



REQUEST FOR PROPOSAL

PROVISION OF WEB AND NETWORK PENETRATION TESTING

RFP No. PSPS20140214

Issue Date: March 18, 2014

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PART A - INFORMATION AND INSTRUCTIONS**

1.0 THE RFP

- 1.1 This Request for Proposal (the “RFP”) provides an opportunity to submit Proposals for review by the City and, depending on the City’s evaluation of Proposals, among other factors, to potentially negotiate with the City to enter into an Agreement. **EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 1 TO PART C OF THE RFP: (I) NO PART OF THE RFP CONSISTS OF AN OFFER BY THE CITY TO ENTER INTO ANY CONTRACTUAL RELATIONSHIP; AND (II) NO PART OF THE RFP IS LEGALLY BINDING ON THE CITY.**
- 1.2 The RFP concerns the City’s interest in procuring the services of a consulting firm with expertise in evaluating the security capabilities of a computer network or web applications. Details of the City’s objectives and requirements to which the RFP relates are set out in Part B of the RFP. The City welcomes Proposals respecting innovative or novel approaches to the City’s objectives and requirements.
- 1.3 The City is interested in selecting a single Proponent with the capability and experience to efficiently and cost-effectively meet the objectives and requirements described in the RFP. The City currently expects to select such a Proponent and then enter into negotiations with that Proponent, which will conclude in the execution of an Agreement between the Proponent and the City. However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any Agreement; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.
- 1.4 The City currently intends that Proposals will be evaluated by the City in relation to their overall value, which will be assessed in the City’s sole and absolute discretion. In assessing value, the City expects to consider the factors described in Section 8 below, among others.
- 1.5 **NO BID SECURITY IS REQUIRED FROM PROPONENTS IN CONNECTION WITH THE SUBMISSION OF PROPOSALS BECAUSE NO PROPOSAL WILL BE DEEMED TO BE AN IRREVOCABLE OR OTHERWISE BINDING LEGAL OFFER BY A PROPONENT TO THE CITY. THE LEGAL OBLIGATIONS OF A PROPONENT THAT WILL ARISE UPON THE SUBMISSION OF ITS PROPOSAL WILL BE LIMITED TO THE TERMS AND CONDITIONS STATED UNDER THE HEADING “LEGAL TERMS & CONDITIONS” IN APPENDIX 1 TO THE PROPOSAL FORM (PART C).**
- 1.6 The execution of an Agreement may be contingent on funding being approved, and the relevant Proposal being approved, by the Vancouver City Council.
- 1.7 Certain capitalized terms used herein but not defined where first used are defined in Section 12 below.
- 1.8 The RFP consists of four parts:
- (a) **PART A - INFORMATION AND INSTRUCTIONS:** This part is intended to serve as a guide to the RFP process for Proponents.
 - (b) **PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS:** This part describes the subject matter of the RFP, in respect of which the City invites Proposals. This part also stipulates the information that must be contained in each Proposal.
 - (c) **PART C - PROPOSAL FORM:** This part consists of the Proposal Form to be completed by each Proponent in connection with its Proposal. Each Proposal must be submitted under the cover of a duly completed and executed Proposal Form.

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- (d) **PART D - FORM OF AGREEMENT:** This part contains a model Agreement. An Agreement or Agreements in this form may be entered into between the City and one or more successful Proponents.

2.0 KEY DATES

- 2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Enquiries	April 1, 2014; 3:00pm Vancouver Time
Closing Time	April 8, 2014; 3:00pm Vancouver Time

- 2.2 All references to time in the RFP 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 proposals.

3.0 CONTACT PERSON

- 3.1 All enquiries regarding the RFP must be addressed to:

Gavin Marshall
Gavin.marshall@vancouver.ca

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

4.0 SUBMISSION OF PROPOSALS

- 4.1 Proponents must submit their Proposals 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”).

- 4.2 Each Proponent must submit its Proposal in an envelope clearly marked with the Proponent’s name and the RFP title and number (“PROVISION OF SERVICES TO WEB AND NETWORK PENETRATION TESTING; PS2014xxxx”) to the following address:

City of Vancouver
Purchasing Services
453 West 12th Avenue
Vancouver, BC
V5Y 1V4

Notwithstanding the foregoing, envelopes submitted by courier or otherwise in-person should be delivered to:

Information Desk, Main Floor Rotunda,
Vancouver City Hall
453 West 12th Avenue
Vancouver, British Columbia
Canada, V5Y 1V4

- 4.3 To be considered by the City, a Proposal must be submitted under the cover of a Proposal Form, completed and duly executed by the relevant Proponent, including Appendix 1 thereto.

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- 4.4 Proposals must not be submitted by fax or email.
- 4.5 Amendments to a Proposal may be submitted in the same manner as the original Proposal, at any time prior to the Closing Time.
- 4.6 Proponents should send one electronic copy (CD or USB) of the Proposal and the hardcopies should be bound in three-ring binders. The City requests that three copies of each Proposal (or amendment) be submitted, though it is not necessary to submit more than one copy of the Proposal Form.
- 4.7 Proposals are revocable and may be withdrawn at any time before or after the Closing Time.
- 4.8 All costs associated with the preparation and submission of a Proposal, including any costs incurred by a Proponent after the Closing Time, will be borne solely by the Proponent.
- 4.9 Unnecessarily elaborate Proposals are discouraged. Proposals should generally be limited to the items specified in Part B of the RFP.
- 4.10 The City is willing to consider any Proposal from two or more Proponents that wish to form a consortium solely for the purpose of submitting a joint Proposal in response to the RFP, provided that they disclose the names of all members of the consortium and all members complete and execute a Proposal Form (Part C). Nonetheless, the City has a strong preference for proposals submitted by a single Proponent, including a Proponent that would act as a general contractor and use subcontractors as required.
- 4.11 Proposals that are submitted after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City's sole discretion.
- 5.0 CHANGES TO THE RFP AND FURTHER INFORMATION**
- 5.1 The City may amend the RFP or make additions to it at any time.
- 5.2 It is the sole responsibility of Proponents to check the City's website at: <http://vancouver.ca/doing-business/open-bids.aspx> regularly for amendments, addenda, and questions and answers in relation to the RFP.
- 5.3 Proponents must not rely on any information purported to be given on behalf of the City that contradicts the RFP, as amended or supplemented in accordance with the foregoing Section 5.2
- 6.0 CONTRACT REQUIREMENTS**
- 6.1 In addition to addressing the other requirements of Part B hereof, each Proponent must indicate in its Proposal the extent to which the Form of Agreement included as Part D hereof is consistent with its Proposal. If the Proposal is inconsistent with any part of the Form of Agreement, the Proponent must so state and must propose alternative contract language as part of its Proposal.
- 6.2 If the head office of a Proponent is located within the City of Vancouver or if the Proponent is to perform any work at a site located within the City of Vancouver, the execution of any Agreement will be contingent upon the Proponent having a valid City of Vancouver business license.
- 6.3 The term of any Agreement is expected to be a three-year period, with two possible one-year extensions, for a maximum total term of five years.

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7.0 PRICING

7.1 All prices quoted in any Proposal 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.

8.0 EVALUATION OF PROPOSALS

8.1 The City may open or decline to open Proposals in such manner and at such times and places as are determined by the City.

8.2 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated by City representatives to determine which Proposal or Proposals offer the overall best value to the City based on price, quality, service, innovativeness, environmental or sustainability concerns or benefits and other criteria including, but not limited to Proponents':

- (a) ability to meet the Requirements (as defined in Part B) as and when required, or ability to otherwise satisfy the City's objectives and requirements;
- (b) skills, knowledge and previous experience;
- (c) proposed plans and work schedules;
- (d) business reputations and capabilities; and
- (e) ability to meet the City's insurance requirements.

Certain other evaluation criteria may be set out in Part B or elsewhere in the RFP.

8.3 The City will retain complete control over the RFP process at all times until the execution and delivery of an Agreement or Agreements, if any. The City is not legally obligated to review, consider or evaluate Proposals, or any particular Proposal, and need not necessarily review, consider or evaluate Proposals, or any particular Proposal in accordance with the procedures set out in the RFP. The City may continue, interrupt, cease or modify its review, evaluation and negotiation process in respect of any or all Proposals at any time without further explanation or notification to any Proponents.

8.4 The City may, at any time prior to signing an Agreement, discuss or negotiate changes to the scope of the RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.

8.5 The City may elect to short-list Proponents and evaluate Proposals in stages. Short-listed Proponents may 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 negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.

8.6 Prior to approval of a Proposal, the City must be satisfied as to the Proponent's financial stability. Proponents may be asked to provide financial statements prepared by an accountant and covering at least the prior two years.

8.7 The City may request that any proposed subcontractors undergo evaluation by the City.

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- 8.8 The City is not under any obligation to approve any Proposal and may elect to terminate the RFP at any time.
- 8.9 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to:
- (a) accept any Proposal;
 - (b) reject any Proposal;
 - (c) reject all Proposals;
 - (d) accept a Proposal which is not the lowest-price proposal;
 - (e) accept a Proposal that deviates from the Requirements or the conditions specified in the RFP;
 - (f) reject a Proposal even if it is the only Proposal received by the City;
 - (g) accept all or any part of a Proposal;
 - (h) split the Requirements between one or more Proponents; and
 - (i) enter into one or more agreements respecting the subject matter of the RFP with any entity or entities at any time.

Without limiting the foregoing, the City may reject any Proposal by a Proponent that has a conflict of interest, has engaged in collusion with another Proponent or has otherwise attempted to influence the outcome of the RFP other than through the submission of its Proposal.

9.0 SUSTAINABILITY

- 9.1 The City's Ethical Procurement Policy and related Supplier Code of Conduct found at <http://vancouver.ca/doing-business/prepare-your-bid.aspx> align the City's overall 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. To the extent applicable, the Ethical Procurement Policy will be referred to in the evaluation of Proposals, and any successful Proponent will be expected to adhere to the Supplier Code of Conduct.
- 9.2 Proponents are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Proponent supply materials, and where such materials may cause adverse environmental effects, the Proponent is to indicate the nature of the hazard(s) in its Proposal. Furthermore, the Proponent 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 Proponents 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.

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10.2 Proponents should note that the *Income Tax Act* (Canada) requires that certain payments to non-residents be subject to tax withholding. Proponents 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 a Proponent that will arise upon the submission of its Proposal are stated in Appendix 1 to the Proposal Form (Part C). Except where expressly stated in such Appendix 1: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City.**

11.2 Potential Proponents should review Appendix 1 to the Proposal Form carefully before submitting a Proposal. Among other things, potential Proponents must note that:

- (a) Except for limited duties in respect of the protection of confidential information and the resolution of legal disputes (as fully specified in Appendix 1 to the Proposal Form), the City does not have, and will not have, any legal obligations to a Proponent or to any proposed subcontractor of that Proponent in respect of the RFP or that Proponent's Proposal until such time as an Agreement is entered into with that Proponent.
- (b) The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process.
- (c) Except only and to the extent that the City is in breach of its duties with respect to a Proponent's confidential information, each Proponent is required to broadly release the City, its officials, its agents and its employees from liability for any losses incurred by the Proponent.
- (a) Except only and to the extent that the City is in breach of its duties with respect to a Proponent's confidential information, each Proponent is required to broadly indemnify and hold harmless the City, its officials, its agents and its employees from and against losses in respect of any claim or threatened claim against any of them.
- (b) Except with respect to the City's duties in respect of a Proponent's confidential information, even to the extent the city is found to have breached any duty to the Proponent, if any, the liability of the City, its officials, its agents and its employees to the Proponent will be limited to \$100.
- (c) With limited exceptions set forth in such Appendix 1 to the Proposal Form, any dispute between the City and a Proponent will be subject to arbitration.
- (d) All RFP-related documents provided to any Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (e) The documentation containing any Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.
- (f) The City will treat any Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information, subject, however, to the applicable provisions of the *Freedom of*

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Information and Protection of Privacy Act (British Columbia) and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council or announcing the results of the RFP to Proponents.

- (g) Proponents must 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 a Proponent at any time (whether before, during or after the RFP process). Furthermore, each Proponent must agree to not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (h) Each Proponent must waive any rights to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and must agree that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions), including, without limitation, records relating only to the Proponent.
- (i) Each Proponent must disclose whether any officer, director, shareholder, partner or employee of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest is:
 - i. an elected official or employee of the City; or
 - ii. related to or has any business or family relationship with any elected official or employee of the City,in each case such that there could be any conflict of interest or an appearance of a conflict of interest in the evaluation or consideration of the Proponent's Proposal by the City.
- (j) Each Proponent must disclose whether the Proponent or any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party.
- (k) Each Proponent is required to disclose whether the Proponent has any affiliation, whether legal or financial, with any other entity which is in the business of providing the same type of goods or services which are the subject of the RFP; and whether the Proponent is competing for purposes of the RFP process with any entity with which it is legally or financially associated or affiliated.
- (l) Each Proponent is required to disclose whether it or any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors: (1) is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; or (2) has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of its Proposal, to influence the outcome of the RFP process.
- (m) A Proponent must not disclose or promote any relationship between it and the City, including by means of any verbal declarations or announcements and by means of any

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sales, marketing or other literature, letters, client lists, press releases, brochures, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City. Each Proponent must undertake not to use the name, official emblem, mark, or logo of the City without the express prior written consent of the City.

12.0 DEFINITIONS

12.1 In the RFP, the following capitalized terms have the following meanings:

- (a) **“Agreement”** means a contract entered into between the City and a successful Proponent, if any, following the conclusion of the RFP process, which contract is expected to be in substantially the same form as the Form of Agreement;
- (b) **“City”** means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter;
- (c) **“Form of Agreement”** means the form of agreement contained in Part D of the RFP;
- (d) **“Proponent”** means an entity, which is not, by the terms hereof, restricted from submitting a Proposal, and which does submit a Proposal;
- (e) **“Proposal”** means a proposal submitted in response to the RFP; and
- (f) **“Proposal Form”** means the form contained in Part C of the RFP.

12.2 All other capitalized terms used in the RFP have the meanings given to them elsewhere in the RFP.

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 PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS**

1.0 CITY REQUIREMENTS

- 1.1 The City is soliciting proposals from Proponents for the provision of services to Web and Network Penetration Testing, or WNPT hereafter, of the City’s computer network. The objective of the IPT is to assess the current level of computer network security along with the identification of risk areas and the determination of mitigation strategy. The City performs IPT in a regular basis as part of the overall information technology program.
- 1.2 The Requirements stated herein are current as of the date hereof, but they may change or be refined in the course of the evaluation of Proposals or otherwise.
- 1.3 Unless otherwise stated, if, and wherever, the Requirements state a brand name, a make, the name of a manufacturer, a trade name or a vendor catalogue number, it is for the purpose of establishing a grade or quality of materials, goods or equipment only. It is not intended to rule out the use of other equivalent materials, goods or equipment. If, however, products other than those specified are proposed in any Proposal, the Proposal must explicitly include the names of such products and their manufacturers, any trade names and any applicable vendor catalogue numbers, and the City may request that the Proponent provide specific evidence of equivalency. Evidence of quality in the form of samples may also be requested.

2.0 ITEMS TO BE ADDRESSED IN EACH PROPOSAL

- 2.1 Each Proposal must have: (i) a title page that clearly indicates the name of the Proponent and the general nature of the Proposal; (ii) a detailed table of contents; and (iii) an executive summary no more than one page long.
- 2.2 Each Proposal must contain a section titled “Technical Proposal,” which should address the Requirements. This section of the Proposal should be divided into paragraphs that correspond to the numbered paragraphs of the foregoing Section 1 of this Part B and the numbered [paragraphs/sections of Annex 1 to the RFP].
- 2.3 Each Proposal must contain a section titled “Commercial Proposal,” which should contain full details of the Proponent’s proposed pricing and payment terms, which must be in accordance with Part A of the RFP, and, which must include a completed table in the following form:

Table 2.3 --Estimated Fees/Disbursements						
Work Task/Phase/ Deliverable	Team Members	Activity/Role	Estimated Hours	Hourly Rate	Estimated Fee	Estimated Disbursements
Maximum Fees/ Disbursements						

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

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Reference should be made to the foregoing Section 1 of this Part B and Annex 1 to the RFP for any further requirements concerning pricing or payment terms, which should be addressed in each Proposal.

- 2.4 Each Proposal must contain a section titled “Proponent Overview,” which must provide a description of the Proponent’s company, purpose and history of successes. Proponents should also include a description of the following:
- The competitive advantage (i.e. differentiation) of the organization
 - Corporate project and data confidentiality strategy
 - Corporate record management (including the final report) policy
 - Corporate policy relating to the hiring of “ex-hackers”
 - Corporate outsourcing policy
- 2.5 Each Proposal must contain a section titled “Key Personnel,” which must identify and provide professional biographical information for the key personnel that would perform the Proponent’s work, outlining their intended roles in meeting the Requirements. If appropriate, also include a complete organization chart, identifying all roles and areas of responsibility. The lead consultant for this engagement must have an active role in this project and must have a minimum of five years of experience in information security consulting of a similar size and scope.

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- 2.6 Preference may be given to Proponents and proposed personnel that demonstrate knowledge and experience involving evaluation of network security capabilities and the needs of computer networks or web applications. Each Proponent should make clear in its Proposal its relevant knowledge and experience, and that of its proposed personnel.
- 2.7 Each Proposal must contain a section titled “References,” which should provide names and contact information for approximately three parties for whom the Proponent has done work in the past with a similar size and scope
- 2.8 Each Proposal must contain a section titled “Subcontractors,” which must list all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors. If selected to enter into an Agreement with the City, the Proponent may be limited to using subcontractors listed in its Proposal.
- 2.9 If the City objects to a subcontractor listed in a Proposal, the City may permit a Proponent to propose a substitute Subcontractor acceptable to the City.
- 2.10 Each Proposal must contain a section titled “Work Plan,” which should detail the sequential process by which the Proponent proposes to undertake the work, and which should include a timeline as necessary. The Proponent’s work plan should make reference to the Requirements as appropriate. This section of the Proposal may be completed by cross-referencing the “Technical Proposal” section where appropriate.

Estimated Hours

Work Task/Phase/ Deliverable	Team Members	Activity/Role	Estimated Hours
Total Hours			

- 2.11 The City is committed to environmental and socio-economic sustainability. Therefore, each Proposal must contain a section titled “Sustainability,” wherein the Proponent should describe the environmental aspects of its Proposal. In addition, this section of the Proposal should include a completed table in the following form:

Sustainability Initiative	Description	Details	Response
a. Packaging Reduction	The City aims to reduce the packaging associated with acquiring various products. More and more suppliers are adopting innovative programs to reduce packaging.	Tell us about your proposed measures to reduce product packaging such as recycle ability, percentage of recycled content, return/collections programs and/or re-use. Examples include providing products in reusable packaging such as plastic	

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Sustainability Initiative	Description	Details	Response
		totes, reducing unnecessary packaging such as shrink wrap or offering packaging that is made from recycled material.	
b. Greenhouse Gas/Carbon Reduction	The City aims to reduce its greenhouse gas/carbon emissions, where possible as part of its Climate Protection Program.	Tell us how the design and use of your product or service takes into account strategies to reduce its carbon footprint. Examples could include offering products with a limited amount of embedded carbon, having a strategy for limiting transportation-related to service provision and/or purchasing carbon credits to offset emissions	
c. Waste Reduction	The City aims to reduce waste where possible.	Tell us how your firm addresses waste minimization and diversion of waste from the landfill in the design of your product or service and its associated delivery, use and disposal. Examples include take-back programs you may have for your products at end-of-life or products that are made from recycled materials.	
d. Toxic Reduction	The City aims to reduce toxins and hazardous substances in the workplace where possible.	Tell us what steps your firm has taken to use 'design for environment' principles to reduce toxic and hazardous substances found in your products. Examples could include products that contain polyvinyl chlorides (PVCs) or volatile organic compounds (VOCs).	
e. Third Party Eco-labelling	The City aims to purchase, when possible, products that are eco-certified or eco-labelled by a recognized third party.	Describe and explain third party certification for the products to be supplied, which includes labelling requirements. State the type of testing performed, and the standards applicable to support biodegradable products completely breaking down in the landfills.	
f. Socio-economic Sustainability	Socio-economic sustainability is important to the City. As such, The	Tell us about your firm's efforts with regards to socio-economic	

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Sustainability Initiative	Description	Details	Response
	City aims to do business with suppliers who are striving to advance social and economic wellbeing in the community.	sustainability. Examples include, but are not limited to, broadening educational and professional development opportunities, supporting minority/youth groups, and supporting low-threshold job programs for vulnerable people.	

- 2.12 Notwithstanding any other provision hereof, the City welcomes Proposals respecting innovative or novel approaches to the City’s objectives and requirements and may consider value-creating Proposals that derogate from the Requirements. Each Proposal must contain a section titled “Deviations and Variations,” in which the Proponent should: (i) note proposed deviations or variations from the terms and conditions set out in the RFP or from the Requirements, even if such deviations or variation are also noted elsewhere in the Proposal; and (ii) detail proposed amendments to the Form of Agreement. If no amendments to the Form of Agreement are proposed, the Proponent must state that its Proposal is fully consistent with the Form of Agreement.
- 2.13 If, in addition to proposing services which meet the Requirements, the Proponent wishes to offer an alternative or alternatives, the alternative solution(s) should to be submitted separately as an appendix within the Proposal. Any pricing impact of the alternative solution(s) should be provided separately in the appendix.
- 2.14 Each Proponent should note Section 9 of Appendix 1 to Part C and should include in its Proposal a section entitled “Conflicts; Collusion; Lobbying” as necessary.
- 2.15 The sections of each Proposal should be arranged in the order in which they are referred to in this Part B. Proponents should avoid, to the extent possible, the inclusion of other top-level Proposal sections.
- 2.16 Each Proponent must submit with its Proposal a Certificate of Existing Insurance, in the form of Annex 2 to the RFP, duly completed and signed by its insurance agent or broker as evidence of its existing insurance, along with a letter from its insurance broker or agent indicating whether or not (and, if not, then to what extent) it will be able to comply with the insurance requirements set out in Section 5 of the Form of Agreement, should the Proponent be selected as a successful Proponent. (Any successful Proponent will also be required to provide proof of the satisfaction of all insurance requirements prior to or concurrently with the City entering into any Agreement.
- 2.17 Each Proponent must submit with its Proposal proof of valid WorkSafeBC registration. Such registration should be maintained as specified in Section 6 of the Form of Agreement.

REQUEST FOR PROPOSAL NO. PS20140214
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PROPOSAL FORM

RFP No. PS20140214, PROVISION OF SERVICES RELATED OF SERVICES RELATED TO WEB AND
NETWORK PENETRATION TESTING (the "RFP")

Proponent's Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Date of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

The Proponent, having carefully examined and read the RFP, including all amendments 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 Proposal.

The Proponent 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 Proponent has executed this Proposal Form:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

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APPENDIX 1 TO PROPOSAL 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 Proponent's legal rights and obligations only with respect to the RFP proposal process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix 1 apply to, or have the effect of supplementing, any Contract formed between the City and the Proponent or otherwise apply as between the Proponent and the City following the signing of any such Contract.

2 DEFINITIONS

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

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent as a result of the RFP.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix 1 is appended.
- (g) "RFP" means the document issued by the City as Request for Proposal No. PS2014xxxx, as amended from time to time and including all addenda.

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3 NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFP or the Proposal Form, including this Appendix 1 (except only Sections 7, 8.2 and 11 of this Appendix 1, in each case to the extent applicable), the City assumes no legal duty or obligation to the Proponent or to any proposed subcontractor in respect of the RFP, its subject matter or the Proposal unless and until the City enters into a Contract, which the City may decline to do in the City's sole discretion.

4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

5 EVALUATION OF PROPOSALS

5.1 Compliance / Non-Compliance

Any proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion.

5.2 Reservation of Complete Control over Process

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

5.3 Discussions/Negotiations

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

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5.4 Acceptance or Rejection of Proposals

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

6 PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

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

- (a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially))
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process,
- (c) the Proponent preparing and submitting the Proposal;
- (d) the City accepting or rejecting the Proposal or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2 Indemnity by the Proponent

Except only and to the extent that the City breaches Section 8.2 of this Appendix 1, the Proponent indemnifies and will protect, save and hold harmless the City, its officials, its agents and its employees from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its proposed subcontractors or agents alleging or pleading:

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

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6.3 Limitation of City Liability

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

7 DISPUTE RESOLUTION

Any dispute relating in any manner to the RFP or the proposal process (except to the extent that the City breaches this Section 7 or Section 8.2 of this Appendix 1, and also excepting any disputes arising between the City and any proponent with whom the City has entered a Contract (or a similar contract between the City and a proponent other than the Proponent)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- (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 Proponent and the arbitrator; and
 - ii. survive any and all awards made by the arbitrator; and
- (c) The Proponent will bear all costs of the arbitration.

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8 PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFP and Proposal Documents City's Property

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

8.2 Proponent's Submission Confidential

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council on the proposal results or announcing the results of the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

8.3 All City Information Confidential

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

9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFP Process

The Proponent confirms and warrants that there is no officer, director, shareholder, partner or employee of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:

- (a) an elected official or employee of the City; or
- (b) related to or has any business or family relationship with any 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 Proposal 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 Proposal.

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9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

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

9.3 Declaration as to No Collusion

The Proponent confirms and warrants that:

- (a) the Proponent has no affiliation, whether legal or financial, with any other entity which is in the business of providing the same type of goods or services which are the subject of the RFP; and
- (b) the Proponent is not competing within the RFP process with any entity with which it is legally or financially associated or affiliated,

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

9.4 Declaration as to Lobbying

The Proponent confirms and warrants that:

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

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

10 NO PROMOTION OF RELATIONSHIP

The Proponent must not disclose or promote any relationship between it and the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City. The Proponent undertakes not to use the name, official emblem, mark, or logo of the City, including without limitation, "City of Vancouver", "Vancouver Police Board", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", or any other reference to any of the foregoing, without the express prior written consent of the City.

11 GENERAL

- (a) All of the terms of this Appendix 1 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive

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the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.

- (b) The legal invalidity or unenforceability of any provision of this Appendix 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 Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP process.
- (d) The Proponent consents to the City contacting any references named by the Proponent in the Proposal.

AS EVIDENCE OF THE PROPONENT'S INTENT TO BE LEGALLY BOUND BY THIS APPENDIX 1, THE PROPONENT HAS EXECUTED AND DELIVERED THIS APPENDIX 1 AS AN INTEGRAL PART OF ITS PROPOSAL FORM IN THE MANNER AND SPACE SET OUT BELOW:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date



PROFESSIONAL SERVICES AGREEMENT

PS20140214 - Provision of Web and Network Penetration Testing

THIS AGREEMENT made as of the • day of • (the "Effective Date")

BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

•
(the "Consultant")

OF THE SECOND PART

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

BACKGROUND:

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

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

1.0 INTERPRETATION

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

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out below:

- (a) **“Agreement”** means this Professional Services Agreement inclusive of all schedules, appendices or exhibits attached hereto, as amended from time to time;
- (b) **“Applicable Laws”** means all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Consultant, any Sub-contractor and the Services, including the Vancouver Building By-law, the British Columbia Building Code, and the British Columbia Fire Code, all as may be in force from time to time;
- (c) **“City’s Site”** means any land and/or premises owned by the City on which or in respect of which the Services are performed by the Consultant;
- (d) **“City’s Project Manager”** means the City’s employee, or his/her delegate, who is authorized in writing to deal with the Consultant on behalf of the City in connection with the Services, or to make decisions in connection with this Agreement;
- (e) **“Confidential Information”** has the meaning set out in Section 15.0
- (f) **“Contract Documents”** means this Agreement, including all Appendices;
- (g) **“Deliverables”** has the meaning set out in Section 17.0;
- (h) **“GST”** means the tax payable and imposed pursuant to Part IX of the Excise Tax Act (Canada), as amended or replaced from time to time, but excluding any provincial component collected by Canada on behalf of British Columbia, such as by way of example the provincial component authorized as of and from July 1, 2010 pursuant to the Consumption Tax Rebate and Transition Act (British Columbia);
- (i) **“Project Team”** has the meaning set out in subsection 2.2(c);
- (j) **“Proposal”** means the proposal submitted by the Consultant in response to the RFP, a copy of which is attached hereto as Appendix B;
- (k) **“PST”** means any tax similar to the tax previously payable and imposed pursuant to the Social Services Tax Act (British Columbia), as amended or replaced from time to time, such as by way of example the provincial sales tax anticipated to be authorized as of and from April 1, 2013 by way of the repeal of the Consumption Tax Rebate and Transition Act (British Columbia) and re-enactment, continuation, or amendment of the Social Services Tax Act (British Columbia);
- (l) **“RFP”** means Request for Proposal PS20140214 - Provision of Web and Network Penetration Testing together with all addenda and questions and answers attached as Appendix C;
- (m) **“Services”** has the meaning set out in Section 2.1;
- (n) **“Sub-contractor”** has the meaning set out in Section 4.1; and
- (o) **“Term”** means the term of this Agreement as specified in Section 12.1.

1.2 The terms and conditions of the Contract Documents, whether or not attached to this Agreement will be deemed to be incorporated into this Agreement. The Contract Documents

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are complementary and what is called for by any one will be as binding as if called for by all. In the event of any conflict or inconsistency between or among any of the Contract Documents, the Contract Documents will be interpreted in the following order of priority, from highest to lowest:

- (a) this Agreement, excluding Appendices B and C;
- (b) the Proposal; and
- (c) the RFP.

1.3 In this Agreement, including the recitals, schedules and appendices to this Agreement, except as expressly stated to the contrary or the context otherwise requires:

- (a) the recitals and headings to sections, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement;
- (b) the terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer, unless otherwise specified, to this Agreement taken as a whole (including any and all attached appendices) and not to any particular section, subsection or other subdivision;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- (d) each reference to a rule, guideline, policy, regulation or directive is deemed to be a reference to any successor or replacement of such rule, guideline, policy, regulation or directive;
- (e) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (f) references to time of day or date mean the local date or time in Vancouver, British Columbia;
- (g) all references to money mean lawful currency of Canada;
- (h) the word “written” includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and “in writing” has a corresponding meaning; and
- (i) the words “include” and “including” are to be construed as meaning “including, without limitation”.

2.0 CONSULTANT'S SERVICES TO THE CITY

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

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

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- 2.2 The Consultant will be fully responsible for:
- (a) coordinating the Services with the City's Project Manager, or their delegate, and ensuring that the performance of the Services does not adversely impact the design or construction schedule for the project or the work and/or services provided by the City's other consultants;
 - (b) taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Appendix A - Insurance Requirements; and
 - (c) maintaining and supervising its employees and Sub-contractors (the "Project Team") described in Section 3.1.
- 2.3 The Consultant represents and warrants to the City that the Consultant possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the reasonable satisfaction of the City.
- 2.4 The Consultant will perform the Services:
- (a) with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered;
 - (b) in accordance with sound current professional practices and design standards; and
 - (c) in conformance with any and all Applicable Laws.
- 2.5 The Consultant will commence the Services promptly and will use every reasonable effort to carry out the Services in accordance with:
- (a) the requirements and appendices of this Agreement, or
 - (b) where no date is specified for the provision of any component of the Services by this Agreement, such completion dates as are reasonably specified from time to time by the City.
- 2.6 The Consultant will not permit, do or cause anything to be done at any time which could allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the City's Site or any other City property.
- 3.0 PROJECT TEAM**
- 3.1 Subject to Section 3.2, the Consultant will utilize only the Project Team members noted in the Proposal.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Consultant may not make substitutions of Project Team members without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section 3, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Consultant, its Sub-contractor or their affiliates.

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3.4 The City may, with stated reasons and acting reasonably, request that the Consultant replace a Project Team member. The Consultant will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.

3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Consultant for any replacement Project Team member.

4.0 SUB-CONTRACTORS

4.1 Unless expressly permitted pursuant to Section 3.0, the Consultant may not engage any contractor or consultant (in each case a “**Sub-contractor**”) for the performance of any part of the Services, unless the Consultant has first obtained the written consent of the City, which consent may be arbitrarily withheld.

4.2 The Consultant will administer, coordinate, and manage all Services provided by any Sub-contractors, and will assume full responsibility to the City for all work performed by the Sub-contractors in relation to the Services and will pay all fees and disbursements of all Sub-contractors, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Consultant.

4.3 Where a Sub-contractor is used by the Consultant under this Agreement, the Consultant will legally bind the Sub-contractor to comply with this Agreement.

4.4 Nothing in this Agreement will create any contractual relationship between a Sub-contractor and the City.

5.0 BASIS OF PAYMENT TO THE CONSULTANT

5.1 In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms hereof, the City will pay the Consultant the fees and reimbursable expenses prescribed herein, plus GST AND PST, as applicable.

5.2 Subject to Section 5.3, payment to the Consultant will be based on hours worked by employees of the Consultant or by the Sub-contractors multiplied by the applicable hourly charge-out rates in the Proposal.

5.3 If there are limiting amounts for fees and disbursements indicated below for the Services or parts thereof, then notwithstanding anything to the contrary in this Agreement the maximum fees and disbursements to be paid by the City to the Consultant for the Services or portions of the Services will not exceed those amounts. Where additional fees are to be paid by the City to the Consultant for increases in the scope of the Services provided by the Consultant, they will not exceed the amount of said fees mutually agreed upon under Section 6.0. This limit on the fees to be paid by the City to the Consultant will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.

The fees for the Services are set out in the Commercial Proposal. Subject to Section 6.0, the total professional fees payable to the Consultant for the Services (not including GST AND PST or disbursements) will not exceed \$●.

Subject to Section 6.0, the total disbursements for which the City will reimburse the Consultant in respect of the Services will not exceed \$● (the “**Fixed Disbursement Amount**”).

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Notwithstanding anything to the contrary contained in this Agreement, save for Section 6.0, the maximum liability of the City hereunder (the “Maximum Fees and Disbursements”) will be \$●, plus GST AND PST, as applicable.

Subject to the Fixed Disbursement Amount, 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.

- 5.4 If the Consultant has engaged Sub-contractors, then the Consultant will make full payment to said Sub-contractors for work performed in relation to the Services.

Subject to Section 5.3, the City will reimburse the Consultant for payments made to Sub-contractors at amounts equal to such actual payments without any additions for overhead and profit to the Consultant.

- 5.5 The Consultant will, by the 25th of the month, provide to the City’s Project Manager a draft invoice with an attached detailed account of all charges to be claimed by the Consultant for the current month. The City’s Project Manager shall review, raise any concerns with the Consultant within ten working days and, after settlement, if necessary, 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, P.O. Box 7757, 349 West Georgia Street, Vancouver, BC, V6B 0L5 or by email to APCentral@vancouver.ca. The invoice must contain:

- (a) Consultant name, address and telephone;
- (b) City purchase order number;
- (c) City’s Project Manager;
- (d) invoice number and date; and
- (e) GST registration number.

- 5.6 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Consultant’s invoices, for whatever reason, the City will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to have the review, audit or clarification resolved within a 60 day period. The City will, if it approves the amount of such invoices, cause the respective invoices to be paid within 30 days of approval.

- 5.7 The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed. The City will be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Consultant and by such other means as will be reasonably necessary or advisable.

6.0 CHANGES TO SCOPE OF SERVICES

- 6.1 The City’s Project Manager may, from time to time and at any time on prior written notice to the Consultant, vary the scope of Services to be provided by the Consultant. In that case and

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where this Agreement contains delivery dates and/or limits as to the Maximum Fees and Disbursements to be paid to the Consultant pursuant to Section 5.3 for all or any part of the Services, such delivery dates and/or limits will be adjusted as agreed to by both Parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.

- 6.2 Should the Consultant consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Consultant will provide the City's Project Manager with notice in writing within ten days of such request or instruction. If the Consultant does not deliver written notice to the City within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Consultant.
- 6.3 The City's Project Manager will consider the Consultant's written notice within a further ten days of receipt of the Consultant's notice and determine and advise as to whether the request constitutes a change in the scope of the Services and, if necessary, the method by which the variation will be scoped and reimbursed. If the City determines that the professional fees payable to the Consultant should be increased due to an increase in the scope of the Services then any such increases will be based on the hourly rates set out in Section in the Commercial Proposal.

7.0 RELEASE AND INDEMNIFICATION

- 7.1 The Consultant now releases the City, its officials, officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Consultant, its Sub-contractors, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.
- 7.2 In undertaking the Services, the Consultant acknowledges that the Consultant has inspected the City's Site, agrees to accept the City's Site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Consultant to perform the Services.
- 7.3 Despite the provision of insurance coverage by the City, the Consultant hereby agrees to indemnify and save harmless the City of Vancouver and its successors, assigns and authorized representatives and each of them (in each case an "Indemnified Party") from and against all costs, losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that an Indemnified Party may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant, its Sub-contractors, or their respective officers, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of an Indemnified Party.
- 7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.
- 7.5 The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.
- 8.0 INSURANCE**
- 8.1 The Consultant will comply with the insurance requirements set out in Appendix A - Insurance Requirements.

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9.0 WORKSAFEBC

- 9.1 The Consultant agrees that it will procure and carry and pay for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafeBC coverage against any monies owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until the WorkSafeBC premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement have been paid in full.
- 9.2 The Consultant will provide the City with the Consultant's and each Sub-contractor's WorkSafeBC registration number and clearance letters from WorkSafeBC confirming that the Consultant and each Sub-contractor are registered in good standing with WorkSafeBC and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged by the Consultant in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.
- 9.3 Whenever the Consultant is required or permitted to perform any Services on any City sites, the Consultant is now appointed and now accepts appointment as the Prime Contractor 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 RFP or under this Agreement, including any studies, reports, plans, drawings, or specifications, is provided to the Consultant for information purposes only and may not be relied upon by the Consultant.

11.0 COMMUNICATION BETWEEN CONSULTANT AND CITY

- 11.1 The City appoints ● as the City's Project Manager for the purposes of this Agreement.

In the event of the revocation in writing of ● 's appointment as the City's Project Manager by the City, ● 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 ● , 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 ● 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

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Consultant and the City regarding this Agreement, including performance of the Services, will be between the City's Project Manager and the Consultant's Project Manager.

12.0 TERM OF AGREEMENT

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

13.0 TERMINATION

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

13.2 Despite Section 13.1, in no event and under no circumstances will the Consultant's "necessary and reasonable wind-up costs incurred" pursuant to Section 13.1 exceed \$1000.00 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

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

- 15.3 If the Consultant is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, the Consultant shall limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that prior to any disclosure the Consultant will promptly notify the City in writing of the existence and the terms, and conditions of the required disclosure and, at the City's request and expense, cooperate in obtaining a protective order or other assurance that confidential treatment and restricted use will be accorded such Confidential Information.
- 15.4 The City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's contractors to protect all personal information acquired from the City in the course of providing services to the City. The Consultant confirms and acknowledges its obligations to comply with all obligations imposed on it pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia) with respect to all personal information received from the City whether as part of the Confidential Information or otherwise.
- 15.5 The Consultant acknowledges that in the event of a breach by the Consultant or any of its employees of their respective confidentiality obligations pursuant to this Section 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).

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16.2 Furthermore, the Consultant undertakes and will cause all of its Sub-contractors to undertake not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between the Consultant and the City. Without limiting the generality of the foregoing, the Consultant will not refer to or use any website, domain name, official emblem, logo or mascot of the City of Vancouver in any Communications, without the express prior written consent of the City.

17.0 DELIVERABLES

17.1 As a result of or as part of providing the Services, the Consultant may receive, create, produce, acquire or collect one or more of the following:

- (a) products, goods, equipment, supplies, models, prototypes and other materials;
- (b) information and data;
- (c) reports, drawings, plans, designs, depictions, specifications and other documentation; and
- (d) any other items identified in this Agreement as deliverables;

(collectively, the “**Deliverables**”).

17.2 Deliverables are deemed not to include:

- (a) any item not required to be produced by the Consultant or supplied to the City as part of or together with the Services, provided that if the City has paid or is liable to pay for any portion of such item’s creation, production, acquisition or collection then such item shall be deemed to be a Deliverable;
- (b) any item produced as a result of the Services, which is specified in this Agreement as being excluded from the Deliverables category; and
- (c) any item which pre-existed the effective date of this Agreement, that is owned by a third party or that is used by the Consultant as part of the services provided to any of its other customers (the “**Pre-Existing Materials**”).

17.3 All Deliverables will be owned solely by the City unless otherwise expressly provided herein. The City shall have the complete and unfettered right to use and deal with the Deliverables for its own benefit in any way it sees fit without limitation, and without accounting in any way to the Consultant.

17.4 The Consultant will keep accurate records and provide regular reports to the City about the Deliverables as they are created or acquired, and grant to the City access to the Deliverables at all times on reasonable notice. The Consultant will treat each Deliverable as subject to the confidentiality provisions set out in Section 15 unless advised otherwise by the City.

17.5 Each Deliverable, as to the whole or that portion of the Deliverable then existing, will be delivered by the Consultant to the City on the earliest of each of the following events:

- (a) the date specified in this Agreement for the delivery of such Deliverable;
- (b) immediately on the date of expiration or sooner termination of this Agreement; or
- (c) the date specified by written notice of the City requesting delivery of all or any part of

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the Deliverable.

17.6 The Consultant transfers to the City, free of all liens and encumbrances, ownership of each Deliverable, and assigns all of its world-wide present and future rights, title and interest in and to each Deliverable, including copyright, effective as of the date of creation or acquisition of such Deliverable by the Consultant. The Consultant irrevocably waives, in favour of the City, all moral rights in the Deliverables. The Consultant will obtain from its employees and any independent contractors, all required assignments and releases of intellectual property, and waivers of moral rights, in the Deliverables. The Consultant will not assert any rights to or interests in, or apply for or register any copyright or other rights or interests in, the Deliverables, or assist any other person in doing so. The Consultant shall provide to the City, during and after the term of this Agreement, any reasonable assistance required for the City to obtain, perfect and enforce its ownership of and rights in the Deliverables, including without limitation execution of assignments and transfers of the Deliverables. This Section does not apply to Pre-Existing Materials.

17.7 The Consultant will not incorporate any Pre-Existing Materials in any Deliverable without first:

- (a) advising the City, in writing, of the nature of the Pre-Existing Materials and their proposed use and obtaining the City's written consent to do so;
- (b) acquiring from each third-party owner of such Pre-Existing Materials, a fully paid-up, perpetual, non-exclusive license, in writing, for the City to use the Pre-Existing Materials as part of the Deliverable; and
- (c) granting, in writing, to the City with respect to such Pre-Existing Materials that the Consultant owns, a fully paid-up, perpetual, non-exclusive license to use the Pre-Existing Materials as part of the Deliverable.

17.8 The Consultant represents and warrants that the Deliverables will not infringe, misappropriate or misuse any copyright, patent, trade-mark, trade secret, or confidential or proprietary information of a third party. The Consultant shall defend, indemnify and hold the City harmless from and against any and all damage, liability, cost and expense incurred by the City in connection with any claim by a third party that a Deliverable infringed, misappropriated or misused its copyright, patent, trade-mark, trade secret, or confidential or proprietary information.

18.0 NOTICES

18.1 Any notice required or permitted to be given to the Consultant will be sufficiently given if delivered in writing by the City's Project Manager to the Consultant's Project Manager personally or, if mailed, by registered mail to the last known address of the Consultant.

18.2 Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by the Consultant's Project Manager to the City's Project Manager personally or, if mailed, by registered mail to City of Vancouver at 453 West 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

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request for proposal or invitation to tender, or otherwise giving that person an unfair competitive advantage over other proponents or tenderers responding to a request for proposal or invitation to tender by the City. The Consultant now acknowledges that a breach of this Section 19.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act* (Canada) and *Criminal Code* of Canada, and accordingly, could be punishable as a crime (as well as a breach of contract).

19.2 The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:

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

20.0 NON-RESIDENT WITHHOLDING TAX

20.1 If the Consultant is a non-resident of Canada as defined in Canadian income tax legislation, the City may withhold from all monies payable under this Agreement such amounts as set out in Canadian income tax legislation, unless a Canada Revenue Agency waiver has been provided to the City within the time limits required under the Canada Revenue Agency administrative guidelines as in effect from time to time and, in any event, prior to payment of an invoiced amount.

20.2 The City shall receive full credit under this Agreement for monies withheld as of and from the date of the withholding and no interest will be payable by the City on sums withheld and later paid directly to the Consultant.

20.3 The Consultant shall indemnify the City for any losses, damages or expenses incurred by the City as a result of the Consultant's failure to properly disclose to the City its non-resident status, as defined in Canadian income tax legislation.

21.0 COMPLIANCE WITH LAW

21.1 The Consultant will comply with the City of Vancouver License By-law and maintain a valid business license throughout the duration of this Agreement.

21.2 The Consultant agrees that it will during the Term comply with all Applicable Laws.

22.0 GOVERNING LAW AND RESOLUTION OF DISPUTES

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

23.0 INDEPENDENT CONSULTANT

23.1 This Agreement is a contract for services and the Consultant, its permitted Sub-contractors, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Consultant and its permitted Sub-contractors are not, nor are they to be deemed to be,

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partners, appointees, employees or agents of the City.

23.2 The Consultant will not represent to anyone that the Consultant has any authority to bind the City in any way or that the Consultant is an employee or agent of the City.

24.0 INDEPENDENT LEGAL ADVICE

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

25.0 TIME FOR PERFORMANCE

25.1 **Time of the Essence.** Time shall be of the essence of this Agreement.

25.2 **Unavoidable Delay.** Notwithstanding Section 25.0, except for the performance of obligations to pay money, the time periods for the City and the Consultant to perform under this Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this Section, an “Unavoidable Delay” means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, strikes/lockouts, acts of God, war or other strife or governmental action) but expressly excludes any and all delays caused by the Consultant’s lack of financial resources or insolvency or strikes, lockouts or other withdrawals of services arising out of a labour dispute (including a strike, lockout, or other labour dispute involving the Vancouver Board of Parks and Recreation and/or the City of Vancouver and their respective employees) or labour affiliations of the Consultant’s employees or Sub-contractor’s employees, or governmental action taken in the enforcement of law specifically against the Consultant or its Sub-Consultants. If an Unavoidable Delay occurs, the non-performing party will, as soon as possible after the occurrence of the Unavoidable Delay, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of its obligations under this Agreement.

26.0 GENERAL

26.1 **No Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing by the City.

26.2 **Severability.** The invalidity, illegality or unenforceability of any portion or provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken position.

26.3 **Remedies Cumulative.** The remedies of the Parties provided for in this Agreement are cumulative and are in addition to any remedies available to the Parties at law or in equity. No remedy will be deemed to exclude or restrict the right of a Party to any other remedies against the other Party and a Party may from time to time have recourse to one or more of the remedies specified in this Agreement or at law notwithstanding the termination of this Agreement.

26.4 **Further Assurances.** Each Party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry

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out the provisions and intent of this Agreement.

- 26.5 **Entire Agreement.** The Contract Documents constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof.
- 26.6 **Amendment.** This Agreement shall not be amended except as specifically agreed in writing by both the City and the Consultant.
- 26.7 **Joint and Several Liability of Joint Venture Participants.** If the Consultant is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, claims, rights, powers, privileges and liabilities of the entities 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.

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

•

Authorized Signatory

Print Name and Title

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APPENDIX A - INSURANCE REQUIREMENTS

1.1 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 \$2,000,000 per claim, an aggregate of not less than \$2,000,000 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 limits of not less than \$2,000,000 per occurrence, and a deductible of not more than \$5,000, protecting the Consultant and the Consultant's Personnel against all claims for personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the Consultant or the actions of the Consultant or the Consultant's Personnel. The policy will contain a cross liability clause in favour of the City and will name the City and the City's Personnel as additional insured.

1.2 Required Policy Terms

All required insurance policies will 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 will:

- (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 to such policies; and
- (c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least 30 calendar days' prior written notice,

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 Personnel.

1.3 Insurance Certificate

Prior to signing this Agreement, the Consultant will 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.

1.4 Sub-Consultant's Insurance

The Consultant will provide in its agreements with its Sub-Consultants insurance clauses in the same form as in this Agreement. Upon request, the Consultant will deposit with the City's

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Project Manager detailed Certificates of Insurance for the policies of its Sub-Consultants (or copies of the policy(ies) themselves, if requested) and a copy of the applicable insurance clauses from its Sub-Consultant agreements.

1.5 Insurance Requirements Additional to any other Requirements

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

1.6 Insurance Requirements Independent of Agreement Obligations

Neither the providing of insurance by the Consultant or the Sub-Consultants 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.

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PROVISION OF WEB AND NETWORK PENETRATION TESTING
PART D - FORM OF AGREEMENT

APPENDIX B - PROPOSAL

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PART D - FORM OF AGREEMENT

APPENDIX C - RFP

REQUEST FOR PROPOSAL NO. PS20140214
PROVISION OF WEB AND NETWORK PENETRATION TESTING
ANNEX 1 - SCHEDULE OF DETAILED REQUIREMENTS

1.0 Introduction

The City is seeking proposals from Proponents for the provision of services to WNPT. As part of the overall information technology program, the City performs WNPT in a periodic basis in order to assess the vulnerability of the City's computer network infrastructure. Information collected by the WNPT will be used to develop mitigation plans to improve the safeguard of the computer network infrastructure at the City.

2.0 Additional Requirements

In additional to the proposal requirements listed in Section 2.0 of PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS, the Proponents must include the followings in their response:

2.1 Description of Services and Methodology

- (a) Project management methodology
- (b) Detail description of service
- (c) Testing methodology

2.2 Report Format

- (a) Table of content of the written WNPT to be delivered at the end of the engagement
- (b) Sample reports on similar engagement without any sensitive information - the City will not agree to sign and non-disclosure agreement in return to receive this information
- (c) Disclose any OEM / vendor relationship

2.3 Risk Mitigation and Communication Strategy

- (a) State any potential impact that could result during the test
- (b) Procedure for handling serious vulnerability, should one being discovered during the test
- (c) Procedure for handling real network and/or application attacks during the test
- (d) Communication plan and expectations during the test
- (e) List of tools and/or applications intended to use during the test

3.0 Work Scope

The following describes the work scope of this engagement:

- (a) The primary focus of this exercise is to conduct an External Web and Network Penetration Testing. It is expected that the WNPT is to be a "black box" test where the selected Proponent will be provided with little to no information about the organization or the scope of its infrastructure and will conduct their tests as if they were an actual hacker attempting to compromise the City security controls. These tests will be conducted outside of regular operating hours to ensure that there is little to no impact on the daily operation of the City should this process results in the inadvertent disabling of one of our systems. The City may choose to provide further information to assist the test at any time.

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- (b) Planning Phase. Activities in the Test Planning Phase include, but not limited to, understanding and communicating the overall test process; address any questions and concerns of the WNPT by City staff; confirmation of IP address to be tested and related particulars; detail WNPT test plan; communication strategy and activities; selection of a date and time to perform the actual WNPT, including an allowance to comply to the City's information technology change management process.
- (c) Testing Phase. Activities in the this phase include, but not limited to, the supply and install of all applicable tools, hardware, and software to facilitate the WNPT; performing the WNPT (including but not limited to: vulnerability scanning, enumeration, exploiting, pivoting, etc.), collect, compile, and creation of a written report on the results, findings, and analysis of the WNPT.
- (d) Post-testing Phase. Activities in this phase include, but not limited to, the delivery of the written WNPT test report to the City; delivery of a presentation to the City's information technology technical team to review and discuss the high-level summary on test results as well as recommendations and mitigation strategies.

4.0 City Provided

The City is committed to:

- (a) Ensure that necessary staff is available to monitor and to response to outages.
- (b) Execute system restorations, if necessary.
- (c) Review and response to deliverables without undo delays.

5.0 Deliverables

The City is expecting the Proponent to deliver the followings as a result of the engagement:

- (a) An executed WNPT associated to the criteria listed in Part B - Section 2.0 and in Annex 1.
- (b) To provide and to maintain all test plans and schedules.
- (c) Periodic status report to update the City's contact person.
- (d) Provide all necessary tools (hardware and software).
- (e) Complete all the testing, analysis, and reporting as per the agreed schedule.
- (f) A written report of City's network and web applications strengths, weaknesses and vulnerabilities, including comprehensive recommendations for remediation strategies and actions ranked by level of urgency.
- (g) A technical briefing (in person or online) to the City's information technology technical team.
- (h) Optional - an executive briefing (in person or online) to the City executives on the result of the engagement. (about 2 hours)

6.0 Boundaries and Limitations

The following is a list of test boundaries and limitations for the WNPT:

- (a) The Proponent agrees to only exploit vulnerabilities if approved by the City contact person
- (b) The WNPT does not include any self-replicating code (viruses or worms).

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- (c) The WNPT does not include manipulate any network configuration of the systems and therefore do not utilize DNS cache poisoning or ARP-based attacks.
- (d) There will be no unplanned denial of service (DoS) unless otherwise stated.
- (e) Infrastructure components of the Vancouver Police Department and the Vancouver Public Library are out-of-scope.

7.0 Acceptance Criteria

Acceptance of deliverable is based on the content and the quality of the deliverable, as defined by the City's manager for this engagement.

8.0 Anticipated Scale

The Proponent is required to provide cost estimates for each of the tests listed (along with their respective scope and scale) below.

- 8.1. External Network Vulnerability Scan and Penetration Test
 - (a) Exploiting vulnerabilities on servers hosted on the City's external network on the network and operating system level
 - (b) 60 IP addresses including web and DNS servers, and one infrastructure router.

- 8.2. External Web Application Penetration Test
 - (a) Detecting vulnerabilities on web applications hosted on the City's external network through URLs
 - (b) 50 applications; average 5 pages per application

- 8.3. External Wireless Penetration Test
 - (a) Exploiting vulnerabilities in the publicly available wireless network configuration to break into the internal network
 - (b) City of Vancouver provided Wireless network available to the public

- 8.4. Denial of Service Test
 - (a) Attempting to bring down a service in a controlled environment during a predetermined timeframe
 - (b) Controlled denial of service attack on external facing components including Web applications, Router, and Firewalls

- 8.5. Client-side Penetration Test
 - (a) Testing the end-user machines for exploitable vulnerabilities and pivot to other network systems by sending phishing emails or web forms phishing traps that psychological manipulates people.
 - (b) City of Vancouver's key IT personnel

- 8.6. Password brute force Test
 - (a) Testing the login web forms or other interfaces to identify weak credentials by running password brute-force attack or determining the plaintext passwords from password hashes.
 - (b) City of Vancouver's public-facing web and network interfaces

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ANNEX 2 - CERTIFICATE OF EXISTING INSURANCE**



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

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

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 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.

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

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**
 INSURER _____ **Insured Values (Replacement Cost) -**
 TYPE OF COVERAGE _____ Building and Tenants' Improvements \$ _____
 POLICY NUMBER _____ Contents and Equipment \$ _____
 POLICY PERIOD From _____ to _____ Deductible Per Loss \$ _____

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

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles
 INSURER _____ **Limits of Liability -**
 POLICY NUMBER _____ Combined Single Limit \$ _____
 POLICY PERIOD From _____ to _____ *If vehicles are insured by ICBC, complete and provide Form APV-47.*

6. **UMBRELLA OR** **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive) -**
 INSURER _____ Per Occurrence \$ _____
 POLICY NUMBER _____ Aggregate \$ _____
 POLICY PERIOD From _____ to _____ Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE** **Limits of Liability**
 INSURER _____ Per Occurrence/Claim \$ _____
 POLICY NUMBER _____ Aggregate \$ _____
 POLICY PERIOD From _____ to _____ Deductible Per Occurrence/Claim \$ _____

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

8. **OTHER INSURANCE** **Limits of Liability**
 TYPE OF INSURANCE _____ Per Occurrence \$ _____
 INSURER _____ Aggregate \$ _____
 POLICY NUMBER _____ Deductible Per Loss \$ _____
 POLICY PERIOD From _____ to _____
Limits of Liability
 TYPE OF INSURANCE _____ Per Occurrence \$ _____
 INSURER _____ Aggregate \$ _____
 POLICY NUMBER _____ Deductible Per Loss \$ _____
 POLICY PERIOD From _____ to _____

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

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

Dated

**REQUEST FOR PROPOSAL NO. PS20140214
PROVISION OF WEB AND NETWORK PENETRATION TESTING
ANNEX 3 - VENDOR CODE OF CONDUCT COMPLIANCE**

Purpose: All suppliers are to complete and submit this form with Proposals to demonstrate compliance with the Supplier Code of Conduct.

The City of Vancouver expects each supplier of goods and services to the City to comply with the City’s Supplier Code of Conduct (SCC) <http://vancouver.ca/policy_pdf/AF01401P1.pdf>. The SCC defines minimum social standards for City suppliers and their subcontractors based on the International Labour Organization (ILO) core labour conventions and compliance with national and other applicable law of the country of manufacture of products including those laws relating to labour, worker health and safety, and the environment.

Proponents/vendors must comply with these standards upon submitting a proposal 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 proponents/vendors must come into compliance with the SCC. To give effect to this requirement, an authorized signatory of the undersigned proponent/vendor must complete the following declaration and include this declaration with their submission/quotation:

“As an authorized signatory of <insert proponent/vendor name>, I declare that to the best of my knowledge, <insert proponent/vendor name> and our sub-contractors have not been and are not currently in violation of the SCC or convicted of an offence under national and other applicable laws of the country of manufacture, 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 ILO convention/national law or other	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 disqualification of <insert proponent/vendor name>’s submission/quotation.”

Corporate Name of Applicant

Name and Title of Authorized Signatory

Signature

**REQUEST FOR PROPOSAL NO. PS20140214
PROVISION OF WEB AND NETWORK PENETRATION TESTING
ANNEX 4 - ASSESSMENT OF VENDOR SUSTAINABILITY LEADERSHIP QUESTIONNAIRE**

Purpose: This document is designed to identify where suppliers are going above the minimum standards in the Supplier Code of Conduct and are demonstrating sustainability leadership in their own operations as part of the evaluation criteria of a bid process.

As part of the City’s corporate Purchasing Policy and related Supplier Code of Conduct, all City vendors must meet minimum requirements related to ethical, social and environmental standards. Beyond these basic requirements, the City would also like to reward vendors that are demonstrating leadership and innovation in sustainability. In order to be able to do so, the City requires that all suppliers bidding on a City contract answer the following questions. The answers to the questionnaire will be evaluated as part of the bid evaluation process.

You will need to be able to verify all your answers to the City upon request. Please keep in mind that these questions relate to your company’s internal operations and overall sustainability leadership.

Section 1: Workplace Health & Safety, Wage Rates and Diversity

1. Tell us how your company works to promote workplace health and safety.

a) We have a documented Health & Safety Policy and Program that is openly endorsed by senior management and is updated on an annual basis	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) We have a Health & Safety Manual that includes safe work procedures, incident investigation process with the intent of prevention, workplace inspection process and emergency preparedness and response.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c) We conduct hazard assessments and job task-specific health & safety training on an annual basis	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d) We are registered with one or more of these Safety Management System/Program:		
OHSAS 18001	<input type="checkbox"/> Yes	<input type="checkbox"/> No
CAN/CSA Z1000	<input type="checkbox"/> Yes	<input type="checkbox"/> No
ANSI Z10	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e) We have a system registered, certified or recognized by another standard	Please specify _____	
f) We adhere to one or more of the ILO health and safety resolutions	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g) We have a non-registered audited health and safety management system	<input type="checkbox"/> Yes	<input type="checkbox"/> No

2. Tell us how you ensure fair wages and employee benefits.

a) We pay all of our staff a minimum wage that meets the regional LICO (See http://www.statcan.gc.ca/pub/75f0002m/2009002/tbl/tbl-2-eng.htm for wage amounts)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) We pay benefits to all of our full-time employees	<input type="checkbox"/> Yes	<input type="checkbox"/> No

3. Tell us about your strategy to address diversity in your workplace.

a) We have a policy or strategy to support hiring a diverse workforce	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) We have a policy or strategy to purchase from diverse	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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ANNEX 4 - ASSESSMENT OF VENDOR SUSTAINABILITY LEADERSHIP QUESTIONNAIRE**

contractors/suppliers

c) Our company participates in work/employment training programs for vulnerable/diverse populations (e.g. Social purchasing portal) Yes No

Section 2: Environmental Management & Stewardship

4. Tell us what policies and programs your company has in place to manage its environmental impact.

a) We have a documented Environmental or Sustainability Policy Yes No

b) We have an environmental management system registered to ISO 14001 Yes No

c) We have a system registered, certified or recognized by another standard (e.g. EMAS) Yes No
Please specify _____

d) We have a non-registered audited environmental management system Yes No

e) We conduct compliance audits to health, safety and environmental legislation Yes No

f) We produce a publicly available annual environmental, CSR, sustainability or accountability report Yes No

5. Tell us how your company works to reduce its greenhouse gas (GHG) emissions.

a) We measure our GHG emissions and have developed a reduction strategy Yes No

b) We publicly report our GHG emissions Yes No

c) We have set publicly available GHG reduction targets Yes No

d) We have set a target for the use of renewable or alternative forms of energy and have developed a strategy to reach this target Yes No

e) We have retrofitted our facility, our fleet and/or made process improvements to decrease GHG emissions and energy use Yes No

f) We have an alternative transportation program for employees (e.g. public transit subsidy, cycling facilities, carpooling program) Yes No

g) We purchase from shipping/delivery companies that have taken steps to reduce their GHG emissions Yes No

h) We operate in third party verified green buildings and have developed a plan to meet third party verified standards (such as LEED, BREEAM, etc) in as many of our facilities as possible Yes No
Please specify the verification system: _____

6. Tell us how your company works to reduce waste in its daily operations.

a) We conduct annual audits to measure the total amount of solid waste generated by our facilities and have a waste reduction strategy Yes No

b) We have set publicly available waste reduction targets Yes No

c) We have an office recycling program that includes office paper, beverage containers, batteries and printer cartridges Yes No

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ANNEX 4 - ASSESSMENT OF VENDOR SUSTAINABILITY LEADERSHIP QUESTIONNAIRE**

d) We have other recycling programs in our operations Yes No
Please specify additional materials recycled: _____

7. Tell us how your company works to reduce the use of toxins and properly manage hazardous substances

a) We are not in violation with any local, national or international laws related to the use of toxins and management of hazardous substances Yes No

b) We have a Toxic Reduction Strategy/Policy that aims to reduce toxins across all operations Yes No

c) We measure the implementation of our Toxic Reduction Strategy/Policy against a pre-determined set of performance metrics and verify performance with a third-party Yes No

Section 3: Back-up Documentation to Verify Responses

The City reserves the right to verify responses on this questionnaire and may request some or all of the following documentation.

Section	Question	Back-up Documentation
Section 1: Workplace Health & Safety, Wage Rates and Diversity	Question 1	<ul style="list-style-type: none"> • A copy of policies • Proof of safety management system certification
	Question 2	<ul style="list-style-type: none"> • Documentation of employee benefit packages and a list of those who receive benefits
	Question 3	<ul style="list-style-type: none"> • A copy of policies
Section 2: Environmental Management & Stewardship	Question 4	<ul style="list-style-type: none"> • A copy of policies • Proof of environmental management system certification • A copy of public report
	Question 5	<ul style="list-style-type: none"> • A copy of public report • A copy of reduction targets and related results • A copy of LEED, BREEAM, etc. certification
	Question 6	<ul style="list-style-type: none"> • Total tonnes of solid waste generated • A copy of reduction targets
	Question 7	<ul style="list-style-type: none"> • A copy of policy or strategy • A copy of reduction targets and related results • A copy of third party audit/verification