

## Non-Disclosure Agreement

WHEREAS, in response to the City's Request for Proposal ("RFP") # PS20121387 entitled "Contracting Services for Deconstruction/Demolition of City of Vancouver Properties" (the "RFP"), the City may disclose to the Proponent, certain Sensitive Material of the City for the sole purpose of considering, evaluating, and responding to the RFP (the "Purpose") and on the terms and subject to the conditions contained in this Agreement,

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

### 1.0 Definitions

- 1.1 "Affiliate" means an affiliate as defined in the *Business Corporations Act* (British Columbia), as amended.
- 1.2 "Agreement" means this Non-Disclosure Agreement.
- 1.3 "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter, and includes, but is not limited to, the Vancouver Police Board, the City's Board of Parks and Recreation, the Vancouver Fire and Rescue Service, and the Vancouver Library Board.
- 1.4 "Proponent" means the company named as the Proponent below the execution block on the last page of this Agreement.
- 1.5 "Proponent's Recipient" means any person who is a member of the Proponent's RFP response team, whether such member is an employee, Sub-Contractor or agent of the Proponent, or any employee or agent of such person, and any other employee or agent of the Proponent.
- 1.6 "RFP" means the City's Request for Proposals No. PS20121387.
- 1.7 "Sensitive Material" means all information, in any form or medium, known or used by the City or an Affiliate of the City which is not known to the general public, including, but not limited to, know-how, trade secrets, strategic plans, technical information, product information, supplier information, customer information, financial information, marketing information and information as to business opportunities, methods and strategies and research and development of the City and its Affiliates. If and to the extent any Sensitive Material is included in any report, assessment, diagram, memorandum or other document or copied or reproduced in any other form or medium, such report, assessment, diagram, memorandum, document or Sensitive Material in such other form or medium will be deemed to be Sensitive Material.

### 2.0 Title

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

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**3.0 Proponent's Obligations**

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

**4.0 Exceptions to Confidentiality Obligations**

- 4.1 This Agreement imposes no obligation upon the Proponent with respect to the City's Sensitive Material received hereunder that
- (a) the Proponent can promptly demonstrate with documentary evidence was already legitimately known to the Proponent without a duty of confidentiality prior to the disclosure thereof by the City,
  - (b) is lawfully received by the Proponent from a third party, other than a supplier introduced to the Proponent by the City, without a duty of confidentiality,

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- (c) has become general public knowledge through no act or fault on the part of the Proponent or the Proponent's Recipients, or
- (d) the Proponent can promptly demonstrate with documentary evidence was independently developed by or for the Proponent without the use of any Sensitive Material.

**5.0 Legal Requirement to Disclose**

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

**6.0 Warranty Disclaimer**

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

**7.0 Injunctive Relief**

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

**8.0 General**

- 8.1 Upon the request at any time of the City, the Proponent will promptly destroy all Sensitive Material and any copies or reproductions thereof in the Proponent's possession or under its control or in the possession or under the control of any of the Proponent's Recipients, and will certify in writing such destruction or return of all Sensitive Material. If compliance with the foregoing would violate any applicable law or regulation, then such information may be retained provided that it is not used for any purpose other than to evidence the Proponent's compliance with such law or regulation, and such retained information must be maintained in confidence as set forth in this Agreement.

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- 8.2 Neither party has an obligation under this Agreement to enter into any other business relationship with the other party.
- 8.3 The Proponent will not, without the written consent of the City, disclose to any third party either the fact that discussions or negotiations are taking place concerning the Transactions or any of the terms, conditions or other facts with respect to the Transactions including the status thereof or the subject matter of this Agreement, provided, however, that nothing herein will prevent the Proponent from making such disclosure
- (a) on a confidential basis to any of the Proponent's Recipients to the extent such person needs to know such information strictly for the purpose of responding to the RFP, or
- (b) in order to comply with the requirements of applicable securities or other laws.
- 8.4 No waiver, addition to or amendment of this Agreement will be effective unless made in writing signed by authorized signatories of the parties and expressly stated to be a waiver, addition to or amendment of this Agreement. This Agreement states the entire agreement between the parties as to its subject matter and merges and supersedes all previous communications with respect to their obligations hereunder, and the provisions hereof will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 8.5 This Agreement will be governed by and interpreted and construed in accordance with the laws prevailing in the Province of British Columbia and the Proponent irrevocably attorns to the exclusive jurisdiction of the courts of British Columbia and all courts having appellate jurisdiction thereover in relation to the interpretation and enforcement of this Agreement.
- 8.6 If the Proponent agrees to the terms and conditions of this Agreement the Proponent is required to sign this Agreement below before viewing Sensitive Material and commencing on the Information Meeting and Site Visit.

Signed by:

\_\_\_\_\_  
\_\_\_\_\_

Print names in full with titles:

\_\_\_\_\_  
\_\_\_\_\_

Print Proponent's company name in full:

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