Consultant the fees and

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- reimbursable expenses prescribed herein, plus GST and PST as applicable to the sale made to the City hereunder.
- 5.2 The fees for the Services are described in this Section 5.0 and in subject to Section 5.3, payment to the Consultant will be based on hours worked by employees of the Consultant or by the Sub-contractors multiplied by the applicable hourly charge-out rates stated in the Proposal.
- 5.3 If there are maximum, lump sum or other limiting amounts for fees or disbursements indicated herein for the Services or for portions thereof, then notwithstanding anything to the contrary in this Agreement the maximum fees or disbursements to be paid by the City to the Consultant for the Services or such portions of the Services will not exceed those stated amounts, except as mutually agreed in writing. Any limit on the fees or disbursements to be paid by the City to the Consultant will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.
- 5.4 Subject to any "Fixed Disbursement Amount" defined herein, or any other limit on disbursements stated herein, the City will reimburse the Consultant for disbursements reasonably incurred by the Consultant in the performance of the Services. Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit.
- 5.5 If the Consultant has engaged Sub-contractors, then the Consultant will make full payment to said Sub-contractors for work performed in relation to the Services. Subject to any "Fixed Disbursement Amount" defined herein, or any other limit on disbursements stated herein, the City will reimburse the Consultant for payments made to Sub-contractors at amounts equal to such actual payments without any additions for overhead and profit to the Consultant.
- 5.6 The Consultant will, by the 25th day of each month, provide to the City's Project Manager a draft invoice with an attached detailed account of all charges to be claimed by the Consultant for the preceding month (if any). The City's Project Manager shall review the draft, raise any concerns with the Consultant within ten working days and, after settlement of any issues (in the City's Project Manager's discretion), approve the draft invoice. The Consultant, if so requested, will meet with the City's Project Manager to expedite and settle of the draft invoice. The Consultant will submit its final invoice, as per the approved draft invoice, to the City of Vancouver, Attention: Accounts Payable, by email to APIInvoice@vancouver.ca. The invoice must contain:
- (a) the Consultant's name, address and telephone number;
 - (b) the City purchase order number;
 - (c) the name of the City's Project Manager;
 - (d) the invoice number and date;
 - (e) details of any applicable taxes (with each tax shown separately); and
 - (f) tax registration number(s).
- 5.7 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning any of the Consultant's invoices, for whatever reason, the City will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to

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have the review, audit or clarification resolved within a 60 day period. The City will, if it approves the amount of such invoice, cause the respective invoice to be paid within 30 days of approval by electronic funds transfer to the bank account indicated by the Consultant.

- 5.8 The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed. The City will be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Consultant and by such other means as will be reasonably necessary or advisable.
- 5.9 The Consultant shall provide bank account information to the City to enable the City to make payments by electronic funds transfer, as contemplated hereby.

6.0 CHANGES TO SCOPE OF SERVICES

- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Consultant, vary the scope of Services to be provided by the Consultant. In that case and where this Agreement contains delivery dates and/or limits as to fees or disbursements (or a defined "Maximum Fees and Disbursements") for all or any part of the Services, such delivery dates and/or limits will be adjusted as agreed to by both Parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.
- 6.2 Should the Consultant consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Consultant will provide the City's Project Manager with notice in writing within ten days of such request or instruction. If the Consultant does not deliver written notice to the City within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Consultant.
- 6.3 The City's Project Manager will consider the Consultant's written notice (if any) within a further ten days of receipt of the Consultant's notice and determine and advise as to whether the request constitutes a change in the scope of the Services and, if necessary, the method by which the variation will be scoped and reimbursed. If the City determines that the professional fees payable to the Consultant should be increased due to an increase in the scope of the Services then any such increases will be based on the hourly rates set out in Section [insert] of the Proposal.

7.0 RELEASE AND INDEMNIFICATION

- 7.1 The Consultant now releases the City, its officials, officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Consultant, its Sub-contractors, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.
- 7.2 In undertaking the Services, the Consultant acknowledges that the Consultant has inspected the City's Site, agrees to accept the City's Site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Consultant to perform the Services.

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- 7.3 Despite any insurance coverage of the City, the Consultant hereby agrees to indemnify and save harmless the City of Vancouver and its successors, assigns, officials, employees, agents and authorized representatives and each of them (in each case an "Indemnified Party") from and against all costs, losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that an Indemnified Party may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant, its Sub-contractors, or their respective officers, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of an Indemnified Party.
- 7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.
- 7.5 The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.
- 8.0 INSURANCE**
- 8.1 The Consultant will comply with the insurance requirements set out in Appendix A - Insurance Requirements.
- 9.0 WORKSAFEBC**
- 9.1 The Consultant agrees that it will procure and carry and pay for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafeBC coverage against any monies owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until the WorkSafeBC premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement have been paid in full.
- 9.2 The Consultant will provide the City with the Consultant's and each Sub-contractor's WorkSafeBC registration number and clearance letters from WorkSafeBC confirming that the Consultant and each Sub-contractor are registered in good standing with WorkSafeBC and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged by the Consultant 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 WorkSafeBC, including penalties levied by WorkSafeBC.
- 9.3 Whenever the Consultant is required or permitted to perform any Services on any City sites, the Consultant is now appointed and now accepts appointment as the "prime contractor" (as defined in the WorkSafeBC regulations) in connection with such Services.
- 10.0 CITY INFORMATION/APPROVALS**
- 10.1 No reviews, approvals or inspections carried out or information supplied by the City will derogate from the duties and obligations of the Consultant (with respect to designs, reviews,

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inspections, approvals or otherwise), and all responsibility related to the Services will be and remain with the Consultant. For greater certainty, any information provided by the City to the Consultant, whether under the RFP or under this Agreement, including any studies, reports, plans, drawings, or specifications, is provided to the Consultant for information purposes only and may not be relied upon by the Consultant.

11.0 COMMUNICATION BETWEEN CONSULTANT AND CITY

11.1 The City appoints [insert name] [email address] as the City's Project Manager for the purposes of this Agreement.

In the event of the revocation in writing of [insert name]'s appointment as the City's Project Manager by the City, [insert name] will have no further authority under this Agreement, except as may be specifically designated in writing by the City and agreed to in writing by [insert name], and all references to the City's Project Manager in this Agreement will thereafter be deemed to be a reference to the City or to such other person designated in writing by the City to the Consultant.

The City's Project Manager may from time to time delegate to a representative the performance of or the authority to perform the duties, responsibilities, rights and obligations of the City in respect of which the City's Project Manager has been designated and appointed its sole and exclusive agent.

11.2 The Consultant appoints [insert name] [email address] as its representative for the purposes of this Agreement (the "Consultant's Project Manager").

11.3 Unless otherwise agreed to in writing by the Parties, all material communication between the Consultant and the City regarding this Agreement, including performance of the Services, will be between the City's Project Manager and the Consultant's Project Manager.

12.0 TERM OF AGREEMENT

12.1 This Agreement will commence on the Effective Date and will expire on the completion of the Services, which Services must be completed by [insert date] (the "Term").

13.0 TERMINATION

13.1 The City at any time, in its sole judgment, may, whether or not cause exists, terminate the services of the Consultant in whole or in part by giving ten days' prior written notice to the Consultant. If termination is not for cause, the Consultant will be paid for all Services properly performed to the date of the delivery of the said notice (subject to the terms of this Agreement) plus all necessary and reasonable wind-up costs incurred, if any, in closing out the Services or the part terminated.

13.2 Despite Section 13.1, in no event and under no circumstances will the Consultant's "necessary and reasonable wind-up costs incurred" pursuant to Section 13.1 exceed \$[insert dollar amount calculated at ten business days' pay] (including all taxes).

14.0 ASSIGNMENT

14.1 The Consultant will not assign this Agreement in whole or in part except with the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.

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Any attempt to assign this Agreement without such consent will be void and of no effect. However, the Consultant will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Consultant have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Consultant, provided always that the Consultant first provides the City with:

- (a) reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and
- (b) a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

15.0 CONFIDENTIALITY

15.1 In the course of or for the purpose of performing the Services, the Consultant will obtain or have access to information, including but not limited to technical information, financial information and business information, which is confidential to the City, and is the exclusive, world-wide property of the City and/or its suppliers and customers (collectively "**Confidential Information**"). Excluded from the definition of Confidential Information is:

- (a) information which is in, or becomes part of, the public domain, not due to the Consultant's breach of this Agreement or the Consultant's actions;
- (b) information which was previously in the Consultant's possession and did not originate from the City; and
- (c) information which lawfully becomes available to the Consultant from a third party not under an obligation of confidence to the City regarding such information.

15.2 The Consultant will not use or reproduce the Confidential Information other than as reasonably required for the performance of the Services under this Agreement. The Consultant will not, without the prior written consent of the City given on such terms and conditions as it prescribes in its sole discretion, disclose or allow access to the Confidential Information to any person, except to only those of its own employees who have a need to know the Confidential Information solely for the provision of the Services, and who have been advised of its confidential nature and have agreed to be bound by the confidentiality and use-restriction provisions in this Section 15.0. The Consultant will take all reasonable precautions against the Confidential Information being used by or disclosed to any unauthorized person.

15.3 If the Consultant is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, the Consultant shall limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that prior to any disclosure the Consultant will promptly notify the City in writing of the existence and the terms, and conditions of the required disclosure and, at the City's request and expense, cooperate in obtaining a protective order or other assurance that confidential treatment and restrictions on use will be accorded such Confidential Information.

15.4 The City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's contractors to protect all personal information acquired from the City in the course of providing services to the City. The Consultant confirms and acknowledges its obligations to comply with all obligations imposed on it pursuant to the *Freedom of Information and Protection of Privacy Act* (British

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Columbia) with respect to all personal information received from the City whether as part of the Confidential Information or otherwise.

- 15.5 The Consultant acknowledges that in the event of a breach by the Consultant or any of its employees of their respective confidentiality obligations pursuant to this Section 15.0, damages alone would not be an adequate remedy. The Consultant therefore agrees with the City that, in addition to and without limiting any other right or remedy it may have, the City will have the right to an immediate injunction or other available equitable relief in any court of competent jurisdiction enjoining any threatened or actual breach of such obligations.
- 15.6 The Consultant shall return all copies of the Confidential Information to the City, in all tangible forms and media, and delete all Confidential Information resident in any databases or systems, upon the earliest of the following dates:
- (a) completion of the Services;
 - (b) expiration or earlier termination of this Agreement; and
 - (c) written request of the City for return of the Confidential Information;

provided that the Consultant shall have the right to retain one copy of the Confidential Information solely for archival purposes or as otherwise may be required by law, subject to its ongoing confidentiality and restricted use obligations.

- 15.7 This Section 15.0 shall survive the expiration or earlier termination of this Agreement.

16.0 NO PROMOTION OF RELATIONSHIP

- 16.1 The Consultant will not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, websites, internet domain names, press releases, brochures or other written materials (the "Communications") without the express prior written consent of the City (except as may be necessary for the Consultant to perform its obligations under this Agreement).
- 16.2 Furthermore, the Consultant undertakes and will cause all of its Sub-contractors to undertake not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between the Consultant and the City. Without limiting the generality of the foregoing, the Consultant will not refer to or use any website, domain name, official emblem, logo or mascot of the City of Vancouver in any Communications, without the express prior written consent of the City.

17.0 DELIVERABLES

- 17.1 As a result of or as part of providing the Services, the Consultant may receive, create, produce, acquire or collect one or more of the following:
- (a) products, goods, equipment, supplies, models, prototypes and other materials;
 - (b) information and data;
 - (c) reports, drawings, plans, designs, depictions, specifications and other documentation; and

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- (d) any other items identified in this Agreement as deliverables;
(collectively, the "Deliverables").
- 17.2 Deliverables are deemed not to include:
- (a) any item not required to be produced by the Consultant or supplied to the City as part of or together with the Services, provided that if the City has paid or is liable to pay for any portion of such item's creation, production, acquisition or collection then such item shall be deemed to be a Deliverable;
 - (b) any item produced as a result of the Services, which is specified in this Agreement as being excluded from the Deliverables category; and
 - (c) any item which pre-existed the effective date of this Agreement, that is owned by a third party or that is used by the Consultant as part of the services provided to any of its other customers (the "Pre-Existing Materials").
- 17.3 All Deliverables will be owned solely by the City unless otherwise expressly provided herein. The City shall have the complete and unfettered right to use and deal with the Deliverables for its own benefit in any way it sees fit without limitation, and without accounting in any way to the Consultant.
- 17.4 The Consultant will keep accurate records and provide regular reports to the City about the Deliverables as they are created or acquired, and grant to the City access to the Deliverables at all times on reasonable notice. The Consultant will treat each Deliverable as subject to the confidentiality provisions set out in Section 15.0 unless advised otherwise by the City.
- 17.5 Each Deliverable, as to the whole or that portion of the Deliverable then existing, will be delivered by the Consultant to the City on the earliest of each of the following events:
- (a) the date specified in this Agreement for the delivery of such Deliverable;
 - (b) immediately on the date of expiration or sooner termination of this Agreement; or
 - (c) the date specified by written notice of the City requesting delivery of all or any part of the Deliverable.
- 17.6 The Consultant transfers to the City, free of all liens and encumbrances, ownership of each Deliverable, and assigns all of its world-wide present and future rights, title and interest in and to each Deliverable, including copyright, effective as of the date of creation or acquisition of such Deliverable by the Consultant. The Consultant irrevocably waives, in favour of the City, all moral rights in the Deliverables. The Consultant will obtain from its employees and any independent contractors, all required assignments and releases of intellectual property, and waivers of moral rights, in the Deliverables. The Consultant will not assert any rights to or interests in, or apply for or register any copyright or other rights or interests in, the Deliverables, or assist any other person in doing so. The Consultant shall provide to the City, during and after the term of this Agreement, any reasonable assistance required for the City to obtain, perfect and enforce its ownership of and rights in the Deliverables, including without limitation execution of assignments and transfers of the Deliverables. This Section does not apply to Pre-Existing Materials.

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- 17.7 The Consultant will not incorporate any Pre-Existing Materials in any Deliverable without first:
- (a) advising the City, in writing, of the nature of the Pre-Existing Materials and their proposed use and obtaining the City's written consent to do so;
 - (b) acquiring from each third-party owner of such Pre-Existing Materials, a fully paid-up, perpetual, non-exclusive license, in writing, for the City to use the Pre-Existing Materials as part of the Deliverable; and
 - (c) granting, in writing, to the City with respect to such Pre-Existing Materials that the Consultant owns, a fully paid-up, perpetual, non-exclusive license to use the Pre-Existing Materials as part of the Deliverable.
- 17.8 The Consultant represents and warrants that the Deliverables will not infringe, misappropriate or misuse any copyright, patent, trade-mark, trade secret, or confidential or proprietary information of a third party. The Consultant shall defend, indemnify and hold the City harmless from and against any and all damage, liability, cost and expense incurred by the City in connection with any claim by a third party that a Deliverable infringed, misappropriated or misused its copyright, patent, trade-mark, trade secret, or confidential or proprietary information.
- 18.0 NOTICES**
- 18.1 Any notice required or permitted to be given to the Consultant will be sufficiently given if delivered in writing by the City's Project Manager to the Consultant's Project Manager personally or, if mailed, by registered mail to the last known address of the Consultant.
- 18.2 Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by the Consultant's Project Manager to the City's Project Manager personally or, if mailed, by registered mail to City of Vancouver at 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4 (addressed to the attention of the City's Project Manager).
- 19.0 NO CONFLICT OF INTEREST**
- 19.1 The Consultant agrees that during the Term the Consultant will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person, whether or not a client of the Consultant's. Without limiting the general scope of this Section 19.1 and by way of example only, the Consultant is prohibited from and will not provide any services which assist or could be seen to be assisting any person in responding to a request for proposal or invitation to tender, or otherwise giving that person an unfair competitive advantage over other proponents or tenderers responding to a request for proposal or invitation to tender by the City. The Consultant now acknowledges that a breach of this Section 19.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act* (Canada) and *Criminal Code* of Canada, and accordingly, could be punishable as a crime (as well as a breach of contract).
- 19.2 The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:
- (a) an elected official or employee of the City; or

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- (b) related to or has any business or family relationship with an elected official or employee of the City, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.

20.0 NON-RESIDENT WITHHOLDING TAX

- 20.1 If the Consultant is a non-resident of Canada as defined in Canadian income tax legislation, the City may withhold from all monies payable under this Agreement such amounts as set out in Canadian income tax legislation, unless a Canada Revenue Agency waiver has been provided to the City within the time limit required under the Canada Revenue Agency administrative guidelines as in effect from time to time and, in any event, prior to payment of an invoiced amount.
- 20.2 The City shall receive full credit under this Agreement for monies withheld as of and from the date of the withholding and no interest will be payable by the City on sums withheld and later paid directly to the Consultant.
- 20.3 The Consultant shall indemnify the City for any losses, damages or expenses incurred by the City as a result of the Consultant's failure to properly disclose to the City its non-resident status, as defined in Canadian income tax legislation.

21.0 COMPLIANCE WITH LAW

- 21.1 The Consultant will comply with the City of Vancouver License By-law and maintain a valid business license throughout the duration of this Agreement.
- 21.2 The Consultant agrees that it will during the Term comply with all Applicable Laws.

22.0 GOVERNING LAW AND RESOLUTION OF DISPUTES

- 22.1 This Agreement will be governed by the laws of the Province of British Columbia and the courts of British Columbia will have exclusive jurisdiction to determine all disputes arising under this Agreement and the Parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution.

23.0 INDEPENDENT CONSULTANT

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

24.0 INDEPENDENT LEGAL ADVICE

- 24.1 The Consultant acknowledges that the Consultant has been given the opportunity to seek independent legal advice before executing this Agreement.

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25.0 TIME FOR PERFORMANCE

- 25.1 **Time of the Essence.** Time shall be of the essence of this Agreement.
- 25.2 **Unavoidable Delay.** Notwithstanding Section 25.1, except for the performance of obligations to pay money, the time periods for the City and the Consultant to perform under this Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this Section, an “**Unavoidable Delay**” means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, acts of God, war or other strife or governmental action) but expressly excludes any and all delays caused by the Consultant’s lack of financial resources; the Consultant’s insolvency ; strikes, lockouts or other withdrawals of services arising out of any labour dispute involving the City, the Consultant or a Sub-contractor; or governmental action taken in the enforcement of any law specifically against the Consultant or its Sub- Consultants. If an Unavoidable Delay occurs, the non-performing party will, as soon as possible after the occurrence of the Unavoidable Delay, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of its obligations under this Agreement.

26.0 GENERAL

- 26.1 **No Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach hereunder, except as may be specifically agreed in writing by the City.
- 26.2 **Severability.** The invalidity, illegality or unenforceability of any portion or provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken position.
- 26.3 **Remedies Cumulative.** The remedies of the Parties provided for in this Agreement are cumulative and are in addition to any remedies available to the Parties at law or in equity. No remedy will be deemed to exclude or restrict the right of a Party to any other remedies against the other Party and a Party may from time to time have recourse to one or more of the remedies specified in this Agreement or at law notwithstanding the termination of this Agreement.
- 26.4 **Further Assurances.** Each Party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 26.5 **Entire Agreement.** The Contract Documents constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof.
- 26.6 **Amendment.** This Agreement shall not be amended except as specifically agreed in writing by both the City and the Consultant.

REQUEST FOR PROPOSAL NO. PS20181832
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PART D - FORM OF AGREEMENT

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- 26.7 **Joint and Several Liability of Joint Venture Participants.** If the Consultant is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, claims, rights, powers, privileges and liabilities of the entities who comprise the Consultant shall be joint and several.
- 26.8 **Schedules and Appendices.** The schedules and appendices attached hereto are incorporated by reference in and form an integral part of this Agreement.
- 26.9 **Set-Off.** The City may at its option, withhold and set-off against any amount owing to the Consultant (whether under this Agreement or otherwise) any amounts payable by the Consultant to the City (whether under this Agreement or otherwise) and the amount of any damages suffered or claims made or to be made by the City as a result of any other claim it may have against the Consultant, whether such claim is at law or in equity or tort or on any other basis.
- 26.10 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the City and the Consultant and their respective successors and permitted assigns.
- 26.11 **Execution.** This Agreement may be executed in one or more counterparts each of which will constitute an original and together will constitute one and the same Agreement. This Agreement may be executed by the Parties electronically or by facsimile and if so executed and transmitted, this Agreement will be for all purposes as effective as if the Parties had delivered an executed original Agreement.

As evidence of their agreement to be bound by the above contract terms, the City and the Consultant each have executed this Agreement as of the day and year first above written.

CITY OF VANCOUVER

Authorized Signatory

Print Name and Title

[NAME OF CONSULTANT]

Authorized Signatory

Print Name and Title

APPENDIX A - INSURANCE REQUIREMENTS

A1.1 Required Types/Amounts Prior to commencing the Services, the Consultant will obtain at its own expense:

- (a) a professional (errors and omissions) liability insurance policy with limits of not less than \$1,000,000 per claim and not less than \$1,000,000 in aggregate and a deductible of not more than \$50,000, protecting the Consultant against all claims for loss or damage arising out of any error or omission of the Consultant or the Consultant's personnel in the performance of the Services; and
- (b) a commercial general liability insurance policy with a limit of not less than \$2,000,000 per occurrence, and a deductible of not more than \$5,000, protecting the Consultant and the Consultant's personnel against all claims for personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the Consultant or the actions of the Consultant or the Consultant's personnel. The policy must contain a cross-liability clause in favour of the City and will name the City and the City's officials, employees and agents as additional insureds.

A1.2 Required Policy Terms

All required insurance policies must remain in full force and effect at all times until completion of the Services or earlier cancellation of this Agreement, and for a period of not less than two years thereafter, and must:

- (a) be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City's Director of Risk Management, acting reasonably;
- (b) be primary insurance in respect to the City, and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute with such policies; and
- (c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least 30 calendar days' prior written notice,

and, for any property insurance carried by the Consultant, contain a clause that waives the insurer's right of subrogation against the City and the City's officials, employees and agents.

A1.3 Insurance Certificate

Prior to signing, and immediately following the signature of, this Agreement, the Consultant shall have provided, or shall provide, the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more certificate(s) of insurance. The certificate(s) of insurance will identify the Agreement title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. Proof of insurance, in the form of such certificate(s) of insurance (or copies of the policy(ies) themselves, if requested), will be made available to the City's Project Manager at any time during the performance of the Services immediately upon request.

A1.4 Sub-Contractors' Insurance

The Consultant will provide in its agreements with its Sub-contractors insurance clauses in the same form as in this Agreement. Upon request, the Consultant will deposit with the City's Project Manager detailed certificates of insurance for the policies of its Sub-contractors (or

copies of the policy(ies) themselves, if requested) and a copy of the applicable insurance clauses from its Sub-contractor agreements.

A1.5 Insurance Requirements Additional to any other Requirements

The Consultant and each of its Sub-contractors will provide, at its own cost, any additional insurance which it is required by law to provide or which it considers necessary.

A1.6 Insurance Requirements Independent of Agreement Obligations

Neither the providing of insurance by the Consultant or the Sub-contractors in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing, will be held to relieve the Consultant from any other provisions of this Agreement with respect to liability of the Consultant or otherwise.

APPENDIX B - PROPOSAL

APPENDIX C - RFP