



**REQUEST FOR APPLICATION - PS20120742  
PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL AND  
FINANCIAL ASSESSMENT**

Responses will be addressed to Purchasing Services, City of Vancouver, 453 West 12<sup>th</sup> Avenue, Vancouver, British Columbia, Canada, V5Y 1V4, (Courier Delivery and Drop off is at the Information Desk, Main Floor Rotunda of the same address) prior to the Closing Time of 3:00 PM, City Hall Clock Time (as defined in Note 2 below), Tuesday, January 22, 2013.

**NOTES:**

1. Responses shall be in a sealed envelope or package marked with the Proponent's Name, the RFA Title and Number and addressed to Purchasing Services, City of Vancouver.
2. The Closing Time and Vancouver Time will be conclusively deemed to be the time shown on the Main Floor Rotunda Information Desk computer clock.
3. The City of Vancouver City Hall is open on Business Days 8:30 A.M. to 4:30 P.M. Vancouver Time and closed Saturdays, Sundays and holidays.
4. Responses to be submitted: Two (2) hard copies and 1 electronic copy.
5. DO NOT SUBMIT BY FAX OR E-MAIL.

All queries related to this RFA shall be submitted in writing, five (5) business days prior to the above closing time to the attention of:

**Donna Lee, Buyer**

**FAX:** 604.873.7057 **E-MAIL:** [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca)

---

**REQUEST FOR APPLICATIONS RFA PS20120742**  
**PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL**  
**AND FINANCIAL ASSESSMENT**

---

**1.0 BACKGROUND**

- 1.1 With the adoption of the Greenest City 2020 Plan the City of Vancouver has set ambitious targets for environmental performance. The underlying objective in implementing low-carbon district heating systems is to accelerate the reduction of greenhouse gas emissions in Vancouver. With recent adoption the adoption of a *Neighbourhood Energy Strategy and Energy Centre Guidelines* (please download report at <http://former.vancouver.ca/ctyclerk/cclerk/20121003/documents/ptec1.pdf> ). The City anticipates the need for consulting services in order to support achievement of environmental sustainability objectives and implementation of the Neighbourhood Energy Strategy.
- 1.2 This Request for Application (“RFA”) identifies a business opportunity for the successful Proponents to enter into standing offer contracts to provide consulting Services for *District Energy Strategic, Technical and Financial Assessment*, as requested and required by the City during the period of April 2013 to April 2015.
- 1.3 Although it is necessary that the Proponent submit a detailed response to the following requirements, including, but without limitation to, a work methodology and fees for the scope of services described in this SOW, the City is interested in proposals that will add value to projects. Innovative ideas will be favourably considered in evaluating all proposals.
- 1.4 The City wishes to enter into standing offer contracts, as described in Appendix D, with a number of consultants that have the interest and capability to provide services generally identified in the Scope of Work. This would allow the City to provide call-up for required services when needs arise. General tasks have been identified in the Scope of Work.
- 1.5 Proponents are required to have significant knowledge and project experience with low-carbon district energy. Proponents are not required to have expertise with every task area identified in the Scope of Work, and may choose to submit proposals including sub-contractors or partners to complete their service offering.

**2.0 SUSTAINABILITY**

- 2.1 The City’s Procurement Policy and related Supplier Code of Conduct found at <http://vancouver.ca/fs/bid/epp/index.htm> align the City’s overall approach to procurement with its corporate social, environmental and economic sustainability values and goals. It establishes a commitment to maximize benefits to the environment through product and service selection, to ensure safe and healthy workplaces, where human and civil rights are respected, and to support an environmentally sustainable local economy, whenever possible. In doing so, the Policy ensures incorporation of sustainability and ethical

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

considerations as integral evaluation components in best-value supply selection.

- 2.2 Vendors are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Vendor supplies materials, and where such materials may cause adverse effects, the Vendor is to indicate the nature of the hazard in its Quotation. The Vendor is to advise the City of any known alternatives or substitutes for such materials that would mitigate the effects of any adverse conditions on the environment.

**3.0 SCOPE OF WORK SUMMARY**

- 3.1 A complete scope of work is contained in Appendix A, Schedule 2.

**4.0 TIMELINE**

- 4.1 The anticipated timeline for the standing offer will be a period of two (2) years. The City will have the right and at the City's sole discretion to extend this Agreement on the same terms and conditions for up to two (2) additional one (1) year periods. The City Project Manager and the Consultant shall determine the foregoing before the end of January of any extension year.
- 4.2 Specific timelines will be expressed in each task.

**5.0 GENERAL METHODOLOGY**

- 5.1 Each Proponent shall submit an Application Form, including all requested information, as below

**APPLICATION FORM**

**Legal Name of Firm:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Postal Code:**

\_\_\_\_\_

**Telephone:**

\_\_\_\_\_

**Fax:**

\_\_\_\_\_

**Email:**

\_\_\_\_\_

**GST Number:**

\_\_\_\_\_

**Key Contact Person:**

\_\_\_\_\_

**Billing Representative:**

\_\_\_\_\_

**Principal Consultant:**

\_\_\_\_\_

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

**Incorporation Date:** \_\_\_\_\_

**Incorporation Number:** \_\_\_\_\_

**Place of Incorporation:** \_\_\_\_\_

**Dunn & Bradstreet Number:** \_\_\_\_\_

**1.0 DOCUMENTS WHICH MUST BE ATTACHED TO THIS APPLICATION FORM**

Applicant now confirms that the Applicant has attached the following documents to this Application form and provides reasons for any deviations:

Description	Reference	Confirmation	Reasons for Deviations
Applicant's Experience: List of Key Personnel associated with the Project, along with resumes of qualifications and experience	Attachment A	<input type="checkbox"/>	
List of Subcontractors	Attachment B	<input type="checkbox"/>	
Area of Expertise	Attachment C	<input type="checkbox"/>	
Schedule of Rates	Attachment D	<input type="checkbox"/>	
Valid City of Vancouver Business License	Section 5.2.a and Appendix A, Article 21	<input type="checkbox"/>	
WorkSafeBC Proof of Coverage	Section 5.2.b and Appendix A, Article 9	<input type="checkbox"/>	
Certificate of Existing Insurance	Section 5.2.c and Appendix A, Article 8	<input type="checkbox"/>	

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

**2.0 APPLICANT'S SIGNATURE AND LEGAL AGREEMENT**

- 2.1 If the City, in its evaluation selects to award a standing offer contract to the Applicant, the Applicant agrees to enter into a standing offer contract with the City, in the form of Appendix A.

\_\_\_\_\_

Legal Name of Applicant

\_\_\_\_\_

Authorized Signature of Applicant

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

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

**Attachment A**

**CONSULTANT'S EXPERIENCE AND REFERENCES**

The Applicants will submit with the application, this Attachment A - Experiences and References, the name of the proposed key personnel and subcontractors and attach his/her resume of experience. In the table, list their relevant experience with similar engagements for similar work over the last two (2) years as well as references for same. If Applicant had been contracted to do City Work the Applicant may use that reference.

**Reference #1**

<b>NAME AND ADDRESS OF COMPANY:</b>	
<b>AREA(S) OF EXPERTISE:</b>	
<b>BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED</b>	
<b>LOCATION OF PROJECT/WORK</b>	
<b>START AND COMPLETION DATES:</b>	
<b>NAME OF PROJECT REFERENCE:</b>	
<b>CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:</b>	
<b>NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:</b>	

**Reference #2**

<b>NAME AND ADDRESS OF COMPANY:</b>	
<b>AREA(S) OF EXPERTISE:</b>	
<b>BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED</b>	
<b>LOCATION OF PROJECT/WORK</b>	
<b>START AND COMPLETION DATES:</b>	
<b>NAME OF PROJECT REFERENCE:</b>	

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

<b>CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:</b>	
<b>NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:</b>	

**Reference #3**

<b>NAME AND ADDRESS OF COMPANY:</b>	
<b>AREA(S) OF EXPERTISE:</b>	
<b>BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED</b>	
<b>LOCATION OF PROJECT / WORK</b>	
<b>START AND COMPLETION DATES:</b>	
<b>NAME OF PROJECT REFERENCE:</b>	
<b>CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:</b>	
<b>NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:</b>	

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

**Attachment B**

**LIST OF SUBCONTRACTORS**

Subject to the terms of the Contract Documents the Consultant will use only the Subcontractors listed in Attachment B, for Work pursuant to any request to provide such service.

The employment of Subcontractors other than those listed will not be permitted without the prior written approval of the City. The City may request information indicating how the Subcontractors listed qualify in experience and background.

(a) Subcontractor Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Description of Sub-Contract Work/Project/Area of Expertise: \_\_\_\_\_  
\_\_\_\_\_

(b) Subcontractor Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Description of Sub-Contract Work/Project/Area of Expertise: \_\_\_\_\_  
\_\_\_\_\_

(c) Subcontractor Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_



**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

\_\_\_\_\_  
Description of Sub-Contract Work/Project/Area of Expertise: \_\_\_\_\_  
\_\_\_\_\_

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

**Attachment C**

Proponents are to provide a list of their expertise with the number of related years of experience. If space in following table provided is not sufficient, please attach additional sheet(s).

√	AREA OF EXPERTISE	YEARS OF EXPERTISE/EXPERIENCE

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY TECHNICAL  
AND FINANCIAL ASSESSMENT**

---

**Attachment D**

**SCHEDULE OF RATES**

Estimated quantities for each individual project will be made available to the Consultant with each Request for Service.

Prices are to be quoted in Canadian currency.

The rates set out in this Table of Pay Items will apply to each Request for Service. Prices quoted will be exclusive of all applicable taxes, F.O.B. destination to the Work Site, with all freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.

**Note: If the table provided is not suitable for the pricing structure provided for the City of Vancouver, please attach a price sheet(s) that is relevant.**

**SCHEDULE OF RATES - PERSONNEL**

Hourly Rate	Name /Title	Area of Responsibility
\$		
\$		
\$		
\$		
\$		

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY  
TECHNICAL AND FINANCIAL ASSESSMENT**

---

**5.2 CITY LICENSE, WORKSAFEBC AND INSURANCE COVERAGE**

- a) Proponents shall submit evidence of a valid City of Vancouver Business License.
- b) Proponents shall submit evidence of WorkSafeBC registration.
- c) Proponents shall submit a Certificate of Existing Insurances (See Appendix B) duly completed and signed by their insurance agent or broker as evidence of their existing insurance, along with a letter from their insurance broker or agent indicating whether or not (and if not then to what extent) they will be able to comply with the insurance requirements set out in Appendix A, Schedule 1, should they be selected as a successful Consultant.
- d) The successful Proponent shall be required to provide certificates of insurance as per Appendix A, Schedule 5, in the finalization of the Agreement.

**6.0 EVALUATION CRITERIA**

- 6.1 Applications will be evaluated by representatives of the City on the basis of the overall best value to the City, based on capability, experience, sustainability, price and any other relevant criteria as determined by the City in its sole and absolute discretion.
- 6.2 The City may elect to short list some of the Proponents and require short listed Proponents to provide additional information or details, including making a presentation, and/or attending an interview.
- 6.3 The City may, at any time prior to signing a contract, discuss or negotiate changes to the scope of the RFA with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Applications as a result of such discussions or negotiations.
- 6.4 No bid security is required since no irrevocable binding legal offer is made by submitting an application in response to this RFA.
- 6.5 There are no mandatory requirements for submitting in response to this RFA but Proponents are encouraged to provide all information requested by the City, particularly where the words "must", "shall", "will", "is to" or "are to" precede a requirement regarding the content or format of an Application.

**7.0 CONTRACT APPROVAL**

- 7.1 Contract approval is contingent the award being approved by the City. Only then may the successful Proponent and the City proceed to finalize and sign the necessary legal agreement.

**REQUEST FOR APPLICATIONS RFA PS20120742  
PREQUALIFICATION FOR THE PROFESSIONAL SERVICES FOR DISTRICT ENERGY  
TECHNICAL AND FINANCIAL ASSESSMENT**

---

- 7.2 The City will notify the successful Proponent in writing that its Application has been approved in principle and invite the Proponent to proceed to finalize and sign a legal agreement.
- 7.3 The City is not under any obligation to approve any Application and may elect to terminate this RFA at any time.
- 7.4 The City is not obligated nor does the City commit to provide any successful Proponent with any level of business during the period of any contract awarded under this RFA.

**8.0 NO CLAIM AGAINST THE CITY**

- 8.1 The Proponent acknowledges and agrees that the City will not be responsible for any costs, expenses, losses, damages (including damages for loss of anticipated profit) or liabilities incurred or alleged to be incurred by the Proponent and by submitting an Application each Proponent shall be deemed to have agreed that it has no claim whatsoever.

Appendix A  
Terms and Conditions



**STANDING OFFER AGREEMENT**

**RFA PS20120742  
PROFESSIONAL SERVICES FOR DISTRICT ENERGY STRATEGIC, TECHNICAL AND FINANCIAL  
ASSESSMENT**

THIS AGREEMENT made as of the **4th** day of January **2013** (the "**Effective Date**")  
BETWEEN:

**CITY OF VANCOUVER**  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia  
V5Y 1V4

(the "**City**")

OF THE FIRST PART

AND:

Legal Name  
Address

(the "**Consultant**")

OF THE SECOND PART

(City and 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.

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 or exhibits attached hereto, 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) **"Application"** means the application submitted by the Consultant in response to the RFA, a copy of which is attached hereto as Schedule 6 ;
- (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 15.0
- (f) **"Contract Documents"** means this Agreement, including all Appendices;
- (g) **"Deliverables"** has the meaning set out in Section 17.0;
- (h) **"HST"** means the tax payable and imposed pursuant to part IX of the Excise Tax Act (Canada) as amended, including any provincial component collected by Canada on behalf of British Columbia, and any successor legislation thereto;
- (i) **"Project Team"** has the meaning set out in subsection 2.2(c);
- (j) **"Request for Services"** or **"RFS"** means the document used by the City's Project Manager to obtain services under this Agreement. The RFS must include a description of required services and schedule. It is to be emailed/faxed to the Consultant who in turn will provide a detailed costing for the service. The RFS must be reviewed and approved by the City's Project Manager before the work is to proceed. A detailed process and sample of the RFS is attached as Schedules 2 and 3, respectively.
- (k) **"Services"** has the meaning set out in Section 2.1;
- (l) **"Sub-contractor"** has the meaning set out in Section 4.1; and
- (m) **"Term"** means the term of this Agreement as specified in Section 12.1.

- 1.2 The terms and conditions of the Contract Documents, whether or not attached to this Agreement will be deemed to be incorporated into this Agreement. 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) Any approved Request for Services;
  - (b) this Agreement, including all Schedules 1 - 6
- 1.3 Nothing in this Agreement guarantees the Consultant any level of business. All Services to be provided by the Consultant shall be as per approved Request for Services.
- 1.4 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, to this Agreement taken as a whole (including any and all attached 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
  - (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 as per the RFS approved by the City's Project Manager; and
  - (b) all services not specifically included in subsections 2.1(a) but which are necessary or incidental to the completion of the Services.
- 2.2 The Consultant will be fully responsible for:
- (a) coordinating the Services with the City's Project Manager, or their delegate, and ensuring that the performance of the Services does not adversely impact the design or construction schedule for the project or the work and/or services provided by the City's other consultants;
  - (b) taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Schedule 1 - 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 conformance 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 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 Application.
- 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 3.0, "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 reimbursable expenses prescribed herein, plus HST, as applicable.
- 5.2 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 in the Application, as well as Schedule 4 of this Agreement.
- 5.3 If there are limiting amounts for fees and disbursements indicated below, or in any approved Request for Services or parts thereof, then notwithstanding anything to the contrary in this Agreement the maximum fees and disbursements to be paid by the City to the Consultant for the Services or portions of the Services will not exceed those amounts specified as per each approved Request for Services. Where additional fees are to be paid by the City to the Consultant for increases in the scope of the Services provided by the Consultant, they will not exceed the amount of said fees mutually agreed upon under Section 7.0. This limit on the fees 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 The fees for the Services are set out in Schedule 4 of this Agreement.
- 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 Section 5.3, 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 shall no later than the last working day of each month, submit a draft invoice to the City's Project Manager. The City's Project Manager shall review, raise any concerns with the Consultant, and after settlement, if necessary, approve the draft invoice. The Consultant, if so requested, shall meet with the City's Project Manager to expedite and settle the draft invoice.
- 5.7 The Consultant will submit final invoices to the City on or before the tenth day of each month as per the approved draft invoice, to the City of Vancouver, Attention: Accounts Payable, P.O. Box 7757, 349 West Georgia Street, Vancouver, BC, V6B 0L5 or by email to [APCentral@vancouver.ca](mailto:APCentral@vancouver.ca). Each invoice will list the names, hours worked and pay rates of all employees of the Consultant and Sub-contractors that have worked on the Services during the previous month, the total amount of previous payments made by the City, and the percentage of the Services that are complete. Each invoice will show separately the amount of HST applicable.

For further clarity, each invoice shall clearly show:

- (a) Name and Address of the Consultant;
- (b) Consultant's invoice number and date of issue;

- (c) City Purchase Order Number (a Purchase Order shall be released for each approved Request for Services);
- (d) Amount of current invoice (HST to be shown separately); and
- (e) Amount of previous payments made by the City.

Attached to each invoice will be:

- (a) detailed listing names, hours worked and pay rates of the Consultant;
- (b) detailed listing names, hours worked and pay rates of the Sub-contractor(s), with confirmation of payments made to Sub-contractor(s); and
- (c) copies of invoices for all disbursements, if and as authorized;
- (d) a brief report, detailing the work completed during the month covered by the invoice, work outstanding to complete the Services and the percentage of Services completed.

Notwithstanding anything to the contrary contained in this Agreement, the City will never be obligated to pay the Consultant a greater percentage of the Maximum Fees and Disbursements than the degree of percentage completion of the total of the Services.

- 5.8 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning 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 have the review, audit or clarification resolved within a 60 day period. The City will, if it approves the amount of such invoices, cause the respective invoices to be paid within 30 days of approval.
- 5.9 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.

## **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 Request for Services contains delivery dates and/or limits as to the Maximum Fees and Disbursements to be paid to the Consultant pursuant to Section 6.3 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 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 Schedule 4 of this Agreement.

## **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.
- 7.3 Despite the provision of insurance coverage by the City, the Consultant hereby agrees to indemnify and save harmless the City of Vancouver and its successors, assigns 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 Schedule 1 - Insurance Requirements.

## 9.0 WORKSAFEBBC

- 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.

## 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, 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 RFA 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 Hugo Haley, Project Planner at Sustainability as the City's Project Manager for the purposes of this Agreement. 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 \_\_\_\_\_ 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 be for two (2) year period commencing on the Effective Date and will expire on **month and date** (the "**Term**"). The City will have the right and at the City's sole discretion, to extend this Agreement on the same terms and conditions for up to (two) additional one (1) year periods. The City Project Manager and the Consultant shall determine the foregoing before the end of January of any extension year.

## 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 (10) 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) in closing out the Services or the part terminated.

13.2 Under no circumstances shall the City be liable for any wind up costs, resulting from the termination, of any type.

## 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. 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 restricted use 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, co-operate in obtaining a protective order or other assurance that confidential treatment and restricted 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 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 16.0, 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
- (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.
- 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 12<sup>th</sup> Avenue, Vancouver, B.C., V5Y 1V4 (addressed to the attention of the City's Project Manager). A copy shall be sent to the Manager, Contracts and Administration, Supply Management, City of Vancouver, 453 West 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4.

#### 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 20.1 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 (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 limits 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.

#### **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 25.0, 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, strikes/lockouts, 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 or insolvency or strikes, lockouts or other withdrawals of services arising out of a labour dispute (including a strike, lockout, or other labour dispute involving the Vancouver Board of Parks and Recreation and/or the City of Vancouver and their respective employees) or labour affiliations of the Consultant's employees or Sub-contractor's employees, or governmental action taken in the enforcement of 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 thereunder, 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.
- 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 that 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.

SAMPLE

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**

BY: \_\_\_\_\_  
Category Manager Date

BY: \_\_\_\_\_  
Nick Kassam Date  
Director of Supply Management

**CONSULTANT**

BY: \_\_\_\_\_  
Authorized Signatory Date

\_\_\_\_\_  
Print Name and Title

**SCHEDULE 1 - INSURANCE REQUIREMENTS**

- 1.0** The following insurance coverage's are minimum insurance required by the City of Vancouver. It is the responsibility of the Consultant to obtain any additional insurance required by law or which the Consultant considers necessary.
- 2.0** The Consultant covenants to obtain at its own expense before commencing work on the Services under this Agreement.
  - 2.1 A Commercial General Liability insurance policy in the form of Schedule 5, with limits of not less than Two Million (\$2,000,000) dollars per occurrence, and a deductible of not more than Five Thousand (\$5,000) dollars, protecting the Consultant against all claims for personal injury, death, bodily injury or property damage arising out of the operation of the Consultant or the actions of the Consultant, its employees, agents or subcontractors. The policy shall contain a cross liability clause in favour of the City of Vancouver and shall name the City, its officials, employees and agents as additional insured.
  - 2.2 a Professional (Errors and Omissions) Liability insurance policy with limits of not less than One Million (\$1,000,000) dollars per claim, an aggregate of not less than One Million (\$1,000,000) dollars and a deductible of not more than Fifty Thousand (\$50,000) dollars, 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
- 3.0** All foregoing insurance policies shall remain in full force and effect at all times during the term of this Agreement and for a period of not less than two (2) years following the completion of the Services and shall:
  - 3.1 be obtained and issued by insurance companies authorized to carry on business in the Province of British Columbia, on terms satisfactory to the City's Director of Risk Management;
  - 3.2 be primary insurance as it respects the City and any insurance or self-insurance maintained by the City shall be in excess of this insurance and shall not contribute to it;
  - 3.3 contain a provision that coverage afforded will not be suspended, voided, reduced or materially altered or changed without the insurance company(s) giving at least thirty (30) days prior written notice by registered mail to the City; and
  - 3.4 contain a clause that waives the insurer's right of subrogation against the City or its officers, employees, servants or agents.
- 4.0** Prior to commencement of the Agreement, the Consultant shall provide evidence of all required insurance to be taken out in the form of Schedule 5 and the insurance certificates shall not contain any disclaimer whatsoever. If required by the City, the Consultant shall provide certified copies of the policies signed by the insurers.
- 5.0** If the Consultant hires a contractor to perform any work related to the Services, the Consultant shall cause such contractor to obtain:
  - 5.1 Commercial General Liability Insurance to cover bodily injury including death and property damage and loss arising from the actions of the contractor, its



employees, agents or subcontractors, with a minimum limit of not less than Two Million (\$2,000,000) Dollars per occurrence and a deductible of not more than Five Thousand (\$5,000) Dollars. Such liability insurance shall include coverage of operations required for the consultant's work under this Agreement.

- 5.2 a Professional (Errors and Omissions) Liability insurance policy with limits of not less than One Million (\$1,000,000) dollars per claim, an aggregate of not less than One Million (\$1,000,000) dollars and a deductible of not more than Fifty Thousand (\$50,000) dollars, 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

## SCHEDULE 2 - SERVICES

The nature and scope of services, all or part of which the City may (but is not obligated to) request from the Consultant from time to time during the Term hereof are as identified in this Schedule 2.

A three step process must be followed before the Consultant will be authorized to complete any of the Services described herein.

1. City Project Manager identifies a need and completes the introduction and the Contemplated Request for Services - Schedule 3 (Title, Description of Services and Required Schedule) and emails/faxes the request to the Consultant.
2. The Consultant prepares a detailed costing by activity (Named resources, labour category, hourly rate and totals). Includes the total (excluding HST) in the space provided in the Consultant's Application, attaches the detailed costing, signs and returns to the City Project Manager.
3. The City Project Manager reviews the Consultant's Application, settles any discrepancies and accepts/rejects the Application. If approved, the City Project Manager signs as authorizing the work and the issuance of a related purchase order, forwards the approved RFS to City Purchasing to have the purchase order issued and returns a copy to the Consultant.
4. City Purchasing raises the related purchase order and issues it to the Consultant, thereby authorizing the Consultant to start work.

Unless the City issues an approved Request for Service and the associated Purchase Order to the Consultant, the Consultant is not authorized to complete any of the Services.

### SERVICES

- 1 The following describe the services to be provided by the Consultant. These services are the Tasks (the "Tasks", individual "Task"), and the City expects that completing each Task will may require a combination of: professional advice, review and analysis of existing data, field investigations, modelling and analysis of new data, generation of reports and briefing notes, development of presentation materials, design and implementation of strategic decision processes.
- 2 As and when required, during the term of the contract, the City will identify tasks to be completed. Based on these requirements, the Consultants shall provide the City with a Task Proposal Letter including the following information:
  - a) Description of scope of services to be provided;
  - b) Estimated consultancy hours for each member based on Statement of Work, broken down by sub-task;
  - c) Schedule with key milestones; and

- d) Description of work to be performed by sub-consultants, sub-consultant name (including key individuals) and fee breakdown.
- 3 For each individual Task to be performed by the Consultant, the Consultant's fees shall not exceed the Task cost as described in the task proposal letter, except in circumstances where the scope of the services has changed. In such cases where the scope has changed, written consent must be provided by the City agreeing to the scope change.
- 4 The main Tasks the Consultant shall provide include:
- a) utility pro forma development and analysis;
  - b) energy demand forecasts for existing and future buildings, which include annual and peak end use heating (space heating, domestic hot water and ventilation air) and cooling demands, including preparation of varying demand scenarios, load duration curves;
  - c) reference case energy supply scenarios, which describe how energy would be supplied in the absence of a district heating and/or cooling system, including life-cycle costs and GHG emissions using defensible energy price forecasts;
  - d) development of low-carbon energy supply strategies for further evaluation and investigation;
  - e) screening level assessments of the technical and business case feasibility of options for building or expanding an existing district heating and/or cooling system based on a low-carbon energy source for different locations in the City;
  - f) detailed business case analysis of options for building or expanding an existing district heating and/or cooling system based on low-carbon energy source for different locations in the City;
  - g) strategic assessment, analysis and advice regarding district energy infrastructure planning, staging and implementation
  - h) assessment of various governance, ownership, financing and operating options for implementation of district heating and/or cooling systems for specific locations in the City and/or City-wide;
  - i) support procuring and negotiating contracts with utility service providers for the implementation of district heating and/or cooling systems in different locations of the City;
  - j) assessment and advice regarding British Columbia Utility Commission regulatory requirements and processes
  - k) financial analysis in support of customer rate setting for district heating and/or cooling systems;
  - l) analysis in support of district heating and/or cooling policy development; and
  - m) multi-stakeholder consultation and decision making process development and facilitation.

- 5 The technical and business case assessments should not be prejudiced to assume any given party would be the developer, owner, or operator of new components of district heating and/or cooling systems.
- 6 The technical and business case assessments should not be prejudiced to assume any given heat generating or distribution technology would be used for a district heating and/or cooling systems.
- 7 The technical and business case assessments will be structured so as to identify key factors and facilitate easy updating with changing assumptions and projections.
- 8 The Proponent is to provide details how they (in general) propose to assess potential technologies, system configurations and their business cases with relation to the Tasks described.
- 9 All key environmental and financial assumptions must be clearly stated and accepted by the City.

#### **11.0 TIMELINE**

- 11.1 The term of Contract shall be for a two (2) year period with the option to renew for two (2) additional one (1) year periods to a maximum total term of four (4) years. The option to extend the Contract is subject to agreement between the Consultant and the City.
- 11.2 For specific tasks the Proponent shall provide a project timeline, including the timing for completion of the project, and will be required to develop and maintain a project schedule.

#### **12.0 CONSULTANCY COORDINATION**

- 12.1 The consultancy will be coordinated by an appointed City representative.
- 12.2 The Consultant shall communicate regularly with the City representative to report progress and seek direction.
- 12.3 Updates will be through various means including phone conversations, written communications, face-to-face meetings and the like.

#### **13.0 DELIVERABLES REQUIRED FOR THIS PROJECT**

- 13.1 Provide written results of each Task as those results become available. State the format for reporting the result of each Task if not provided in written form;
- 13.2 A draft report to the City representative for review, comment and adjustments prior to finalisation; and
- 13.3 Present a comprehensive report to the City representative. This report will consolidate all results acquired through individual Task. The final report is to be provided in three (3) hard copies, as well as, one (1) electronic copy.

REQUEST FOR SERVICES FORM

<b>City of Vancouver</b> 453 West 12th Avenue Vancouver, British Columbia V5Y 1V4	<b>Consultant:</b> [company]	Agreement No. PS20120742- Professional Service4s for District Energy Strategic, Technical and Financial Assessment
<b>Requesting Dept:</b> [department] Project Mgr: [name] Fax: [604.xxx.xxx] Email: [@vancouver.ca]	Contact: [name] Fax: [604.xxx.xxx] Email: [ @ ]	Issue Date: [month,day,year]
CC:		No. of Pages: [#]

**Contemplated Request for Service**

The following is a description of the nature and scope of Services being requested by Owner in accordance with the terms of the Agreement. Work is not to proceed unless authorized by a Purchase Order issued by the City of Vancouver, Supply Management. All materials and workmanship are to be in accordance with the Agreement unless otherwise stated. Please submit an itemized fee quotation and completion schedule (all in accordance with the Agreement) applicable to the Services described herein, within 5 days of the date specified above.

Title: [descriptive title for project]

Description of Services:  
 [scope of work]

Required Schedule:  
 [tentative start date, progress points, target completion date, etc.]

<p><b>Consultant's Proposal</b></p> <p>Subject to the Terms and Conditions of the Contract, the Consultant hereby offers to perform the work described above for the following Price (based upon the rates and payment terms specified in the Agreement) to be completed in accordance with the Required Schedule: \$ _____, plus HST. See attached.</p> <p>Consultant Signed: _____ Date: _____</p>
<p><b>Approval</b></p> <p>The undersigned hereby accepts the Consultant's Proposal and approves the issuance of a related Purchase Order.</p> <p>Request for Services authorized by City's Project Manager: <i>Signed after quote is reviewed and accepted.</i></p> <p>_____ Date: _____</p>

**SCHEDULE 4**

**SCHEDULE OF RATES**

Estimated quantities for each individual project will be made available to the Consultant with each Request For Service.

The rates set out in this Table of Pay Items will apply to each Request For Service. Prices quoted will be exclusive of all applicable taxes, FOB/DDP destination to the Work Site, with all freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.

**Note: If the table provided is not suitable for the pricing structure provided for the City of Vancouver, please attach a price sheet(s) that is relevant.**

**SCHEDULE OF RATES - PERSONNEL**

Hourly Rate	Name /Title	Area of Responsibility
\$		
\$		
\$		
\$		
\$		

**SCHEDULE 5 - INSURANCE**

The following and attached insurance certificates shall be provided and maintained in accordance with Schedule 1.

SAMPLE



**GENERAL CERTIFICATE OF INSURANCE**

Section 8 b) – City start to select the required # of days Written Notice before sending the certificate out for completion  
 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 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
*and certifies that the insurance policies as listed herein have been issued to the Named Insured(s) and are in full force and effect as of the effective date of the agreement described below.*

2. **NAMED INSURED:** *[must be the same name as the Permittee/Licensee or Party(ies) to Contract and is/are either an individual(s) or a legally incorporated company(ies)]*

**MAILING ADDRESS:** \_\_\_\_\_

**LOCATION ADDRESS:** \_\_\_\_\_

**DESCRIPTION OF OPERATION, CONTRACT, AGREEMENT, LEASE, PERMIT OR LICENSE:** \_\_\_\_\_

3. **PROPERTY INSURANCE** naming the City of Vancouver as a Named Insured and/or Loss Payee with respect to its interests and shall contain a waiver clause in favour of the City of Vancouver.

**(All Risks Coverage including Earthquake and Flood)**

**INSURED VALUES: (Replacement Cost)**

INSURER: \_\_\_\_\_  
 TYPE OF COVERAGE: \_\_\_\_\_  
 POLICY NUMBER: \_\_\_\_\_  
 POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

Building and Tenants' Improvements: \$ \_\_\_\_\_  
 Contents and Equipment: \$ \_\_\_\_\_  
 Deductible Per Loss: \$ \_\_\_\_\_

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

Including the following extensions:

**LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)**

- Personal Injury
- Products and Completed Operations
- Cross Liability or Severability of Interest
- Employees as Additional Insureds
- Blanket Contractual Liability
- Non-Owned Auto Liability

Per Occurrence: \$ \_\_\_\_\_  
 Aggregate: \$ \_\_\_\_\_  
 All Risk Tenants' Legal Liability: \$ \_\_\_\_\_  
 Deductible Per Occurrence: \$ \_\_\_\_\_

INSURER: \_\_\_\_\_  
 POLICY NUMBER: \_\_\_\_\_  
 POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

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

INSURER: \_\_\_\_\_  
 POLICY NUMBER: \_\_\_\_\_  
 POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

**LIMITS OF LIABILITY:**  
 Combined Single Limit: \$ \_\_\_\_\_  
*If vehicles are insured by ICBC, complete and provide Form APV-47.*

6.  **UMBRELLA OR**  **EXCESS LIABILITY INSURANCE**

**LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)**

INSURER: \_\_\_\_\_  
 POLICY NUMBER: \_\_\_\_\_  
 POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

Per Occurrence: \$ \_\_\_\_\_  
 Aggregate: \$ \_\_\_\_\_  
 Self-Insured Retention: \$ \_\_\_\_\_

7. **OTHER INSURANCE** (e.g. Boiler & Machinery, Business Interruption, Crime, etc.) – Please specify Name of Insurer(s), Policy Number, Policy Period, and Limit

8. **POLICY PROVISIONS:**

*Where required by the governing contract, agreement, lease, permit or license, it is understood and agreed that:*

- a) *The City of Vancouver, its officials, officers, employees, servants and agents have been added as Additional Insureds with respect to liability arising out of the operation of the Named Insured pursuant to the governing contract, agreement, lease, permit or license;*
- b) *SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to any of the policies listed herein, either in part or in whole, will be given by the Insurer(s) to the Holder of this Certificate; the exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply;*
- c) *The insurance policy (policies) listed herein shall be primary with respect to all claims arising out of the operation of the Named Insured. Any insurance or self-insurance maintained by the City of Vancouver shall be in excess of this insurance and shall not contribute to it.*

**SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE**

\_\_\_\_\_  
**PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER** Dated: \_\_\_\_\_





**PROFESSIONAL LIABILITY INSURANCE CERTIFICATE**

Section 4 – City staff to select the required # of days Written Notice before sending out for completion

Section 2, 3 & 4– to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
*and certifies that the insurance policy as listed herein has been issued to the Named Insured(s) and is in full force and effect as of the effective date of the agreement described below.*

2. **NAMED INSURED:** *[must be the same name as the Permittee/Licensee or Party(ies) to Contract and is/are either an individual(s) or a legally incorporated company(ies)]*

MAILING ADDRESS:

LOCATION ADDRESS:

DESCRIPTION OF OPERATION/CONTRACT:

**3. PROFESSIONAL LIABILITY INSURANCE**

**LIMITS OF LIABILITY:**

INSURER: \_\_\_\_\_ Per occurrence/claim: \$ \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_ Deductible per occurrence/claim: \$ \_\_\_\_\_

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

**4. POLICY PROVISIONS:**

*Where required by the governing contract, agreement, permit or license, it is understood and agreed that SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to the policy listed herein, either in part or in whole, will be given by the Insurer to the Holder of this Certificate. The exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply.*

**SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE**

\_\_\_\_\_ Dated: \_\_\_\_\_  
**PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER**

### SCHEDULE 6 - APPLICATION

This Schedule 6 - Consultant's Application (submitted on **month, date at time**) to **RFA ??-TITLE** becomes part of the Contract Documents, not attached but incorporated by reference.

SAMPLE

---

**APPENDIX B - CERTIFICATE OF EXISTING INSURANCE**

Proponents are to complete and provide as part of their Applications, in accordance with Section 5.2.c, the attached certificate of existing insurance.



**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 12<sup>th</sup> 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 _____	<b>Insured Values (Replacement Cost) -</b>
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:
 

<input checked="" type="checkbox"/> Personal Injury	INSURER _____	
<input checked="" type="checkbox"/> Property Damage including Loss of Use	POLICY NUMBER _____	
<input checked="" type="checkbox"/> Products and Completed Operations	POLICY PERIOD _____	From _____ to _____
<input checked="" type="checkbox"/> Cross Liability or Severability of Interest	<b>Limits of Liability (Bodily Injury and Property Damage Inclusive) -</b>	
<input checked="" type="checkbox"/> Employees as Additional Insureds	Per Occurrence	\$ _____
<input checked="" type="checkbox"/> Blanket Contractual Liability	Aggregate	\$ _____
<input checked="" type="checkbox"/> Non-Owned Auto Liability	All Risk Tenants' Legal Liability	\$ _____
	Deductible Per Occurrence	\$ _____

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

INSURER _____	<b>Limits of Liability -</b>
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** **Limits of Liability**  

INSURER _____	Per Occurrence/Claim \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	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 _____	<b>Limits of Liability</b>
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____
TYPE OF INSURANCE _____	<b>Limits of Liability</b>
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**