



STATEMENT OF WORK PS10329

COST CONSULTANT FOR BUILDING ENERGY CODE UPDATES

Responses will be received in the Purchasing Services Office, 3rd Floor, Suite #320, East Tower, 555 West 12th Avenue, Vancouver, British Columbia, Canada, V5Z 3X7 prior to the Closing Time of Tuesday, December 7, 2010, 3:00:00 PM, City Hall Clock Time (as defined in Note 2 below).

NOTES:

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

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

Dino Goundouvas
Buyer

FAX: 604.873.7057 E-MAIL: purchasing@vancouver.ca

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1.0 BACKGROUND

The Sustainability Group is seeking a cost consultant to conduct an analysis of the cost implications of proposed amendments to the Vancouver Building By-Law (VBBL).

In order to decrease the environmental impact of new buildings, reduce energy and water consumption and GHG emissions, the VBBL includes a number of environmental performance requirements that address energy and water efficiency. As we move towards the goal of carbon neutral new buildings in 2020, the City will incrementally amend the building code to reflect more stringent energy efficiency targets.

By measuring and analyzing the performance of recently constructed buildings, we have identified areas of potential energy efficiency improvements that can be achieved via code amendments. In order to address the full implications of the proposed code amendments and support smooth implementation we need to have a clear idea of what the cost premium of the new requirements will be from the perspective of the development industry.

2.0 PURPOSE

2.1 The purpose of the work is to:

- Conduct a cost analyses based on the implications of the proposed amendments to the Vancouver Building By-Law (VBBL).

3.0 SCOPE OF WORK

3.1 Phase 1) In 2011 the VBBL will reference a more rigorous energy standard: ASHRAE 90.1 2010. The updated standard includes more stringent requirements with regard to building envelope construction, efficient lighting and heat plant upgrades. In addition the City is proposing to require additional energy efficiency measures related to passive design. This study will analyze net present value analysis and estimated energy savings associated with the new standard as compared to ASHRAE 90.1 2007. The analysis will focus on six building types:

- high-rise residential
- mid-rise residential (wood frame)
- mid-rise concrete
- large retail
- high-rise commercial
- mid-rise commercial.

3.2 Phase 2) As a second phase to the Green Homes Program, the City will be amending the building by-law for one and two family dwellings to improve the baseline performance of new homes. This study will examine the cost implications of the following proposed changes:

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- R-50 insulation in the attic
- Effective R-22 insulation in walls (continuous thermal insulation)
- 1.5 ACH @50Pa
- 2.5 ACH @50Pa
- 3.5 ACH @50Pa
- EnergyStar Zone B windows
- Condensing tank-less DHW
- Condensing boilers
- Drain-water heat recovery systems.

The City can provide energy savings on proposed measures for the second phase of the Green Home Program.

4.0 PROJECT MILESTONES

4.1 The Proponent shall ensure the project will be completed according to the schedule indicated for each Milestone.

Milestone	Schedule
Phase 1 - Analyses	Wednesday, December 22, 2010
Phase 2 - Analyses	Friday, January 21, 2011

5.0 TIMELINE

3.1 The anticipated completion date for delivery of the final report is **January 21, 2011**.

3.2 If the above is not achievable, the Proponent shall provide a suggested timeline, including the timing for completion of the project, and will be required to develop and maintain a project schedule.

6.0 CONSULTANCY COORDINATION

3.3 The consultancy will be coordinated by an appointed City representative.

3.4 The Consultant shall communicate regularly with the City representative to report progress and seek direction.

3.5 Updates will be through various means including phone conversations, written communications, face-to-face meetings and the like.

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7.0 DELIVERABLES REQUIRED FOR THIS PROJECT

- 6.1 The consultant will be expected to deliver a final written report, a report in presentation (slide) format, and to deliver two in-person presentations to City of Vancouver staff and stakeholders.

8.0 GENERAL METHODOLOGY

- 8.1 Proposal submissions should outline the resources expected to be devoted by the Proponent.
- 8.2 Proponents are to provide a detailed plan of approach and description of the services proposed, including the details of the services. Include the intent to obtain the same by sub-consultant.
- 8.3 In the submission, the Proponent should provide a description of the methods to be employed to perform and co-ordinate the work.

9.0 WORKSAFEBC COVERAGE

- 9.1 The Consultant agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of the Contract. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafeBC coverage against any monies owing by the City to the Consultant. The City shall have the right to withhold payment under the Contract until the WorkSafeBC's premiums, assessments or penalties in respect of work done or service performed in fulfilling the Contract have been paid in full.
- 9.2 The Consultant shall provide the City with the Consultant's WorkSafeBC registration number and a letter from the WorkSafeBC confirming that the Consultant is registered in good standing with WorkSafeBC and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies under the Contract. The Consultant shall indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged in the performance of the Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafeBC, including penalties levied by the WorkSafeBC.

10.0 INSURANCE COVERAGE

- 10.1 Applicants shall submit with their application a Certificate of Existing Insurance (in the form set out in Appendix A) duly completed and signed by their insurance agent or broker as evidence of their existing insurance, along with a letter from their insurance broker or agent indicating whether or not (and if not then to what extent) they will be

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- able to comply with the insurance requirements set out in this section should they be selected as a successful Proponent.
- 10.2 The following insurance coverage are minimum insurance required by the City of Vancouver. It is the responsibility of the Consultant to obtain any additional insurance required by law or which the Consultant considers necessary.
- 10.3 The Consultant covenants to obtain at its own expense before commencing work on the Services under this Agreement.
- 10.3.1 A Professional Liability insurance policy with limits of not less than One Million (\$1,000,000) Dollars per occurrence with an aggregate of not less than One Million (\$1,000,000) Dollars and a deductible of not more than Fifty Thousand (\$50,000) Dollars; protecting the Consultant against all claims for loss or damage arising out of any wrongful act or error or omission of the Consultant in performance of the professional services herein described in this agreement.
- 10.4 All foregoing insurance policies shall remain in full force and effect at all times during the term of this Agreement and for a period of not less than two (2) years following the completion of the Services and shall:
- 10.4.1 be obtained and issued by insurance companies authorized to carry on business in the Province of British Columbia, on terms satisfactory to the City's Director of Risk Management;
- 10.4.2 be primary insurance as it respects the City and any insurance or self-insurance maintained by the City shall be in excess of this insurance and shall not contribute to it;
- 10.4.3 contain a provision that coverage afforded will not be suspended, voided, reduced or materially altered or changed without the insurance company(s) giving at least thirty (30) days prior written notice by registered mail to the City; and
- 10.4.4 contain a clause that waives the insurer's right of subrogation against the City or its officers, employees, servants or agents.
- 10.5 Prior to commencement of the Agreement, the Consultant shall provide evidence of all required insurance to be taken out in the form of a Professional Liability Insurance certificate and the insurance certificate shall not contain any disclaimer whatsoever. If required by the City, the Consultant shall provide certified copies of the policies signed by the insurers.
- 10.6 If the Consultant hires a subcontractor to perform any work related to the Services, the Contractor will ensure that all the Sub-Contractors will place and maintain the same type and amount of Professional Liability insurance, and for the same period of time, as is required of the Contractor.

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11.0 COMPANY PROFILE

- 11.1 Provide a description of the Proponent's company, purpose and history of successes including number of years in business, projects. Include a list of key personnel employed by any named proposed sub-contractor to the Proponent.

12.0 KEY PERSONNEL

- 12.1 Identify and provide resumes for the key personnel in the Proponent's proposed team and outline what their roles will be in servicing this project.
- 12.2 The City will consider a Proposal from two (2) or more persons or companies having no formal corporate links who wish to form a joint venture or consortium solely for the purpose of submitting a Proposal in response to this SOW, provided they disclose the names of all members of the joint venture or consortium and all members provide detail of their involvement and background. While the City will consider such a consortium Proposal, the City has a strong preference for Proposals submitted by a single firm who would act as a prime contractor and then supplies any required specialist expertise via Sub-contractors or Sub-consultants, as the case may be.
- 12.3 Proponents wanting to be considered for any contract with the City should include all relevant prior experiences with similar projects. Specifically, proponents are expected to demonstrate their aptitude in the following areas:
 - 12.3.1 items listed as Phases in Section 3.0
 - 12.3.2 excellent written and oral skills.
- 12.4 Proponents must state the knowledge and experience of each proposed team member. For team members with limited or no knowledge and experience, proponents must describe these team members' roles in the Project, and how the rest of the team will support these team members.

13.0 PRICING

- 13.1 Prices quoted are to be exclusive of HST, except where expressly requested.
- 13.2 Pricing shall be held firm for the term of the Contract, unless otherwise expressly agreed to by the City.
- 13.3 Prices are to be quoted F.O.B. Destination to the Delivery Site(s), including freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.
- 13.4 Prices are to be quoted in Canadian currency.
- 13.5 The Proponent should provide the following information:

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- 13.5.1 a total maximum fee for the Services, inclusive of all disbursements (except any applicable taxes, which is to be shown separately), showing all costs associated with the Project Tasks and deliverables;
 - 13.5.2 estimated consultancy hours for each member based on Statement of Work;
 - 13.5.3 a breakdown of the total maximum Project fee into the costs associated with each team member, inclusive of fees, disbursements and applicable taxes;
 - 13.5.4 a description of all disbursements, including a maximum amount for each;
 - 13.5.5 a description of all costs, organized as above, for any additional proposed scope of work related to this Project. For example, where additional meetings are requested by the City, describe how these would be charged to the City;
 - 13.5.6 hourly rates for all team members; and
 - 13.5.7 a description of all costs associated with Sub-contractors.
- 13.6 The Proponent should copy and customize the Pricing Table set out below for inclusion in their SOW submission:

Estimated Fees/Disbursements					
Work Task/Phase/ Deliverable	Team Member	Activity/Role	Estimated Hours	Hourly Rate	Estimated Total
Phase 1					
Phase 2					
Maximum Fees/ Disbursements				Total:	

- 13.7 State:
- 13.7.1 Itemize the types of expenses and costs listed as disbursements.

14.0 ALTERNATIVE PRICING SOLUTIONS

- 14.1 Proponents may offer alternative pricing options.

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15.0 TERMS OF PAYMENT

- 15.1 The City's standard payment terms are Net Thirty (30) days after receipt of approved invoice: however any discounts or more favourable terms which may be offered by the Proponent will be taken into consideration in the financial evaluation. Please indicate in your response if other than Net 30.
- 15.2 Invoices shall indicate labour separate from materials and where applicable, where HST is applied. Invoices shall be sent to:
- City of Vancouver
1st Floor - Sustainability Group
453 West 12th Avenue
Vancouver, BC
V5Y 1V4
- 15.3 Describe if Electronic Fund Transfer (EFT) is available.

16.0 EVALUATION CRITERIA

- 16.1 The following criteria, which are not in any order of importance, will be taken into consideration during the City's evaluation of the Statement of Work:
- 16.1.1 Proposal format and clarity;
 - 16.1.2 Ability to work within the time frame;
 - 16.1.3 Demonstrated understanding, knowledge and experience in market analysis, municipal planning, land use planning and urban design;
 - 16.1.4 Ability to meet the requirements of the Scope of Work;
 - 16.1.5 Qualifications and overall experience of Consultant assigned to the project;
 - 16.1.6 Proponent's business reputation and capabilities where applicable;
 - 16.1.7 Understanding of scope of work;
 - 16.1.8 The proponent's proposed work schedule;
 - 16.1.9 Proposal includes creative approaches to addressing anticipated challenges associated with this scope of work;
 - 16.1.10 Demonstrated experience with building energy modeling software
 - 16.1.11 Familiarity with ASHRAE 90.1 2007 and ASHRAE 90.1 2010
 - 16.1.12 Quantitative and costing analyses
 - 16.1.13 The best value to the City based on, but not limited to, quality, service and price; and

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16.1.14 Pricing and any other criteria the City, in its sole discretion, required to determine the likely success of the project.

16.2 The City may elect to short list some of the Proponents and require short listed Proponents to provide additional information or details, including making a presentation, and/or attending an interview.

17.0 SUBMISSION OF STATEMENT OF WORK

17.1 All costs associated with the preparation and submission of the Proposal including any costs incurred by the Proponent after the Closing Time, will be borne solely by the Proponent.

18.0 PROPOSAL APPROVAL

18.1 Proposal approval is contingent on funds being approved and the Proposal being approved by the City. Only then may the successful Proponent and the City proceed to settle, draft and sign the necessary legal agreement (attached herein as Appendix C - Professional Service Agreement).

18.2 The City will notify the successful Proponent in writing that its Proposal has been approved in principle and invite the Proponent to proceed with discussions to settle, draft and sign a legal agreement.

18.3 The City is not under any obligation to approve any Proposal and may elect to terminate this SOW at any time.

18.4 Notwithstanding any other provision in the SOW documents, the City has in its sole discretion, the unfettered right to:

18.4.1 accept any Proposal;

18.4.2 reject any Proposal;

18.4.3 reject all Proposals;

18.4.4 accept a Proposal which is not the lowest price;

18.4.5 accept a Proposal that deviates from the Requirements, Specifications or the conditions specified in this SOW;

18.4.6 reject a Proposal even if it is the only Proposal received by the City;

18.4.7 accept all or any part of a Proposal; and

18.4.8 split the Requirements between one or more Proposals.

19.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

19.1 The City is subject to the Province of British Columbia's *Freedom of Information and Protection of Privacy Act*.

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20.0 DECLARATION - No conflict of Interest

20.1 Declaration as to Conflict of Interest

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

20.1.1 an elected official or employee of the City; or

20.1.2 related to or has any business or family relationship with any elected official or employee of the City, such that there would be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of this Proposal by the City.

21.0 REQUIREMENTS

21.1 The successful Proponent will be requested to provide the following:

21.1.1 Certificate of Existing Insurance;

21.1.2 Certificate of Professional Liability Insurance (attached as Appendix B)(must be submitted at the time of award);

21.1.3 City of Vancouver Business License; and

21.1.4 Business Number or an article of incorporation.

for more information, please visit:

<http://www.fin.gov.bc.ca/registries/corppg/default.htm>

22.0 REFERENCES

22.1 The Proponent is to provide a list of at least three (3) relevant and successfully completed projects with similar work over the last two (2) years as well as references for same by completing the table below. By submitting a Proposal, the Proponent consents to the City contacting these references, and consents to the City also contacting any other organization for the purposes of evaluating the Proponent's company and Proposal.

22.2 Include an organization chart for the Proponent's proposed Project team, identifying the team leader or project manager, and all roles and areas of responsibility.

22.3 In addition, the Proponent shall submit at least two samples of written work similar in nature to Section 3.0.

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23.0 RESPONSE FORMAT

Proponents are requested to organize its response according to the following format:

Title Page: The title page will show the SOW title and number, Closing Time and Date, Proponent name, address, telephone number, and the name and title of the contact person.

Table of Contents: Page numbers are to be indicated.

Proponent Profile:

1. General

Provide a brief overview of your company or organization including information on previous or present collaborations with other companies or organizations.

2. Resources

Describe in general, your organizational capabilities including resources available to you, or your team, (if applicable), such as access to information, personnel with specialized knowledge and expertise in the applicable fields.

3. Letter of Approach

Provide a brief overview of the methodology proposed.

4. Pricing

Provide pricing based on the Pricing Table including the total amount.

5. Requirements

Provide the documents as required in Section 17.0

6. Examples of Past Work:

List references and describe the relevant activities, including contact information. The Proponent is to attach in printed form examples of relevant past work.

Section 4 – City staff to select the required # of days Written Notice before sending out for completion
Section 2, 3 & 4– to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
and certifies that the insurance policy as listed herein has been issued to the Named Insured(s) and is in full force and effect as of the effective date of the agreement described below.
2. **NAMED INSURED:** *[must be the same name as the Permittee/Licensee or Party(ies) to Contract and is/are either an individual(s) or a legally incorporated company(ies)]*

MAILING ADDRESS:

LOCATION ADDRESS:

DESCRIPTION OF OPERATION/CONTRACT:

3. PROFESSIONAL LIABILITY INSURANCE

LIMITS OF LIABILITY:

INSURER: _____ Per occurrence/claim: \$ _____
POLICY NUMBER: _____ Aggregate: \$ _____
POLICY PERIOD: From _____ to _____ Deductible per occurrence/claim: \$ _____

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

4. POLICY PROVISIONS:

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

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

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



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

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

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.

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

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**

INSURER _____	Insured Values (Replacement Cost) -
TYPE OF COVERAGE _____	Building and Tenants' Improvements \$ _____
POLICY NUMBER _____	Contents and Equipment \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

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

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

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

INSURER _____	Limits of Liability -
POLICY NUMBER _____	Combined Single Limit \$ _____
POLICY PERIOD From _____ to _____	<i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i>

6. **UMBRELLA OR** **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive) -**

INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE**

INSURER _____	Limits of Liability
POLICY NUMBER _____	Per Occurrence/Claim \$ _____
POLICY PERIOD From _____ to _____	Aggregate \$ _____
	Deductible Per Occurrence/Claim \$ _____

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

8. **OTHER INSURANCE**

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

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

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

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APPENDIX C - FORM OF AGREEMENT



PROFESSIONAL SERVICES AGREEMENT

[insert department name]
Agreement # [insert]

PART A - AGREEMENT DETAILS

BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

[NAME OF CONSULTANT]
[address of Consultant]

(the "Consultant")

OF THE SECOND PART

BACKGROUND:

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

1.0 PROJECT MANAGERS

1.1 The City's Project Manager for this Agreement is as follows:

[NTD: Insert name, title, address, e-mail and telephone.]

1.2 The Consultant's Project Manager for this Agreement is as follows:

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 APPENIDX C - FORM OF AGREEMENT
 PART A - AGREEMENT DETAILS**

[NTD: Insert name, title, address, e-mail and telephone.]

2.0 SERVICES

2.1 The "Services" will consist of the services described in the following documents (and those subsequently included upon the request or instruction of the City's Project Manager pursuant to Part B, Section 3.0 - *Changes to Scope of Service*, if any):

- (a)
- (b)
- (c)
- (d)

2.2 All of which documents are now deemed to be attached to and form an integral part of this Agreement whether or not actually attached to this Agreement. In the event of any conflict or inconsistency, the terms of Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms* will be given priority, followed by the terms of this Part A - *Agreement Details*, followed by the above-noted documents, in the order set forth above.

3.0 DELIVERABLES/AGREEMENT PRICE

The following Table 1 describes each Deliverable and sets out the maximum fees and expenses for each Deliverable and is to be read in conjunction with Part B, Section 2.0 - *Basis of Payment to Consultant*.

Table 1

Deliverables Description	Maximum Fees for Deliverable (fixed dollar amount or % of total)	Maximum Expenses
Report #1		
Report #2		
Final Report		
"Agreement Price" (Maximum Fees and Expenses) excluding HST, as per Part B, Section 2.1		

3.1 Pursuant to Part B, Section 2.2 - *Hourly (or Daily) Rates/Unit Rates Fixed*, the Consultant now confirms that the following hourly rates apply for the following Consultant's Personnel:

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 APPENIDX C - FORM OF AGREEMENT
 PART A - AGREEMENT DETAILS**

Table 2

Name/Title	Area of Responsibility/ Description of Services Provided	Hourly Rate
Consultant's Project Manager		

4.0 KEY PERSONNEL

Pursuant to Part B, Section 1.6 - *Key Personnel*, the following individuals are now designated "key personnel":

Table 3 - Key Personnel

Name/Title	Area of Responsibility/Description of Services Provided
Consultant's Project Manager	

5.0 PROJECT SCHEDULE

Pursuant to Part B, Section 1.7 - *Project Schedule*, the following Project Schedule will apply to the Services:

Table 4 - Project Schedule

Deliverable	Completion Deadline
Report #1	
Final Report	

6.0 CONFLICT OF INTEREST/LOBBYIST REGISTRATION DISCLOSURE

Pursuant to Part B, Section 17 - *Conflict of Interest/Lobbyist Registration Disclosure*, the Consultant has the following exceptions regarding conflict of interest or lobbyist registration:

This Agreement is between the City and the Consultant and consists of this Part A - *Agreement Details*, Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms* and any documents

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APPENIDX C - FORM OF AGREEMENT
PART A - AGREEMENT DETAILS**

referred to in any of these sections. If there is any conflict between these sections, Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms*, will take precedence. The Consultant acknowledges that it has read and understands this Agreement.

AS EVIDENCE OF THE CITY'S AND THE CONSULTANT'S agreement to be legally bound by the terms of this Agreement, the City and the Consultant have signed where indicated below and delivered this Agreement to each other effective as of **[insert month, day, year]**.

CITY OF VANCOUVER
by its authorized signatory:

[insert name],
[insert job title]

[LEGAL NAME OF CONSULTANT - to exactly match name on insurance, WorkSafeBC and business licence]
by its authorized signatory(ies):

[Name and Title]

[Name and Title]

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APPENIDX C - FORM OF AGREEMENT
PART B - PROFESSIONAL SERVICES TERMS AND CONDITIONS**

PART B - PROFESSIONAL SERVICES TERMS AND CONDITIONS

1.0 CONSULTANT'S SERVICES TO THE CITY

1.1 Defined Terms

Capitalized words and terms used in this Agreement have the meanings given to them in Part C - *Defined Terms*.

1.2 Effective Date

This Agreement will take effect and become legally binding on the parties once it is signed and delivered by both the City and the Consultant.

1.3 Provide Services

The Consultant now agrees to provide and be fully responsible for the Services.

1.4 No Contracting Out Without Consent

The Consultant will not engage sub-consultants or otherwise assign, sub-contract or let out as task work any part of the Services, unless the Consultant has obtained the prior written consent of the City's Project Manager, which consent may be arbitrarily withheld.

1.5 Quality of Service

The Consultant represents and warrants that, it has the necessary skill, ability, experience, personnel and other resources to perform the Services, and that it will perform the Services:

- (a) with the degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to the Services,
- (b) in accordance with sound current professional practices,
- (c) in conformance with the latest standards and codes prescribed by professional and regulatory bodies in the applicable profession, field or discipline, and
- (d) in accordance with the requirements of this Agreement, and any requests or instructions of the City's Project Manager made/given pursuant hereto.

1.6 Key Personnel

The Consultant will furnish all personnel required to perform the Services, and all such personnel will be competent and qualified to perform the Services. Where specific key personnel have been named as such in Part A, Section 4.0 - *Key Personnel*, such key personnel will not be replaced with other personnel without the prior written consent of the City's Project Manager, which consent may be arbitrarily withheld.

1.7 Project Schedule

The Consultant will commence the Services promptly and will carry out the Services in accordance with the Project Schedule.

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2.0 BASIS OF PAYMENT TO THE CONSULTANT

2.1 Maximum Fees and Expenses - Agreement Price

This Agreement is a "time and materials" contract subject to an upset price maximum. Accordingly, despite any other term of this Agreement (except for Part A, Section 3.0 - *Deliverables/Agreement Price*) the maximum fees and expenses payable by the City to the Consultant for the Services is the amount set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* (the "Agreement Price").

2.2 Hourly (or Daily) Rates/Unit Rates Fixed

All hourly (or daily) rates and unit rates set out in this Agreement will remain fixed until the completion of the Services and may not be increased by the Consultant for any reason.

2.3 Basis of Payment

In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms of this Agreement, the City will pay the Consultant the fees and expenses set out in this Agreement, plus the HST, as applicable.

2.4 "Time and Materials" Agreement

Subject to the other terms of this Agreement, payment to the Consultant will be based on:

- (a) hours worked by the Consultant's Personnel in providing the Services multiplied by the applicable hourly charge-out rate for that personnel as set out in Table 2 of Part A, Section 3.0 - *Deliverables/Agreement Price*; and
- (b) the direct out-of-pocket expenses necessarily incurred in providing the Services and expressly permitted to be charged separately under this Agreement.

2.5 Deliverable Price is Maximum

Despite anything to the contrary in this Agreement (except Part A, Section 3.0 - *Deliverables/Agreement Price*) the maximum fees and expenses to be paid by the City to the Consultant for each Deliverable will not exceed the amounts set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* for that Deliverable, and accordingly:

- (a) where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable is less than the maximum amounts set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price*, the City will only pay for the aggregate of the time and materials at the hourly (or daily) rates for fees and the unit rates for expenses;
- (b) where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable exceeds the maximum amounts set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* for that Deliverable, the City will only pay the maximum fees and expenses amount set out there for that Deliverable; and
- (c) the Consultant will only invoice for, and the City will only be obligated to pay, a maximum of 90% of the maximum amounts set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* for each Deliverable, with the remaining ten percent

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being a performance security holdback retained by the City, and which the City will be obligated to pay once all Deliverables have been completed in accordance with the terms and conditions of this Agreement and accepted by the City's Project Manager.

2.6 Services Obligations included in Agreement Price

The Agreement Price and maximum amounts of fees and expenses as set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price* will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.

2.7 Permitted Expenses

Subject to the maximum liability of the City under Part A, Section 3.0 - *Deliverables/Agreement Price*, expenses for which the City will reimburse the Consultant will be limited to the following:

- (a) transportation costs, for any of the Consultant's Personnel to travel to meetings requested by the City's Project Manager at locations other than the Consultant's offices or the City's premises within the City of Vancouver, is not to exceed \$0.41 per kilometre to a maximum of 10 kilometres one way. No accommodation, food or other travel related expenses will be reimbursable;
- (b) long distance telephone calls;
- (c) photocopies to a maximum of \$0.20 per page; and
- (d) delivery of reports, documents, drawings or correspondence by courier, where this method of delivery has been requested by the City's Project Manager.

Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit.

All other expenses not listed above are now deemed to be expressly included in the Consultant's fees.

If the Consultant has engaged Sub-Consultant(s), then the Consultant will make full payment to those Sub-Consultant(s) for work performed in relation to the Services.

2.8 Sub-Consultant Services all-inclusive unless Change Order

Where the City and Consultant have expressly stated in Part A - *Agreement Details* (or by Change Order) that certain Services to be performed by a Sub-Consultant are to be paid for separately from the other Services, the City will reimburse the Consultant for payments made to such Sub-Consultant(s) at amounts equal to the actual payments made to that Sub-Consultant by the Consultant without any additions for overhead and profit.

2.9 Interim Invoices

The Consultant will submit invoices to the City's Project Manager on or before the tenth day of each month. Each invoice will list the names, hours worked and hourly (or daily) rates of all Consultant's Personnel that have provided Services for each Deliverable that month, the total amount of previous payments made by the City for each Deliverable, the percentage completion for each Deliverable, a holdback of ten percent from the invoice, and (for the

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purposes of showing the 90% limit on each Deliverable referred to in Section 2.3.2(c) above) the percentage that all invoices to date bears to the total maximum fees and expenses for each Deliverable.

Each invoice will show separately the applicable amount of the HST.

Attached to each invoice will be copies of:

- (a) invoices for all expenses claimed, categorized according to Deliverable;
- (b) confirmation of payments made to Sub-Consultant(s) for the previous month for each Deliverable; and
- (c) a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete each Deliverable.

2.10 90% Limit on Time & Materials Payments Until Completion

Despite anything to the contrary in this Agreement:

- (a) the City will never be obligated to pay the Consultant a greater percentage of total fees and expenses than the degree of percentage completion of each Deliverable as set out in Table 1 of Part A, Section 3.0 - *Deliverables/Agreement Price*; and
- (b) the City will never be obligated to pay more than 90% of the fees and expenses actually owing on any monthly invoice until after all Deliverables have been completed in accordance with the terms and conditions of this Agreement and accepted by the City's Project Manager, and then the aggregate of the ten percent holdbacks will become due.

2.11 Review of Invoice

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

2.12 Records Requirements

The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all expenses and percentage amounts of work completed. All such accounts and records will not be disposed of by the Consultant without the prior written consent of the City's Project Manager. The City will be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Consultant and by such other means as will be reasonably necessary or advisable.

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2.13 Taxes/Currency

The Agreement Price is expressed and payable in Canadian dollars and is exclusive of any applicable HST.

3.0 CHANGES TO SCOPE OF SERVICES

The City's Project Manager may, at any time and from time to time and without invalidating this Agreement, require a change to the Services and/or the Project Schedule. Should the Consultant consider that any such request or instruction constitutes a change warranting amendment of the Agreement Price or Project Schedule, the Consultant must advise the City in writing prior to acting on any such request or instruction, and in any event within five (5) Business Days of such request or instruction. In that case, the maximum Agreement Price and/or Project Schedule will be adjusted, if/as agreed to by both parties in writing, and failing agreement, if/as the City's Project Manager may determine, acting reasonably. Failing any such adjustment, the Services provided pursuant to the request or instruction will be deemed to be included within the Agreement Price and to be subject to the Project Schedule.

4.0 RELEASE AND INDEMNIFICATION

4.1 Release

The Consultant now releases the City and the City's Personnel from all Losses including those caused by personal injury, death, property damage or loss, and economic loss, arising out of, suffered or experienced by the Consultant or the Consultant's Personnel in connection with their performance of the Services.

4.2 Acceptance "As Is"

In undertaking the Services, the Consultant acknowledges that it has inspected the City's site(s), agrees to accept the site(s) "as-is" and undertakes to take all precautions necessary to ensure the safety of all the Consultant's Personnel.

4.3 Indemnity

Despite any insurance which may be placed by the City, the Consultant now indemnifies and will indemnify and save harmless the City and the City's Personnel from and against all Losses that the City or the City's Personnel may sustain, incur, suffer or be put to at any time either before or after the completion of the Services or sooner cancellation of this Agreement, that arise out of any act or failure to act of the Consultant or the Consultant's Personnel under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Losses are caused by errors, omissions or negligent acts of the City or the City's Personnel.

4.4 Separate from Other Remedies and Rights

This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law.

4.5 Survival of Release/Indemnity

This Section 4.0 will survive the completion of the Services or sooner cancellation of this Agreement.

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5.0 INSURANCE

5.1 Required Types/Amounts

Prior to commencing the Services, the Consultant will obtain at its own expense:

- (a) a Professional (Errors and Omissions) Liability insurance policy with limits of not less than \$1,000,000 per claim and an aggregate of not less than \$1,000,000, protecting the Consultant against all claims for loss or damage arising out of any error or omission of the Consultant or the Consultant's Personnel in the performance of the Services; and
- (b) a Commercial General Liability insurance policy with limits of not less than \$5,000,000 per occurrence, and a deductible of not more than \$5,000, protecting the Consultant and the Consultant's Personnel against all claims for personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the Consultant or the actions of the Consultant or the Consultant's Personnel. The policy will contain a cross liability clause in favour of the City and will name the City and the City's Personnel as additional insured.

5.2 Required Policy Terms

All required insurance policies will remain in full force and effect at all times until completion of the Services or earlier cancellation of this Agreement, and for a period of not less than two years thereafter, and will:

- (a) be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City's Director of Risk Management, acting reasonably;
- (b) be primary insurance in respect to the City and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute to such policies; and
- (c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least 30 calendar days' prior written notice.

for any property insurance carried by the Consultant, contain a clause that waives the insurer's right of subrogation against the City and the City's Personnel.

5.3 Insurance Certificate

Prior to signing this Agreement, the Consultant will provide the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more Certificate(s) of Insurance. The Certificate(s) of Insurance will identify the Agreement title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. Proof of insurance, in the form of such Certificate(s) of Insurance (or copies of the policy(ies) themselves, if requested), will be made available to the City's Project Manager at any time during the performance of the Services immediately upon request.

5.4 Sub-Consultant's Insurance

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

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

5.5 Insurance Requirements Additional to any other Requirements

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

5.6 Insurance Requirements Independent of Agreement Obligations

Neither the providing of insurance by the Consultant or the Sub-Consultants in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing, will be held to relieve the Consultant from any other provisions of this Agreement with respect to liability of the Consultant or otherwise.

6.0 WORKSAFEBC REQUIREMENTS

6.1 Maintain Coverage - General

The Consultant will carry and pay for full WorkSafeBC coverage for itself and all the Consultant's Personnel engaged within British Columbia in the performance of the Services, failing which the City has the unfettered right to set off and withhold the amount of any unpaid premiums, assessments and/or penalties for such WorkSafeBC coverage against any amounts owing by the City to the Consultant pursuant to this Agreement, until all amounts payable to WorkSafeBC have been paid in full.

6.2 Provide Evidence of Coverage - General

On request, the Consultant will provide the City's Project Manager with the Consultant's WorkSafeBC registration number and a letter from WorkSafeBC confirming that the Consultant is registered in good standing with WorkSafeBC and that all amounts owing to Work Safe BC have been paid to date, prior to the City having any obligation to pay any invoice under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of Losses arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged in the performance of the Services or arising out of or in any way related to the failure to observe the safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.

7.0 CITY APPROVALS

No reviews or approvals carried out or information supplied by the City or the City's Personnel will derogate from the duties and obligations of the Consultant, and all responsibility related to the Services will be and remain with the Consultant.

8.0 CANCELLATION

The City (through the City's Project Manager) may at any time, in its sole discretion, whether or not the Consultant is in default, cancel this Agreement in whole or in part by giving 5 Business Days' prior written notice to the Consultant. Where the Consultant is not in default and the City cancels this Agreement, the City will pay the Consultant at the rates set out in this Agreement for all Services properly performed to the date of the delivery of the cancellation notice (subject to the terms of this Agreement) plus necessary and reasonable

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wind up costs incurred, if any, in respect to the cancellation. However, in no event will the Consultant be entitled to compensation for wind up costs which exceed ten percent of the remaining balance of the Agreement Price as at the date of cancellation.

9.0 CONFIDENTIALITY

The Consultant acknowledges that, in performing the Services required under this Agreement, it will acquire information about certain matters which are confidential to the City, and that such information is the exclusive property of the City. The Consultant undertakes to treat as confidential all information received by reason of its position as Consultant, and agrees not to disclose same to any third party either during or after the performance of the Services under this Agreement, without the express prior written consent of the City's Project Manager.

10.0 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

10.1 Ownership

All reports, drafts, data, drawings, audiovisual materials, information, plans, models, designs, specifications and other documents or products produced, received or acquired by the Consultant as a result of the provision of the Services (the "Material") will be the sole property of the City, and the City will have the right to utilize all of the Material for its benefit in any way it sees fit without limitation.

10.2 Time of Delivery

The Material will be delivered by the Consultant to the City's Project Manager immediately on the expiration or sooner cancellation of this Agreement, provided that the City's Project Manager may, at any time or times prior to the expiration or sooner cancellation of this Agreement, give written notice to the Consultant requesting delivery by the Consultant to the City's Project Manager of all or any part of the Material, in which event the Consultant will immediately comply with such request.

10.3 Patent and Copyright

(a) The Consultant now transfers title in and to the Material and assigns to the City sole copyright in the Material. The Consultant agrees that title to the Material is to be considered to have been transferred, and any copyright in the Material is to be considered to have been assigned by the Consultant to the City upon creation of the Material. The Consultant now irrevocably waives, in favour of the City, the Consultant's moral rights in respect of the Material. The Consultant will obtain in writing, from the Consultant's Personnel or from any other source used, all required assignments, waivers, including waivers of moral rights, releases of interest and acknowledgements necessary to transfer title to and copyright in the Material to the City.

(b) The Consultant now represents and warrants that the portion of the Material produced by the Consultant will not infringe any patent or copyright or any other industrial or intellectual property rights including trade secrets.

11.0 NON-RESIDENT WITHHOLDING TAX

11.1 If the Consultant is a non-resident of Canada, as defined in Canadian income tax legislation, the City may withhold from all monies payable under this Agreement such amounts as set out in

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Canadian income tax legislation unless a Canada Revenue Agency waiver has been provided to the City within the time limits required under the Canada Revenue Agency administrative guidelines as in effect from time to time, and in any event, prior to payment of an invoiced amount.

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

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

12.0 CITY BUSINESS LICENCE

The Consultant will comply at all times with the City of Vancouver License By-law.

13.0 RESOLUTION OF DISPUTES

This Agreement will be governed by the laws of British Columbia and the parties now irrevocably attorn to the jurisdiction of, and agree to submit all disputes to, the courts of British Columbia for resolution.

14.0 INDEPENDENT CONSULTANT

This Agreement is a contract for services and the Consultant and the Consultant's Personnel, are not, nor are they to be deemed to be partners, appointees, employees or agents of the City.

15.0 NO ASSIGNMENT

The Consultant will not assign, either directly or indirectly (including, without limitation, by way of any transfer of control of the shares or ownership interests in the Consultant), this Agreement or any right of the Consultant under this Agreement, without the prior written consent of the City's Project Manager, which consent may be arbitrarily withheld.

16.0 NO PROMOTION

The Consultant must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City's Project Manager (except as may be necessary for the Consultant to perform the Consultant's obligations under the terms of this Agreement). The Consultant undertakes not to use the name, official emblem, mark, logo or mascot of the City, including without limitation, the use of "City of Vancouver", "Vancouver Police Board", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", or any other reference or means of promotion or publicity to any of the foregoing, without the express prior written consent of the City's Project Manager. Furthermore, the Consultant undertakes not to disclose or promote its relationship with the City in any communication or matter whatsoever as a basis to create an association, express or implied, between the Consultant and the "City of Vancouver", "Vancouver Police Board", "Vancouver Public Library", "Vancouver Park Board", or "Vancouver Board of Parks and Recreation".

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17.0 CONFLICT OF INTEREST/LOBBYIST REGISTRATION DISCLOSURE

17.1 Conflict of Interest

- (a) The Consultant agrees that until 90 calendar days after completion of the Services, the Consultant will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person whether or not a client of the Consultant's. The Consultant now acknowledges that a breach of this Section 17.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act* (Canada) and *Criminal Code* of Canada and accordingly could be punishable as a crime and not merely as a breach of contract.
- (b) The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:
 - (i) an elected 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, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration or this Agreement or the performance of the Services,

except as expressly disclosed in Part A - *Agreement Details*, and now agrees that if at any time prior to 90 calendar days after completion of the Services such declarations or representations cease to be true, complete and accurate, the Consultant will notify the City's Project Manager immediately.

17.2 Lobbyist Registration Disclosure

The Consultant now confirms and warrants that neither it nor any of its Sub-Consultants, nor any of their respective officers, directors, shareholders, partners or employees is registered as a lobbyist under any lobbyist registration legislation in any jurisdiction in Canada or the United States of America, except as expressly disclosed in Part A - *Agreement Details*, and now agrees that if at any time prior to 90 calendar days after completion of the Services such declarations or representations cease to be true, complete and accurate, the Consultant will notify the City's Project Manager immediately.

18.0 NOTICES

Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party c/o its Project Manager at the respective address specified in Part B, Section 1.0 - *Section Managers*, or to such other address in Canada as either party may specify in writing to the other. Any such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

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19.0 TIME OF ESSENCE

Time will be of the essence of this Agreement.

20.0 FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, if an Event of Force Majeure occurs or is likely to occur, the party whose performance is affected thereby will promptly notify the other party of the particulars of the relevant event or circumstances and, if reasonably possible, supply supporting evidence. The parties will use their reasonable best efforts to remove, curtail or contain the cause of the delay, interruption or failure (provided that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of the party which is the employer affected) and to resume, with the least possible delay, their compliance with their respective duties, covenants and obligations under this Agreement. Neither the City nor the Consultant will be liable to the other for any delay, interruption or failure in the performance of its duties, covenants or obligations hereunder if caused by an Event of Force Majeure, and the date limited for the performance of such duties, covenants or obligation hereunder will be postponed for a period equal to the delay occasioned by such an Event of Force Majeure, unless otherwise agreed in writing by the parties hereto.

21.0 LEGAL EFFECT/ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties, and will benefit and bind each party and their successors and permitted assigns.

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PART C - DEFINED TERMS

1.0 DEFINITIONS

In this Agreement, the following words and phrases have the following meanings:

- (a) **"Agreement"** means this agreement as set out in Part A - *Agreement Details*, Part B - *Professional Services Terms and Conditions* and Part C - *Defined Terms* and any attachments, all as may be amended from time to time as contemplated hereby;
- (b) **"Agreement Price"** has the meaning set out in Part B, Section 2.1 - *Maximum Fees and Expenses - Agreement Price*;
- (c) **"Business Day"** means any day other than a Saturday, Sunday or "holiday" as defined in the *Interpretation Act* (British Columbia);
- (d) **"Certificate(s) of Insurance"** means certificate(s) of the type provided to the Consultant by the City and required to be completed pursuant to Part B, Section 5.0 - *Insurance*;
- (e) **"City"** means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter;
- (f) **"City's Personnel"** means the City's and the City's contractors' (other than the Contractor's) directors, officials, officers, employees, agents, licensees and invitees and includes where the context permits, the Vancouver Police Board, Vancouver Public Library Board, Vancouver Board of Parks and Recreation, and all officials, officers, employees and other agents of each of the same;
- (g) **"City's Project Manager"** means the City's employee or representative (or any replacement or delegate of that person) who is authorized to deal with the Consultant on behalf of the City in connection with the Services and to make decisions in connection with this Agreement, as identified in Part A, Section 1.0 - *Project Managers*;
- (h) **"Consultant"** means the entity defined as such on the front page of tPart A of the Agreement;
- (i) **"Consultant's Personnel"** means the Consultant's and the Sub-Consultants' respective partners, principals, directors, officials, officers, employees, agents, licensees and invitees;
- (j) **"Consultant's Project Manager"** is the Consultant's employee or representative who has the overall responsibility for the successful planning and execution of the Services and who is authorized to deal with the City on behalf of the Consultant in connection with the Services and to make decisions in connection with this Agreement, as identified in Part A, Section 1.0 - *Project Managers*;
- (k) **"Deliverable"** means the Services completion/payment milestones specifically identified as such in Part A, Section 3.0 - *Deliverables/Agreement Price*;

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- (l) "Event of Force Majeure" means acts of God or public enemy (including criminals and terrorists), wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or public authority, including the City (provided that such orders were not issued nor any such labour disputes occasioned as a result of an act or omission of the Consultant, or anyone employed or retained by the Consultant), freight embargos or power failures, PROVIDED that any such event or circumstance reasonably constitutes a material disabling event or circumstance which is beyond the reasonable control of a party, does not arise from the neglect or default of a party, and which results in a material delay, interruption or failure by a party in carrying out its duties, covenants or obligations under this Agreement, but which does not mean or include any delay caused by the Consultant's lack of funds or financial condition;
- (a) "HST" means the tax payable and imposed pursuant to part IX of the Excise Tax Act (Canada) as amended, including any provincial component collected by Canada on behalf of British Columbia, and any successor legislation thereto;
- (m) "Losses" means all:
- (i) direct and indirect, as well as;
 - (ii) consequential,
- claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and expenses, interest, penalties and amounts paid in settlement, whether from a third person or otherwise);
- (n) "Material" has the meaning set out in Part B, Section 10 - *Ownership of Copyright and Documents*;
- (o) "Personnel" means, depending on the context, the City's Personnel or the Consultant's Personnel;
- (p) "Project Schedule" means the schedule for delivery of the Services as set out in Part A, Section 5.0 - *Project Schedule*;
- (q) "Services" means the services described in Part A, Section 2.0 - *Services*;
- (r) "Sub-Consultant" means the independent consultants, agents, affiliates, associates, subcontractors and other third parties, if any, retained by the Consultant to assist in the performance of the Services;
- (s) "WorkSafeBC" means the entity formerly known as Workers Compensation Board (British Columbia) an entity created pursuant to the *Workers Compensation Act* (British Columbia) and any reference to "WorkSafeBC" requirements includes a reference to that Act as well as all regulations and directives enacted or issued from time to time pursuant to that Act, all as amended or replaced from time to time.