



REQUEST FOR PROPOSALS

CONSULTING SERVICES FOR OPPENHEIMER PARK FIELD HOUSE REPAIR AND UPGRADE

RFP No. PS20210590

Issue Date: June 2 2021

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

SUMMARY

The City is seeking architectural services including mechanical, structural and electrical consultants as appropriate to support City staff in delivering repairs, renewal and hardening of the existing Oppenheimer Field House interior.

PART A INSTRUCTIONS AND INFORMATION

1.0 INSTRUCTIONS

1.1 The City is interested in selecting an entity (each, a “**Proponent**”) that submits a proposal (each, a “**Proposal**”) with the capability and experience to efficiently and cost-effectively meet the requirements described in this RFP. The City expects to select a Proponent to enter into contract negotiations. The term of any agreement is expected to be 1 year or until services are complete.

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

1.2 Proponents should submit their proposals on or before the time and date specified in the table in Section 2.0 below (the “**Closing Time**”) by email in accordance with the following:

- Subject of the file to be: PS20210590 - Consulting Services for Oppenheimer Park Field House Repair and Upgrade - *Vendor name*.
- Document format for submissions:
 - RFP Part C in PDF format - 1 combined PDF file
 - Pricing spreadsheet (in Excel format)
 - Any other attachments if necessary
- Zip the files to reduce the size or email separately if needed.
- Send your submissions to Bids@vancouver.ca; do not deliver a physical copy to the City of Vancouver.
- Submitting the files via Drop box, FTP, or similar programs, is not acceptable.
- Due to cybersecurity concerns, the City of Vancouver will quarantine any inbound email with attachments not in PDF or Microsoft Office formats, which will result in non-delivery to Supply Chain Management and will be deemed not submitted. Non-compliant file formats will be detected and quarantined even if they are compressed, zipped, renamed, and include password protected zipped files.
- The maximum number of attachments allowed in an email message is 250 attachments.
- The maximum size limit for an email message, including all attachments, is 20MB per message.

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

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

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

1.6 All questions must be made in writing and are to be directed only to the above contact person. In-person or telephone enquiries are not permitted. Any communication from potential Proponents to City staff other than the contact person regarding the content of this RFP may lead to disqualification of the Proponent from this RFP process, at the City's sole discretion.

2.0 KEY DATES

2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Questions	June 22, 2021
Closing Time	June 29, 2021 at 3:00:00 p.m.

3.0 CHANGES TO THE RFP AND FURTHER INFORMATION

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

4.0 EVALUATION OF PROPOSALS

4.1 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated by City representatives, using quantitative and qualitative tools and assessments, as appropriate, to determine which Proposal or Proposals offer the overall best value to the City. In so doing, the City expects to examine:

Evaluation Criteria	Evaluation Weighting
Qualifications Criteria	Pass/Fail
Technical (based on	50%
Financial	50%
Total	100%

5.0 CITY'S DISCRETION

5.1 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to: (a) accept any Proposal; (b) reject any Proposal; (c) reject all Proposals; (d) accept a Proposal which is not the lowest-price proposal; (e) accept a Proposal that deviates from the Scope of Work 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 Scope of Work 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.

6.0 LEGAL TERMS AND CONDITIONS

- 6.1 The legal obligations of a Proponent that will arise upon the submission of its Proposal are stated in Appendix 2. Except where expressly stated in these Legal Terms and Conditions: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City. EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 2: (I) NO PART OF THE RFP CONSISTS OF AN OFFER BY THE CITY TO ENTER INTO ANY CONTRACTUAL RELATIONSHIP; AND (II) NO PART OF THE RFP IS LEGALLY BINDING ON THE CITY.

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

**PART B
SCOPE OF WORK**

The scope of work stated in this Part B (collectively, the “**Scope of Work**”) IS current as of the date hereof, but may change or be refined in the course of the evaluation of Proposals or otherwise.

1.0 BACKGROUND

- 1.1 The Oppenheimer Field House is situated in Oppenheimer Park, 488 Powell Street, Vancouver, B.C. V6A 1G6. The field house is a 10-year old building that is providing essential services to the downtown community. Building experienced significant damage in recent years and needs immediate repairs and renewal, including hardening of the finishes, to be able to continue supporting the park and community effectively.
- 1.2 Most of the repairs are interior to the building and described in detail in the succeeding sections below. Appropriate building permits are required. There is a need and desire for fast tracked timelines.

2.0 STATEMENT OF REQUIREMENTS

- 2.1 The City is seeking architectural services including mechanical, structural and electrical consultants as appropriate to support City staff in delivering repairs, renewal and hardening of the existing Oppenheimer Field House interior.
- 2.2 Requirements for the project are outlined below.

A. Site

- Location: Oppenheimer Park, 488 Powell St., Vancouver, B.C. V6A 1G6
- Legal Description: Asset Acct No.: A242/ DEOD (Downtown East Side)
- See Attachment 1: As-built drawings for existing building
- See Attachment 2: Requirements for remediation scope of work
- See Attachment 3: Requirements for rebuild scope of work

B. Size

- 3,500 sf total

C. Character

- See Attachment 4: Original field house drawings
- See Attachment 5: Photos of original field house damaged areas

D. Regulatory Requirements

- Vancouver Building By-law - Building Permit required

E. Standards

- Vancouver Building By-law will apply

F. Process

- The City will require review and sign-off of the design and documents at the following milestones:
 - a. Construction Documents 50%
 - b. Construction Documents 90%

G. Schedule

- Tender documents to be complete 10 weeks after contract award.

H. Budget

- Estimated Construction budget is \$810,000

I. Permits

- Proponents will be responsible for applying for and obtaining appropriate Building Permit.

J. Consultant Team:

- The Consultant Team must be composed of the following disciplines:
 - a. Architect to act as Coordinating Registered Professional
 - b. Structural
 - c. Mechanical
 - d. Electrical
 - e. Landscape

2.3 The Basic Services required for the project are described in “Schedule A - Basic and Additional Services” in the attached Architect Agreement.

2.4 All the attachments mentioned in 2.2 above are incorporated in this RFP by reference and can be accessed through the City’s FTP site as follows:

Use **any internet browser** and go to: <https://webtransfer.vancouver.ca>

The user ID is: PS20210590dl@coveftp01

The password is: [qEV7zis6](#) (The password is case sensitive)

NOTE: Any information the City provides in this RFP in respect of the Project, including, without limitation, any studies, reports, plans, drawings, measurements or specifications, is provided for information purposes only and the Proponent is not entitled to rely on such information as a basis for making professional decisions in performing the Services.

**APPENDIX 1
PROPOSAL FORM**

**RFP No. PS20210590 - Consulting Services for Oppenheimer Park Field House Repair and Upgrade
(the "RFP")**

Proponent's Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Date of Legal Organization: _____

Key Contact Person: _____

Telephone: _____

E-mail: _____

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

The Proponent further acknowledges that it has read and agrees to the Legal Terms & Conditions attached as Appendix 2 to the RFP.

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

The City reserves the right to set aside and no longer consider Proposals from Proponents that do not meet or exceed the following qualifications criteria stated below:

QUALIFICATIONS CRITERIA	
A. Does the Proponent have experience delivering at least 5 public washroom facilities or other public amenities of similar scale and complexity within the last 5 years? If 'Yes', include an example or examples in your Proposal.	Yes <input type="checkbox"/> No <input type="checkbox"/>
B. Does the Proponent have experience in processing development and building permits with the City of Vancouver within the last 3 years? If 'Yes', include an example or examples in your Proposal.	Yes <input type="checkbox"/> No <input type="checkbox"/>

Complete the requirements below by attaching a separate brief Proposal section organized in the same manner and in the same order as the items below and containing all of the requested information.

1. Proponent Overview

Provide a description of the Proponent's company, purpose and history of successes especially as they relate to the City's objectives on this project.

2. Approach to performing Scope of Work

Describe your proposed approach to providing the required services and include a timeline to illustrate when work will be performed.

3. Key Personnel

Identify and provide professional biographical information for the key personnel that would perform the Proponent's work, including those of the primary sub-consultants that would perform the Proponent's work, outlining their intended roles in meeting the Scope of Work.

4. Innovation and Alternative Approaches

Notwithstanding any other provision hereof, the City welcomes Proposals respecting innovative and/or alternative solutions to the City's objectives and requirements and may consider value-creating Proposals that derogate from the Requirements. In the space below, note any proposed innovative approaches to meeting the City's requirements. Proponents should articulate any pricing impact of the alternate solution(s) provided.

5. PROPONENT'S REFERENCES

Client Name # 1	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Project Name and Summary - please provide details of the project such as scope, challenges, and outcomes.	
Client Name # 2	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Project Name and Summary - please provide details of the project such as scope, challenges, and outcomes.	
Client Name # 3	
Address (City and Country)	
Contact Name	
Title of Contact	

Telephone No.	
E-mail Address	
Length of Relationship	
Project Name and Summary - please provide details of the project such as scope, challenges, and outcomes.	

6. Sub-consultants

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

7. Declaration of Supplier Code of Conduct

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

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

Signature: _____

Name and Title: _____

Exceptions to Declaration:

8. Conflicts, Collusion, Lobbying

See Article 9 of Appendix 2 for instructions.

9. Pricing

Complete the pricing table on the accompanying Commercial Proposal spreadsheet. All prices are to be quoted in in Canadian currency and exclusive of GST calculated upon such prices, but inclusive of all other costs including PST.

Please ensure the Commercial Proposal is submitted as an Excel spreadsheet.

10. Supplier Diversity

Please note that these Supplier Diversity questions are optional and will not form part of the evaluation of this RFP. Proponent answers to Supplier Diversity questions are for information gathering purposes only and will be kept confidential in accordance with the Legal Terms and Conditions of this RFP.

In the space below, indicate the Proponent’s company profile with regards to social value and economic inclusion supporting equity, diversity, inclusion and reconciliation, including social/environmental certifications, workforce diversity and/or if owned/controlled by an equity-seeking demographic (including but not limited to non-profit, cooperative, Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ+ people).

Majority owned/controlled/ by:	Workforce Diversity:	Social / Environmental Certifications
<input type="checkbox"/> Women <input type="checkbox"/> Indigenous Peoples <input type="checkbox"/> Non-Profit/Charity (Social Enterprise) <input type="checkbox"/> Coop <input type="checkbox"/> Community Contribution Corporation (3C/CCC) <input type="checkbox"/> Ethno-cultural Persons <input type="checkbox"/> People with Disabilities <input type="checkbox"/> LGBTQ+ <input type="checkbox"/> Other: please indicate	% Women % Indigenous Peoples % Ethno-cultural People % People with Disabilities % LGBTQ+ % Other: please indicate	<input type="checkbox"/> BCorp <input type="checkbox"/> BuySocial <input type="checkbox"/> Supplier Diversity Certification <input type="checkbox"/> Fairtrade <input type="checkbox"/> Green Business Certification (ie. LEED, ClimateSmart) <input type="checkbox"/> Other: please indicate

**APPENDIX 2
LEGAL TERMS AND CONDITIONS OF RFP**

1. APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

These legal terms and conditions set out the City's and the Proponent's legal rights and obligations only with respect to the RFP proposal process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix 2 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 2, the following terms have the following meanings:

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent following and as a result of the Proponent's selection by the City in the City's RFP process.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 2), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means Appendix 2 of the RFP, as completed and executed by the Proponent.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20210590, as amended from time to time and including all addenda.

3. NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFP or the Proposal Form, including this Appendix 2 (except only Sections 7, 8.2 and 10 of this Appendix 2, 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. The City may also invite a proponent to adjust its proposal to remedy any such problem, without providing the other proponents an opportunity to amend their proposals.

5.2 Reservation of Complete Control over Process

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

5.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss or negotiate changes to the scope of the RFP, any proposal or any proposed agreement with any one or more of the proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of such discussions or negotiations with other proponents or changes to the RFP or such proposals or proposed agreements, and, without limiting the general scope of Section 6 of this Appendix 2, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

5.4 Acceptance or Rejection of Proposals

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

6. PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

Except only and to the extent that the City is in breach of Section 8.2 of this Appendix 2, 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 2, the Proponent indemnifies and will protect, save and hold harmless the City, its officials, its agents and its employees from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its proposed subcontractors or agents alleging or pleading:

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

6.3 Limitation of City Liability

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the City breaches Section 8.2 of this Appendix 2), 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 2, and also excepting any disputes arising between the City and the Proponent under a Contract (or a similar contract between the City and a proponent other than the Proponent)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- (a) The arbitrator will be selected by the City's Director of Legal Services;
- (b) Section 6 of this Appendix 2 will: (i) bind the City, the Proponent and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and
- (c) The Proponent will bear all costs of the arbitration.

8. PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFP and Proposal Documents City's Property

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

8.2 Proponent's Submission Confidential

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

8.3 All City Information Confidential

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

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

9.1 Declaration as to no Conflict of Interest in RFP Process

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is: (i) an official or employee of the City; or (ii) related to or has any business or family relationship with an elected official or employee of the City, in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.
- (b) The Proponent confirms and warrants that there is no person having an interest (as defined above) who is a former official, former employee or former contractor of the City and who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City, except as set out, in all material detail, in the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.

9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

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

9.3 Declaration as to No Collusion

The Proponent confirms and warrants that:

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

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

9.4 Declaration as to Lobbying

The Proponent confirms and warrants that:

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

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

10. GENERAL

- (a) All of the terms of this Appendix 2 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.
- (b) The legal invalidity or unenforceability of any provision of this Appendix 2 will not affect the validity or enforceability of any other provision of this Appendix 2, 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.

**APPENDIX 3
FORM OF AGREEMENT**

See attached.



ARCHITECT AGREEMENT

ARCHITECT:



PROJECT:

CONSULTING SERVICES FOR OPPENHEIMER PARK FIELDHOUSE
REPAIR AND UPGRADE

insert date>

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ARCHITECT AGREEMENT

THIS ARCHITECT AGREEMENT is made as of <[redacted]>

BETWEEN:

CITY OF VANCOUVER, a municipal corporation continued pursuant to the *Vancouver Charter* and having an office at 453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4

(the “City” (as further defined herein))

AND:

<[redacted] **INSERT ARCHITECT NAME**>, a <[redacted] corporation/limited partnership/general partnership> formed under the laws of <[redacted]> and having an office at <[redacted] insert address>, Vancouver, British Columbia, <[redacted]>

(the “Architect”)

WHEREAS:

- A. The City is undertaking <[redacted] insert project description> (the “Project”) and wishes to engage the Architect to provide design services and construction administrative services therefor; and
- B. The Architect has agreed to provide to the City the services it requires on the terms and conditions set out herein,

NOW THEREFORE, in consideration of the premises and the covenants herein contained, the parties hereto agree as set forth herein.

ARTICLE 1.0 DEFINITIONS

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- 1.1 “Additional Services” means the Services listed under the heading “Additional Services” within Schedule A.
- 1.2 “Agreement” means this Architect Agreement between the City and the Architect, including the following schedules and appendices, which are integral parts hereof, and all amendments made hereto by written agreement between the City and the Architect:

Schedule A	Basic and Additional Services
Schedule B	Fees for Basic and Additional Services
Schedule C	Construction Budget and Project Schedule
Schedule D	Reports and City-Provided Items
Schedule E	Key Employees and Architect’s Consultants
Appendix 1	Request for Proposals
Appendix 2	Architect’s and Architect’s Consultants’ Proposals
Appendix 3	WorkSafeBC Registration Confirmation
Appendix 4	Certificate of Professional Liability Insurance

Appendix 5 Certificate of Commercial General Liability Insurance

- 1.3 “**Architect’s Consultant**” means a person, firm or company retained, with the approval of the City, and compensated by the Architect, to provide consulting services for the Project, as listed under “Architect’s Consultants” in Schedule E.
- 1.4 “**Architect’s Proposal**” means the Architect’s proposal submitted to the City on <date> and entitled <insert title of proposal> in response to the RFP and attached as Appendix 2 and the other documents included in Appendix 2.
- 1.5 “**Basic Services**” means the Services listed under the heading “Basic Services” within Schedule A and the services set forth in this Agreement, excluding the schedules and appendices hereto.
- 1.6 “**Business Day**” means a day on which banks are open for business in Vancouver, British Columbia, except a Saturday, Sunday or statutory holiday.
- 1.7 “**City**” means the City of Vancouver acting as a corporate entity and as owner of the Project Site and expressly excludes the City while acting in its capacity as a municipal regulatory authority.
- 1.8 “**City’s Consultant**” means a person, firm or company retained and compensated by the City to provide consulting services for the Project, other than the Architect.
- 1.9 “**City’s Project Manager**” means the individual employee of the City or a City’s Consultant who is authorized to give instructions to the Architect on behalf of the City with respect to the Project.
- 1.10 “**Claims**” has the meaning set out in Section 5.6.
- 1.11 “**Confidential Information**” has the meaning set out in Section 5.2.
- 1.12 “**Construction Budget**” means the budget available for total Construction Cost, determined or approved in writing by the City; provided that, as at the time of signing this Agreement, the Construction Budget (the “preliminary Construction Budget”) is as set out in Schedule C.
- 1.13 “**Construction Cost**” means the contract price (expected to be specified in a Construction Contract), net of applicable taxes, to complete the Construction Work, as estimated by the Cost Consultant and agreed to by the City and the Architect, acting reasonably, based on the market rates expected to prevail at the time scheduled for the Construction Work, plus, if the City is to provide any labour or material for the Construction Work, the market value of that work or material; for the avoidance of doubt, “Construction Cost” shall not include the compensation to be paid to the Architect, the Architect’s Consultants or the City’s Consultants in connection with the Project or the cost of land, City of Vancouver development cost charges or development cost levies or other costs which are the responsibility of the City (except for labour and materials for the Construction Work).
- 1.14 “**Construction Contract**” means each written agreement between the City and a Construction Contractor for Construction Work.
- 1.15 “**Construction Contract Documents**” means all documents that shall make up a Construction Contract.
- 1.16 “**Construction Contractor**” means the person, firm, or corporation (or more than one such persons, firms or corporations) contracting with the City to provide labour, materials and equipment for the performance of Construction Work.

- 1.17 **“Construction Work”** means the total construction services to be performed by the Construction Contractor to complete the construction of the Project.
- 1.18 **“Cost Consultant”** means the person, firm or company, retained and compensated by the City (unless otherwise expressly provided herein), to provide Construction Cost estimates for the Project.
- 1.19 **“Deliverables”** has the meaning set out in Section 5.3.
- 1.20 **“General Review”** means site visits to the Project Site at intervals appropriate to the stage of construction, and field reviews and tests as the Architect considers necessary, for purposes of checking the progress and quality of the Construction Work, as it is carried out, and to determine whether the Construction Work is in conformity with the requirements of the Construction Contract Documents.
- 1.21 **“Hazardous Substance”** means any substance or material that is prohibited, controlled or regulated by any competent authority pursuant to any environmental law including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any environmental law.
- 1.22 **“Indemnified Party”** has the meaning set out in Section 5.6.
- 1.23 **“Project Budget”** means the City’s estimate of the total cost to it for the Project, including, but not limited to, the Construction Cost, the Architect’s fees hereunder, other professional fees, land costs and all other costs to the City for the Project.
- 1.24 **“Project Schedule”** means the time schedule for the Project, which at the time of signing this Agreement is as set out in Schedule C.
- 1.25 **“Project Site”** means <📍insert location>.
- 1.26 **“RFP”** means Request for Proposal No. PS20210590, Consulting Services for Oppenheimer Park Fieldhouse Repair and Upgrade, together with all related addenda and questions and answers issued by the City, all of which are attached as Appendix 1.
- 1.27 **“Services”** means all of the services the Architect is to perform for the City pursuant to this agreement, including the Basic Services and any Additional Services.
- 1.28 **“Substantial Performance of the Construction Work”** means that the Construction Work (under the Construction Contract) has been “completed” as such term is defined in the *Builders’ Lien Act* (British Columbia).
- 1.29 **“Total Performance of the Construction Work”** shall have been reached when the entire Construction Work has been performed to the requirements of the Construction Contract Documents, and is so certified by the Architect.
- 1.30 **“WCB”** has the meaning set out in Section 5.8.
- 1.31 **“WCB Legislation”** has the meaning set out in Section 5.8.

ARTICLE 2.0 ARCHITECT'S RESPONSIBILITIES**2.1 Basic Services and Additional Services**

- 2.1.1 The Architect shall provide the Basic Services, including basic architectural services, structural, mechanical and electrical engineering services, construction administration services and other basic consulting services, as necessary, all in accordance with any instructions given by the City from time to time.
- 2.1.2 The Basic Services required to be provided by the Architect include the coordination required to integrate all parts of the Services to be provided by the Architect, the Architect's Consultants, the City and any City's Consultants. The Architect shall also work closely, and consult, with City representatives in performing the Basic Services.
- 2.1.3 The Basic Services required to be provided by the Architect include all services not specifically referred to in this Agreement, but which are necessary or incidental to the completion of other Basic Services.
- 2.1.4 The Architect shall provide the particular Additional Services that are from time to time requested in writing by the City subsequent to the date hereof, if any, and, in providing such Additional Services, the Architect shall comply with any specific instructions given by the City from time to time.
- 2.1.5 Except as otherwise expressly set out herein (including in Schedule D hereto), any information the City provides to the Architect in respect of the Project, including, without limitation, any studies, reports, plans, drawings, measurements or specifications, is provided for information purposes only and the Architect is not entitled to rely on such information as a basis for making professional decisions in performing the Services.
- 2.1.6 The Architect acknowledges the time constraints set out in the Project Schedule for the Project and shall provide the Services in accordance with the Project Schedule to facilitate the issuance of an occupancy permit for the Project by ~~<date>~~ and completion of all of the Services by ~~<date>~~, unless otherwise agreed in writing between the City and the Architect. The City may, acting reasonably, refine the Project Schedule from time to time, and the Architect shall assist the City, at the City's request, in making such refinements. In the event of a suspension and resumption of the Project or other event reasonably requiring an adjustment to the Project Schedule, the City shall make such adjustments to the Project Schedule as are reasonable in the circumstances.
- 2.1.7 Unless otherwise specifically provided in this Agreement, the Architect shall have no responsibility for:
- (a) the discovery, reporting, analyses, evaluation, presence, handling, removal or disposal of;
 - (b) advice in respect of; or
 - (c) the exposure of persons, property or the environment to

Hazardous Substances at the Project Site that have not been introduced to the Project Site by the Architect or anyone for whom the Architect is responsible under this Agreement.

2.2 Construction Budget and Construction Cost Estimates

- 2.2.1 The Architect shall review and provide its professional advice to the City regarding the Construction Budget and assist the Cost Consultant with the preparation of Construction Cost estimates pursuant to this Agreement.
- 2.2.2 Neither the Architect nor the City has control over the cost of labour, materials or equipment, over general contractors' methods of determining bid prices, or over competitive bidding, market, or negotiating conditions and therefore the Architect cannot and does not warrant or represent that bids or any negotiated price for a Construction Contract shall not vary from any Construction Cost estimate.
- 2.2.3 In producing design development and construction documents for the Project and carrying out other Services, the Architect shall at all times take the necessary steps to ensure that the design is consistent with all City-approved Project requirements, the most recent City-approved Construction Budget, and all relevant information furnished by the Cost Consultant or (other) City's Consultants.

2.3 Adjustment of Construction Budget

- 2.3.1 If, prior to the conclusion of the construction documents phase of the Services, the Construction Cost is agreed to be higher than the then Construction Budget, the City shall increase the Construction Budget and/or give directions as to how to revise the Project scope or quality to satisfy the Construction Budget;
- 2.3.2 If the bidding or negotiation phase has not commenced within three months after the Architect submits the construction documents to the City, the Construction Budget shall be adjusted by the City to reflect changes in the general level of prices in the construction industry between the date of submission of the construction documents to the City and the date on which bids or proposals are sought (as such change is determined by the Cost Consultant).
- 2.3.3 If the lowest bona fide Construction Work bid or lowest negotiated Construction Work proposal exceeds the latest-approved Construction Budget, the City may do one or more of the following:
 - (a) give written approval of an increase in the Construction Budget;
 - (b) authorize re-solicitation of bids or proposals, or negotiation or renegotiation of a price;
 - (c) give instructions to the Architect to revise the Project scope or quality as necessary to reduce the Construction Cost; and
 - (d) terminate this Agreement in accordance with Section 5.9.
- 2.3.4 If the City chooses to proceed under Section 2.3.3(c), the Architect shall, under the direction of the City acting reasonably, modify the construction documents or provide other services necessary to reduce the Construction Cost to the latest approved Construction Budget. Such modifications or other necessary services requested to reduce the Construction Cost shall be deemed to be Basic Services and shall not be subject to additional charge only if: (a) the lowest bona fide Construction Work bid or lowest negotiated Construction Work proposal referred to in Section 2.3.3 exceeded the relevant Construction Budget by more than 15 percent; and (b) such excess did not result from extraordinary market conditions or other factors reasonably not foreseen by or under the control of the Architect, and, even when such two conditions are

satisfied, such modifications or services shall be deemed to Basic Services only up to the point at which the Construction Cost is reduced to within 15 percent of such relevant earlier Construction Budget. In each other case (and in each case of work within such 15 percent buffer), the modifications or other necessary services shall be treated as Additional Services.

2.4 Construction Contract Requirements

- 2.4.1 The Architect's issuance of a certificate for payment for Construction Work performed under the Construction Contract shall constitute a representation by the Architect to the City, based on General Review and on review of the Construction Contractor's application for payment that the Construction Work for which payment is sought has been performed, that to the best of the Architect's knowledge, information and belief, such Construction Work is in conformity with the Construction Contract Documents, and that the Construction Contractor is entitled to payment in the amount certified, subject to any specific reservations or qualifications stated in the certificate for payment.
- 2.4.2 The issuance of a certificate for payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Construction Contractor has used the monies paid to it under the Construction Contract, or that the Construction Contractor has discharged the obligations imposed on it by law under the *Workers' Compensation Act*, or other applicable statutes.
- 2.4.3 The Architect shall act as, and fulfill the role of, the "Consultant" under the Construction Contract for the Project.

ARTICLE 3.0 CITY'S RESPONSIBILITIES

3.1 Provision of Information

The City shall provide:

- 3.1.1 all reasonably necessary information regarding the requirements for the Project including a program setting forth the City's Project objectives, constraints, schedules, and criteria, including:
 - (a) spatial and functional requirements and relationships;
 - (b) flexibility and expandability;
 - (c) special equipment and systems;
 - (d) site requirements; and
 - (e) sustainability requirements;
- 3.1.2 revisions to the Construction Budget, as required hereby or as otherwise determined by the City; and
- 3.1.3 the information, surveys, reports and services set out in Schedule D.

3.2 Other City Responsibilities

The City shall:

- 3.2.1 examine documents submitted by the Architect and give the Architect decisions and approvals as necessary;
- 3.2.2 except to the extent otherwise agreed herein, obtain all required consents, approvals, licenses and permits from authorities having jurisdiction, and pay the cost of all such required consents, approvals, licenses and permits, irrespective of whether the Architect or the City obtains them;
- 3.2.3 immediately notify the Architect in writing if the City observes or otherwise becomes aware of any fault or defect in the Project or any non-conformity with the requirements of the Construction Contract;
- 3.2.4 promptly fulfill the City's responsibilities expressly stated in the Agreement for the orderly progress of the Services and of the Construction Work;
- 3.2.5 authorize in writing a person to act on the City's behalf and define that person's scope of authority with respect to the Project, in each case when necessary; and
- 3.2.6 using the City's standard form of legal, insurance and bonding documents as a basis and in consultation with the City's Director of Legal Services and the City's Director of Risk Management, prepare the invitations to tender (or similar solicitations) and Construction Contract Documents for the Construction Work, provided that the Architect shall be responsible for:
 - (a) the preparation of all design, specification and other tender and contract documentation that does not form part of the legal terms and conditions of the documents;
 - (b) the review of all legal terms and conditions to ensure logical consistency (as opposed to legal compatibility) of the Architect's work with those legal terms and conditions; and
 - (c) the review and incorporation of such requirements and refinements as are requested by the City's Director of Legal Services and the City's Director of Risk Management.

ARTICLE 4.0 PAYMENTS TO THE ARCHITECT

4.1 Payments

- 4.1.1 The City shall pay professional fees and reimbursable expenses to the Architect as set forth in this ARTICLE 4.0 and Schedule B.
- 4.1.2 Payments of fees for the Basic Services, the Additional Services and reimbursable expenses shall be made monthly upon submittal and approval of the Architect's invoices (as described below) for Services rendered and expenses incurred, and, in relation to the Basic Services, shall be in proportion to the Basic Services performed within each phase of the Services described in Schedule B.
- 4.1.3 If any amounts are to be charged by the Architect for work done in a given calendar month, the Architect shall, by the 25th day of the following month, provide to the City's Project Manager a draft invoice, in a form acceptable to the City's Project Manager, including a detailed account of all charges to be claimed by the Architect for the relevant month (including statements as to percentages of completion of the Architect's own work and the Architect's Consultants' work and including supporting documentation, such as Architect's Consultants' invoices or statements of account).

The City's Project Manager shall review the draft, raise any concerns with the Architect within ten working days and, after settlement of any issues (in the City's Project Manager's discretion), approve the draft invoice. The Architect, if so requested, shall meet with the City's Project Manager to expedite and settle of the draft invoice. The Architect shall submit its final invoice, as per the approved draft invoice, to the City of Vancouver, Attention: Accounts Payable, by email to APInvoice@vancouver.ca. The invoice must contain:

- (a) the Architect's name, address and telephone number;
- (b) the City purchase order number;
- (c) the name of the City's Project Manager;
- (d) the invoice number and date;
- (e) details of any applicable taxes; and
- (f) tax registration number(s).

4.1.4 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning any of the Architect's invoices, for whatever reason, the City shall 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 shall use reasonable efforts to have the review, audit or clarification resolved within a 60 day period. The City shall, if it approves the amount of such invoice, cause the respective invoice to be paid within 30 days of approval by electronic funds transfer to the bank account indicated by the Architect.

4.1.5 The Architect shall 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 shall 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 Architect and by such other means as shall be reasonably necessary or advisable.

4.1.6 The Architect shall not take a mark-up on amounts charged to the Architect by the Architect's Consultants.

4.1.7 The Architect shall provide bank account information to the City to enable the City to make payments by electronic funds transfer, as contemplated hereby.

4.2 Reimbursable Expenses

The following expenses, when incurred by the Architect, or the Architect's employees, in the interest of the Project, are reimbursable by the City:

4.2.1 reasonable, documented travel expenses in connection with the Project for travel that has been expressly pre-authorized in writing by the City; however, expenses for travel within the Lower Mainland of British Columbia and to and from persons' residences shall not be included as reimbursable expenses;

4.2.2 reasonable, documented communication and shipping expenses (e.g., for long distance telephone calls, courier service, and postage);

- 4.2.3 reasonable, documented expenses for the reproduction of plans, sketches, drawings, graphic representations, specifications and other documents, excluding reproductions for the Architect's office use or for the use of the Architect's Consultants;
- 4.2.4 reasonable, documented expenses for renderings, plotting of computer-generated drawings, models, and mock-ups specifically requested by the City and not forming part of the Basic Services;
- 4.2.5 documented fees, levies, duties or taxes for permits, licenses or approvals that are specific to the Project and are required to be paid by authorities having jurisdiction; and
- 4.2.6 over-time services costs, for over-time authorized in advance by the City, to the extent that the cost of such services exceeds normal direct personnel expenses, where "direct personnel expenses" refers to the salaries of the Architect's or the Architect's Consultant's personnel engaged on the Project plus the cost of such mandatory and customary contributions and employee benefits as employment taxes and other statutory benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

4.3 Changes and Adjustments

- 4.3.1 Except to the extent otherwise expressly provided herein or agreed in writing, the Architect agrees that the City may assume that all services are Basic Services unless the City expressly requests Additional Services in a writing expressly acknowledging that the requested services are Additional Services or the Architect notifies the City in writing and in advance that an Additional Service is required by the Architect or an Architect's Consultant, or has been requested by the City, and the City then agrees in writing and expressly authorizes the performance of the Additional Service.
- 4.3.2 If and to the extent that the Construction Contract time initially established in the Construction Contract is exceeded or extended through no fault of the Architect and the Architect is required to provide ongoing contract administration services, incremental services required for such extended period of the Construction Contract administration shall be treated as Additional Services but shall be paid only upon and in accordance with the prior agreement of the City.

4.4 Project Suspension or Abandonment

If the Project is suspended or abandoned in whole or in part for more than a total of 90 consecutive days, the Architect shall be paid within 30 days of the date that an invoice is submitted for all services performed and reimbursable expenses incurred to date. If the Project is resumed after being suspended or abandoned in whole or in part for more than a total of 60 days whether consecutive or not, the Architect's fees shall be adjusted by the City to reasonably compensate the Architect for the increased costs incurred by the Architect as a direct result of the suspension or abandonment.

4.5 Taxes

- 4.5.1 In the event that new or additional taxes in respect of the services included in this Agreement are required to be paid by the Architect by federal or provincial legislation enacted after the Agreement is executed, the fees payable under this Agreement shall be adjusted to include such new or additional taxes.
- 4.5.2 Except as stated in Section 4.5.1, the prices stated herein include all taxes and government levies, except for the federal goods and services tax arising under the

Excise Tax Act (Canada) as a result of the sale of the Services within Canada hereunder.

- 4.5.3 If the Architect is a non-resident of Canada as defined in Canadian income tax legislation, the City may withhold from all monies payable under this Agreement such amounts as set out in Canadian income tax legislation, unless a Canada Revenue Agency waiver has been provided to the City within the time limit required under the Canada Revenue Agency administrative guidelines as in effect from time to time and, in any event, prior to payment of an invoiced amount. The City shall receive full credit under this Agreement for monies withheld as of and from the date of the withholding and no interest shall be payable by the City on sums withheld and later paid directly to the Architect.
- 4.5.4 The Architect shall indemnify the City for any losses, damages or expenses incurred by the City as a result of the Architect's failure to properly disclose to the City its non-resident status, as defined in Canadian income tax legislation.
- 4.5.5 The foregoing Section 4.5.4 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 5.0 GENERAL CONDITIONS

5.1 Architect's Consultants and Employees

- 5.1.1 The Architect shall be responsible for retaining and paying all the Architect's Consultants and employees. However, the City now acknowledges that, unless otherwise expressly set forth herein, it shall be responsible for retaining and paying for the Cost Consultant and (other) City's Consultants, including any of the City's Consultants engaged to perform the work referred to in Schedule D.
- 5.1.2 The Architect hereby assumes full responsibility to the City for all work performed by the Architect's Consultants under this Agreement. Nothing in this Agreement shall create any contractual relationship between the City and any of the Architect's Consultants.
- 5.1.3 The Architect shall only utilize:
 - (a) its employees; and
 - (b) its Architect's Consultants approved in writing by the Cityto perform the Services under this Agreement.
- 5.1.4 Except in the event of circumstances beyond the Architect's control, the Architect may not make substitutions or changes to its employees primarily responsible for the performance of the Services, and it must ensure that its Architect's Consultants do not make substitutions or changes to their employees primarily responsible for the performance of the Services, in each case as such employees are listed under the heading "Key Employees" within Schedule E, and in each case without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed, or conditioned.
- 5.1.5 Notwithstanding the foregoing Section 5.1.4, in no event may the Architect or an Architect's Consultant replace any professionally-registered staff with staff that is not so registered, and the Architect shall ensure that the Architect's Consultants do not do so.

- 5.1.6 For the purposes of the above Section 5.1.4, “circumstances beyond the Architect’s control” means an illness, death, injury, pregnancy, medical leave, or termination of employment or contract but expressly excludes situations where an employee is called upon to perform services for another client of the Architect or its affiliates.
- 5.1.7 The City may, with stated reasons and acting reasonably, request that the Architect replace an employee assigned to the Project or cause an Architect’s Consultant to replace an employee assigned to the Project. The Architect shall and shall cause each Architect’s Consultant to, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace any such individual with someone of substantially similar competency and experience.

5.2 Confidentiality

- 5.2.1 In the course of or for the purpose of performing the Services, the Architect shall 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 Architect’s breach of this Agreement or the Architect’s actions;
 - (b) information which was previously in the Architect’s possession and did not originate from the City; and
 - (c) information which lawfully becomes available to the Architect from a third party not under an obligation of confidence to the City regarding such information.
- 5.2.2 The Architect shall not use or reproduce the Confidential Information other than as reasonably required for the performance of the Services under this Agreement. The Architect shall 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 and its Architect’s Consultants who have a need to know the Confidential Information solely for the provision of the Services, and who have been advised of its confidential nature and have agreed to be bound by the confidentiality and use-restriction provisions in this Section 5.2. The Architect shall take all reasonable precautions against the Confidential Information being used by or disclosed to any unauthorized person.
- 5.2.3 If the Architect is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, the Architect shall limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that, prior to any disclosure, the Architect shall promptly notify the City in writing of the existence and the terms, and conditions of the required disclosure and, at the City’s request and expense, co-operate in obtaining a protective order or other assurance that confidential treatment and restrictions on use shall be accorded such Confidential Information.
- 5.2.4 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 Architect 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.

5.2.5 The Architect acknowledges that in the event of a breach by the Architect or any of its employees of their respective confidentiality obligations pursuant to this Section 5.2, damages alone would not be an adequate remedy. The Architect therefore agrees with the City that, in addition to and without limiting any other right or remedy it may have, the City shall 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.

5.2.6 The Architect 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 Architect 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.

5.2.7 This Section 5.2 shall survive the expiration or earlier termination of this Agreement.

5.3 Deliverables

5.3.1 As a result of or as part of providing the Services, the Architect 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, designs, models, plans, sketches, drawings, graphic representations, documents and specifications; and
- (d) any other items identified in this Agreement as deliverables;

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

5.3.2 Deliverables are deemed not to include:

- (a) any item not required to be produced by the Architect 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; and
- (b) any item produced as a result of the Services, which is specified in this Agreement as being excluded from the Deliverables category.

5.3.3 The Architect shall 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 Architect shall treat each

Deliverable as subject to the confidentiality provisions for the benefit of the City set out in Section 5.2 unless advised otherwise by the City.

- 5.3.4 A copy of each Deliverable, as to the whole or that portion of the Deliverable then existing, shall be delivered by the Architect to the City on the earliest of each of the following events:
- (a) the date specified in, or inferable from, this Agreement for the delivery of such Deliverable;
 - (b) immediately on the date of expiration or sooner termination of this Agreement; or
 - (c) the date specified by written notice of the City requesting delivery of all or any part of the Deliverable.
- 5.3.5 The Architect represents and warrants that the Deliverables shall not infringe, misappropriate or misuse any copyright, patent, trade-mark, trade secret, or confidential or proprietary information of a third party. The Architect 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.
- 5.3.6 The Architect hereby grants to the City, and shall procure that each Architect's Consultant shall grant to the City, automatically and without additional consideration, an irrevocable, perpetual, royalty-free and unfettered license to, itself and through contractors and agents, use, copy, amend, reproduce, modify and create derivative works of all Deliverables that are reports, designs, models, plans, sketches, drawings, graphic representations, documents or specifications for any purpose in connection with the Project (including in connection with the City's use and occupancy of the Project, and any future alterations, additions or reconstruction of the Project), and the City may retain copies of all of the same for such purpose.
- 5.3.7 The Architect irrevocably waives, in favour of the City, all moral rights in the Deliverables.
- 5.3.8 The Architect shall obtain from its employees and contractors and, as required, third parties (and shall require that its contractors obtain from their employees and contractors), all required licenses, including rights to sublicense, all assignments and all releases of intellectual property, and waivers of moral rights, respecting the Deliverables so as to give full effect to the provisions of this Section 5.3, including the unfettered license referred to in Section 5.3.6. The Architect shall moreover 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 rights in the Deliverables or to receive the full benefit of the Deliverables for purposes of the Project.
- 5.3.9 This Section 5.3 shall survive the expiration or earlier termination of this Agreement.

5.4 Project Identification

The Architect shall be entitled, at the Architect's expense, to sign the building by inscription or otherwise on a suitable and reasonably visible part of the permanent fabric of the building. The location, size and design of the sign or inscription and the duration of the signage shall be subject to approval by the City.

5.5 Dispute Resolution

- 5.5.1 Any claim, dispute or issue in dispute between the City and the Architect in relation to this Agreement shall be decided by mediation or arbitration, if the City and the Architect so agree in writing in relation to the specific claim, dispute or issue in dispute, or, failing any such agreement, by the courts of competent jurisdiction in the Province of British Columbia.
- 5.5.2 In the event that parties agree to arbitration pursuant to Section 5.5.1:
- (a) the arbitration shall be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the parties, and failing agreement by the parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia;
 - (b) the parties shall share equally the costs of the arbitration but shall be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements; and
 - (c) the arbitration shall take place in Vancouver, British Columbia and shall be governed by the laws of British Columbia.
- 5.5.3 This Section 5.5 shall survive the expiration or earlier termination of this Agreement.

5.6 Release and Indemnification

- 5.6.1 Notwithstanding any other provision hereof, it is agreed that the Architect shall not be liable for damages, interest, costs or any other expenses arising out of the failure of any manufactured product or any manufactured or factory-assembled system of components to perform in accordance with the manufacturer's written specifications on which the Architect relied in the preparation of the design, construction or supplementary documents, unless the Architect could reasonably have anticipated such failure.
- 5.6.2 The Architect 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 Architect, its contractors or consultants, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement (excepting any caused by the non-performance by the City of its obligations hereunder, or any gross negligence or wilful misconduct by the City).
- 5.6.3 In undertaking the Services, the Architect acknowledges that the Architect has inspected the Project Site, and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Architect to perform the Services.
- 5.6.4 Despite any insurance coverage of the City, the Architect hereby agrees to indemnify and save harmless the City of Vancouver and its successors, assigns, official, employees, agents and authorized representatives and each of them (in each case an "Indemnified Party") from and against all costs, losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that an Indemnified Party may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of

the Architect, its contractors or consultants, 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 primarily caused by errors, omissions or negligent acts of an Indemnified Party.

5.6.5 The foregoing Section 5.6.4 shall not affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.

5.6.6 This Section 5.6 shall survive the expiry or sooner termination of this Agreement.

5.7 Insurance

5.7.1 The Architect shall, purchase and maintain, at its own cost, professional liability insurance with a limit of not less than \$2,000,000 per claim and \$5,000,000 in aggregate and a deductible of not more than \$50,000 or other such amounts as the City may approve from time to time, protecting the Architect against all claims for loss or damage arising out of any error or omission of the Architect or Architect's personnel in the performance of the Services.

5.7.2 The Architect shall purchase and maintain during the entire term of this Agreement, at its own cost, a commercial general liability insurance policy with a limit of not less than \$2,000,000 per occurrence \$2,000,000 in aggregate and a deductible of not more than \$5,000 or other such amounts as the City may approve from time to time, protecting the Architect and the Architect's personnel against all claims for bodily injury including death, personal injury, advertising liability, completed operations, product liability, or property damage or loss arising out of the operations of the Architect or the actions of the Architect or the actions of the Architect or the Architect's personnel. The policy must:

- (a) a cross-liability clause in favour of the City;
- (b) 24 months completed operations and products liability coverage;
- (c) blanket contractual liability coverage;
- (d) contingent employer's liability coverage;
- (e) non-owned automobile liability coverage;
- (f) sudden and accidental pollution liability coverage; and
- (g) the City and the City's officials, employees and agents being added as additional insureds.

5.7.3 The Architect shall purchase and maintain during the entire term of this Agreement, at its own cost, automobile liability insurance on all licensed vehicle owned or leased to the Architect with a limit of not less than \$5,000,000 per occurrence or other such amount as the City may approve from time to time protecting against damages arising from bodily injury including death, and from claims for property damage arising from the operations of the Architect or the Architect's personnel.

5.7.4 The Architect shall purchase and maintain during the entire term of this Agreement, at its own cost all-risk contractor's equipment or property insurance covering all property or equipment owned or rented by the Architect and its agents or personnel against all risks of loss or damage with coverage sufficient to allow for immediate replacement.

This insurance must include a clause that waives the insurer's right of subrogation against the City and the City's officials, employees and agents.

- 5.7.5 All required insurance policies specified in Sections 5.7.1, 5.7.2, 5.7.3, and 5.7.4 must remain in full force and effect at all times until completion of the Services or earlier cancellation of this Agreement, and for a period of not less than two years thereafter, and must:
- (a) be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City, acting reasonably;
 - (b) be primary insurance with respect to all claims arising out of the Architect, and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute with such policies; and
 - (c) contain a provision that such insurance coverage will not be cancelled or endorsed to reduce the limits of liability without the insurer or their authorized representative giving the City at least 30 days' written notice by registered mail. Should the policy be endorsed to restrict coverage midterm, written notice of such restriction will be sent by registered mail to the City no later than the effective date change; the exception is cancellation for non-payment of premium in which case the applicable statutory conditions will apply.
- 5.7.6 The Architect shall cause the Architect's Consultants to each carry insurance clauses in the same form as in this Agreement; provided that the per-claim and annual aggregate coverage limits applicable to the Architect's Consultants' professional liability insurance shall vary based on the prices of the services being provided to the Architect by each Architect's Consultant. In particular, if an Architect's Consultant's fees payable by the Architect are less than \$100,000, the per-claim limit must be no lower than \$1,000,000 and there must be at least \$2,000,000 in annual aggregate coverage; if the fees are between \$100,000 and \$249,999, the per-claim limit must be no lower than \$2,000,000 and there must be at least \$3,000,000 in annual aggregate coverage; if the fees amount to \$250,000 or more, the per-claim limit must be no lower than \$2,000,000 and there must be at least \$5,000,000 in annual aggregate coverage.
- 5.7.7 Prior to signing, and immediately following the signature of, this Agreement, the Architect shall have provided, or shall provide, the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more certificate(s) of insurance. The certificate(s) of insurance will identify the Agreement title, Agreement number, policy holder, description of work, insurer name, insurer policy number, insurer policy period, and insurer limits. 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.
- 5.7.8 Upon request, the Architect shall deposit with the City certificates of insurance for the policies required to be obtained by the Architect's Consultants or copies of the insurance-related clauses from its agreements with them.
- 5.7.9 The Architect and each of the Architect's Consultants will purchase and maintain, at its own cost, any additional insurance which it is required by law, or other lines of insurance coverages, endorsements or increased limits of insurance as deemed necessary by the City and as a reasonable and prudent architect, consultant, engineer or other professional would require to protect their performance of services similar to the Services outlined.

5.7.10 Neither the providing of insurance by the Architect or the Architect's 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 Architect from any other provisions of this Agreement with respect to liability of the Architect or otherwise.

5.8 WorkSafeBC Coverage

5.8.1 The Architect agrees that it shall procure and carry at its expense and shall cause each of the Architect's Consultants to procure and carry at their expense full WorkSafeBC ("WCB") coverage as required by the *Workers Compensation Act* (British Columbia) and the regulations thereunder including all amendments thereto from time-to-time (the "WCB Legislation") for their respective employees, contractors and agents engaged in the performance of the Services under this Agreement. The Architect agrees that, notwithstanding any other provision of this Agreement, the City has the unfettered right to set off the amount of the unpaid premiums, assessments and penalties for such WCB coverage against any monies owing by the City to the Architect. The City shall have the right to withhold payment under this Agreement until the WCB premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement have been paid in full.

5.8.2 Prior to commencing any services under this Agreement and thereafter as and when requested by the City, the Architect shall provide the City with the Architect's and each Architect's Consultant's WCB registration numbers and with written confirmation from the WCB that the Architect and all of the Architect's Consultants are registered and in good standing with the WCB and that all premiums, assessments and penalties have been paid to date.

5.8.3 The Architect shall indemnify and hold harmless the City from and against all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to:

- (a) unpaid WCB assessments of the Architect or any other employer for whom the Architect is responsible under this Agreement;
- (b) the acts or omissions of any person engaged directly or indirectly by the Architect in the performance of the Services, or for whom the Architect is responsible at law and which acts or omissions are or are alleged by the WCB to constitute a breach of the WCB Legislation or any other failure to observe the safety rules, regulations and practices of WCB, including any and all fines and penalties levied by the WCB, and
- (c) Any breach of Section 5.8.2.

5.8.4 The foregoing Section 5.8.3 shall survive the expiry or sooner termination of this Agreement.

5.9 Term and Termination

5.9.1 Unless earlier terminated pursuant to the remaining provisions of this Section 5.9, this Agreement shall expire at such date at which both: (a) three years have elapsed since Substantial Performance of the Construction Work; and (b) Total Performance of the Construction Work has been achieved; provided that if the City and the Architect continue to deal with each other in relation to the Project following such date, this Agreement shall be deemed to be renewed on a month-to-month basis until such time as their dealings cease.

- 5.9.2 The City may terminate this Agreement at any time (and for its convenience) upon 30 days' written notice to the Architect, which shall immediately upon receipt of such notice take all reasonable steps to wind down the performance of the Services and to minimize expenditure, including complying with any instructions from the City as to how to do so.
- 5.9.3 If the City reasonably considers that the Architect is not discharging any of its material obligations under this Agreement, the City may inform the Architect by notice stating the grounds for the notice. If evidence of remediation satisfactory to the City is not received as soon as practicable or in any case within 14 days or such longer period as agreed by the parties, the City may by a further notice to the Architect of at least 14 days terminate this Agreement.
- 5.9.4 The City may terminate this Agreement with immediate effect if the Architect becomes bankrupt or insolvent, goes into liquidation, has a receiver or administrator appointed over it or any of its assets of undertaking, enters into any arrangement for the benefit of its creditors, becomes the subject of any moratorium or carries on business under a receiver, trustee, manager or arrangement for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events.
- 5.9.5 After giving at least 14 days' written notice to the City, the Architect may terminate this Agreement, or at its discretion and without prejudice to the right to terminate, may suspend or continue suspension of performance of the whole or part of the Services when:
- (a) 90 days after the due date for payment of an invoice, it has not received payment of that part which has not by that time been contested in writing by the City and provided always that:
 - (i) the Architect has issued a notice of reminder to the City following the due date for payment in relation to such unpaid sum; and
 - (ii) the termination notice may not be issued until the expiry of 30 days following the issue of such reminder notice; or
 - (b) the City commits any material or persistent breach(es) of its obligations under this Agreement which render(s) performance by the Architect of its obligations under this Agreement or a substantial part thereof impossible or significantly adversely affect(s) such performance of this Agreement as a whole and further which, remain(s) irremediable after 60 days.
- 5.9.6 The following consequences shall apply upon the termination of this Agreement:
- (a) The Architect shall, as soon as reasonably practicable:
 - (i) deliver to the City all work and Deliverables produced by or on behalf of the Architect during the course of performing the Services;
 - (ii) return (or destroy if otherwise directed by the City in writing) all Confidential Information provided to it for the purposes of this Agreement;
 - (iii) return all of the Project Site access cards, equipment and other items provided by the City in connection with this Agreement, failing which, the City may enter the relevant premises and take possession thereof,

and, until any such access cards, equipment and other items have been returned or repossessed, the Architect shall be solely responsible for its or their safe-keeping;

- (iv) if so requested by the City, take reasonable steps to assign any Architect's Consultant contracts to the City and do all things and execute all documents necessary to give effect thereto; and
 - (v) otherwise comply with all reasonable requirements of the City arising from the cessation of the Services or the continuing development of the Project Site.
- (b) The Architect shall be entitled to be paid its reasonable properly incurred costs of compliance with Section 5.9.6(a) and its reasonable demobilization costs, up to a maximum of \$1,000, in aggregate, save in circumstances in which the City reasonably claims that the termination was a consequence of a default by the Architect in the provision of any part of the Services, in which case all such costs shall be for the Architect's own account.
 - (c) The Architect shall be entitled to payment for any completed portion of the Services rendered in full compliance herewith prior to the time of termination, in accordance with Schedule B.
 - (d) Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

5.10 Law Governing this Agreement

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the parties now irrevocably agree that, unless the parties agree to arbitration pursuant to Section 5.5, the courts of the Province of British Columbia shall have exclusive jurisdiction in all matters arising out of or in any way relating to this Agreement, except to the extent necessary to enforce, in another jurisdiction, any decision or award made by an arbitrator pursuant to Section 5.5 or any judgment of any court in the Province of British Columbia.

5.11 Successors and Assigns

The City and the Architect, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. However, neither the City nor the Architect shall assign or transfer an interest in this Agreement without the written consent of the other.

5.12 Extent of Agreement

This Agreement represents the entire and integrated Agreement between the City and the Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the City and the Architect.

5.13 Notices

5.13.1 Any notice required or permitted to be given by one party to another pursuant to this Agreement must be in writing and shall be validly given if delivered by personal delivery or courier, transmitted by electronic means (with delivery confirmation or an

email reply effectively acknowledging delivery) or mailed in British Columbia by registered mail to the respective party at its address as follows:

- (a) **City of Vancouver**
 Facilities Planning and Development
 300-515 West 10th Avenue
 Vancouver, British Columbia V5Z 4A8

 Attention: <[redacted]name>, Project Manager
 Fax: <604-[redacted]>

- (b) <[redacted]name>
 <[redacted]address>

 Attention: <[redacted]name and title>
 Fax: <[redacted]604->
 Email: <[redacted]>

or to such other person or address as one party may advise the other in writing from time to time, provided that, notwithstanding the foregoing, the Architect's invoices shall be addressed as specified in Section 4.1.3 or as otherwise specified in the relevant City purchase order.

5.13.2 Any notice given (and, in the case of electronic transmission, confirmed or acknowledged) in accordance with Section 5.13.1 shall be conclusively deemed to have been given:

- (a) if given by personal delivery, on the day of actual delivery thereof;
- (b) if given by courier or registered mail, on the Business Day following confirmation by the courier or postal service that the notice has been delivered; and
- (c) if given by electronic transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

Notwithstanding the foregoing, if the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery, courier or electronic transmission.

5.14 No Promotion

The Architect shall 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 without the express prior written consent of the City (except as may be necessary for the Architect to perform its obligations under this Agreement). The Architect shall not use the City's logo or any of the City's official marks without the express prior written consent of the City

5.15 Compliance with Law

The Architect shall comply and shall cause the Architect's Consultants to comply with 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 Architect, the Architect's Consultants and the services to be performed under this Agreement, all as may be in force from time to time.

5.16 Precedence of Documents

In the event of any conflict or inconsistency between this Agreement (excluding Appendix 2) and the Architect's Proposal, this Agreement (excluding Appendix 2) shall take precedence.

5.17 Severance

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby. If any term or condition of this Agreement is found to be illegal, invalid ineffective, inoperable or otherwise unenforceable, but would not be so if some part of it were deleted, the term or condition shall apply with such modifications as may be necessary to make it enforceable.

5.18 Time of the Essence

Time is of the essence of this Agreement.

5.19 No Waiver

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

5.20 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 shall 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.

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5.21 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this Agreement by signing any counterpart.

5.22 Independent Legal Advice

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

5.23 Electronic Execution

Delivery of an executed signature page to this Agreement by either party by electronic transmission shall be as effective as delivery of a manually executed copy of this Agreement by such party.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written by and on behalf of the parties by their duly authorized signatories.

CITY OF VANCOUVER

by its authorized signatory:

By: _____
Signature

Print Name and Title



by its authorized signatories:

By: _____
Signature

Print Name and Title

By: _____
Signature

Print Name and Title

SCHEDULE A - BASIC AND ADDITIONAL SERVICES

1) BASIC SERVICES

The following are Basic Services requirements:

a) Basic Schematic Design Services

Within the schematic design phase of the Project, the Architect shall perform, as Basic Services, the following services and such additional schematic design phase services as are indicated in the RFP or the Architect's Proposal:

- i) summarizing findings and recommendations from the pre-design phase and/or other preceding work in a written, illustrated document, which establishes the scope for the design;
- ii) reviewing the requirements furnished by the City, and the characteristics of the Project Site;
- iii) reviewing and commenting on the Construction Budget and Project Schedule in relation to the City's requirements;
- iv) reviewing with the City alternative approaches to the design of the Construction Work and the types of construction contracts;
- v) reviewing applicable statutes, regulations, codes and by-laws and where necessary, reviewing the same with the authorities having jurisdiction;
- vi) based on mutually agreed upon requirements and schedules, and the Construction Budget, preparing for the City's review and approval schematic design documents to illustrate the scale and character of the Project and how the parts of the Project functionally relate to each other, including, at a minimum, the following Deliverables:
 - (1) a site plan;
 - (2) spatial relationship diagrams;
 - (3) principal floor plans
 - (4) building sections;
 - (5) elevations; and
 - (6) outline specifications;
- vii) providing the Cost Consultant with information necessary to prepare estimates of the Construction Cost;
- viii) other services indicated to be Basic Services.

b) Basic Design Development Services

Within the design development phase of the Project, the Architect shall perform, as Basic Services, the following services and such additional design development phase services as are

indicated in the RFP or the Architect's Proposal, taking into account the most recent City-approved Construction Budget and the most recently approved estimate of Construction Cost:

- i) preparing, for the City's review and approval, design development documents consisting of drawings and other documents appropriate to the scale of the Project to describe the size and character of the entire Project, including the architectural, structural, mechanical, and electrical systems, sustainability measures, code compliance, materials and such other elements as may be appropriate, including but not limited to:
 - (1) site plans;
 - (2) plans;
 - (3) sections;
 - (4) elevations;
 - (5) massing diagrams;
 - (6) project briefs, including information from the Architect and each Architect's Consultant detailing area calculations, all building systems, sustainability measures and all the parameters that shall guide the work in the next phase; and
 - (7) presentation materials as required for the public meetings and presentations to municipal boards and authorities, as required by City of Vancouver by-laws for the Project;
- ii) reviewing and commenting upon the cost estimates prepared by the Cost Consultant, and investigating alternate solutions to problem areas and generally consulting with the City and the Cost Consultant to the extent necessary for the Cost Consultant to be able to confirm the design is consistent with the Construction Budget;
- iii) continuously reviewing and ensuring compliance with applicable statutes, regulations, codes and by-laws as the design phase of the Project progresses;
- iv) other services indicated to be Basic Services.

c) **Basic Construction Documents Services**

Within the construction documents phase of the Project, the Architect shall perform, as Basic Services, the following services and such additional construction documents phase services as are indicated in the RFP or the Architect's Proposal, taking into account the most recent City-approved Construction Budget and the most recently approved estimate of Construction Cost:

- i) preparing, for the City's review and approval, construction documents consisting of drawings and standard-format specifications setting forth in detail the requirements for the construction of the Project;
- ii) providing the necessary documents for the City to obtain pre-tender estimates of Construction Cost from the Cost Consultant;
- iii) coordinating with the City in preparing the City's tender or other solicitation package;
- iv) reviewing the City's form of Construction Contract for information and coordination purposes;

v) reviewing statutes, regulations, codes and by-laws applicable to the design and where necessary reviewing the same with the authorities having jurisdiction in order that all required consents, approval, licenses and permits necessary for the Project may be obtained, and obtaining the following required consents, approvals, licenses and permits on the City's behalf:

(1) a development permit

(2) a building permit (including the provision of all required schedules and letters of assurance; and

vi) other services indicated to be Basic Services.

d) **Basic Bidding or Negotiation Services**

Within the bidding or negotiation phase of the Project (which shall be managed by the City), the Architect shall perform, as Basic Services, the following services and such additional bidding or negotiation phase services as are indicated in the RFP or the Architect's Proposal:

i) participating in the preparation of requirements for tendering or other solicitation documents that are to be posted by the City as part of the Construction Contract bid processes;

ii) reviewing the tender submissions and participating in qualification or selection processes for a Construction Contractor;

iii) attending bidder site reviews or meeting, and addressing technical questions from bidders;

iv) assisting and advising the City on obtaining bids or negotiated proposals and in awarding and preparing the Construction Contract; and

v) preparing, or contributing to City-issued addenda, amendments and other technical information as required;

vi) other services indicated to be Basic Services.

e) **Basic Construction Contract Administration Services**

Within the construction contract administration phase of the Project, the Architect shall perform, as Basic Services, the following services and such additional construction contract administration phase services as are indicated in the RFP or the Architect's Proposal:

i) being a representative of the City acting as the "Consultant"/"Payment Certifier" as defined in the Construction Contract and doing all things required of it thereunder;

ii) acting on the City's behalf to the extent provided in the Construction Contract Documents;

iii) reviewing the Construction Work at all appropriate times when it is in preparation or progress;

iv) acting as the coordinating registered professional for the Project, which role shall include without limitation, providing overall liaison, control, coordination and communication between all parties for the Project (except as limited by the Construction Contract);

v) forwarding all instructions from the City to the Construction Contractor;

ARCHITECT AGREEMENT
SCHEDULE B - FEES FOR BASIC AND ADDITIONAL SERVICES

- vi) carrying out the General Review of the Construction Work and coordinating field review from all disciplines;
- vii) examining, evaluating and reporting to the City upon representative samples of the Construction Work;
- viii) keeping the City informed of the progress and quality of the Construction Work, and reporting to the City defects and deficiencies in the Construction Work observed during the course of site reviews;
- ix) attending regularly scheduled construction meetings at the Project Site;
- x) determining the amounts owing to the Construction Contractor under the Construction Contract based on the Architect's observations and evaluation of the Construction Contractor's applications for payment;
- xi) issuing certificates for payment under the Construction Contract for Construction Work performed;
- xii) interpreting the requirements of the Construction Contract Documents and communicating to the City and, as necessary, the Construction Contractor its opinions as to the performance thereunder by both the City and the Construction Contractor;
- xiii) rendering interpretations in written and graphic form as may be required with reasonable promptness on the written request of either the City or the Construction Contractor (in conformity with the Construction Contract);
- xiv) rendering written findings, as required within a reasonable time (and in conformity with the Construction Contract), on all claims, disputes and other matters in question between the City and the Construction Contractor relating to the execution or performance of the Construction Work or the interpretation of the Construction Contract Documents;
- xv) rejecting, in conformity with the Construction Contract, work which does not conform to the Construction Contract Documents;
- xvi) whenever required by the Construction Contract or necessary or advisable, in the Architect's opinion, for the implementation of the Construction Contract Documents, requiring special inspections or testing of work (in conformity with the Construction Contract), whether or not such work has been fabricated, installed or completed;
- xvii) reviewing, and taking other appropriate actions with reasonable promptness upon, the Construction Contractor's submittals such as shop drawings, product data, and samples, in conformity with the Construction Contract;
- xviii) preparing, in conformity with the Construction Contract, contemplated change orders, change orders, and change directives for the City's approval and signature in accordance with the Construction Contract Documents;
- xix) directing, in conformity with the Construction Contract, minor adjustments in the Construction Work which are consistent with the intent of the Construction Contract Documents, when these do not involve an adjustment in the Construction Contract price or an extension of the Construction Contract time;
- xx) furnishing, in conformity with the Construction Contract, supplemental instructions to the Construction Contractor with reasonable promptness or in accordance with a schedule for such instructions agreed to by the Architect and the Construction Contractor;

- xxi) determining the date of Substantial Performance of the Construction Work in accordance with the Builders' Lien Act and the Construction Contract and issuing a certificate of completion in respect thereof;
- xxii) determining the dates for substantial completion of subcontracts in accordance with the progressive release provisions of the Builders' Lien Act and the Construction Contract and issuing certificates of completion therefor;
- xxiii) determining the date of Total Performance of the Construction Work and issuing a written certificate of same in accordance with the Construction Contract;
- xxiv) verifying the validity of the Construction Contractor's application for final payment and issuing a certificate of final payment;
- xxv) receiving from the Construction Contractor, reviewing on behalf of the City for Construction Contract compliance, and, when compliant, forwarding to the City, written warranties and related documents;
- xxvi) reviewing and confirming that operation manuals prepared by the Construction Contractor are in accordance with the Construction Contract, and forwarding the same (which compliant) to the City;
- xxvii) preparing a Project close-out report , including at a minimum a summary of each of the design phases, all monthly reporting and site reviews during construction, a final budget summary, including all change orders, a final schedule summary, including any adjustments, the certificate of completion, the final certificate for payment, the occupancy permit, and a summary commentary explaining any major issues and deviations from expectations
- xxviii) preparing record drawings showing changes in the Construction Work made during construction based on marked-up as-built drawings, and other data furnished by the Construction Contractor to the Architect, and sending to the City two paper copies and four electronic copies on disk of each such drawing, provided that the accuracy of such information shall be the sole responsibility of the Construction Contractor;
- xxix) prior to the end of the period of one year following the date of Substantial Performance of the Construction Work, reviewing any defects or deficiencies which have been reported or observed during that period, and notify the Construction Contractor in writing of those items requiring attention by the Construction Contractor to complete the Construction Work in accordance with the Construction Contract;
- xxx) preparing and providing all schedules required under the City of Vancouver Building Bylaw for issuance of an occupancy permit;
- xxxi) other services indicated to be Basic Services.

f) **Basic Post-Construction Services**

Within the post-construction phase of the Project, the Architect shall perform, as Basic Services, the following services and such additional post-construction phase services as are indicated in the RFP or the Architect's Proposal:

2) ADDITIONAL SERVICES

The following are, each to the extent they are not required as Basic Services, Additional Services, and they shall be provided to the City by the Architect if the City requests them in writing:

- a) Providing more exhaustive or continuous on site review or representation than is required as a Basic Service.
- b) Providing analyses of the City's needs and programming requirements of the Project.
- c) Providing financial feasibility, Project Budget or other special costing studies.
- d) Providing site evaluations, planning surveys, or comparative studies of prospective sites.
- e) Providing special surveys, environmental studies and submissions and other related services required for approval by authorities having jurisdiction over the Project.
- f) Providing services relating to future facilities, systems and equipment.
- g) Providing services to investigate existing conditions or facilities such as preparing measured drawings or verifying the accuracy of drawings or other information furnished by the City.
- h) Providing detailed estimates of Construction Cost, detailed quantity surveys, inventories of material and equipment, or analyses of owning and operating costs.
- i) Providing graphic design, signage and other similar services.
- j) Providing tenant layout and design services.
- k) Preparing models or architectural renderings specifically commissioned by the City.
- l) Preparing documents for alternative, separate or sequential bids or providing extra services in connection with bidding, negotiations, or construction prior to the completion of the construction documents phase.
- m) Coordinating construction work performed by separate construction contractors or by the City's own forces and coordinating the services required in connection with construction performed and equipment supplied by the City.
- n) Providing services after expiry of the period of three years following the date of Substantial Performance of the Construction Work.
- o) Revising or providing additional drawings, specifications or other documents which are:
 - i) caused by the enactment or revisions of statutes, regulations, codes or by-laws, subsequent to the preparation of such documents;
 - ii) caused by an interpretation by the authorities having jurisdiction which differs from the Architect's interpretation of statutes, regulations, codes or by-laws, which difference the Architect could not have reasonably anticipated; or
 - iii) due to changes required as a result of the City's failure to render decisions in a timely manner.

ARCHITECT AGREEMENT
SCHEDULE B - FEES FOR BASIC AND ADDITIONAL SERVICES

- p) Providing services in connection with evaluating substitutions proposed by the Construction Contractor and making subsequent revisions to the drawings, specifications and other documentation resulting from them.
- q) Making investigations, inventories of materials and equipment, valuations and detailed appraisals of existing facilities.
- r) Providing services made necessary by the material default of the Construction Contractor, by major defects or deficiencies in the Construction Work of the Construction Contractor, or by a material failure of performance by either the City or Construction Contractor under the Construction Contract.
- s) Providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such work.
- t) Providing services in evaluating an extensive or unreasonable number of claims submitted by the Construction Contractor or others in connection with the Construction Work.
- u) Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.
- v) Attending, presenting or speaking as the City's representative at any public hearing, mediation, arbitration proceedings, or legal proceedings except as required as a Basic Service.
- w) Providing for services of consultants other than the Architect's Consultants.
- x) Translating documents into a language other than English.
- y) Providing or arranging for any services not otherwise provided for in this Agreement, or which the Agreement states are to be treated as Additional Services.

SCHEDULE B - FEES FOR BASIC AND ADDITIONAL SERVICES

1) BASIC SERVICES

The following are the professional fees the City shall pay to the Architect for the Basic Services performed by the Architect and by the Architect's Consultants:

2) ADDITIONAL SERVICES

The City and the Architect shall discuss and seek to agree the fees for Additional Services, which shall be fixed fees, per-service, and shall be recorded in writing; provided that if the City and the Architect do not agree the fees for a particular Additional Service, the following are the fees the City shall pay for the Additional Service:

- a) Fees for authorized Additional Services not included in Basic Services, excluding those provided by the Architect's Consultants, shall be calculated on a time-worked basis at the hourly rates set out on page <redacted> of the Architect's Proposal in Appendix 2.
- b) Fees for authorized Additional Services provided by the Architect's Consultants shall be invoiced to the Architect by the Architect's Consultants according to the hourly rates agreed to in advance in writing by the City and the Architect, and then shall be re-invoiced by the Architect to the City. However, in no event shall these rates exceed the hourly rates set out in the Architect's Proposal.

SCHEDULE C - CONSTRUCTION BUDGET AND PROJECT SCHEDULE

C1 The preliminary Construction Budget is \$< >, comprised of the following:

< >	\$< >
< >	\$< >
< >	\$< >
< >	\$< >
< >	\$< >
Total:	\$< >

C2 The Project Schedule, up until the issuance of an occupancy permit, is as follows, with the work to be started on the date of this Agreement and the occupancy permit to be issued by < >:

Phase:	Duration:
Schematic Design Phase	< >
Design Development Phase	< >
Construction Documents Phase	< >
Bidding or Negotiation Phase	< >
Construction Contract Administration Phase	< >

The expected time for completion of post-construction services is 1 year. This time forms part of the Project Schedule.

SCHEDULE D - REPORTS AND CITY-PROVIDED ITEMS

- 1) The City shall provide the following documents for the Architect's information only, and not for reliance:
 - a) <redacted>; and
 - b) <redacted>.
- 2) The City shall provide the following additional documents, which may be relied upon by the Architect for accuracy, but not for completeness. The Architect is solely responsible for any inferences drawn from the specific information in these documents:
 - a) <redacted> subsurface investigation reports, including the following information or the results of the following tests: test borings, test pits, soil bearing values, percolation tests, a list of and evaluations of toxic or hazardous substances or materials present at the Project Site, ground corrosion and resistivity tests, necessary operations for anticipating subsoil conditions, and appropriate professional recommendations>; and
 - b) <redacted>.
- 3) The City shall provide the following additional documents, which may be relied upon by the Architect for accuracy and completeness (completeness meaning that they do not, together, omit to state any material information that would reasonably be deemed to be necessary to completely describe the matters within the intended scope of such documents):
 - a) <redacted> a survey or surveys describing the physical characteristics and legal limitations for the Project Site, and a written legal description of the site and adjoining properties, as necessary, showing the following, as applicable: grades and lines of streets, alleys, pavements and adjoining properties and structures; adjacent drainage, rights-of-way; restrictions; easements; encroachments; zoning; deed restrictions; the boundaries and contours of the site; locations and dimensions of existing buildings and other improvements and trees>;
 - b) <redacted> information available to the City concerning utility services, both public and private, above and below grade, including inverts and depths>;
 - c) <redacted> air and water pollution tests, tests for toxic or hazardous substances or materials, structural, mechanical, chemical, and other laboratory and environmental tests, inspections, laboratory and field tests and reports as the City determines are required by the Architect, the Architect's Consultants, the authorities having jurisdiction or the Construction Contract Documents>; and
 - d) <redacted>.
- 4) **The City shall provide the following additional items:**
 - a) <redacted> Cost Consultant Services for the Project>; and
 - b) <redacted> Enhanced commissioning services for the Project.>

**SCHEDULE E -
 KEY EMPLOYEES AND ARCHITECT'S CONSULTANTS**

Key Employees

The following are the key employees of the Architect and of Architect's Consultants, who shall be primarily responsible for performing the Services:

-
-
-

<NTD: Include at a minimum the principal in charge, the project architect and the construction contract administrator.>

Architect's Consultants

The following Architect's Consultants have been approved by the City:

Company Name, Address	Contact Name and Telephone Number	Area of Responsibility
	Name: Phone: 	
	Name: Phone: 	
	Name: Phone: 	

APPENDIX 1 - REQUEST FOR PROPOSALS

RFP to be attached, together with all amendments, addenda and Q&As.

APPENDIX 2 - ARCHITECT'S AND ARCHITECT'S CONSULTANTS' PROPOSALS

Final Architect's Proposal to be attached, together with Architect's Consultants' proposals, if applicable.

APPENDIX 3 - WORKSAFEBC REGISTRATION CONFIRMATION

To be attached before contract is signed.

APPENDIX 4 - CERTIFICATE OF PROFESSIONAL LIABILITY INSURANCE

To be attached before contract is signed.

APPENDIX 5 - CERTIFICATE OF COMMERCIAL GENERAL LIABILITY INSURANCE

To be attached before contract is signed.