



REQUEST FOR APPLICATIONS

PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES

RFA No. PS20161319

Issue Date: August 26, 2016

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

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PART A - INFORMATION AND INSTRUCTIONS

1.0 THE RFA

- 1.1 This This Request for Applications (the "RFA") provides an opportunity to submit Applications for review by the City and, depending on the City's evaluation of Applications, among other factors, to potentially enter into a standing-offer Agreement under which services may be provided to the City for Archaeological Services.
- 1.2 EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 1 TO PART C OF THE RFA: (I) NO PART OF THE RFA CONSISTS OF AN OFFER BY THE CITY TO ENTER INTO ANY CONTRACTUAL RELATIONSHIP; AND (II) NO PART OF THE RFA IS LEGALLY BINDING ON THE CITY.
- 1.3 As noted above, this RFA concerns the City's interest in, from time to time, procuring archaeological consulting services. The personnel presented must be in good standing with the Archaeology Branch and meet Archaeology Branch requirements to undertake archaeological assessments for lands within the City of Vancouver (i.e. permit holder and/or field director). In addition, at least one (1) senior personnel must be registered professional consulting archaeologists in good standing with the British Columbia Association of Professional Archaeologists. As specific requirements are not known at this time, the City wishes to enter into standing contracts, in the form of Part D (each an "Agreement"), with a number of suppliers that have the interest and capabilities to provide such services. This would allow the City to call for required services, as and when the need arises. Further information regarding the services that are expected to be required is set out in Part B of the RFA.
- 1.4 The City is interested in selecting applicants in this RFA (each an "Applicant") with the capability and experience to efficiently and cost-effectively meet the City's requirements. The City currently expects to select such Applicants and then enter into negotiations with such Applicants concluding in the execution of Agreements with them. However, the City may: (i) decline to select any Applicant; (ii) decline to enter into any Agreement; (iii) select only one Applicant; or (iv) enter into one or more agreements respecting the subject matter of the RFA with one or more Applicants or other entities at any time. The City may also terminate the RFA at any time.
- 1.5 A secondary purpose of this RFA is to produce a list of pre-qualified vendors, which may be invited, from time to time during a period of approximately three years to participate in procurement competitions (whether invitations to tender, requests for proposal, requests for quotations or otherwise) to provide archaeological consulting services for medium to large projects (the "Pre-Qualified List"). The City currently expects that the same entities with which it enters into Agreements would be included on the Pre-Qualified List. However, the City may opt to include fewer, more or no Applicants on the Pre-Qualified List.
- 1.6 In assessing Applicants, the City expects to consider the factors described in Section 8 below, among others.
- 1.7 NO BID SECURITY IS REQUIRED FROM APPLICANTS IN CONNECTION WITH THE SUBMISSION OF APPLICATIONS BECAUSE NO APPLICATION WILL BE DEEMED TO BE AN IRREVOCABLE OR OTHERWISE BINDING LEGAL OFFER BY AN APPLICANT TO THE CITY. THE LEGAL OBLIGATIONS OF AN APPLICANT THAT WILL ARISE UPON THE SUBMISSION OF ITS APPLICATION WILL BE LIMITED TO THE TERMS AND CONDITIONS STATED IN APPENDIX 1 TO THE APPLICATION FORM (PART C).
- 1.8 The execution of any Agreement may be contingent on approval by the Vancouver City Council.
- 1.9 The RFA consists of four parts, plus annexes:

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- (a) PART A - INFORMATION AND INSTRUCTIONS: This part is intended to serve as a guide to the RFA process for Applicants.
- (b) PART B - SERVICES EXPECTED TO BE REQUIRED AND ITEMS TO BE ADDRESSED IN APPLICATIONS: This part elaborates upon the subject matter of the RFA, in respect of which the City invites Applications. This part also stipulates the information that should be contained in each Application.
- (c) PART C - APPLICATION FORM: This part consists of the application form to be completed by each Applicant in connection with its Application (the "**Application Form**"). Each Application must be submitted under the cover of a duly completed and executed Application Form.
- (d) PART D - FORM OF AGREEMENT: This part contains a model Agreement (the "**Form of Agreement**"). Any Agreement entered into at the conclusion of the RFA process is expected to be substantially in the form of the Form of Agreement.
- (e) ANNEXES - Annexes expand upon PART B - SERVICES EXPECTED TO BE REQUIRED AND ITEMS TO BE ADDRESSED IN APPLICATIONS.

2.0 KEY DATES

2.1 Potential Applicants should note the following key dates:

Event	Time and Date
Deadline for Enquiries	3pm, September 21, 2016
Closing Time	3pm, September 27, 2016

2.2 All references to time in the RFA are references to the time in the City of Vancouver, as shown on the clock used by the City for the purposes of requests for applications.

3.0 CONTACT PERSON

3.1 All enquiries regarding the RFA must be addressed to:

Dino Goundouvas
dino.goundouvas@vancouver.ca

3.2 All enquiries must be made in writing. In-person or telephone enquiries are not permitted.

3.3 **IF A POTENTIAL APPLICANT BELIEVES THAT THE CITY MAY BE UNABLE TO SELECT IT DUE TO A CONFLICT OF INTEREST, BUT IS UNCERTAIN ABOUT THIS, THE POTENTIAL APPLICANT IS URGED TO CONTACT THE ABOVE-MENTIONED INDIVIDUAL AS SOON AS POSSIBLE WITH THE RELEVANT INFORMATION SO THAT THE CITY MAY ADVISE THE POTENTIAL APPLICANT REGARDING THE MATTER.**

4.0 SUBMISSION OF APPLICATIONS

4.1 Applicants should submit their Applications in writing on or before the time and date specified in the bottom row of the table in Section 2.1 above (the "**Closing Time**").

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- 4.2 Each Applicant should submit its Application in an envelope clearly marked with the Applicant's name and the RFA title and number ("PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES PS20161319") to the following address:

City of Vancouver
4th Floor, Vancouver City Hall
Supply Chain Management office
453 West 12th Avenue
Vancouver, British Columbia
Canada, V5Y 1V4

- 4.3 To be considered by the City, an Application must be submitted under the cover of an Application Form, completed and duly executed by the relevant Applicant, including Appendix 1 thereto.
- 4.4 Amendments to an Application may be submitted via the same methods, at any time prior to the Closing Time.
- 4.5 Applications must not be submitted by fax or email.
- 4.6 The City requests that one hard copy and one electronic copy (on a flash drive, memory stick or similar medium) of each Application (or amendment) be submitted.
- 4.7 Applications should not be bound in three-ring binders.
- 4.8 Applications are revocable and may be withdrawn at any time before or after the Closing Time.
- 4.9 All costs associated with the preparation and submission of an Application, including any costs incurred by an Applicant after the Closing Time, will be borne solely by the Applicant.
- 4.10 Unnecessarily elaborate Applications are discouraged. Applications should generally be limited to the items specified in Part B of the RFA.
- 4.11 The City is willing to consider an Application from two or more Applicants that wish to form a consortium solely for the purpose of submitting a joint Application in response to the RFA, provided that they disclose the names of all members of the consortium and all members complete and execute an Application Form (Part C), including Appendix 1 thereto. Nonetheless, the City has a strong preference for Applications submitted by single Applicants, including those that would act as a general contractor and use subcontractors as required.
- 4.12 Applications 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 Applicant, in the City's sole discretion.

5.0 CHANGES TO THE RFA AND FURTHER INFORMATION

- 5.1 The City may amend the RFA or make additions to it at any time.
- 5.2 It is the sole responsibility of Applicants 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 RFA.
- 5.3 Applicants must not rely on any information purported to be given on behalf of the City that contradicts the RFA, as amended or supplemented in accordance with the foregoing Section 5.2

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6.0 CONTRACT REQUIREMENTS

- 6.1 In addition to addressing the other requirements of Part B hereof, each Applicant should indicate in its Application the extent to which the Form of Agreement included as Part D hereof is consistent with its Application. If the Application is inconsistent with any part of the Form of Agreement, the Applicant should so state and should propose alternative contract language as part of its Application.
- 6.2 The term of any Agreement is expected to be a two-year period, with three possible one-year extensions, for a maximum total term of five years.

7.0 PRICING

- 7.1 All prices quoted in any Application are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.
- 7.2 Prices must be quoted in Canadian currency and fixed prices must be quoted for the full term of the Applicant's proposed agreement.
- 7.3 Prices are to be quoted CIP, destination (Incoterms, 2010). For the avoidance of doubt, freight, insurance, unloading at the destination designated by the City, import duties, brokerage, royalties, handling, overhead, profit and all other similar costs are to be included in quoted prices.

8.0 EVALUATION OF APPLICATIONS

- 8.1 The City may open Applications in such manner and at such times and places as are determined by the City.
- 8.2 The City currently intends that all Applications submitted to it in accordance with the RFA will be evaluated by City representatives, using quantitative and qualitative tools and assessments, as appropriate, to determine which Applications offer the overall best value to the City. In so doing, the City expects to examine not only financial terms, but also:
- (a) Applicants' skills, knowledge, reputations and previous experience(s) collaborating, engaging and working with the City and local First Nations (including Squamish, Tseil-Waututh and Musqueam)
 - (b) Applicants' demonstrated ability to work with the Province and local First Nations to successfully obtain permits and complete projects;
 - (c) Applicants' capabilities to provide the required Services (as defined in Part B) as and when needed, including any established relationships with specialized laboratories to complete and expedite work;
 - (d) Quality and service factors;
 - (e) Environmental or social sustainability practices (e.g. employment of local First Nations community members); and
 - (f) Costs of Services.

Certain other factors may be mentioned in Part B or elsewhere in the RFA.

- 8.3 The City will retain complete control over the RFA process at all times. The City is not legally obligated to review, consider or evaluate Applications, or any particular Application, and need not necessarily review, consider or evaluate Applications, or any particular Application in

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accordance with the procedures set out in the RFA. The City may continue, interrupt, cease or modify its review, evaluation and negotiation process in respect of any or all Applications at any time without further explanation or notification to any Applicants.

- 8.4 Applicants may at any time be asked to provide additional information or details for clarification, including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to the Form of Agreement. The City will be at liberty to enter into discussions or negotiations with any one or more of the Applicants without having any duty or obligation to advise the other Applicants or to allow the other Applicants the same opportunity.
- 8.5 Prior to approval of an Application, the City must be satisfied as to the Applicant's financial stability. Applicants may be asked to provide financial statements prepared by an accountant and covering at least the prior two years. The City may also request that any proposed subcontractors undergo evaluation by the City.
- 8.6 The City will retain complete discretion over the number of Applications to accept or the number of Agreements to enter into, if any. Once Agreements (if any) have been entered into, the City will also retain complete discretion over the allocation of work, if any, to or among successful Applicants.
- 8.7 The City expects to evaluate Applicants not only for the purpose of entering into standing Agreements and allocating work on the basis of such Agreements from time to time over a period of approximately three to five years as describe above, but also, as noted at Section 1.5 above, to produce a Pre-Qualification List of Applicants, which could be invited to make submissions in procurement competitions limited to the listed Applicants. The City expects that it would maintain the Pre-Qualification List, without refreshing it or adding new entities to it for a period of approximately three years.
- 8.8 For the avoidance of doubt, notwithstanding any other provision in the RFA, the City has in its sole discretion, the unfettered right to: (a) accept any Application; (b) reject any Application; (c) reject all Applications; (d) give precedence to an Application which is not the lowest-price Application; (e) accept an Application that deviates from the description of Services in Part B or the conditions specified in the RFA; (f) reject an Application even if it is the only Application received by the City; (g) accept all or any part of an Application; and (h) enter into one or more agreements respecting the subject matter of the RFA with any entity or entities at any time. Without limiting the foregoing, the City may reject any Application by an Applicant that has a conflict of interest, has engaged in collusion with another Applicant or has otherwise attempted to influence the outcome of the RFA other than through the submission of its Application.

9.0 SUSTAINABILITY

- 9.1 The City's Procurement Policy, Ethical Purchasing Policy and related Supplier Code of Conduct found at <http://vancouver.ca/doing-business/selling-to-and-buying-from-the-city.aspx> align the City's approach to procurement with its corporate social, environmental and economic sustainability values and goals. They evidence the City's commitment to maximize benefits to the environment through product and service selection, and to ensure safe and healthy workplaces, where human and civil rights are respected. Each Applicant is expected to adhere to the supplier performance standards set forth in the Supplier Code of Conduct. The Ethical Purchasing Policy shall be referred to in the evaluation of Applications, to the extent applicable.
- 9.2 Applicants are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Applicant supply materials, and where such materials

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may cause adverse environmental effects, the Applicant is to indicate the nature of the hazard(s) in its Application. Furthermore, the Applicant is to advise the City of any known alternatives or substitutes for such materials that would mitigate such adverse effects.

10.0 CERTAIN APPLICABLE LEGISLATION

10.1 Applicants should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's consultants or contractors to protect all personal information acquired from the City in the course of providing any service to the City.

10.2 Applicants should note that the *Income Tax Act* (Canada) requires that certain payments to non-residents be subject to tax withholding. Applicants are responsible for informing themselves regarding the requirements of the *Income Tax Act* (Canada), including the requirements to qualify for any available exemptions from withholding.

11.0 LEGAL TERMS AND CONDITIONS

11.1 The legal obligations of an Applicant that will arise upon the submission of its Application are stated in Appendix 1 to the Application Form (Part C). Except where expressly stated in such Appendix 1: (i) no part of the RFA consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFA is legally binding on the City.

POTENTIAL APPLICANTS MUST REVIEW APPENDIX 1 TO THE APPLICATION FORM CAREFULLY BEFORE SUBMITTING AN APPLICATION.

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PART B - SERVICES EXPECTED TO BE REQUIRED AND ITEMS TO BE ADDRESSED IN APPLICATIONS

1.0 SERVICES EXPECTED TO BE REQUIRED

1.1 The City expects to require the following services (together, the "Services"):

- a) Pre-construction & project planning level archaeological assessments and recommendations, including Archeological Overview Assessment ("AOA") reports;
- b) Pre-construction archaeological investigation and testing;
- c) Provincial and First Nations archaeology permitting including assisting the City in conducting obtaining Archaeological Impact Assessments, by obtaining Section 14 (Heritage Inspection) Heritage Impact, and where appropriate Section 12 (Alteration) Permits;
- d) Applicable First Nations archaeology/heritage investigation permits;
- e) Construction services including site surveillance and monitoring, reporting, investigation (systematic data recovery), and analyzing archaeological materials and/or sites in accordance with Provincial requirements
- f) City-wide or area-wide plans/assessments for civil related and/or on-site archaeology work including developing frameworks, policies, and guidelines in consultation with the public and First Nations;
- g) Development of neighbourhood level "Heritage Discovery" plans to improve awareness and outline procedures for crews in case of accidental discovery of archaeological sites;
- h) Emergency call out services in the case of accidental discovery of potential archaeological sites during excavation work;
- i) Project related engagement with First Nations and/or providing guidance to the City on engagement efforts; and,
- j) Archaeology and First Nations related training sessions for City staff.

1.2.1 The Proponent(s) will prepare final and interim reports in duplicate (hard copy) as well as on a CD in PDF format. Depending on the nature of the Services, these reports may include the following:

- a) Technical memorandum, letter reports, and reports;
- b) Copies of executed permits; and,
- c) Daily field memos and inspection reports.

1.3.1 The City will provide the following to assist the Consultant in their work:

- (a) All necessary City of Vancouver approvals and permits;
- (b) Traffic control services;
- (c) Restoration of asphalt pavement, concrete surfacing or other surfacing;
- (d) Removal of excavated sediments that cannot be put back into the excavated areas

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(e) Dewatering; and

(f) Shoring.

The City will endeavor to ensure that there will be no access restrictions to the sites. However, the Applicant is advised that they will need to coordinate their site work with the work schedules of City Crews and Contractors as to minimize conflict and impact to efficiencies.

All deliverables should include maps, renderings, and photos if designated by City staff.

1.2 The foregoing information about the Services is current as of the date hereof, but it may change or be refined in the course of the evaluation of Applications or otherwise.

2.0 ITEMS TO BE ADDRESSED IN EACH APPLICATION

(a) a section titled "Applicant Overview," which must provide a description of the Applicant's company, purpose and history of successes;

(b) a section titled "Key Personnel," which must identify and provide professional biographical information and current resume of the key personnel that would perform the Applicant's work, outlining their intended roles in meeting the Services, and if appropriate, also include a complete organization chart, identifying all roles and areas of responsibilities;

(c) a section titled "Related Experience," which must provide information on the Applicant's relevant knowledge and experience completed and attached in the form of Appendix 1 - Consultant's Qualification Criteria to Part B (unless otherwise required therein) together with examples or recent projects completed in similar capacity and scope;

(d) a section listing names of specialized laboratories used by Applicant in past 24 months to complete work

(e) a section describing all systems used by the Applicant to assure quality, compliance to agreed project timelines and customer satisfaction

2.2 Each Application should contain a section titled "Technical Information," which should address the Applicant's ability to provide the Services. This section of the Application should be divided into paragraphs that correspond to the numbered paragraphs of the foregoing Section 1.1 of this Part B.

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2.3 Each Application should contain a section titled "Pricing," which should contain full details of the Applicant's proposed pricing and payment terms, which should be in accordance with Part A of the RFA and, which should include a completed table in the following form:

PRICING

Hourly Rate (Monday-Friday normal business hours)	Description
Technical Services	
\$ _____	Principal Consultant
\$ _____	Senior Consultant / Project Manager/ Permit Holder / Field Director
\$ _____	Intermediate Consultant/ Permit Holder / Field Director
\$ _____	Junior Consultant
\$ _____	Technician / Draftsperson/ GIS
\$ _____	Administration Support
Field Services	
\$ _____	Construction/Investigation Field Director
\$ _____	Construction/Investigation First Nations representatives (or Field Assistants). Assume one representative from each First Nation interested in applicable construction projects in Vancouver.
\$ _____	Construction/Investigation Daily Disbursements (Lump Sum). Outline travel costs as necessary.
\$ _____	Total Construction/Investigation Day Rate (Lump Sum). Include on-site archaeological work and First Nations representatives listed above, and submission of daily field memo.

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\$ _____	Emergency Call Out. Outline minimum fee and hourly rate for call out with less than 4 hours' notice if different from rates above.
\$ _____	After hours/weekend work - Calls after 5pm and 6am or on Saturday, Sunday and statutory holidays (if different from emergency call outs).
Disbursements:	The Applicant's proposed disbursements amounts applicable to the Services are: <input type="checkbox"/> Percentage of total fees up to a maximum fee (please specify) excluding GST and PST as applicable: _____% <input type="checkbox"/> Charged at cost

All prices are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.

- 2.4 Each Application should contain a section titled "Applicant Overview," which should provide a description of the Applicant's company, purpose and history of successes. This section should also indicate whether the Applicant has a valid City of Vancouver business license (or, if available, a Metro West Inter-municipal Business License).
- 2.5 Each Application should contain a section titled "Key Personnel," which should identify and provide professional biographical information for the key personnel that would perform the Applicant's work, outlining their intended roles in performing the Services and applicable qualifications. If appropriate, also include a complete organization chart, identifying all roles and areas of responsibility.
- 2.6 Preference may be given to Applicants and proposed personnel that demonstrate knowledge and experience involving archaeological assessments (as listed in Part B 1.1). Each Applicant should make clear in its Application its relevant knowledge and experience, and that of its proposed personnel.
- 2.7 Each Application should contain a section titled "References," which should provide names and contact information for approximately three parties for whom the Applicant has done work in the past.

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Client Reference #1

NAME AND ADDRESS OF COMPANY:	
BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED:	
LOCATION OF PROJECT/WORK:	
START AND COMPLETION DATES:	
NAME OF PROJECT REFERENCE:	
CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:	
NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:	

Client Reference #2

NAME AND ADDRESS OF COMPANY:	
BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED:	
LOCATION OF PROJECT/WORK:	
START AND COMPLETION DATES:	
NAME OF PROJECT REFERENCE:	
CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:	
NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:	

Client Reference #3

NAME AND ADDRESS OF COMPANY:	
BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED:	
LOCATION OF PROJECT/WORK:	

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START AND COMPLETION DATES:	
NAME OF PROJECT REFERENCE:	
CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:	
NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:	

Note: The City will independently verify these references.

2.8 Each Application must contain a section titled "Local First Nation References," which should provide names and contact information for references with Squamish, Tsleil-Waututh and Musqueam; with whom the Applicant has worked with in the past, using tables in the following format:

Local FN Reference #1

NAME AND ADDRESS OF LOCAL FIRST NATION:	
BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED:	
LOCATION OF PROJECT/WORK:	
START AND COMPLETION DATES:	
NAME OF PROJECT REFERENCE:	
CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:	
NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:	

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Local FN Reference #2

NAME AND ADDRESS OF LOCAL FIRST NATION:	
BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED:	
LOCATION OF PROJECT/WORK:	
START AND COMPLETION DATES:	
NAME OF PROJECT REFERENCE:	
CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:	
NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:	

Local FN Reference #3

NAME AND ADDRESS OF LOCAL FIRST NATION:	
BRIEF DESCRIPTION OF PROJECT / WORK PERFORMED:	
LOCATION OF PROJECT/WORK:	
START AND COMPLETION DATES:	
NAME OF PROJECT REFERENCE:	
CURRENT TELEPHONE NUMBER AND EMAIL OF PROJECT REFERENCE:	
NAMES OF KEY PERSONNEL AND SUBCONTRACTORS:	

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- 2.9 Each Application must contain a section titled "Example Projects," which should provide examples of projects that demonstrate their experience working with local First Nations and on projects in or around the City of Vancouver as much as possible, using tables in the following format:
- 2.10 Each Application should contain a section titled "Subcontractors," which should list all of the subcontractors that the Applicant proposes to use in carrying out its work under an Agreement, or state that the Applicant does not propose to use any subcontractors. If selected to enter into an Agreement with the City, the Applicant may be limited to using subcontractors listed in its Application.
- 2.11 If the City objects to a subcontractor listed in an Application, the City may permit an Applicant to propose a substitute Subcontractor acceptable to the City.
- 2.12 Notwithstanding any other provision hereof, the City welcomes Applications respecting innovative or novel approaches to the City's objectives and requirements and may consider value-creating Applications that derogate from the statement of Services herein. Each Application should contain a section titled "Deviations and Variations," in which the Applicant should: (i) note proposed deviations or variations from the terms and conditions set out in the RFA or from the statement of Services herein, even if such deviations or variation are also noted elsewhere in the Application; and (ii) detail proposed amendments to the Form of Agreement. If no amendments to the Form of Agreement are proposed, the Applicant should state that its Application is fully consistent with the Form of Agreement.
- 2.13 If, in addition to proposing services consistent with the Services, the Applicant wishes to offer an alternative or alternatives, the alternative solution(s) should to be submitted separately as an appendix within the Application. Any pricing impact of the alternative solution(s) should be provided separately in the appendix.
- 2.14 Each Applicant should note Section 9 of Appendix 1 to Part C and should include in its Application a section entitled "Conflicts; Collusion; Lobbying" as necessary.
- 2.15 The sections of each Application should be arranged in the order in which they are referred to in this Part B. Applicants should avoid, to the extent possible, the inclusion of other top-level Application sections.
- 2.16 Each Applicant should submit with its Application a Declaration of Supplier Code of Conduct Compliance, in the form of Annex 1 to the RFA, and a Certificate of Existing Insurance, in the form of Annex 2 to the RFA, each duly completed and executed. The latter should be signed by the Applicant's insurance agent or broker as evidence of its existing insurance, and should be accompanied by 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 Section 8.0 of the Form of Agreement, should the Applicant be selected as a successful Applicant. (Any successful Applicant will also be required to provide proof of the satisfaction of all insurance requirements prior to or concurrently with the City entering into any Agreement.)
- 2.17 Each Applicant should submit with its Application proof of valid WorkSafeBC registration. Such registration should be maintained as specified in Section 9.0 of the Form of Agreement.
- 2.18 Each Application must be submitted under the cover of a completed Application Form, including Appendix 1 thereto.

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PART C - APPLICATION FORM

APPLICATION FORM

RFA No. PS20161319, PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES (the
"RFA")

Applicant's Name: _____
"Applicant"

Address: _____

Jurisdiction of Legal Organization: _____

Date of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

The Applicant, having carefully examined and read the RFA, including all amendments and addenda 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 Application.

The Applicant further acknowledges that it has read and agreed to the Legal Terms & Conditions attached as Appendix 1 hereto and has separately executed such Appendix 1. .

IN WITNESS WHEREOF the Applicant has executed this Application Form:

Signature of Authorized Signatory for the Applicant

Date

Name and Title

Signature of Authorized Signatory for the Applicant

Date

Name and Title

REQUEST FOR APPLICATIONS NO. PS20161319
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PART C - APPLICATION FORM (APPENDIX 1)

APPENDIX 1 TO APPLICATION FORM

LEGAL TERMS AND CONDITIONS

1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

These legal terms and conditions set out the City's and the Applicant's legal rights and obligations only with respect to the RFA application process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix 1 apply to, or have the effect of supplementing, any Contract formed between the City and the Applicant or otherwise apply as between the Applicant and the City following the signing of any such Contract.

2 DEFINITIONS

In this Appendix 1, the following terms have the following meanings:

- (a) "Applicant" means the legal entity which has signed the Application Form, and "applicant" means any applicant responding to the RFA, excluding or including the Applicant, as the context requires.
- (b) "Application" means the package of documents consisting of the Application Form (including this Appendix 1), the Applicant's application submitted under cover of the Application Form, and all schedules, appendices and accompanying documents, and "application" means any application submitted by any applicant, excluding or including the Applicant, as the context requires.
- (c) "Application Form" means that certain Part C of the RFA, completed and executed by the Applicant, to which this Appendix 1 is appended.
- (d) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (e) "Contract" means a legal agreement, if any, entered into between the City and the Applicant following and as a result of the Applicant's selection by the City in the City's RFA process.
- (f) "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).
- (g) "RFA" means the document issued by the City as Request for Applications No. PS20161319, as amended from time to time and including all addenda.

3 NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFA or the Application Form, including this Appendix 1 (except only Sections 7, 8.2 and 10 of this Appendix 1, in each case to the extent applicable), the City assumes no legal duty or obligation to the Applicant or to any proposed subcontractor in respect of the RFA, its subject matter or the Application 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 APPLICANT

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 Applicant or to any of the Applicant's proposed subcontractors* (as opposed to the

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public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFA process, or any contract or tort law duty to preserve the integrity of the RFA process. The Applicant 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 RFA process on this basis.

5 EVALUATION OF APPLICATIONS

5.1 Compliance / Non-Compliance

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

5.2 Reservation of Complete Control over Process

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

5.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss or negotiate changes to the scope of the RFA, any application or any proposed agreement with any one or more of the applicants without having any duty or obligation to advise the Applicant or to allow the Applicant to vary its Application as a result of such discussions or negotiations with other applicants or changes to the RFA or such applications or proposed agreements, and, without limiting the general scope of Section 6 of this Appendix 1, the City will have no liability to the Applicant as a result of such discussions, negotiations or changes.

5.4 Acceptance or Rejection of Applications

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

6 PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Applicant

Except only and to the extent that the City is in breach of Section 8.2 of this Appendix 1, the Applicant now releases the City, its officials, its agents and its employees from all liability for any Losses incurred in connection with the RFA or the Application, including any Losses in connection with:

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

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or duty under the RFA 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 RFA process,
- (c) the Applicant preparing and submitting the Application;
- (d) the City accepting or rejecting the Application or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any application; addresses or fails to address any application or applications; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the applicant(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFA.

6.2 Indemnity by the Applicant

Except only and to the extent that the City breaches Section 8.2 of this Appendix 1, the Applicant 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 Applicant 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 RFA (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFA 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 RFA process, or
- (c) liability on any other basis related to the RFA or the application process.

6.3 Limitation of City Liability

In the event that, with respect to anything relating to the RFA or this application process (except only and to the extent that the City breaches Section 8.2 of this Appendix 1), 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 Applicant or its subcontractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Applicant 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 RFA or the application process (except to the extent that the City breaches this Section 7 or Section 8.2 of this Appendix 1, and also excepting any disputes arising between the City and the Applicant under a Contract (or a similar contract between the City and an applicant other than the Applicant)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- (a) The arbitrator will be selected by the City's Director of Legal Services;
- (b) Section 6 of this Appendix 1 will: (i) bind the City, the Applicant and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and

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PART C - APPLICATION FORM (APPENDIX 1)

- (c) The Applicant will bear all costs of the arbitration.

8 PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFA and Application Documents City's Property

- (a) All RFA-related documents provided to the Applicant 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 Application, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Application to the Applicant.

8.2 Applicant'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 Application, including without limitation names and prices, in the course of publicly reporting to the Vancouver City Council about the RFA, the City will treat the Application (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 Applicant 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 Applicant at any time (whether before, during or after the RFA process). Furthermore, the Applicant 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 Application.
- (b) The Applicant 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 Application (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 Application (or any other submissions) including, without limitation, records relating only to the Applicant.

9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFA Process

- (a) The Applicant confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Applicant or of any of its proposed subcontractors, or any other person related to the Applicant'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 there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Application by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Application.
- (b) The Applicant 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 RFA obtained during his or her employment or

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engagement by the City, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Application.

9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

The Applicant confirms and warrants that neither the Applicant 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 RFA would create a conflict of interest or the appearance of a conflict of interest between the Applicant's duties to the City and the Applicant's or its subcontractors' duties to such third party, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Application.

9.3 Declaration as to No Collusion

The Applicant confirms and warrants that:

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

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Application.

9.4 Declaration as to Lobbying

The Applicant confirms and warrants that:

- (a) neither it nor any officer, director, shareholder, partner, employee or agent of the Applicant 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 Applicant or any of its proposed subcontractors has engaged in any form of political or other lobbying whatsoever with respect to the RFA or sought, other than through the submission of the Application, to influence the outcome of the RFA process,

in each case as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Application.

10 GENERAL

- (a) All of the terms of this Appendix 1 to this Application Form which by their nature require performance or fulfillment following the conclusion of the application process will survive the conclusion of such process and will remain legally enforceable by and against the Applicant and the City.
- (b) The legal invalidity or unenforceability of any provision of this Appendix 1 will not affect the validity or enforceability of any other provision of this Appendix 1, which will remain in full force and effect.
- (c) The Applicant now assumes and agrees to bear all costs and expenses incurred by the Applicant in preparing its Application and participating in the RFA process.

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11 INDEPENDENT LEGAL ADVICE

THE APPLICANT ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SUBMITTING ITS APPLICATION FORM, INCLUDING THIS APPENDIX 1.

IN WITNESS WHEREOF, AS EVIDENCE OF THE APPLICANT'S INTENT TO BE LEGALLY BOUND HEREBY, THIS APPENDIX 1 IS EXECUTED ON BEHALF OF THE APPLICANT BY ITS DULY AUTHORIZED SIGNATORY OR SIGNATORIES:

Signature of Authorized Signatory for the Applicant

Date

Name and Title

Signature of Authorized Signatory for the Applicant

Date



STANDING OFFER PROFESSIONAL SERVICES AGREEMENT

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 Consultant wishes to be included on the City's internal list of approved professional service providers of Professional Archaeological Services who may be contacted by the City from time to time; and
- B. The City wishes to include the Consultant on such list so that the City may have the option of procuring such professional services from the Consultant from time to time, subject to the terms and conditions set out herein.

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:

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PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES
PART D - FORM OF AGREEMENT

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 Standing Offer 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, and inclusive of all Terms Agreements;
- (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, or incorporated by reference herein by operation of, Appendix C;
- (d) **"City Site"** means any land and/or premises owned by the City on which or in respect of which any Services are performed by the Consultant;
- (e) **"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;
- (f) **"Confidential Information"** has the meaning set out in Section 15.1
- (g) **"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, including all Terms Agreements;
- (h) **"Deliverables"** has the meaning set out in Section 17.1;
- (i) **"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;
- (j) **"Project Team"** has the meaning set out in subsection 2.2(c);
- (a) **"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;
- (k) **"RFA"** means Request for Applications PS20161319 - PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES, together with all addenda and questions and answers attached hereto, or incorporated by reference herein by operation of, Appendix D;
- (l) **"Services"** has the meaning set out in Section 2.1;
- (m) **"Sub-contractor"** has the meaning set out in Section 4.1;

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- (n) "Term" means the term of this Agreement as specified in Section 12.1; and
 - (o) "Terms Agreement" means a document substantially in the form of Appendix B setting out in relation to the particular Services to be provided thereunder:
 - (i) the particular Services and Deliverables to be completed by the Consultant;
 - (ii) the time schedule, including the Time(s) for Completion therefor;
 - (iii) the Project Team therefor;
 - (iv) any specific City Site therefor; and
 - (v) the fees to be paid by the City therefor, including the Maximum Fees, Fixed Disbursement Amount and Maximum Fees and Disbursements (if any).
- 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, C and D;
 - (b) any and all Term Agreements;
 - (c) the Application; and
 - (d) the RFA.
- 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;

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PART D - FORM OF AGREEMENT

- (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 described in each Terms Agreement, which services shall be consistent with the manner of provided the services described in the RFA and the Application; and
- (b) all services not specifically included in subsection 2.1(a), but which are necessary or incidental to the completion of such other Services.

2.2 The City and the Consultant shall adhere to the following procedure in respect of specific Services:

- (a) First, the City may identify a need for Services and, if it does so, it may complete a draft of the Terms Agreement and send the draft to the Consultant. The City will leave the fees blank, but may include proposed Maximum Fees, Fixed Disbursement Amount and Maximum Fees and Disbursements.
- (b) Second, the Consultant, upon receipt of a draft Terms Agreement, shall promptly complete the fee provisions of the draft Terms Agreement (provided that the fee provisions must be completed consistently with the hourly rates set out in the Application), including any proposed modifications to the City's proposed Maximum Fees, Fixed Disbursement Amount and Maximum Fees and Disbursements, and otherwise amend and complete the Terms Agreement, have it executed on behalf of the Consultant, and return it to the City.
- (c) Third, the City shall review Consultant's finalized Terms Agreement, including fees, and if it approves of the Terms Agreement, it shall have it executed on behalf of the City by the City's Project Manager and return it to the Consultant. If it does not approve, the City may in its discretion cease discussions with the Consultant in relation to the particular Services or request that the Consultant propose a varied Terms Agreement.

2.3 The City makes no representations, warranties or covenants hereunder respecting the volume of Services, if any, to be procured from the Consultant.

2.4 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.

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PART D - FORM OF AGREEMENT

- 2.5 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.
- 2.6 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.
- 2.7 The Consultant will commence the Services promptly upon the execution of the Terms Agreement to which those Services relate and will use every reasonable effort to carry out the Services in accordance with:
- (a) the requirements and appendices of this Agreement and the applicable Terms Agreement, or
 - (b) where no date is specified for the provision of any component of the Services by the applicable Terms Agreement, such completion dates as are reasonably specified from time to time by the City.
- 2.8 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 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 applicable Terms Agreement, which shall be consistent with 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, "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.

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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 in the relevant Terms Agreement, plus GST and PST as applicable to the sale made to the City hereunder.
- 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 stated in the Application.
- 5.3 If there are maximum, lump sum or other limiting amounts for fees or disbursements indicated herein for the Services set out in a particular Terms Agreement, then notwithstanding anything to the contrary in this Agreement the maximum fees or disbursements to be paid by the City to the Consultant for those 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 the relevant Terms Agreement.
- 5.4 Subject to any "Fixed Disbursement Amount" set out in a Terms Agreement, or any other limit on disbursements stated in the relevant Terms Agreement, 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 in the applicable Terms Agreement, or any other limit on disbursements stated in the applicable Terms Agreement, 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 in which the Consultant performs any Services, 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

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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 APInvoice@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 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 the applicable Terms 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 applicable 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.

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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 the Application.

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 Despite any insurance coverage of the City, the Consultant hereby agrees to indemnify and save harmless the City of Vancouver and its successors, assigns, official, 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.

7.3 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.

7.4 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

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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, 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 or any Terms 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 later of: (i) the [insert] anniversary of the Effective Date; and (ii) if there are Services ongoing pursuant to a Terms Agreement on the [insert] anniversary of the Effective Date, the date on which those Services have been completed by the Consultant (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

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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. 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

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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 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 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:

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- (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 the applicable Terms 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,

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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 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:

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- (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 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.
- 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,

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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 \$5,000,000 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 60 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
SAMPLE REQUEST FOR SERVICE**

PROCESS

1. City Project Manager identifies a need and completes the introduction and the Request for Services form (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 GST) in the space provided in the Consultant's Proposal, attaches the detailed costing, signs and returns to the City Project Manager.
3. The City Project Manager reviews the Consultant's Proposal, settles any discrepancies and accepts/rejects the Proposal. If approved, the City Project Manager enters the pricing information, signs as authorizing the work to proceed and returns a copy to the Consultant

REQUEST FOR SERVICES FORM

Project: Owner: City of Vancouver 453 West 12th Avenue Vancouver, British Columbia V5Y 1V4	Consultant: Fax	Agreement No. Issue Date:
CC:		No. of Pages (including CCN)

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 to the Consultant for this project; work is not to proceed unless authorized and signed by the Owner. All materials and workmanship are to be in accordance with the Agreement unless otherwise stated. Please submit an itemized fee quotation and completion schedule applicable to the Services described herein, within 5 days of the date specified above.

Title:

Background:

Description of Services:

List of Subcontractors(if required):

Required Schedule:

Pricing Schedule:

Work Task/Phase/ Deliverable	Estimated Hours	Hourly Billing Rate	Estimated Fee	Est. Disbursemen ts	Total
Maximum Fees/Disbursements Subtotal					
GST					
Total Fee (Subtotal plus GST)					

Consultant's Proposal

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 .

Consultant Signed: _____ Date:_____

Approval

The undersigned hereby accepts the Consultant's Proposal and approves the issuance of a related Purchase Order.

Request for Services authorized by City's Project Manager: *Signed after quote is reviewed and accepted.*

_____ Date:_____

APPENDIX C - APPLICATION

REQUEST FOR APPLICATIONS NO. PS20161319
PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES
PART D - FORM OF AGREEMENT

APPENDIX D - RFA

REQUEST FOR APPLICATIONS NO. PS20161319
 PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES
 ANNEX 1 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

Purpose: All proposed suppliers are to complete and submit this form to certify compliance with the supplier performance standards set out in the 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>. The SCC defines minimum labour and environmental standards for City suppliers and their subcontractors.

Suppliers are expected to comply with the aforementioned standards upon submitting a tender, proposal, application, expression of interest or quotation to the City, or have a plan in place to comply within a specific period of time. The City reserves the right to determine an appropriate timeframe in which suppliers must come into compliance with these standards. To give effect to these requirements, an authorized signatory of each proposed vendor must complete the following declaration and include this declaration with its submission:

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 in the table below (*include all violations/convictions that have occurred in the past three years as well as plans for corrective action*).

Section of SCC / title of law	Date of violation /conviction	Description of violation / conviction	Regulatory / adjudication body and document file number	Corrective action plan

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: _____

REQUEST FOR APPLICATIONS NO. PS20161319
 PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES
 ANNEX 2 - CERTIFICATE OF EXISTING INSURANCE

Annex 2



CERTIFICATE OF EXISTING INSURANCE

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:

<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	Limits of Liability (Bodily Injury and Property Damage Inclusive) -		
<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 _____	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**

INSURER _____	Limits of Liability (Bodily Injury and Property Damage Inclusive) -		
POLICY NUMBER _____	Per Occurrence	\$	_____
POLICY PERIOD From _____ to _____	Aggregate	\$	_____
	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 _____

**REQUEST FOR APPLICATIONS NO. PS20161319
PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES
ANNEX 3 - CONSULTANT ENGAGEMENT PROCESS**

1.0 INTRODUCTION AND OVERVIEW

- 1.1 The process to establish the scope of services for each consultancy and the Consultant engagement process are both identified in this Annex 3.
- 1.2 Pursuant to the terms of the Agreement, the City may (but is not obligated to) request the Services or portion thereof from the Consultant from time to time during the term of the Agreement.
- 1.3 Values expressed in this Annex 3 are inclusive of all fees, costs, and taxes except GST and PST as applicable.

2.0 CONSULTANT ENGAGEMENT PROCESS

- 2.1 Each instance of the Services is subject to the relevant process set out herein and unless prior written approval is given by the City, as specified by the relevant process, the Consultant shall not commence the Services or any portion thereof.
- 2.2 Services may be requested from the Consultant through a Request for Services process (described in Section 3.0 below), or on an 'on-call' basis

3.0 REQUEST FOR SERVICES PROCESS

- 3.1 Notwithstanding Section 2.1 above, unless otherwise the City issues an approved Request for Service and an associated purchase order to the Consultant, the Consultant shall not commence the Services or any portion thereof.
- 3.2 If the City requires the Services of the Consultant for a particular project, the following procedure shall be adhered to:
 - (a) first, the City identifies a need for Services and completes a draft of a Request for Services and sends the Request for Services to the Consultant leaving the price provisions blank;
 - (b) second, the Consultant upon receipt of the Request for Services promptly prepares and completes the pricing provisions of the Request for Services, including a detailed costing of the Services by activity (such as but not limited to named resources, labour category, hourly rate(s) and sub-totals) and the maximum fees and disbursements (excluding GST and PST as applicable), provided that the price provisions must be completed consistently with the price provisions of the Agreement, and otherwise amend, complete and execute the Request for Services; and
 - (c) third, the City shall review the Consultant's finalized Request for Services, including price, and if the City approves the Request for Services, the City shall execute the Request for Services and return it to the Consultant together with a unique purchase order number. If the City does not approve, the City may in its discretion cease discussions with the Consultant in relation to the particular Services or request that the Consultant propose a varied Request for Services;
 - (d) Exceptions to a, b and c above will be for on demand calls for up to \$2,000.00 may be requested via phone or email for short term engagements.

(collectively, the "RFS Process").

REQUEST FOR APPLICATIONS NO. PS20161319
PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES
ANNEX 3 - CONSULTANT ENGAGEMENT PROCESS

3.3 Specific conditions to RFS Process:

- (a) projects up to \$75,000:
 - (i) the RFS Process is followed; and
 - (ii) the Request for Services (RFS) is prepared and sent by the City's Supply Chain Management department (SCM) to the Consultant;
 - (iii) the RFS may be sent to one pre-qualified consultant;
- (b) projects over \$75,000 but less than \$200,000:
 - (i) the RFS Process is followed;
 - (ii) the SCM issues and receives Request for Services;
 - (iii) Request for Services is issued to, preferably, a minimum of three (3) pre-qualified Consultants; and
 - (iv) the Request for Services that provides best overall value, including best pricing, is selected.

3.4 Projects over \$200,000 but less than \$300,000:

- (a) Notwithstanding Section 3.4(b) below, the following shall apply:
 - (i) the RFS Process is followed;
 - (ii) SCM issues and receives Request for Services;
 - (iii) Request for Services is issued to all pre-qualified Consultants;
 - (iv) the Request for Services that provides best overall value, including best pricing, is selected.
- (b) Where project requirements cannot be met by any pre-qualified Consultant, the City may, at its sole discretion, post a request for proposals on the City's website and subject such requirements to the City's public bidding process. Refer to the City's website (<http://vancouver.ca/doing-business/bids-contracts-rfps-purchase-orders.aspx>) for further information on the City's public bidding process.

3.5 The Consultant shall reference the unique purchase order number discussed in Section 3.2(e) above in its invoice to which the relevant Request for Services relates, and submit its invoices to the City subject to and in accordance with Section 5.0 of the Agreement.

4.0 ON-CALL REQUESTS

4.1 Services of limited and smaller scope may be required by the City from the Consultant from time to time (an "On-Call Request"), which by way of example only, may include the Consultant's attendance to meetings with City staff where the expert opinion of the Consultant may be required. Therefore, the process set out in this Section 4.0 shall apply to any On-Call Requests placed by the City.

4.2 Following the full execution of the Agreement, the City will issue a standing service order number ("Standing Order Number") to the Consultant for invoicing purposes only. Unless otherwise directed by the City, the Standing Order Number shall remain in effect for the full term of the Agreement.

4.3 The City may place On-Call Requests with the Consultant via telephone or in writing which may include email, facsimile or otherwise. The City will provide the details of the On-Call Request to the Consultant, including the details of the Services required, the location where the Services are

REQUEST FOR APPLICATIONS NO. PS20161319
PRE-QUALIFICATION OF CONSULTANTS FOR ARCHAEOLOGICAL SERVICES
ANNEX 3 - CONSULTANT ENGAGEMENT PROCESS

- 4.4 to be performed, the date of delivery and any other pertinent detail as the City may deem necessary. The Consultant shall reply and acknowledge to the City receipt of the On-Call Request as soon as reasonably practical.
- 4.5 If an On-Call Request is placed through a telephone call, the Consultant shall promptly follow up with an email confirmation to the City summarizing and acknowledging the details of the On-Call Request.
- 4.6 Each instance of an On-Call Requests shall be invoiced on a time and materials basis consistent with the hourly rates set out in the Agreement.
- 4.7 The Consultant shall reference the Standing Order Number in all of its invoices to which the relevant On-Call Request relates, and submit its invoices to the City subject to and in accordance with Section 5.0 of the Agreement.