



REQUEST FOR PROPOSALS

Title: Drupal Hosting Solution

Reference No.: 1220-030-2018-024

FOR THE ACQUISITION OF INFORMATION TECHNOLOGY SOLUTIONS

(General Services)

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REQUEST FOR PROPOSALS

1. INTRODUCTION

1.1 Purpose

The City of Surrey (the “**City**”) is interested in receiving proposals (the “**Proposal**”) from proponents (the “**Proponent**”) who have recent experience in providing a Drupal Hosting Solution (as defined in section 1.2) as needed by the City.

The purpose of this request for proposals (the “**RFP**”) is to solicit competitive proposals for the most appropriate Drupal Hosting Solution that provides the robust functionality (the “**Services**”) as described in Schedule A.

This RFP is designed to provide the Proponent with the information necessary to prepare a competitive Proposal. Similarly, the RFP process is intended to also provide the City with the information it requires to select a Proponent to provide the Services. Specifically, the City is looking for a Proponent whose Solution (as defined in section 1.2) meets or exceeds the City’s requirements as described in Schedule A.

This RFP is being conducted in conjunction with RFP 1220-030-2018-038 for the City of Surrey Website Redesign and CMS Replacement. Proponents may choose to submit Proposals for either or both RFPs. It should be noted that it is not a requirement to submit Proposals for both RFPs but if Proponents wish to respond to both solicitations then separate Proposals should be prepared for each solicitation.

1.2 Definitions

In this RFP the following definitions shall apply:

“**BC Bid Website**” means www.bcbid.gov.bc.ca;

“**City**” means the City of Surrey;

“**City Representative**” has the meaning set out in section 2.6;

“**City Website**” means www.surrey.ca;

“**Closing Time**” has the meaning set out in section 2.2;

“**Contract**” means a formal written contract between the City and a Preferred Proponent(s) to undertake the Services, the preferred form of which is attached as Schedule B–1;

“**Drupal Hosting Solution**” means a cloud computing Drupal hosting solution that is capable of performing the Services;

“**Evaluation Team**” means the team appointed by the City;

“**Information Meeting**” has the meaning set out in section 2.3;

“Preferred Proponent(s)” means the Proponent(s) selected by the Evaluation Team to enter into negotiations for a Contract;

“Proponent” means an entity that submits a Proposal;

“Proposal” means a proposal submitted in response to this RFP;

“RFP” means this Request for Proposals;

“Services” has the meaning set out in Schedule A;

“Site” means the place or places where the Services are to be performed; and

“Solution” means a Drupal Hosting Solution and all related implementation services; and

“Statement of Departures” means Schedule C-1 to the form of Proposal attached as Schedule C.

2. INSTRUCTIONS TO PROPONENTS

2.1 Anticipated Solicitation Schedule

The following is the City’s estimated timeline for the project.

Solicitation Schedule	Estimated Dates
Issuance of the RFP	August 17, 2018
Information Meeting	September 12, 2018
Closing Date and Time	October 4, 2018
Evaluation of Proposals	October 2018
Interviews/Demonstrations dates for Preferred Proponents only (if any)	*To Be Advised
Finalization of the Contract	*To Be Advised
Expected “Go Live” Date	*To Be Advised

The City reserves the right to modify this schedule at the City’s discretion.

2.2 Closing Time and Address for Proposal Delivery

A Proposal should be labelled with the Proponent’s name, RFP title and number. A Proposal should be submitted in the form attached to this RFP as Schedule C – Form of Proposal.

The Proponent may submit a Proposal either by email or in a hard copy, as follows:

(a) Email

If the Proponent chooses to submit by email, the Proponent should submit the Proposal electronically in a single pdf file which must be delivered to the City by email at: purchasing@surrey.ca

on or before the following date and time

Time: 3:00 p.m., local time
Date: October 4, 2018

(the “Closing Time”).

PDF emailed Proposals are preferred and the City will confirm receipt of emails. Note that the maximum file size the City can receive is 10Mb. If sending large email attachments, Proponents should phone to confirm receipt. A Proponent bears all risk that the City’s equipment functions properly so that the Proposal is submitted on time.

(b) Hard Copy

If the Proponent chooses NOT to submit by email, the Proponent should submit one (1) original unbound Proposal and one (1) copy (two (2) in total) which must be delivered to the City at the office of:

Name: Richard D. Oppelt, Purchasing Manager
at the following location:

Address: Surrey City Hall
Finance & Technology Department – Purchasing Section
Reception Counter, 5th Floor West
13450 – 104 Avenue, Surrey, B.C., Canada V3T 1V8

on or before the Closing Time.

2.3 Information Meeting

An information meeting may be hosted by the City Representative to discuss the City’s requirements under this RFP (the “**Information Meeting**”). While attendance is at the discretion of Proponents, Proponents who do not attend will be deemed to have attended the Information Meeting and to have received all of the information given at the Information Meeting. At the time of issuance of this RFP a meeting has not been scheduled.

An information meeting will be hosted by the City Representative to discuss the City’s requirements under this RFP (the “Information Meeting”). While attendance is at the discretion of Proponents, Proponents who do not attend will be deemed to have attended the Information Meeting and to have received all of the information given at the Information Meeting. At the time of issuance of this RFP a meeting has been scheduled as follows:

When: September 12, 2018
Where: City Hall – 13450 104th Avenue, Surrey, B.C., Canada
Room: 1E 20.04 (Community Room B)
Time: 2:00pm

2.4 Late Proposals

Proposals submitted after the Closing Time will not be accepted or considered. Delays caused by any delivery, courier or mail service(s) will not be grounds for an extension of the Closing Time.

2.5 Amendments to Proposals

Proposals may be revised by written amendment, delivered to the location set out in Section 2.2, at any time before the Closing Time but not after. An amendment should be signed by an authorized signatory of the Proponent in the same manner as provided by Section 4.3. E-mailed amendments are permitted, but such amendment should show only the change to the proposal price(s) and should not disclose the actual proposal price(s). A Proponent bears all risk that the City's equipment functions properly so as to facilitate timely delivery of any amendment.

2.6 Inquiries

All inquiries related to this RFP should be directed in writing to the person named below (the "**City Representative**"). Information obtained from any person or source other than the City Representative may not be relied upon.

Name: Richard D. Oppelt, Purchasing Manager
Address: 13450 – 104th Avenue
Surrey, British Columbia, V3T 1V8, Canada
Business Fax: 604-599-0956
Business E-mail: purchasing@surrey.ca
Reference: 1220-030-2018-024

Inquiries should be made no later than 7 business days before Closing Time. The City reserves the right not to respond to inquiries made within 7 business days of the Closing Time. Inquiries and responses will be recorded and may be distributed to all Proponents at the discretion of the City.

Proponents finding discrepancies or omissions in the Contract or RFP, or having doubts as to the meaning or intent of any provision, should immediately notify the City Representative. If the City determines that an amendment is required to this RFP, the City Representative will issue an addendum in accordance with section 2.7. No oral conversation will affect or modify the terms of this RFP or may be relied upon by any Proponent.

2.7 Addenda

If the City determines that an amendment is required to this RFP, the City Representative will issue a written addendum by posting it on the BC Bid Website at www.bcbid.gov.bc.ca (the “BC Bid Website”) and the City Website at www.surrey.ca (the “City Website”) that will form part of this RFP. It is the responsibility of Proponents to check the BC Bid Website and the City Website for addenda. The only way this RFP may be added to, or amended in any way, is by a formal written addendum. No other communication, whether written or oral, from any person will affect or modify the terms of this RFP or may be relied upon by any Proponent. By delivery of a Proposal, Proponent is deemed to have received, accepted and understood the entire RFP, including any and all addenda.

2.8 Examination of Contract Documents (Schedule B)

The Contract that has been adopted by the City for technology projects are included in this RFP solicitation as Schedule B (for cloud computing implementations). Proponents are responsible to review all specifications, requirements, terms and conditions, insurance requirements, and other requirements herein. Proponents should be prepared to enter into a Contract substantially the same as one of the attached Contract. The Proponent’s failure to execute a Contract substantially the same as one of the attached Contracts may result in disqualification for future solicitations for this same or similar products/services.

Submittal of a Proposal is agreement to the above condition. Proponents are to price and submit Proposals to reflect all the specifications and requirements in this RFP and terms and conditions substantially the same as those included in this RFP.

Any specific areas of dispute with the attached Contracts must be identified in a Proponent’s Proposal (refer to Schedule C-1 – Statement of Departures) and may, at the sole discretion of the City, be grounds for disqualification from further consideration in award of a contract.

The City may request that a Shortlisted Proponent submit its preferred License Agreement and Support Agreement.

The terms of the Proponent’s preferred License Agreement and Support Agreement should either not contradict the terms of the Contract, or else such varying terms and requirements should be identified in the Proponent’s Statement of Departures (Schedule C-1 to this RFP).

The terms of a License Agreement and Support Agreement will be consistent with information provided by the Proponent in Schedule C-3-1 – Drupal Hosting Solution Requirements Response Form – of its Proposal.

The City may consider and may choose to accept some, none, or all Contract modifications that the Proponent has submitted with its Proposal.

Nothing herein prohibits the City, at its sole option, from introducing or modifying contract terms and conditions and negotiating with the Preferred Proponent to align the proposal to City needs, within the objectives of the RFP. The City has significant and critical time frames which frame this initiative; therefore, should such negotiations with the highest

ranked, apparent Preferred Proponent fail to reach agreement in a timely manner as deemed by the City, the City, at its sole discretion, retains the option to terminate negotiations and continue to the next-highest ranked Proposal.

2.9 Opening of Proposals

The City intends to open Proposals in private but reserves the right to open Proposals in public at its sole discretion.

2.10 Status Inquiries

All inquiries related to the status of this RFP, including whether or not a Contract has been awarded, should be directed to the City Website and not to the City Representative.

3. COMPETITIVE SELECTION PROCESS

This Section describes the competitive selection process that the City intends to use in the selection of a Preferred Proponent or Preferred Proponents.

- (a) At least five business days in advance of the demonstration the City will provide each Shortlisted Proponent with a finalized agenda the City would like to discuss;
- (b) if a Shortlisted Proponent wishes to rely upon anything said or indicated at the demonstration, the Shortlisted Proponent must submit an inquiry describing the information it would like to have confirmed and request the City provide that information to the Shortlisted Proponents in written form and, if such information relates to a clarification, explanation or change to the RFP, request an addendum clarifying and/or amending the RFP;
- (c) by participating in the demonstration a Shortlisted Proponent confirms its agreement with these procedures and acknowledges that the meeting is an integral part of the competitive selection process as described in this RFP and is in the interests of all parties.

3.1 Demonstration (Shortlisted Proponents Only)

A demonstration for Shortlisted Proponents only will be held at Surrey City Hall, on the date and time specified in Table 1, below.

If selected as a Shortlisted Proponent, Proponents agree to provide the Evaluation Team the opportunity to interview proposed key personnel identified by the Evaluation Team, at the option of the City. The Evaluation Team may request a Shortlisted Proponent to provide a demonstration of the Proposal as an opportunity for the Evaluation Team to ask questions and seek clarifications. This demonstration will allow Shortlisted Proponents to present their proposal and demonstrate the proposed Drupal Hosting Solution to the Evaluation Team.

Shortlisted Proponents will be offered various dates from which to select to provide their demonstration.

The City reserves the right not to conduct demonstrations. Should the demonstrations be held, the City requires that they be led by the proposed Shortlisted Proponent's key personnel (respective advisors, employees or representatives). The City reserves the right, to record (audio/visual) of each shortlisted Proponent's demonstration as part of its evaluation process.

3.2 Points of Consideration for Demonstration

The following points should be considered by the Shortlisted Proponent while planning for the demonstration:

- (a) All Key Personnel (as identified in Schedule C-2) of the Shortlisted Proponent should attend and actively participate in the demonstration.
- (b) Shortlisted Proponents will be required to present their Proposal and demonstrate their proposed Drupal Hosting Solution to the Evaluation Team. The City Representative will schedule the time for each demonstration during the period of dates set aside for this purpose and will be indicated in the notification letter.
- (c) All demonstrations will be held at Surrey City Hall on the date and time to be determined and advised by the City.
- (d) The City will provide a suitable meeting room for the demonstration. With the exception of the following, Shortlisted Proponents are to provide their own hardware/software and may not have access to any other City supplied equipment. Any software/application will need to be installed on the Shortlisted Proponent's equipment. In addition, Shortlisted Proponents are responsible for populating their demonstrations with sample data

The following items will be provided by the City:

- Projector
 - Wired or Wi-Fi connection
 - Conference Phone
- (e) The Drupal Hosting Solution used in the demonstration must be the same as that included in the Proposal. If certain requirements as specified in Schedule C-3-1 are met by third-party software as part of the Shortlisted Proponent's Solution, the Shortlisted Proponent is expected to demonstrate the third party product and so indicate during the demonstration.
 - (f) If a Shortlisted Proponent wishes to rely upon anything said or indicated by the City at the demonstration, the Shortlisted Proponent must submit an inquiry describing the information it would like to have confirmed and request the City

provide that information to the Shortlisted Proponents in written form and, if such information relates to a clarification, explanation or change to the RFP, request an addendum clarifying and/or amending the RFP.

- (g) By participating in the demonstration a Shortlisted Proponent confirms its agreement with these procedures and acknowledges that the demonstration is an integral part of the competitive selection process as described in this RFP and is in the interests of all parties.

3.3 Demonstration Schedule

The City is providing this advance draft agenda in order for Shortlisted Proponents to adequately prepare for their demonstration. The City reserves the right to revise this draft agenda as deemed appropriate. For example, the Shortlisted Proponents may be asked to demonstrate how the proposed solution satisfies the Drupal Hosting Solution **Requirements** as found in Schedule A-1 the final agenda will be distributed to the Shortlisted Proponents with the Notification Letter.

Shortlisted Proponents are asked to follow the agenda and showcase the desirable functionality of the proposed solution. Shortlisted Proponents are encouraged to highlight and discuss the unique aspects of the proposed Drupal Hosting Solution and how their proposed Solution would benefit the City.

3.4 Shortlisted Proponents' Timeline

The dates provided in Table 1 below are approximate and are for the period up to the project "Go Live" date.

The City reserves the right to modify the following timetable at the City's discretion.

Table 1 – Anticipated Schedule

Activity	Date
Shortlisted Proponents Notified	Mid-October 2018
Commencement of Demonstrations – Shortlisted Proponents Only	Late October/Early November 2018
Shortlist Demonstrations Completed	Late November/Early December
Selection of Preferred Proponent	Mid-December
Expected "Go Live" Date	Q2/Q3 2019

The City reserves the right to modify this schedule at the City's discretion.

4. PROPOSAL SUBMISSION FORM AND CONTENTS

4.1 Package (Hard Copy)

If the Proponent chooses NOT to submit by email, the Proponent should submit a Submission in a particular submittal format, to reduce paper, encourage our recycled product expectations, and reduce package bulk. Bulk from binders and large packages are unwanted. Vinyl plastic products are unwanted. The City also has an environmentally-preferable purchasing commitment, and seeks a package format to support the green expectations and initiatives of the City.

Please do not use any plastic or vinyl binders or folders. The City prefers simple, stapled paper copies. If a binder or folder is essential due to the size of your Proposal, they should be fully 100% recycled stock.

The City seeks and prefers submittals on 100% Post Consumer Fibre (PCF) paper, consistent with the City's policy and the City environmental practices.

Please double-side your Proposal.

4.2 Form of Proposal

Proponents should complete the form of Proposal attached as Schedule C, including Schedules C-1 to C-5. Proponents are encouraged to respond to the items listed in Schedules C-1 to C-5 in the order listed. Proponents are encouraged to use the forms provided and attach additional pages as necessary.

A Proposal should include sufficient information to allow the City to verify the total cost for the project and all of the Proponent's claim of meeting the RFP's requirements. Each Proposal should respond to every request for information in the above noted schedules, whether the request requires a simple "yes" or "no" or requires a detailed narrative response. Simply repeating the RFP's requirements and agreeing to comply may be an unacceptable response.

The Proponent may include any additional information it believes is relevant. An identifiable tab sheet should precede each section of a Proposal, and each Proposal should follow the format as set out in this RFP.

4.3 Signature

The legal name of the person or firm submitting the Proposal should be inserted in Schedule C. The Proposal should be signed by a person authorized to sign on behalf of the Proponent and include the following:

- (a) If the Proponent is a corporation then the full name of the corporation should be included, together with the names of authorized signatories. The Proposal should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the Proposal on behalf of the corporation is submitted;

- (b) If the Proponent is a partnership or joint venture then the name of the partnership or joint venture and the name of each partner or joint venturer should be included, and each partner or joint venturer should sign personally (or, if one or more person(s) have signing authority for the partnership or joint venture, the partnership or joint venture should provide evidence to the satisfaction of the City that the person(s) signing have signing authority for the partnership or joint venture). If a partner or joint venturer is a corporation then such corporation should sign as indicated in subsection (a) above; or
- (c) If the Proponent is an individual, including a sole proprietorship, the name of the individual should be included.

5. EVALUATION AND SELECTION

5.1 Evaluation Team

The evaluation of Proposals will be undertaken on behalf of the City by the Evaluation Team. The Evaluation Team may consult with others including City staff members, third party consultants and references, as the Evaluation Team may in its discretion decide is required. The Evaluation Team will give a written recommendation for the selection of a Preferred Proponent or Preferred Proponents to the City.

5.2 Evaluation Criteria

The Evaluation Team will compare and evaluate all Proposals to determine the Proponent's strength and ability to provide the Drupal Hosting Solution which is most advantageous to the City, using the following criteria:

(a) Experience, Reputation and Resources

The Evaluation Team will consider the Proponent's responses to items in Schedule C-2.

(b) Proposed Solution

The Evaluation Team will consider the Proponent's responses to Schedule C-3 and Schedule C-4. The City will evaluate Proposals and determine whether a Proponent has met the Drupal Hosting Solution Requirements in Schedule C-3-1. Proponents must demonstrate to the City, in the City's sole opinion, that the Proponent meets the requirements in Schedule C-3 and Schedule C-4. Those Proponents whom the City has determined, in its sole and absolute discretion, to have met the requirements will be shortlisted.

(c) Financial

The Evaluation Team will consider the Proponent's response to Schedule C-5 including Schedule C-5-1.

(d) Statement of Departures

The Evaluation Team will consider the Proponent's response to Schedule C-1.

The Evaluation Team will not be limited to the criteria referred to above, and the Evaluation Team may consider other criteria that the team identifies as relevant during the evaluation process. The Evaluation Team may apply the evaluation criteria on a comparative basis, evaluating the Proposals by comparing one Proponent's Proposal to another Proponent's Proposal. All criteria considered will be applied evenly and fairly to all Proposals.

The City's intent is to acquire the solution that provides the best value to the City and meets or exceeds the requirements identified in this RFP.

5.3 Discrepancies in Proponent's Financial Proposal

If there are any obvious discrepancies, errors or omissions in Schedule C-5-1 of a Proposal (Proponent's Financial Proposal), then the City shall be entitled to make obvious corrections, but only if, and to the extent, the corrections are apparent from the Proposal as submitted, and in particular:

- (a) if there is a discrepancy between a unit price and the extended total, then the unit prices shall be deemed to be correct, and corresponding corrections will be made to the extended totals;
- (b) if a unit price has been given but the corresponding extended total has been omitted, then the extended total will be calculated from the unit price and the estimated quantity; and
- (c) if an extended total has been given but the corresponding unit price has been omitted, then the unit price will be calculated from the extended total and the estimated quantity.

5.4 Litigation

In addition to any other provision of this RFP, the City may, in its absolute discretion, reject a Proposal if the Proponent, or any officer or director of the Proponent submitting the Proposal, is or has been engaged directly or indirectly in a legal action against the City, its elected or appointed officers, representatives or employees in relation to any matter, or if the City has initiated legal action against any officers or directors of the Proponent.

In determining whether or not to reject a Proposal under this section, the City will consider whether the litigation is likely to affect the Proponent's ability to work with the City, its consultants and representatives and whether the City's experience with the Proponent indicates that there is a risk the City will incur increased staff and legal costs in the administration of the Contract if it is awarded to the Proponent.

5.5 Additional Information

The Evaluation Team may, at its discretion, request clarifications or additional information from a Proponent with respect to any Proposal, and the Evaluation Team may make such requests to only selected Proponents. The Evaluation Team may consider such clarifications or additional information in evaluating a Proposal.

5.6 Interviews

The Evaluation Team may, at its discretion, invite some or all of the Proponents to appear before the Evaluation Team to provide clarifications of their Proposals. In such event, the Evaluation Team will be entitled to consider the answers received in evaluating Proposals. Proponent management and technical personnel will be expected to participate in presentations, demonstrations and/or interviews, which will be made at no cost to the City.

All information and documents provided by the Proponents or gathered by the Evaluation Team during a presentation, demonstration or an interview may be considered by the Evaluation Team, which may revisit and re-evaluate the Proponent's Proposal or ranking on the basis of such information and documents.

5.7 Multiple Preferred Proponents

The City reserves the right and discretion to divide up the Services, either by scope, geographic area, or other basis as the City may decide, and to select one or more Preferred Proponents to enter into discussions with the City for one or more Contracts to perform a portion or portions of the Services. If the City exercises its discretion to divide up the Services, the City will do so reasonably having regard for the RFP and the basis of Proposals.

In addition to any other provision of this RFP, Proposals may be evaluated on the basis of advantages and disadvantages to the City that might result or be achieved from the City dividing up the Services and entering into one or more Contracts with one or more Proponents.

5.8 Negotiation of Contract and Award

If the City selects a Preferred Proponent or Preferred Proponents, then it may:

- (a) enter into a Contract with the Preferred Proponent(s); or
- (b) enter into discussions with the Preferred Proponent(s) to attempt to finalize the terms of the Contract(s) (and, if applicable, a License Agreement and Support Agreement as described in section 2.8), including financial terms, and such discussions may include:
 - (1) clarification of any outstanding issues arising from the Preferred Proponent's Proposal;
 - (2) negotiation of amendments to the departures to the draft Contract, if any, proposed by the Preferred Proponent as set in Schedule C-1 to the Preferred Proponent's Proposal; and
 - (3) negotiation of amendments to the Preferred Proponent's price(s) as set out in Schedule C-5 to the Preferred Proponent's Proposal and/or scope of Services if:
 - (A) the Preferred Proponent's financial Proposal exceeds the City's approved budget, or
 - (B) the City reasonably concludes the Preferred Proponent's financial proposal includes a price(s) that is unbalanced, or
 - (C) a knowledgeable third party would judge that the Preferred Proponent's price(s) materially exceed a fair market price(s) for

services similar to the Services offered by the Preferred Proponent as described in the Preferred Proponent's Proposal; or

- (c) if at any time the City reasonably forms the opinion that a mutually acceptable agreement is not likely to be reached within a reasonable time, give the Preferred Proponent(s) written notice to terminate discussions, in which event the City may then either open discussions with another Proponent or terminate this RFP and retain or obtain the Services in some other manner.

6. GENERAL CONDITIONS

6.1 No City Obligation

This RFP is not a tender and does not commit the City in any way to select a Preferred Proponent, or to proceed to negotiations for a Contract, or to award any Contract, and the City reserves the complete right to at any time reject all Proposals, and to terminate this RFP process.

6.2 Proponent's Expenses

Proponents are solely responsible for their own expenses in preparing, and submitting Proposals, and for any meetings, negotiations or discussions with the City or its representatives and consultants, relating to or arising from this RFP. The City and its representatives, agents, consultants and advisors will not be liable to any Proponent for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this RFP.

6.3 No Contract

By submitting a Proposal and participating in the process as outlined in this RFP, Proponents expressly agree that no contract of any kind is formed under, or arises from, this RFP, prior to the signing of a formal written Contract.

6.4 Conflict of Interest

A Proponent shall disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with the City, its elected or appointed officials or employees. The City may rely on such disclosure.

6.5 Solicitation of Council Members, City Staff and City Consultants

Proponents and their agents will not contact any member of the City Council, City staff or City consultants with respect to this RFP, other than the City Representative named in section 2.6, at any time prior to the award of a contract or the cancellation of this RFP.

6.6 Confidentiality

All submissions become the property of the City and will not be returned to the Proponent. All submissions will be held in confidence by the City unless otherwise

required by law. Proponents should be aware the City is a “public body” defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

6.7 Reservation of Rights

The City reserves the right, in its sole and absolute discretion, to:

- (a) amend the scope of Services, modify, cancel or suspend the competitive selection process at any time for any reason;
- (b) accept or reject any Proposal, based on the Evaluation Criteria;
- (c) waive a defect or irregularity in a Proposals, and accept that Proposal;
- (d) reject or disqualify or not accept any or all Proposals, without any obligation compensation or reimbursement to any Proponent or any of its team members;
- (e) re-advertise for new Proposals, or enter into negotiations for the Services or for Services of a similar nature;
- (f) make any changes to the terms of the business opportunity described in this RFP;
- (g) negotiate any and all aspects of Proposals; and
- (h) extend, from time to time, and date, time period or deadline provided in this RFP, upon written notice to all Proponents.

6.8 Acceptance of Proposals

Notwithstanding anything to the contrary contained in the RFP or any other document, material or communication:

- (a) The City will not necessarily accept the Proposal with the lowest Proposal Price, or any Proposal, and the City reserves the right to reject any and all Proposals at any time, or cancel the RFP process, without further explanation and to accept any Proposal the City considers to be in any way advantageous to it. The City’s acceptance of any Proposal is contingent on having sufficient funding for the Solution and a Contract with a Proponent. Proposals containing qualifications will be considered to be non-conforming Proposals in that they will fail to conform to the requirements of the RFP documents and on that basis they may be disqualified or rejected. Nevertheless, the City may waive any non-compliance with the requirements of the RFP documents, specifications or any conditions, including, without limitation, the timing of delivery of anything required by these RFP documents, and the City, at its discretion, may consider non-conforming Proposals and accept a non-conforming Proposal.

- (b) Where the City is of the view, in its sole discretion, that there is an ambiguity or other discrepancy which cannot be discerned or resolved from examining the contents of the Proposal, then whether or not such an ambiguity or discrepancy actually exists on the face of the Proposal, the City may, prior to Contract award, solicit clarification from the Proponent or accept clarification from the Proponent on any aspect of its Proposal. Such clarification may include the acceptance of any further documents or information which will then form part of the Proposal. The soliciting or accepting of such clarification (whether or not solicited) by the City will be without any duty or obligation on the City to advise any other Proponents or to allow them to vary their Proposal Prices as a result of the acceptance of clarification from any one or more Proponents and the City will have no liability to any other Proponent(s) as a result of such acceptance of clarification.
- (c) If the City considers that all Proposals are priced too high, it may reject them all.
- (d) The City, prior to awarding of any Contract, may negotiate with the Proponent presenting the lowest priced Proposal, or any Proponent, for changes in the Solution, the materials, the specifications or any conditions, without having any duty or obligation to advise any other Proponents or to allow them to modify their Proposal, and the City will have no liability to any Proponent as a result of such negotiations or modifications.
- (e) The City and its representatives, agents, consultants and advisors will not be liable to any Proponent for any claims, whether for costs, expenses, losses, damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by a Proponent in preparing and submitting a Proposal, or participating in negotiations for a final Contract, or other activity related to or arising out of this RFP, including in the event the City accepts a non-compliant Proposal or otherwise breaches the terms of this RFP.
- (f) A pre-award meeting may be conducted with the preferred Proponent prior to award to confirm project details and expectations of the City.
- (g) Proponents are solely responsible for their own expenses in preparing and submitting a Proposal, and for any meetings, negotiations or discussions with the City, or its representatives and consultants, relating to or arising from the RFP. The City will not be liable to any Proponent for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a contract, or other activity related to or arising out of this RFP.

SCHEDULE A – SCOPE OF SERVICES

The City of Surrey's main website, surrey.ca, has seen an average of 11 million page views a year over the last 5 years, and an increase in users from 1.4 million to 2.4 million in this same time period.

This increase in users parallels our growth as a City and we are committed to expand and enhance our digital services to best meet the needs of this growing population. To that end, we have undertaken a project to build a new surrey.ca on a new platform.

Current State

At present, we have 10 external-facing web properties, including our main site, surrey.ca. All of our web properties have been hosted and supported by a single third-party vendor since 2010. The Service Level Agreement (SLA) for this support has included support of Open Text, a Closed Source and proprietary Content Management System (CMS.) The SLA also involves support of sites using open-source CMSs, primarily Drupal, but also Wordpress.

Since 2015, the City has been transitioning from Open Text CMS to Drupal CMS. As part of this CMS move, the City has an active Request for Proposal to move the City's main site, www.surrey.ca, to Drupal 8, in tandem with this Request for Hosting Services. The City is seeking a hosted and managed services partner that will help continue this CMS move, and, alongside the City, securely, responsibly and flexibly establish and grow our Drupal sites and processes. The City and its hosting provider must be agile and open in creating and managing Drupal sites on an open-source CMS and with the involvement of multiple vendors, while maintaining security and service expectations. At this time, we are only seeking a host to host and support our Drupal sites.

Target State

The City of Surrey and its Hosting and Services provider will work as a partnership to create and maintain a secure but flexible environment that leverages the Drupal product and its spirit of openness and agility. Our provider will be immersed in our specific security requirements, and invested in guiding us to create and sustain a future-ready environment.

This Hosting RFP project will also evaluate options for hosting the City's future web properties that will be utilizing the Drupal platform. The hosting and support solution should be able to scale up to 35 sites including our City website, Surrey Public Library website, and three additional Drupal microsites <http://www.surreyfusionfestival.ca/>, <https://www.surrey.ca/canadaday/> and <https://investsurrey.ca/>). Our current Wordpress sites are out of scope.

In addition, the City is interested in learning more about the efficiencies, longevity and security of Drupal multi-site. In particular, we would like to hear how you would suggest we host and manage:

- Surrey events sites (eg, This includes our current sites, <https://www.surrey.ca/canadaday/> and <http://www.surreyfusionfestival.ca/> and the yet to be developed future Drupal sites for <https://www.surrey.ca/childrensfestival/> <https://www.surrey.ca/partyfortheplanet/> and <https://www.surrey.ca/treelighting/>.)
- (future possibility) Surrey.ca and <https://www.surreylibraries.ca>
- (future state) short-term marketing campaign site

Within this, we would like to learn about the break-even point where hosting, development and managing the multi-site is more cost efficient.

The City is interested in the following possible solutions to satisfy the requirements in this RFP:

1. Platform-as-a-Service
2. Managed hosting service
3. Custom Architected Drupal platform solution to be managed and supported by the City's IT Ops

The solutions above should include any design, development, support and training documentation.

SCHEDULE A-1 – DRUPAL HOSTING SOLUTION REQUIREMENTS

For greater certainty, the requirements listed in Schedule A-1 (Drupal Hosting Solution Requirements) and Schedule C-3-1 (Drupal Hosting Solution Requirements Response) are identical. The only difference between the two Schedules is that Schedule C-3-1 contains two additional columns for the Proponent to enter information regarding its own Proposal.

Schedule A-1 may be viewed and/or downloaded from the City of Surrey's Managed File Transfer Service (MFT):

Hostname: <https://mft.surrey.ca>

Logon ID surreybid

Password: Welcome

Locate Folder 1220-030-2018-024

(APPENDICES 1 THROUGH 9 WILL BE INSERTED LATER WHEN AN AGREEMENT IS ASSEMBLED FOR EXECUTION INCLUDING INFORMATION FROM THE RFP AND SUCCESSFUL PROPOSAL)

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APPENDIX 1-A – DRUPAL HOSTING SOLUTION REQUIREMENTS

APPENDIX 2 – FEES AND PAYMENT

APPENDIX 3 – TIME SCHEDULE

APPENDIX 4 – KEY PERSONNEL AND SUB-CONTRACTORS

APPENDIX 5 – ADDITIONAL WORK

APPENDIX 6 – SERVICE LEVELS

APPENDIX 7 – TRAINING PLAN

APPENDIX 8 – PRIVACY PROTECTION SCHEDULE

APPENDIX 9 – CONFIDENTIALITY AGREEMENT



**DRUPAL HOSTING SOLUTION AND IMPLEMENTATION
SERVICES AGREEMENT**

BETWEEN

CITY OF SURREY

and

[CONTRACTOR]

for

DRUPAL HOSTING SOLUTION

Reference No.: 1220-030-2018-024

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CLOUD COMPUTING DRUPAL HOSTING SOLUTION AND IMPLEMENTATION SERVICES AGREEMENT

DRUPAL HOSTING SOLUTION

This Agreement is dated for reference this _____ day of _____, 20__;

AGREEMENT No.: 1220-030-2018-024

BETWEEN:

CITY OF SURREY
13450 - 104th Avenue
Surrey, British Columbia, V3T 1V8, Canada

(the "City")

OF THE FIRST PART

AND:

(Insert Full Legal Name and Address of Contractor)

(the "Contractor")

OF THE SECOND PART

WHEREAS the Contractor desires to make the Services (as hereinafter defined) available to the City and the City desires to acquire access to the Services from the Contractor.

THEREFORE in consideration of the payment of one (\$1.00) dollar and other good and valuable consideration paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) the City and the Contractor agree as follows:

1. INTERPRETATION

1.1 Definitions

1.1.1 In this Agreement the following definitions apply:

"Additional Work" means additional work that the City may wish performed that is not a Change and not a Services Expansion;

"Account" has the meaning set out in Section 2.1.2;

"Agreement" means this Cloud Computing Services Agreement between the City and Contractor, inclusive of all appendices, schedules, attachments, addenda and other documents incorporated by reference;

"Change" means an addition to, deletion from or alteration of the Services;

“Change Order” means when a Change or Additional Work is approved, the City Representative shall issue a written approval, setting out a description of the Services covered by the Change or Additional Work, the price or method of valuation for the Services, the change in the Fees and adjustment, if any, to the Time Schedule. The value of Services performed in a Change or Additional Work shall be included for payment with the certificates for payment;

“City Data” means all information, in writing (including electronic) form, created by or in any way originating with City, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with City, in the course of using and configuring the Services provided under this Agreement, that is stored on the cloud;

“City Representative” (or designate) who will have the duty of instituting and maintaining communication with the Contractor as to the requirements of this Agreement including but not limited to a Security Incident or breach notification;

***“Cloud Computing”** is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction;

“Commencement Date” means the _____ day of _____, 20__, which is the date the Services are to commence;

“Confidential Information” means information supplied to, obtained by, or which comes to the knowledge of the Contractor and the City (or either of them) as a result of the performance of the Services and this Agreement, which includes, but is not limited to, Personal Information, information that relates to the business of the third party, and information that is subject to solicitor-client privilege;

“Contemplated Change Order” has the meaning set out in Section 2.2.2;

“Data Breach” means any actual or reasonably suspected unauthorized access to or acquisition of City Data;

“Department Representative” means the Department Representative, or her designate, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative, and notified to the Contractor;

“Disabling Code” has the meaning set out in Section 2.8.2;

“Dispute” has the meaning set out in Section 26.1;

“Documentation” has the meaning set out in Section 2.4;

“Enhancements” means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that Contractor may develop or acquire and incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers;

“Escrow Agent” has the meaning set out in Section 24.1;

“Fees” means the fees and payments set out in Appendix 2;

“First Renewal Term” has the meaning set out in Section 4.3;

“Go-Live Date” means the date on which the City, acting reasonably, confirms in writing that the Services satisfy the functional, technical and security requirements as set out in this Agreement;

“Implementation Period” has the meaning set out in Section 4.2;

“Indemnitees” has the meaning set out in Section 10.1.1;

“Initial Term” commences on the Commencement Date for a period of five (5) years to and including the _____ day of _____, 20__;

“Invoice” has the meaning set out in Section 7.2.1;

“Marks” has the meaning set out in Section 2.5;

“Performance Report” has the meaning set out in Section 2.11;

“Personal Information” means information about an identifiable individual and any other types of information that, alone or in combination, would reveal the identity of a particular individual, other than business contact information;

“Quotation” has the meaning set out in Section 2.2.3;

“Release Event” has the meaning set out in Section 24.2;

“Second Renewal Term” has the meaning set out in Section 4.4;

“Security Incident” means any actual or reasonably suspected adverse event that compromises the availability, confidentiality, or integrity of the City Data or the ability of the City to access the City Data;

“Services” means and includes anything and everything required to be done for the fulfilment and completion of this Agreement including, as applicable, Services Expansion;

“Services Expansion” has the meaning set out in Section 2.12;

“Service Levels” means the requirements set out in Appendix 6;

“Source Code” means a set of instructions, written in programming language, that must be translated to machine instructions before the program can run on a computer. These instructions must be compiled into object code before the computer can understand them;

“Term” means the Initial Term and, as applicable, the First Renewal Term and the Second Renewal Term;

“Time Schedule” means the milestones and dates set out in Appendix 3; and

“Third Party” means persons, corporations and entities other than Contractor, City or any of their employees, or agents.

*The National Institute of Standards and Technology, 2011.

1.2 Appendices

1.2.1 The following attached Appendices are a part of this Agreement:

- (a) Appendix 1 – Scope of Services;
- (b) Appendix 1-A – Drupal Hosting Solution Requirements
- (c) Appendix 2 – Fees and Payment;
- (d) Appendix 3 – Time Schedule;
- (e) Appendix 4 – Key Personnel and Sub-Contractors;
- (f) Appendix 5 – Additional Work;
- (g) Appendix 6 – Service Levels;
- (h) Appendix 7 – Training Plan;
- (i) Appendix 8 – Privacy Protection Schedule; and
- (j) Appendix 9 – Confidentiality Agreement.

1.2.2 This Agreement may only be modified by express and specific written agreement.

2. SERVICES

2.1 Services

2.1.1 This Agreement sets forth the terms and conditions under which the Contractor agrees to supply labour scheduling software, including software licensing, implementation services, education and training, support and maintenance and associated software and services, City Data import / export, monitoring, support, backup and recovery, as further set forth in Appendix 1 through Appendix 1-A (inclusive), attached hereto, which are to

be provided on a time and materials basis. The Contractor agrees to work with the City to ensure proper change management and assist in identifying any required technology upgrades within the City's network in support of the implementation of the Services. The Contractor agrees to fulfill its obligations to provide the Services in a timely manner in order to achieve the agreed milestones and dates in the Time Schedule.

2.1.2 The City and any of its employees, agents, contractors, suppliers of services or other designated users that have a need to use all or a portion of the Services specified by the City for the benefit of the City shall have the right to operate and use the same provided they are approved by the City. The Contractor shall issue accounts, or permit the City to issue accounts, to individuals selected by City as account-holders for using all or a portion of the Services specified by the City. Only account-holders approved by the City may access or use the Services and each account-holder's access to the Services requires valid login credentials, including at least user identification and secure passwords (each an "**Account**"). The rights of an account-holder may not be used by more than one individual, unless the Account of the account-holder is reassigned in its entirety to another account-holder, in which case the prior holder of the Account shall no longer have any right to access or use the Services. The City acknowledges and agrees that the City:

- (a) is fully responsible for the Accounts assigned by or at the request of the City and the acts and omissions of each account-holder, including the creation of Account credentials by any person, the maintenance, confidentiality and security of all passwords related to Accounts, and any and all activities that occur under Accounts assigned by or at request of the City;
- (b) shall notify the Contractor as soon as practicable after obtaining or receiving any knowledge of:
 - (i) any unauthorized use of an Account or any password related to an Account; or
 - (ii) any other breach of security with respect to an Account, provided that such notification will not negate the City's liability for any unauthorized use of an Account or password until such time as Contractor can be reasonably expected to take corrective measures; and
- (c) will provide true, current, accurate and complete information as prompted by the Account-creation process or as otherwise requested by the Contractor from time-to-time and to promptly update such information when any changes occur.

2.1.3 The City covenants and agrees that it shall:

- (a) be responsible for account-holders' compliance with all of the terms and conditions of the Account;
- (b) be solely responsible for the accuracy, quality, integrity and legality of any City Data the City stores on or uploads to the cloud, and of the means by which City Data is acquired and used, including compliance with all Personal Information

privacy laws and regulations and ensuring that no third party intellectual property rights are infringed; and

- (c) use all commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Contractor promptly of any such unauthorized access or use.

2.1.4 The City covenants and agrees that it shall not:

- (a) make the Services available to anyone, or permit anyone to access the Services, other than account-holders;
- (b) license, sublicense, sell, resell, transfer, assign, distribute, rent, lease or time-share the rights granted to City under this Agreement to use the Services, or copy or otherwise commercially exploit the Services or its components in any way except in accordance with the rights granted hereunder;
- (c) use the Services in any manner or for any purpose:
 - (i) that contravenes, facilitates the violation of, or violates any applicable laws;
 - (ii) that extracts, gathers, collects, or stores Personal Information about individuals except in compliance with all applicable Personal Information privacy laws or that involves City Data mining, robots or similar City Data gathering or extraction methods on individual's Personal Information without their express consent; or
 - (iii) that interferes with or disrupts the integrity or performance of the Services;
- (d) attempt to gain unauthorized access to the Services or its related systems or networks;
- (e) post, upload, reproduce, distribute or otherwise transmit on the cloud:
 - (i) defamatory, infringing, indecent or unlawful software, materials or information; or
 - (ii) inappropriate, profane, or obscene software, materials or information without suitable or lawfully-required access controls;
- (f) disable or circumvent any access control or related process or procedure established with respect to the Services; or
- (g) remove any copyright or other proprietary or intellectual property rights notices or labels on or in the cloud or any part, copy or report generated therefrom or thereof.

2.1.5 The City acknowledges that the cloud is not intended to be use as a repository of large media files. The City agrees to use the cloud only for its intended purposes and not for storing large media file, failing which the Contractor may establish and enforce a reasonable limit on the size of City Data that may be stored on the cloud.

2.1.6 Nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor hereunder.

2.2 Changes

2.2.1 City makes a Change to the Services, then the City shall issue a Change Order.

2.2.2 The City Representative may at any time give the Contractor a written request (a "**Contemplated Change Order**") to provide a Quotation for a specified Change that the City is considering.

2.2.3 If the City Representative gives the Contractor a Contemplated Change Order, then the Contractor shall, as part of the Services, respond as promptly as possible with a written price quotation (a "**Quotation**"). Any Quotation submitted by the Contractor for a Change or a Contemplated Change Order shall, unless expressly stated otherwise in the Quotation, be interpreted to represent the total adjustment to the Fees (excluding GST) owing on account for the Services contemplated by the Quotation and for certainty shall be interpreted to include compensation on account of all related costs, including but not limited to all direct, indirect, or impact, head office, overhead, and all other costs, and all markups and profits, even if the Quotation does not specifically mention such items.

2.2.4 The City Representative may at any time, by way of a Change Order, direct the Contractor to proceed with a Change and the Contractor shall comply with such direction.

2.2.5 The Contractor shall not proceed with any Services that the Contractor intends or expects to be treated as a Change without receiving a written Change Order.

2.2.6 If for any reason the Contractor proceeds with Services that the Contractor intends to claim as a Change before a written Change Order is issued, then verbal approval must have been received and a written Change Order pending. The Contractor shall maintain daily records, and submit them before the end of the next day to the City Representative for certification. Notwithstanding any other provision of this Agreement, no payment shall be owing to the Contractor on account of any claimed Change if the Contractor fails to maintain and submit such records. However, the mere maintenance and submission of such daily records shall not create an entitlement for the Contractor to receive payment for the claimed Change and the Contractor's right to receive payment shall be as otherwise provided by in this Agreement.

2.2.7 The Contractor shall not be entitled to rely on any oral representation (except in an emergency), site meeting discussion, site meeting minutes or other communication as approval that any Services are a Change. The Contractor shall strictly comply with the requirements of this section.

2.2.8 In an emergency, when it is impractical to delay the Services until the written authorization is issued, the City Representative may issue an oral direction which the

Contractor shall follow. In such event, the City Representative shall issue a confirming Change Order at the first opportunity.

2.2.9 If the Contractor eliminates any functionality of any of the Services provided under this Agreement and subsequently offers that functionality in other or new products (whether directly or indirectly through agreement with a Third Party), then the portion of those other or new products that contain the functions in question, or the entire product if the functions cannot be separated out, shall be provided to the City at no additional charge and under the terms of this Agreement, including technical support. If the Contractor incorporates the functionality of the Services provided under this Agreement into a newer product and continues to offer both products, the City may, in its sole discretion, exercise the option to upgrade to the newer product at no additional cost.

2.3 Standard of Care

2.3.1 The Contractor will perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner performing services similar to the Services, and on the understanding that the City is relying on the Contractor's experience and expertise. The Contractor represents that it has the expertise, qualifications, resources and relevant experience to provide the Services. The Contractor represents and warrants that the Services will be performed in a professional manner consistent with industry standards reasonably applicable to such Services.

2.4 Documentation

2.4.1 Documentation shall mean, collectively:

- (a) this Agreement including any amendment thereto;
- (b) all materials published or otherwise made available to City by the Contractor that relate to the functional, operational and/or performance capabilities of the Services;
- (c) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by the Contractor that describe the functional, operational and/or performance capabilities of the Services;
- (d) the results of any presentations or tests provided by the Contractor to the City; and
- (e) any requests for information and/or requests for proposals and/or requests for quotations (or documents of similar effect) issued by the City, and the responses thereto from the Contractor, and any document which purports to update or revise any of the foregoing.

2.4.2 In the event of the conflict or inconsistency among the foregoing, the order of priority to resolve such conflict or inconsistency is as follows:

- (a) firstly, any written amendments to this Agreement mutually agreed upon by the parties;
- (b) secondly, this Agreement;
- (c) thirdly, the items described in subsection 2.4.1(b);
- (d) fourthly, the items described in subsection 2.4.1(c);
- (e) fifthly, the items described in subsection 2.4.1(d); and
- (f) sixthly, the items described in subsection 2.4.1(e).

2.5 Marks

2.5.1 Marks shall mean the trademarks and/or trade names of Contractor as licensed to City hereunder.

2.6 Service Levels

2.6.1 The Contractor covenants and agrees to continue performing the Services after the Go-Live Date in accordance with this Agreement and in particular the Service Levels as set forth in Appendix 6.

2.6.2 The Contractor shall provide the City with incident reports regarding any unavailability of the Services that the Contractor becomes aware of.

2.7 Training

2.7.1 The Contractor shall provide a training plan in accordance with Appendix 7.

2.7.2 The City reserves the right to video and/or audio tape any and all training sessions, whether held at the City or the Contractor's site, or via teleconference. Use of such training tapes shall be strictly for City staff training purposes and such training tapes may not be posted on any social media or otherwise made available to anyone other than City staff.

2.8 Warranties, Representations and Covenants

2.8.1 The Contractor represents and warrants that the Services provided to the City under this Agreement shall conform to, be performed, function, and produce results substantially in accordance with the Documentation.

2.8.2 The Contractor represents, warrants and agrees that the Services do not contain and City will not receive from the Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or City Data (a "**Disabling Code**").

2.8.3 In the event a Disabling Code is identified, Contractor shall take all steps necessary, at no additional cost to City, to:

- (a) restore and/or reconstruct any and all City Data lost by the City as a result of Disabling Code;
- (b) furnish to City a corrected version of the Services without the presence of the Disabling Code; and
- (c) as needed, re-implement the Services at no additional cost to the City.

2.8.4 The Contractor represents, warrants and agrees that:

- (a) the Contractor has all intellectual property rights necessary to provide the Services to the City in accordance with the terms of this Agreement;
- (b) the Contractor is the sole owner or is a valid licensee of all software, text, pictures, audio, video, logos and copy that provides the foundation for provision of the Services, and has secured all necessary licenses, consents, and authorizations with respect to the use of these underlying elements;
- (c) the Services do not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any Third Party; and
- (d) there is currently no actual or threatened suit against the Contractor by any Third Party based on an alleged violation of such right.

2.8.5 Each party represents and warrants that it has the right to enter into this Agreement. The Contractor represents and warrants that it has the unrestricted right to provide the Services, and that it has the financial viability to fulfill its obligations under this Agreement. The Contractor represents, warrants and agrees that the Services shall be free and clear of all liens, claims, encumbrances or demands of Third Parties. The Contractor represents and warrants that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Services.

2.8.6 The Contractor will assign to the City all Third Party warranties and indemnities that the Contractor receives in connection with any Services provided to the City. To the extent that the Contractor is not permitted to assign any warranties or indemnities through to the City, the Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent the Contractor is permitted to do so under the terms of the applicable Third Party agreements.

2.8.7 The Contractor represents and warrants to the City that the Services provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. The Contractor must repair any date/time change defects at the Contractor's own expense.

- 2.8.8 The Contractor warrants that all resolution and response times as delineated in Appendix 6 – Service Levels shall be adhered to.
- 2.8.9 The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, and all Services furnished by or on behalf of the Contractor under this Agreement. The Contractor, without additional compensation, shall correct or revise any errors or omissions in the Services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the Term of this Agreement shall survive any termination or expiration of this Agreement and shall be in addition to all other obligations and liabilities of the Contractor.
- 2.8.10 The warranties set forth in Section 2.8 are in lieu of all other warranties, express or implied, with regard to the Services pursuant to this Agreement, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose and shall survive the expiration or termination of this Agreement.

2.9 Software Upgrades and Enhancements

- 2.9.1 The Contractor shall supply:
- (a) at no additional cost updated versions of the software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of web browsers;
 - (b) at no additional cost interface softwares that are developed by the Contractor for interfacing the Services to other software products; and
 - (c) at no additional cost, updated versions of the Services, that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Services supplied to the City.
- 2.9.2 The Contractor shall maintain any and all Third Party software products at their most current version and at no additional charge. However, the Contractor shall not maintain any Third Party software versions, including one version back, if any such version would prevent the City from using any functions, in whole or in part, or would cause deficiencies in the system. If implementation of an upgrade to a Third Party software product requires additional personnel, the City and the Contractor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, any additional charges to be paid by the City for such upgrade. Any additional costs that are charged by a Third Party software manufacturer for an upgrade to a Third Party software product that is not covered by such product's maintenance agreement shall be charged to and paid for by the Contractor.

2.10 Enhancements

2.10.1 The Contractor shall provide the City with all Enhancements and associated Documentation that are provided as general releases of the software, in whole or in part, as part of the Services. Such Documentation shall be adequate to inform the City of the problems resolved including any significant differences resulting from the release which are known by the Contractor. The Contractor warrants that each such Enhancement general release shall be tested and perform according to the specifications. The Contractor agrees to correct corrupted City Data that may result from any system deficiency introduced by the Enhancement at no cost to the City. Enhancements to correct any deficiency shall be provided to the City at no additional cost and without the need for a Change Order.

2.11 Performance Reporting

2.11.1 As part of the Services and at no additional cost to the City, the Contractor will, on a monthly basis during the Term, submit to the City a performance report (each, a "**Performance Report**"). Each Performance Report will describe in detail the effectiveness of the Services in meeting the City's requirements during the previous month, and in particular will address the following topics:

- (a) the extent to which the City's minimum requirements for the Services as set out in this Agreement were met;
- (b) if any minimum requirements were not met, a description of requirements that were not met and steps the Contractor took to remedy such failures;
- (c) any other failures of the Services, including system unavailability, software errors, bugs, etc., including a description of the failure and steps the Contractor took to remedy such failure;
- (d) any proposed improvements or upgrades to the Services to be implemented in the next following month; and
- (e) such other performance measures as the City may reasonably request.

2.11.2 The City will use the Performance Reports to assist the City in determining whether the Services are suitable for any Services Expansion.

2.12 Optional Expansion of Services

2.12.1 The City may, in its sole and absolute discretion, at any time after the first three (3) months of the Term, upon written notice direct the Contractor to expand the Services to include such additional City departments, facilities or entities as the City may determine at its election (a "**Services Expansion**"). The following will apply with respect to any Services Expansion:

- (a) the City and the Contractor will, acting reasonably, promptly enter into an amendment to this Agreement which will include any additional or amended terms as may be required to implement the Services Expansion; and
- (b) the Contractor will be entitled to additional compensation for the performance of the additional services required for the Services Expansion, which will be determined on the basis of the Fees.

2.12.2 For certainty, the City will not be obligated to issue any Services Expansion under this Agreement, and unless and until any Services Expansion is issued, the Contractor will only be entitled to perform the Services as described in this Agreement.

3. TIME

3.1 Time is of the essence.

4. TERM

4.1 The Contractor covenants and agrees to provide the Services throughout the Term unless terminated as provided herein.

4.2 The first period of time during the Initial Term will include the Commencement Date and finish on the Go-Live Date (the "**Implementation Period**") and a three (3) year period starting on the Go-Live Date.

4.3 The City shall have the option of renewing this Agreement for a further term of three (3) years (the "**First Renewal Term**") by giving notice in writing to the Contractor at any time prior to one hundred and eighty (180) days before the end of the Initial Term. If the City elects to extend the Initial Term, the provisions of this Agreement shall remain in force during the First Renewal Term, including the Fees.

4.4 The City shall have the option of renewing this Agreement for a further term of three (3) years (the "**Second Renewal Term**") by giving notice in writing to the Contractor at any time prior to one hundred and eighty (180) days before the end of the First Renewal Term. If the City elects to extend the First Renewal Term, the provisions of this Agreement shall remain in force during the Second Renewal Term, including the Fees.

4.5 There are no further renewals at the end of the Second Renewal Term.

4.6 With respect to the renewals contemplated in Section 4.3 and Section 4.4, the Contractor shall provide the City with written notice of the approaching renewal deadline no earlier than two hundred and ten (210) days before the end of the then-current Term. If the Contractor fails to provide the City with notice in accordance with this Section, the City may renew the Agreement by giving written notice at any time during the one hundred and eighty (180) days immediately before the end of the then-current Term.

5. PERSONNEL

5.1 Personnel

- 5.1.1 The Contractor agrees at all times to maintain an adequate staff of experienced and qualified employees, agents or personnel for efficient performance under this Agreement. The Contractor agrees that, at all times, the employees, agents or personnel of the Contractor furnishing or performing any Services shall do so in a proper, workmanlike, and dignified manner.
- 5.1.2 The Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them upon the City's premises shall obey the rules and regulations that are established by the City and shall comply with the reasonable directions of the City's officers. The City may, at any time, require the removal and replacement of any of the Contractor's employees, agents or personnel for good cause.
- 5.1.3 The Contractor shall be responsible for the acts of its employees, agents or personnel while on the City's premises. Accordingly, the Contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on the City's premises. The Contractor shall be responsible for all damages to persons or property caused by the Contractor or any of its employees, agents or personnel. The Contractor shall promptly repair, to the specifications of the City, any damage that it, or its employees, agents or personnel may cause to the City's premises or equipment or if the Contractor fails to do so, the City may repair such damage and the Contractor shall reimburse the City promptly for the cost of such repair.
- 5.1.4 The Contractor agrees that, in the event of an accident of any kind, the Contractor will immediately notify the City Representative and thereafter, if requested, furnish a full written report of such accident.
- 5.1.5 The Contractor shall perform the Services without interfering in any way with the activities of the City's staff or visitors.
- 5.1.6 The Contractor and its employees or agents shall have the right to use only those facilities of the City that are necessary to perform the Services and shall have no right to access any other facilities of the City. The City shall also extend parking privileges to properly identified members of the Contractor's full-time staff on the same basis as they are extended to City staff.
- 5.1.7 The City shall have no responsibility for the loss, theft, disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of the Contractor or its employees, agents, personnel, subcontractors, or material-men.

5.2 Sub-Contractors and Assignment

- 5.2.1 The Contractor will not engage any personnel or sub-contractors, or sub-contract or assign its obligations under this Agreement, in whole or in part, without the prior written

approval of the City, which approval may be reasonably withheld by the City, and any attempt to do so shall be void and without further effect.

- 5.2.2 The Contractor shall identify all of its strategic business partners related to the Services provided under this Agreement, including but not limited to all sub-contractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

5.3 Agreements with Sub-Contractors

- 5.3.1 The Contractor will preserve and protect the rights of the City with respect to any Services performed under sub-contract and incorporate the terms and conditions of this Agreement into all sub-contracts as necessary to preserve the rights of the City under this Agreement. The Contractor will be as fully responsible to the City for acts and omissions of sub-contractors and of persons directly or indirectly retained by them as for acts and omissions of persons directly retained by the Contractor.

5.4 Separation of Duties and Non-Disclosure

- 5.4.1 The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City Data to that which is absolutely necessary to perform job duties.

5.5 Right to Remove Personnel

- 5.5.1 The City shall have the right at any time to require that the Contractor remove from interaction with the City any employee, agent or personnel who the City believes is detrimental to its working relationship with the Contractor. The City shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the City specifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of this Agreement without the City's consent.

6. LIMITED AUTHORITY

6.1 Agent of City

- 6.1.1 The Contractor is not and this Agreement does not render the Contractor an agent or employee of the City, and without limiting the above, the Contractor does not have authority to enter into any contract or reach any agreement on behalf of the City, except for the limited purposes as may be expressly set out in this Agreement, or as necessary in order to provide the Services. The Contractor will make such lack of authority clear to all persons with whom the Contractor deals in the course of providing the Services.

6.2 Independent Contractor

- 6.2.1 The Contractor is an independent Contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City will

not control or direct the details, means or process by which the Contractor performs the Services. The Contractor will determine the number of days and hours of work required to properly and completely perform the Services. The Contractor is primarily responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for in this Agreement. The Contractor will be solely liable for the wages, fringe benefits, work schedules and work conditions of any partners, employees, agents or personnel.

7. FEES AND PAYMENT

7.1 Fees

7.1.1 The City will pay to the Contractor the Fees in accordance with this Agreement provided the Services have been performed. Payment by the City of the Fees will be full payment for the Services and the Contractor will not be entitled to receive any additional payment from the City.

7.2 Payment – Services

7.2.1 In accordance with the provisions set out in Appendix 2 including the time of payments, the Contractor shall prepare an Invoice for all Fees as follows:

- (a) The Contractor will submit an invoice (the "**Invoice**") to the City requesting payment of the Fees relating to the Services or Additional Work provided in the previous month including any subscription or license costs, and including the following information:
 - (i) an invoice number;
 - (ii) the Contractor's name, address and telephone number;
 - (iii) the City's reference number for the Services, **PO # _____**;
 - (iv) description and date(s) of the Services;
 - (v) Contractor's price per hour for each item, multiplied by the number of hours used of each item, and total for each item;
 - (vi) taxes (if any);
 - (vii) other applicable charges (if any);
 - (viii) payment terms including any available prompt payment discounts;
 - (ix) grand total of the Invoice; and
 - (x) Contractor's representative Name, Title, Location and Department.
- (b) if the City reasonably determines that any portion of an Invoice is not payable due to an error, then the City will so advise the Contractor;
- (c) all Fees are payable in Canadian dollars; and
- (d) no interest will be payable on any overdue accounts.

7.3 Payment – Additional Work

7.3.1 The City shall pay the costs for any Additional Work on a time and material basis, as described in Appendix 5.

7.4 Invoicing

7.4.1 Invoices will be submitted by the Contractor to: surreyinvoices@surrey.ca.

Name: City of Surrey – IT Project Management Office

Address: 13450 - 104th Avenue
Surrey, British Columbia, V3T 1V8, Canada

7.4.2 Invoices and supporting documentation shall be prepared at the sole expense and responsibility of the Contractor. The City will not compensate the Contractor for any costs incurred for Invoice preparation. The City may request, in writing, changes to the content and format of the Invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate costs at any time.

7.5 Records

7.5.1 The Contractor will prepare and maintain proper records related to the Services, including records, receipts and invoices relating to Disbursements. On request from the City, the Contractor will make the records available open to audit examination by the City at any time during regular business hours during the time the Contractor is providing the Services and for a period of six years after the Services are complete.

7.6 Non-Residents

7.6.1 If the Contractor is a non-resident of Canada and does not provide to the City a waiver of regulation letter, the City will withhold and remit to the appropriate governmental authority the greater of:

- (a) 15% of each payment due to the Contractor; or
- (b) the amount required under applicable tax legislation.

8. CITY RESPONSIBILITIES

8.1 City Information

8.1.1 The City will, in co-operation with the Contractor, make efforts to make available to the Contractor information which the City has in its files that relate to the delivery of the Services. The Contractor will review any such material upon which the Contractor intends to rely and take reasonable steps to determine if that information is complete or accurate. The Contractor will assume all risks that the information is complete and accurate and the Contractor will advise the City in writing if in the Contractor's judgment

the information is deficient or unreliable and undertake such new surveys and investigations as are necessary.

8.2 City Decisions

- 8.2.1 The City will in a timely manner make all decisions required under this Agreement, examine documents submitted by the Contractor and respond to all requests for approval made by the Contractor pursuant to this Agreement.

9. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

- 9.1 The Contractor shall indemnify, defend and hold the City harmless from any and all actions, proceedings, or claims of any type brought against the City alleging that the Services and/or Documentation or the City's use of the Services and/or Documentation constitutes a misappropriation or infringement upon any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party. The Contractor agrees to defend against, and hold the City harmless from, any claims and to pay all litigation costs, all reasonable attorneys' fees, settlement payments and all judgments, damages, costs or expenses awarded or resulting from any claim. The City shall, after receiving notice of a claim, advise the Contractor of it. The City's failure to give the Contractor timely notification of said claim shall not affect the Contractor's indemnification obligation unless such failure materially prejudices the Contractor's ability to defend the claim. The City reserves the right to employ separate counsel and participate in the defense of any claim at its own expense.
- 9.2 If the Services and/or Documentation, or any part thereof, is the subject of any claim for infringement of any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, or if it is adjudicated by a court of competent jurisdiction that the Services and/or Documentation, or any part thereof, infringes any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, and the City's use of the Services and/or Documentation, or any part of it, is enjoined or interfered with in any manner, the Contractor shall, at its sole expense and within thirty (30) calendar days of such injunction or interference, either:
- (a) procure for the City the right to continue using the Services and/or Documentation free of any liability for infringement or violation;
 - (b) modify the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to the City; or
 - (c) replace the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to the City.

The Contractor shall have no obligation to indemnify the City for a claim if:

- (a) the City uses the Services in a manner contrary to the provisions of this Agreement and such misuse is the cause of the infringement or misappropriation; or
- (b) the City's use of the Services in combination with any product or system not authorized, approved or recommended by the Contractor and such combination is the cause of the infringement or misappropriation.

9.3 No limitation of liability set forth elsewhere in this Agreement is applicable to the intellectual property infringement indemnification set forth herein.

10. INSURANCE AND DAMAGES

10.1 Indemnity

10.1.1 The Contractor will indemnify and save harmless the City and all of its elected and appointed officials, officers, employees, servants, representatives and agents (collectively the "**Indemnitees**"), from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) for damage to or destruction or loss of property, including loss of use, and injury to or death of any person or persons which any of the Indemnitees incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Contractor of any obligation of this Agreement, or any wrongful or negligent act or omission of the Contractor or any employee, agent or personnel of the Contractor.

10.2 Survival of Indemnity

10.2.1 The indemnity described in Section 10.1.1 and will survive the termination or completion of this Agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of the Indemnitees.

10.3 Limitation of Liability

10.3.1 Neither party will be liable to the other for any indirect, incidental, special or consequential damages of any kind whatsoever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to City Data, loss of profits or of contracts, loss of business and loss of goodwill or anticipated savings, even if the party has been notified of the possibility thereof or could have foreseen such claims. The entire liability of each party to the other party for direct damages from any cause whatsoever, and regardless of the form of action or the cause of action, whether in contract or in tort (including negligence), strict liability, breach of a fundamental term, fundamental breach or otherwise in connection with this Agreement.

10.4 Contractor's Insurance Policies

10.4.1 The Contractor will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout this Agreement the following insurances in forms and amounts acceptable to the City from insurers licensed to conduct business in Canada:

- (a) commercial general liability insurance on an occurrence basis, in an amount not less than five million (\$5,000,000) dollars inclusive per occurrence against death, bodily injury and property damage arising directly or indirectly out of the work or operations of the Contractor, its employees, agents and personnel. The insurance will include cross liability and severability of interests such that the coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. The insurance will include, but not be limited to, premises and operators' liability, broad form products and completed operations, owners and the Contractor's protective liability, blanket contractual, employees as additional insureds, broad form property damage, non-owned automobile, contingent employers liability, personal injury, and incidental medical malpractice. The City will be added as additional insured; and
- (b) cyber and privacy liability insurance covering actual or alleged acts, errors or omissions committed by "SaaS provider", its agents, subcontractor, or employees, arising out of the performance of this Agreement with a minimum combined single and aggregate limit of at least three million (\$3,000,000) dollars per occurrence. The policy coverage shall include coverage for cyber security risks (such as data breaches, unauthorized access/use, ID theft, privacy violations, degradations, and downtime), failure to protect confidential information from disclosure, personal injury, and infringement of intellectual property, including copyrights and trademarks. "City of Surrey", shall be endorsed as an Additional Insured, and the policy will include no provision that would prevent, preclude, or exclude a claim brought by "City of Surrey".

10.5 Insurance Requirements

10.5.1 The Contractor will provide the City with evidence of the required insurance prior to the commencement of this Agreement. Such evidence will be in the form of a completed certificate of insurance acceptable to the City. The Contractor will, on request from the City, provide certified copies of all of the Contractor's insurance policies providing coverage relating to the Services, including without limitation any professional liability insurance policies. All required insurance will be endorsed to provide the City with thirty (30) days advance written notice of cancellation or material change restricting coverage. To the extent the City has an insurable interest, the builder's risk policy will have the City as first loss payee. The Contractor will be responsible for deductible amounts under the insurance policies. All of the Contractor's insurance policies will be primary and not require the sharing of any loss by the City or any insurer of the City.

10.6 Contractor's Responsibilities

10.6.1 The Contractor acknowledges that any requirements by the City as to the amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Contractor acknowledges and agrees that the Contractor is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage limits shall not be construed as relieving the Contractor from responsibility for any amounts which may exceed these limits, for which the Contractor may be legally liable.

10.7 Additional Insurance

10.7.1 The Contractor shall place and maintain, or cause any of its sub-contractor to place and maintain, such other insurance or amendments to the foregoing policies as the City may reasonably direct.

10.8 Waiver of Subrogation

10.8.1 The Contractor hereby waives all rights of recourse against the City for loss or damage to the Contractor's property.

11. TERMINATION

11.1 By the City

11.1.1 The City for any reason may with ninety (90) days written notice to the Contractor terminate this Agreement before the completion of the Term, such notice to be determined by the City at its sole discretion. Upon receipt of such notice, the Contractor will perform no further Services other than the work which is reasonably required to complete the Services. Despite any other provision of this Agreement, if the City terminates this Agreement before the completion of all the Services, the City will pay to the Contractor all amounts owing under this Agreement for Services provided by the Contractor up to and including the date of termination, plus reasonable termination costs in the amount as determined by the City in its sole discretion. Upon payment of such amounts no other or additional payment will be owed by the City to the Contractor, and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Services not performed or other profit opportunities.

11.2 Termination for Cause

11.2.1 The City may terminate this Agreement for cause as follows:

- (a) if the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the City may, without prejudice to any other right or remedy the City may have, terminate this Agreement by giving the Contractor or receiver or trustee in bankruptcy written notice; or

- (b) if the Contractor is in breach of any term or condition of this Agreement, in particular compliance with Service Levels, and such breach is not remedied to the reasonable satisfaction of the City within five (5) days after delivery of written notice from the City to the Contractor, then the City may, without prejudice to any other right or remedy the City may have, terminate this Agreement by giving the Contractor further written notice.

11.2.2 If the City terminates this Agreement as provided by this Section, then the City may:

- (a) enter into contracts, as it in its sole discretion sees fit, with other persons to complete the Services;
- (b) withhold payment of any amount owing to the Contractor under this Agreement for the performance of the Services;
- (c) set-off the total cost of completing the Services incurred by the City against any amounts owing to the Contractor under this Agreement, and at the completion of the Services pay to the Contractor any balance remaining; and
- (d) if the total cost to complete the Services exceeds the amount owing to the Contractor, charge the Contractor the balance, which amount the Contractor will forthwith pay.

11.3 Curing Defaults

11.3.1 If the City determines that some portion of the Services has not been completed satisfactorily, the City may require the Contractor to correct such Services prior to the City making any payment without terminating this Agreement upon five (5) days written notice to the Contractor. In such event, the City will provide the Contractor with an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, if the Contractor does not provide a sufficient remedy. The City may retain the amount equal to the cost to the City for otherwise correcting or remedying the Services not properly completed. The parties agree to act reasonably and diligently to remedy issues.

12. APPLICABLE LAWS

12.1 Applicable Laws

12.1.1 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia. The City and the Contractor accept the jurisdiction of the courts of British Columbia and agree that any action under this Agreement be brought in such courts.

12.2 Codes and By-Laws

12.2.1 The Contractor will provide the Services in full compliance with all applicable laws and regulations.

12.3 Interpretation of Laws

12.3.1 The Contractor will, as a qualified and experienced professional, interpret laws and regulations applicable to the performance of the Services. If an authority having jurisdiction imposes an interpretation which the Contractor could not reasonably have verified or foreseen prior to entering into this Agreement, then the City will pay the additional costs, if any, of making alterations so as to conform to the required interpretation.

13. CITY DATA PRIVACY

13.1 The Contractor will use City Data only for the purpose of fulfilling its duties under this Agreement and for City's sole benefit, and will not share such City Data with or disclose it to any Third Party without the prior written consent of City or as otherwise required by law. By way of illustration and not of limitation, the Contractor will not use such City Data for the Contractor's own benefit and, in particular, will not engage in "City Data mining" of City Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by the City.

13.2 All City Data will be stored on servers located solely within Canada. The Contractor will not permit access to Personal Information from outside Canada.

13.3 The Contractor will provide access to City Data only to those Contractor employees, agents, personnel, contractors and subcontractors who need to access the City Data to fulfill the Contractor's obligations under this Agreement. The Contractor will ensure that, prior to being granted access to the City Data, the Contractor's employees, agents or personnel who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all City Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the Contractor's employees, agents and personnel's duties and the sensitivity of the City Data they will be handling.

13.4 The Contractor will ensure it maintains the confidentiality, integrity and availability of City Data by ensuring appropriate security controls are applied.

14. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

14.1 No Disclosure

14.1.1 Except as provided for by law or otherwise by this Agreement, the Contractor and the City will keep strictly confidential, and will not, without the prior express written consent of the Contractor and the City, publish, release, disclose or permit to be disclosed

Confidential Information to any person or corporation, either before, during or after termination of this Agreement, except as reasonably required to complete the Services.

14.2 Return of Property and City Data

The Contractor agrees to return to the City the City Data at the termination or expiration of this Agreement, upon the City's written request made within 30 days after such termination or expiration, as provided herein. This provision applies to all City Data that is the possession of subcontractors, agents or auditors of Contractor. Within 15 days after the date of the City's request, the Contractor will make available to City for download a file of City Data in an agreed-upon machine readable (a commercially reasonable standard such as comma separated value (.csv) or extendible markup language (.xml)) format along with attachments in their native format as stored on the SaaS. Such service shall be done at no cost to the City. Once Contractor has received written confirmation from City that all City Data has been successfully transferred to the City, Contractor shall within thirty (30) days, unless legally prohibited, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification in accordance with Section 15.7 herein.

15. SECURITY

15.1 Security

15.1.1 The Contractor shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the Contractor. For example, virus checking and port sniffing – the City and the Contractor shall understand each other's roles and responsibilities. The Contractor and the City recognize that security responsibilities are shared. The Contractor is responsible for providing a secure application service and/or infrastructure within the context of the Services being provided to the City. The City is responsible for securing City owned and operated infrastructure.

15.2 Access to City Data, Security Logs and Reports

15.2.1 The Contractor shall provide reports to the City in a format agreed to by both the Contractor and the City. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all City files related to this Agreement. Audit logs and login history logs shall include the following requirements:

- (a) audit logs (in a filterable and exportable.csv format): user, date and time of change (add or update), previous value of field, current value of the field, object; and
- (b) login history logs: IP address that attempted login, date and time and success/fail.

15.3 Import and Export of City Data

15.3.1 The City shall have the ability to import or export City Data in piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the City to import or export City Data to/from other service providers.

15.4 Access To and Extraction of City Data

15.4.1 The City shall have access to City's Data during the Term. The Contractor shall within seven (7) business days of the City's request, provide the City, without any contingencies whatsoever (including but not limited to payment of any fees due to the Contractor), an extract of the City Data in a mutually agreed upon machine readable format, anytime during the Term of this Agreement. Such provision of City Data, shall be charged to the City on a time and materials basis, as agreed to by the parties, at the hourly rates of the Contractor as set out in Appendix 5 – Additional Work.

15.5 City Data Ownership

15.5.1 All City Data shall become and remain the property of the City.

15.6 City Data Protection

15.6.1 Protection of personal privacy and City Data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of the City information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City Data and comply with the following conditions:

- (a) the Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Information and City Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Information and City Data of similar kind;
- (b) without limiting the foregoing, the Contractor warrants that all City Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) at an encryption level equivalent to or stronger than 128-bit AES encryption. Further, the Contractor warrants that all City Data will be encrypted while in storage at an encryption level equivalent to or stronger than 256-bit AES encryption;
- (c) at no time shall any City Data or processes — that either belong to or are intended for the use of the City or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City;

- (d) the Contractor shall not use any information collected in connection with the service issued from this Agreement for any purpose other than fulfilling the Service;
- (e) all facilities used to store and process City Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to secure such City Data from unauthorized access, destruction, use, modification, or disclosure. Such measures will be no less protective than those used to secure the Contractor's own City Data of a similar type, and in no event less than reasonable in view of the type and nature of the City Data involved; and
- (f) the Contractor shall at all times use industry-standard and up-to-date security controls, technologies and procedures including, but not limited to firewalls, strong authentication, anti-malware protections, intrusion detection and prevention, regular patch management and vulnerability scanning, security event logging and reporting, and transport and storage encryption in providing the Services under this Agreement.

15.6.2 Prior to the "**Go-Live Date**" the Contractor will at its expense conduct or have conducted the requirements in subsections 15.6.2(a), (b) and (c) and thereafter, and the Contractor will at its expense conduct or have conducted the requirements in subsections 15.6.2(a), (b) and (c) at least once per year, and immediately after any actual or reasonably suspected City Data Breach:

- (a) audit of the Contractor's security policies, procedures and controls;
- (b) a vulnerability scan, performed by a City-approved Third Party, of the Contractor's systems and facilities that are used in any way to deliver Services under this Agreement; and
- (c) a formal penetration test, performed by a process and qualified personnel of the Contractor's systems and facilities that are used in any way to deliver Services under this Agreement.

15.6.3 Any time during the Term, if the Contractor intends to use City Data facilities of a different hosting service provider for storing the City Data, the Contractor shall provide at least thirty (30) days prior written notice of its intention to the City with proof in writing of the new hosting service provider meeting the requirements of being certified under ISO 27017 (or standards that succeed them, and which are acknowledged by both parties as equally or more effective). For greater clarity, failing to do so would result in a substantial breach of the Agreement.

15.6.4 The Contractor will provide the City the reports or other documentation resulting from the above audits, certifications, scans and tests in subsections 15.6.1(a), 15.6.2(b) and 15.6.2(c) within seven (7) business days of the Contractor's receipt of a request from the City.

15.6.5 Based on the results of the above audits, certifications, scans and tests, the Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures in order to meet its obligations under this Agreement, and provide the City with written evidence of remediation, based on the results of the above audits, certifications, scans and tests, the Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures in order to meet its obligations under this Agreement, and provide the City with written evidence of remediation, provided that to the extent that completing such modifications to its security measures is not practicable within thirty (30) calendar days, the Contractor will have commenced such modifications within thirty (30) calendar days and will thereafter diligently pursue the implementation until completion within one hundred and eighty (180) days.

15.6.6 The City may require, at its expense, that the Contractor perform additional audits and tests, and the Contractor will use commercially reasonable efforts, taking into consideration the availability of its resources, to accommodate such request. Any audit or test request by the City needs to be coordinated with the Contractor and will be performed only on a mutually agreed basis including the timeline for the audit or test. When performed, the results of any such audit or test will be provided to the City within seven (7) business days of the Contractor's receipt of such results. The City shall reimburse the Contractor for all its reasonable out of pocket expenses in connection with such audit or test, including the cost of the Contractor staff used for such audit.

15.7 City Data Destruction

15.7.1 The Contractor acknowledges and agrees that, upon termination or expiry of this Agreement, or at any time during the term of this Agreement at the City's request, all City Data in the possession of the Contractor shall be destroyed using a "Purge" or "Destroy" method, as defined by NIST Special Publication 800-88, such that ensures that City Data recovery is infeasible.

15.7.2 The Contractor must provide the City with a backup of all City Data prior to performing City Data destruction unless otherwise instructed by the City in writing. The Contractor must receive confirmation from the City that all City Data to be destroyed has been received.

15.7.3 The Contractor agrees to provide a "Certificate of Sanitization/Disposition" within a reasonable period of performing destruction of City Data for each piece of media that has been sanitized which includes, at a minimum, the following information:

- (a) type of media sanitized;
- (b) description of sanitization process and method used;
- (c) tool used for sanitization;
- (d) verification method;

- (e) date of sanitization; and
- (f) signature of contractor.

16. SECURITY INCIDENT OR CITY DATA BREACH RESPONSE

- 16.1 When either a Security Incident or a City Data Breach is suspected, investigation is required to commence without delay. If the Contractor becomes aware of a suspected Security Incident or suspected City Data Breach, the Contractor will inform the City Clerk immediately (unless a City Data Breach is conclusively ruled out, in which case notification must be within 24 hours) by contacting the City's 24x7 IT on-call staff at 604-591-4444 and selecting the option for critical services.
- 16.2 If a City Data Breach is confirmed, immediate remedial action is required, the Contractor must notify the City Clerk immediately by contacting the City's 24x7 IT on-call staff as described above.
- 16.3 Immediately upon becoming aware of any suspected Security Incident, the Contractor shall fully investigate the Security Incident's circumstances, extent and causes. The Contractor must then report the results to City Clerk and continue to keep City Clerk informed on a daily basis of the progress of its investigation until the issue has been effectively resolved.
- 16.4 Oral reports by the Contractor regarding Security Incidents and City Data Breaches will be reduced to writing and supplied to the City Clerk as soon as reasonably practicable, but in no event more than forty-eight (48) hours after the oral report.
- 16.5 For any confirmed Security Incident, the Contractor's report discussed herein shall identify:
 - (a) the nature of the incident;
 - (b) the cause or suspected cause of the incident;
 - (c) what the Contractor has done or shall do to mitigate the incident; and
 - (d) what corrective action the Contractor has taken or shall take to prevent future similar incidents.
- 16.6 For an actual or suspected City Data Breach, the Contractor's report discussed herein shall identify:
 - (a) the nature of the unauthorized use or disclosure;
 - (b) the City Data used or disclosed;
 - (c) who made the unauthorized use or received the unauthorized disclosure (if known);

- (d) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - (e) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- 16.7 The Contractor, at its expense, shall cooperate fully with the City's investigation of and response to any City Data Breach, including allowing the City to participate as is legally permissible in the breach investigation.
- 16.8 The Contractor will not provide notice of the City Data Breach directly to the persons whose City Data were involved, regulatory agencies, or other entities, without prior written permission from the City.
- 16.9 Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the City under law or equity, the Contractor will promptly reimburse the City in full for all costs incurred by the City in any investigation, remediation or litigation resulting from any City Data Breach, including but not limited to providing notification to Third Parties whose City Data were compromised and to regulatory bodies, law enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a City Data Breach in such a fashion that, in the City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the City Data Breach.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Intellectual property is owned by the applicable content owner and, except as expressly set out herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's intellectual property. For greater certainty:
- (a) the City acknowledges that the Contractor retains all right, title and interest in the Contractor's intellectual property. The City acknowledges that it does not, by virtue of receiving a license to use the Contractor's intellectual property, acquire any proprietary rights therein, other than the limited rights granted in this Agreement. The Contractor warrants that it is the sole owner of its intellectual property; and
 - (b) the Contractor acknowledges that the City retains all right, title and interest in the City's intellectual property. The Contractor acknowledges that it does not, by virtue of receiving a license to use the City's intellectual property in order to customize the intellectual property, acquire any proprietary right to the City's intellectual property, other than the limited rights granted under this Agreement. The City warrants that it owns the City's intellectual property that it provides to the Contractor for the purpose of customizing the intellectual property.

17.2 Neither party may transfer or assign its rights and obligations under this Agreement without first obtaining the other party's prior written consent.

17.3 Upon termination or expiry of this Agreement, the Contractor shall remove the City's intellectual property from the software.

18. PROTECTION OF PERSONAL INFORMATION

18.1 Refer to Appendix 8 – Privacy Protection Schedule.

19. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR CITY DATA

19.1 Except as otherwise expressly prohibited by law, the Contractor will:

- (a) if required by a court of competent jurisdiction or an administrative body to disclose City Data, the Contractor will notify the City in writing immediately upon receiving notice of such requirement and prior to any such disclosure;
- (b) consult with the City regarding its response;
- (c) cooperate with the City's reasonable requests in connection with efforts by the City to intervene and quash or modify the legal order, demand or request; and
- (d) upon the City's request, provide the City with a copy of its response.

19.1 If the City receives a subpoena, warrant, or other legal order, demand or request seeking City Data maintained by the Contractor, the City will promptly provide a copy to the Contractor. The Contractor will supply the City with copies of City Data required for the City to respond within forty-eight (48) hours after receipt of copy from the City, and will cooperate with the City's reasonable requests in connection with its response.

20. CITY DATA RETENTION AND DISPOSAL

20.1 The City records fall under the City's retention policies, not the Contractors. The Corporate Records program is governed by the *Corporate Records By-law, 2010, No. 17002*, as amended.

21. CITY DATA TRANSFER UPON TERMINATION OR EXPIRATION

21.1 Upon termination or expiration of this Agreement, the Contractor will ensure that all City Data is securely transferred to the City, or a Third Party designated by the City, within ten (10) calendar days of any such event. The Contractor will ensure that such migration uses facilities and methods that are compatible with the relevant systems of the City, and that the City will have access to City Data during the transition. In the event that it is not possible to transfer the aforementioned City Data to the City in a format that does not require proprietary software to access the City Data, the Contractor shall provide the City with an unlimited use, perpetual license to any proprietary software necessary in order to gain access to the City Data.

- 21.2 The Contractor will provide a fully documented service description and perform and document a gap analysis by examining any differences between its Services and those to be provided by its successor.
- 21.3 The Contractor will provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the City.
- 21.4 The Contractor shall implement its contingency and/or exit plans and take all necessary actions to provide for an effective and efficient transition of service with minimal disruption to the City. The Contractor will work closely with its successor to ensure a successful transition to the new service and/or equipment, with minimal downtime and effect on the City, all such work to be coordinated and performed no less than ninety (90) calendar days in advance of the formal, final transition date.

22. INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE

- 22.1 The City may suspend or terminate (or direct the Contractor to suspend or terminate) an end user's access to Services in accordance with the City's policies. The City will assume sole responsibility for any claims made by end user regarding the City's suspension/termination or directive to suspend/terminate such Services.
- 22.2 The Contractor may suspend access to Services by the City immediately in response to an act or omission that reasonably appears to jeopardize the security or integrity of the Contractor's Services or the network(s) or facilities used to provide the Services. Suspension will be to the minimum extent, and of the minimum duration, required to prevent or end the security issue. The suspension will be lifted immediately once the breach is cured. The Contractor may suspend access to Services by the City in response to a material breach by the City of any terms of use the City has agreed to in connection with receiving the Services. The Contractor will immediately notify the City of any suspension of the City access to Services.

23. RIGHTS AND LICENSE IN AND TO CITY DATA

- 23.1 The parties agree that as between them, all rights, in and to City Data shall remain the exclusive property of the City, and the Contractor has a limited, nonexclusive license to access and use these City Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.
- 23.2 All City Data created and/or processed by the Services is and shall remain the property of the City and shall in no way become attached to the Services, nor shall the Contractor have any rights in or to the City Data.
- 23.3 This Agreement does not give a party any rights, implied or otherwise, to the other's Data, content, or intellectual property, except as expressly stated in the Agreement.
- 23.4 The City retains the right to use the Services to access and retrieve City Data stored on the Contractor's Services infrastructure at any time at its sole discretion.

23.5 The Contractor shall agree to support the City to conduct a City Data export annually for archiving purposes.

24. ESCROWING OF SOURCE CODE OF LICENSED SOFTWARE

24.1 After the parties execution of this Agreement and at written request of the City, the parties shall enter into a Source Code Escrow Agreement with a mutually agreed third-party escrow agent ("**Escrow Agent**") pursuant to which the Contractor will deposit a source code version of the software component of the Services other than any third party software with all necessary passwords, software keys, and related technical documentation (collectively, the "**Source Code**").

24.2 Each of the following shall constitute a "**Release Event**" for purposes of this Agreement and the Source Code Escrow Agreement:

- (a) in the event that the Contractor:
 - (i) makes an assignment in bankruptcy, or is subject to a bankruptcy order, under the *Bankruptcy and Insolvency Act (Canada)* or the bankruptcy and insolvency legislation of any other jurisdiction;
 - (ii) has made a general assignment for the benefit of its creditors; or
 - (iii) has terminated its on-going business operations or transfers all or substantially all of the assets or obligations associated with or set forth in this Agreement to a third party except in connection with a continuation of the Contractor's business;

provided that, if the Contractor;

- (A) is still providing the Cloud Computing Services to the City; and
- (B) is disputing an involuntary assignment or order described in subsection (i), (ii) or (iii) above, the Contractor shall have forty (40) calendar days after the receipt of the assignment or order, failing which a "**Release Event**" is deemed to have occurred.

24.3 All rights and licenses granted by the Contractor under this Agreement or the Source Code Escrow Agreement (including all licensed Software, Source Code, documentation and work product, are and shall be deemed to be rights and licenses to "intellectual property", as such term is used in and interpreted under Section 65.11(7) of the *Bankruptcy and Insolvency Act (Canada)* and Section 32(6) of the *Companies' Creditors Arrangement Act (Canada)* and the Escrow Agreement is "supplementary" to this Agreement. In each case, the City shall have all rights, elections and protections under the *Bankruptcy and Insolvency Act (Canada)*, the *Companies Creditors Arrangement Act (Canada)* and all other applicable bankruptcy, insolvency, restructuring and similar laws with respect to this Agreement, the Source Code Escrow Agreement and the subject matter hereof and thereof.

24.4 All fees and expenses charged by an escrow agent will be borne by the City.

25. WORKERS' COMPENSATION BOARD, AND OCCUPATIONAL HEALTH AND SAFETY

- 25.1 The Contractor will, at its own expense, procure and carry full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in the supply of the Goods and Services. The City has the unfettered right to set off the amount of the unpaid premiums and assessments for the Workers' Compensation Board coverage against any monies owing by the City to the Contractor. The City will have the right to withhold payment under this Agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the Goods and Services have been paid in full.
- 25.2 The Contractor will provide the City with the Contractor's Workers' Compensation Board registration number and a letter from the Worker's Compensation Board confirming that the Contractor is registered in good standing with the Workers' Compensation Board.
- 25.3 The Contractor agrees that it is the prime contractor for the Services for the purposes of the *Workers Compensation Act*, unless the City specifies in writing that it is not. The Contractor will have a safety program in place that meets the requirements of the Workers' Compensation Board Occupational Health and Safety Regulation and the *Workers Compensation Act*. As prime contractor, the Contractor will be responsible for appointing a qualified coordinator for insuring the health and safety activities for the location of the Services. That person will be the person so identified in this Agreement, and the Contractor will advise the City immediately in writing if the name or contact number of the qualified coordinator changes.
- 25.4 Without limiting the generality of any other indemnities granted by the Contractor in this Agreement, the Contractor will indemnify and save harmless the Indemnitees from and against all claims, demands, causes of action, suits, losses, damages, costs, liabilities, expenses, judgments, penalties and proceedings (including all actual legal costs) which any of the Indemnitees incur, suffer or are put to arising out of or in any way related to unpaid Workers' Compensation Board assessments owing from any person or corporation engaged in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including penalties levied by the Workers' Compensation Board.
- 25.5 The Contractor will ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers Compensation Act* and Regulations pursuant thereto.
- 25.6 The City may, on twenty-four (24) hours written notice to the Contractor, install devices or rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case will the City be responsible for ascertaining or discovering, through inspections or review of the operations of the Contractor or otherwise, any deficiency or immediate hazard.

26. DISPUTE RESOLUTION

26.1 Dispute Resolution Procedures

26.1.1 The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this Agreement or related to this Agreement ("**Dispute**") using the dispute resolution procedures set out in this Section 26.1.1.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a Dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Surrey, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.

(c) Litigation

If within 90 days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.

27. JURISDICTION AND COUNCIL NON-APPROPRIATION

271 Nothing in this Agreement limits or abrogates, or will be deemed to limit or abrogate, the jurisdiction of the Council of the City in the exercise of its powers, rights or obligations under any public or private statute, regulation or by-law or other enactment.

27.2 The Contractor recognizes and agrees that the City cannot make financial commitments beyond the City's current fiscal year. The City will annually make bonafide requests for appropriation of sufficient funds to cover all payments covered by this Agreement. If the City's Council does not appropriate funds, or appropriates insufficient funds, the City will notify the Contractor of its intention to terminate or reduce the Services so affected within 90 days after the non-appropriation becomes final. Such termination shall take effect ninety (90) days from the date of notification, shall not constitute an event of default and shall relieve the City, its officers and employees, from any responsibility or liability for the payment of any further amounts under this Agreement.

28. GENERAL

28.1 Entire Agreement

28.1.1 This Agreement, including the Appendices and any other documents expressly referred to in this Agreement as being a part of this Agreement, contains the entire agreement of the parties regarding the provision of the Services and no understandings or agreements, oral or otherwise, exist between the parties except as expressly set out in this Agreement. This Agreement supersedes and cancels all previous agreements between the parties relating to the provision of the Services.

28.2 Amendment

28.2.1 This Agreement may be amended only by agreement in writing, signed by both parties.

28.3 Contractor's Terms Rejected

28.3.1 In the event that the Contractor issues an invoice, packing slip, sales receipt, or any like document to the City, the City accepts the document on the express condition that any terms and conditions in it which constitute terms and conditions which are in addition to or which establish conflicting terms and conditions to those set out in this Agreement are expressly rejected by the City.

28.4 Survival of Obligations

28.4.1 All of the Contractor's obligations to perform the Services in a professional and proper manner will survive the termination or completion of this Agreement.

28.5 Cumulative Remedies

28.5.1 The City's remedies under this Agreement are cumulative and in addition to any right or remedy which may be available to the City at law or in equity.

28.6 Notices

28.6.1 Any notice, report or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise provided for, and will be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by facsimile, on transmission, or if by mail or email, five calendar days after posting. The addresses for delivery will be as follows:

(a) The City: City of Surrey – IT Project Management Office
13450 - 104th Avenue
Surrey, British Columbia, V3T 1V8, Canada

Attention: [Contact Name/PositionTitle]
Business Fax:
Business E-mail:

(b) The Contractor: [Legal Name]
[Street Address], [City], [Province/State]
[Postal or Zip Code]

Attention: [Contact Name/PositionTitle]
Business Fax:
Business E-mail:

28.7 Unenforceability

28.7.1 If any provision of this Agreement is invalid or unenforceable, it will be severed from the Agreement and will not affect the enforceability or validity of the remaining provisions of the Agreement.

28.8 Headings

28.8.1 The headings in this Agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of this Agreement.

28.9 Singular, Plural and Gender

28.9.1 Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the context so requires.

28.10 Waiver

28.10.1 No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

28.11 Signature

28.11.1 This Agreement may be executed in one or more counterparts all of which when taken together will constitute one and the same agreement, and one or more of the counterparts may be delivered by fax or PDF email transmission.

28.12 Force Majeure

28.12.1 Neither party shall be liable to the other for failure or delay of performance hereunder due to causes beyond its reasonable control. Such delays include, but are not limited to, earthquake, flood, storm, fire, epidemics, acts of government, governmental agencies or officers, war, riots, or civil disturbances. The non-performing party will promptly notify the other party in writing of an event of force majeure, the expected duration of the event, and its anticipated effect on the ability of the party to perform its obligations, and make reasonable effort to remedy the event of force majeure in a timely fashion.

28.12.2 The performing party may terminate or suspend its performance under this Agreement if the non-performing party fails to perform its obligations under this Agreement for more than fifteen (15) consecutive calendar days. The City's payment obligations shall be suspended automatically if it is denied access to the Services for more than five (5) hours in any twenty-four (24) hour period.

28.13. Enurement

28.13.1 This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the City and the Contractor.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

CITY OF SURREY

by its authorized signatory:

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

<<INSERT LEGAL NAME OF CONTRACTOR>>

I/We have the authority to bind the Contractor.

(Legal Name of Contractor)

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(APPENDICES 1 THROUGH 9 WILL BE INSERTED LATER WHEN AN AGREEMENT IS ASSEMBLED FOR EXECUTION INCLUDING INFORMATION FROM THE RFP AND SUCCESSFUL PROPOSAL)

APPENDIX 1 – SCOPE OF SERVICES

APPENDIX 1-A – DRUPAL HOSTING SOLUTION REQUIREMENTS

APPENDIX 2 – FEES AND PAYMENT

APPENDIX 3 – TIME SCHEDULE

APPENDIX 4 – KEY PERSONNEL AND SUB-CONTRACTORS

APPENDIX 5 – ADDITIONAL WORK

APPENDIX 6 – SERVICE LEVELS

1. Definitions
2. Availability
3. Planned Maintenance
4. Performance
5. Capacity
6. Data Residency
7. Access to City Data
8. Change Management
9. Reliability
10. Disaster Recovery
11. Support
12. Service Credit

APPENDIX 7 – TRAINING PLAN

APPENDIX 8 – PRIVACY PROTECTION SCHEDULE

APPENDIX 9 – CONFIDENTIALITY AGREEMENT

SCHEDULE C – FORM OF PROPOSAL

RFP Project Title: DRUPAL HOSTING SOLUTION

RFP Reference No.: 1220-030-2018-024

Legal Name of Proponent:

Contact Person and Title: _____

Business Address: _____

Business Telephone: _____

Business Fax: _____

Business E-Mail Address: _____

TO:

City Representative: Richard D. Oppelt, Purchasing Manager

Address: Surrey City Hall
Finance Department – Purchasing Section
Reception Counter, 5th Floor West
13450 – 104 Avenue, Surrey, B.C., V3T 1V8, Canada

E-mail for PDF Files: purchasing@surrey.ca.

Dear Sir:

1.0 I/We, the undersigned duly authorized representative of the Proponent, having received and carefully reviewed all of the Proposal documents, including the RFP and any issued addenda posted on the City Website and BC Bid Website, and having full knowledge of the Site, and having fully informed ourselves as to the intent, difficulties, facilities and local conditions attendant to performing the Services, submit this Proposal in response to the RFP.

2.0 **I/We confirm** that the following schedules are attached to and form a part of this Proposal:

- Schedule C-1 – Statement of Departures;
- Schedule C-2 – Proponent's Experience, Reputation and Resources;
- Schedule C-3 – Proponent's Proposed Solution;
 - Schedule C-3-1 – Drupal Hosting Solution Requirements Response
- Schedule C-4 – Proponent's Example Implementation Schedule; and
- Schedule C-5 – Proponent's Financial Proposal:
 - Schedule C-5-1 – Financial Worksheet (Cloud Computing).

3.0 I/We confirm that this Proposal is accurate and true to best of my/our knowledge.

4.0 I/We confirm that, if I/we am/are awarded a contract, I/we will at all times be the “prime contractor” as provided by the *Worker's Compensation Act (British Columbia)* with respect to the Solution. I/we further confirm that if I/we become aware that another consultant at the place(s) of the Solution has been designated as the “prime contractor”, I/we will notify the City immediately, and I/we will indemnify and hold the City harmless against any claims, demands, losses, damages, costs, liabilities or expenses suffered by the City in connection with any failure to so notify the City.

This Proposal is submitted this ____ day of _____, 20__.

I/We have the authority to bind the Proponent.

(Legal Name of Proponent)

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

SCHEDULE C-1 - STATEMENT OF DEPARTURES

1. I/We have reviewed the proposed Contract attached to the RFP as Schedule "B". If requested by the City, I/we would be prepared to enter into that Contract, amended by the following departures (list, if any):

Section	Requested Departure(s) / Alternative(s)
_____	_____
_____	_____

2. The City of Surrey requires that the successful Proponent have the following in place **before commencing the Services**:

- (a) Workers' Compensation Board coverage in good standing and further, if an "Owner Operator" is involved, personal operator protection (P.O.P.) will be provided,
Workers' Compensation Registration Number _____;
- (b) Prime Contractor qualified coordinator is Name: _____
and Contact Number: _____;
- (c) Insurance coverage for the amounts required in the proposed Contract as a minimum, naming the City as additional insured and generally in compliance with the City's sample insurance certificate form available on the City's Website at www.surrey.ca search [Consultants Certificate of Insurance](#);
- (d) City of Surrey or Intermunicipal Business License: Number _____;
- (e) If the Consultant's Solution is subject to GST, the Consultant's GST Number is _____; and
- (f) If the Consultant is a company, the company name indicated above is registered with the Registrar of Companies in the Province of British Columbia, Canada, Incorporation Number _____.

As of the date of this Proposal, we advise that we have the ability to meet all of the above requirements **except as follows** (list, if any):

Section	Requested Departure(s) / Alternative(s)
_____	_____
_____	_____

3. I/We offer the following alternates to improve the Services described in the RFP (list, if any):

Section	Requested Departure(s) / Alternative(s)
_____	_____
_____	_____

4. The Proponent acknowledges that the departures it has requested in Sections 1, 2 and 3 of this Schedule C-1 will not form part of the Contract unless and until the City agrees to them in writing by initialling or otherwise specifically consenting in writing to be bound by any of them.

SCHEDULE C-2 - PROPONENT'S EXPERIENCE, REPUTATION AND RESOURCES

Proponents should provide responses to the following items, and if a particular item is inapplicable or cannot be answered, Proponents should clearly state why (use the spaces provided and/or attach additional pages, if necessary):

- (i) Provide a brief description of the Proponent's current business;
- (ii) Proponent's relevant experience and qualifications in delivering Services similar to those required by the RFP;
- (iii) Proponent's demonstrated ability to provide the Services;
- (iv) Proponent should describe their capability, capacity and plans for developing and supporting the deliverables, as well as describe contingency plans if the primary plan is not able to meet the project needs;
- (v) Using a format similar to the following, provide a summary of similar relevant contracts entered into by the Proponent in which the Proponent performed services comparable to the Services, including the jurisdiction the contract performed, the contract value, the date of performance. The City's preference is to have a minimum of three references.

Name of client's organization:	
Reference Contact Information:	Name:
	Phone Number:
	Email Address:
How long has the organization been a client of the Proponent?	
Provide the installation date of the comparative system, and any relevant comments.	
Description of comparative system - Please be specific and detailed.	
Information on any significant obstacles encountered and resolved for this type of Service.	

- (vi) Proponent's financial strength (with evidence such as financial statements, bank references);
- (vii) Describe any difficulties or challenges you might anticipate in providing the Services to the City and how you would plan to manage these;
- (viii) Proponents should identify key personnel and their roles and responsibilities for all phases of the project. The Proponent should submit resumes and also a short narrative description of relevant experience for all proposed key personnel, for example:

- Account Manager
- Project Manager
- Design, Development and Implementation Manager
- Testing Manager
- Technical Architect

Name: _____

Responsibility: _____

Experience: _____

(ix) Identify subcontractors, if any, the Proponent intends to use for the performance of the Services, describe the portion of the Services proposed to be subcontracted and a description of the relevant experience of the subcontractor, using a format similar to the following:

Subcontractor Name: _____

Subcontractor Services: _____

Experience: _____

SCHEDULE C-3 - PROPONENT'S PROPOSED SOLUTION

Proponents should provide responses to the following items, and if a particular item is inapplicable or cannot be answered, Proponents should clearly state why (use the spaces provided and/or attach additional pages, if necessary):

- (i) **Executive Summary:** Proponent should provide a brief narrative (preferably not to exceed 2 pages) that illustrates an understanding of the City's requirements and Services and describing the proposed solution. The summary should contain as little technical jargon as possible and should be oriented toward non-technical personnel. The executive summary should not include financial information;
- (ii) A general description of the general approach and methodology that the Proponent would take in performing the Services including specifications and requirements;
- (iii) **Value Add:** The Proponent should provide a description of value-added, innovative ideas and unique services that the Proponent can offer to implement the City's requirements relevant to the scope of services described in this RFP;
- (iv) Proponent should provide in detail how its proposed Solution meets the Drupal Hosting Solution Requirements. Please complete Drupal Hosting Solution Requirements Response, Schedule C-3-1; and
- (v) Proponent should describe in detail in Schedule C-5-1 – Financial Worksheet how its proposed Solution will be impacted by changes in annual page views, users and/or editors.

Schedule C-3-1 may be viewed and/or downloaded from the City of Surrey's Managed File Transfer Service (MFT):

Hostname: <https://mft.surrey.ca>

Logon ID surreybid

Password: Welcome

Locate Folder 1220-030-2018-024

SCHEDULE C-4 - PROPONENT'S EXAMPLE IMPLEMENTATION SCHEDULE

The City encourages responses that demonstrate a thorough understanding of the nature of the work and what the Contractor must do to get the work done properly. To this end, Proponents should provide an estimated project schedule, with major item descriptions and time indicating a commitment to provide the Drupal Hosting Solution and perform the Services within the time specified.

As a minimum, the Proponent's Example Implementation Schedule should be in sufficient detail to specify the work breakdown structure for all tasks, deliverables as set out in Schedule A.

Proponent should indicate:

- Deliverable Work Product
- Service Start Date
- Work Product Delivery Date
- City Review Period (showing start and completion dates)

Deliverables	Service Start Date	Work Product Delivery Date	City Review Period	
			Start Date	Completed Date
	-	-	-	-

SAMPLE

SCHEDULE C-5 - PROPONENT'S FINANCIAL PROPOSAL

Indicate the Proponent's proposed fee (excluding GST), using the following financial worksheet(s) (as applicable):

1. Schedule C-5-1: Financial Worksheet (Example)

Schedule C-5-1 may be viewed and/or downloaded from the City of Surrey's Managed File Transfer Service (MFT):

Hostname: <https://mft.surrey.ca>
Logon ID: surreybid
Password: Welcome

Locate Folder: 1220-030-2018-024

3. Additional Expenses:

The proposed Contract attached as Schedule "B" to the RFP provides that expenses are to be included within the fee. Please indicate any expenses that would be payable in addition to the proposed fee set out above:

4. Payment Terms:

A cash discount of _____% will be allowed if account is paid within _____ days, or the _____ day of the month following, or net 30 days, on a best effort basis.

ATTACHMENT 1 – PRIVACY PROTECTION SCHEDULE

(Included for reference purposes – will be attached to final agreement)

This Schedule forms part of the agreement between City of Surrey (the "Public Body") and _____ (the "Contractor") respecting Request for Proposals #1220-030-2018-024 – Drupal Hosting Solution (the "Agreement").

Definitions

1. In this Schedule,
 - (a) "access" means disclosure by the provision of access;
 - (b) "Act" means the Freedom of Information and Protection of Privacy Act (British Columbia), as amended from time to time;
 - (c) "contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (d) "personal information" means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the Public Body and the Contractor dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the "control of a public body" within the meaning of the Act.

Purpose

2. The purpose of this Schedule is to:
 - (a) enable the Public Body to comply with its statutory obligations under the Act with respect to personal information; and
 - (b) ensure that, as a service provider, the Contractor is aware of and complies with its statutory obligations under the Act with respect to personal information.

Collection of personal information

3. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about.
5. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by the Public Body to answer questions about the Contractor's collection of personal information.

Accuracy of personal information

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Public Body to make a decision that directly affects the individual the information is about.

Requests for access to personal information

7. If the Contractor receives a request for access to personal information from a person other than the Public Body, the Contractor must promptly advise the person to make the request to the Public Body unless the Agreement expressly requires the Contractor to provide such access and, if the Public Body has advised the Contractor of the name or title and contact information of an official of the Public Body to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

8. Within 5 business days of receiving a written direction from the Public Body to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.

9. When issuing a written direction under section 8, the Public Body must advise the Contractor of the date the correction request to which the direction relates was received by the Public Body in order that the Contractor may comply with section 10.
10. Within 5 business days of correcting or annotating any personal information under section 8, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Public Body, the Contractor disclosed the information being corrected or annotated.
11. If the Contractor receives a request for correction of personal information from a person other than the Public Body, the Contractor must promptly advise the person to make the request to the Public Body and, if the Public Body has advised the Contractor of the name or title and contact information of an official of the Public Body to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

12. The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

13. Unless the Public Body otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

14. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the Public Body in writing to dispose of it or deliver it as specified in the direction.

Use of personal information

15. Unless the Public Body otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

Disclosure of personal information

16. Unless the Public Body otherwise directs in writing, the Contractor may only disclose personal information inside Canada to any person other than the Public Body if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

17. Unless the Agreement otherwise specifies or the Public Body otherwise directs in writing, the Contractor must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in its custody or under its control the Contractor:

- (a) receives a foreign demand for disclosure;
- (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
- (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure the Contractor must immediately notify the Public Body and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

Notice of unauthorized disclosure

19. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in its custody or under its control, the Contractor must immediately notify the Public Body. In this section, the phrase "unauthorized disclosure of personal information" will bear the same meaning as in section 30.5 of the Act.

Inspection of personal information

20. In addition to any other rights of inspection the Public Body may have under the Agreement or under statute, the Public Body may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's

premises to inspect any personal information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to its management of personal information or its compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

Compliance with the Act and directions

21. The Contractor must in relation to personal information comply with:
- (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
 - (b) any direction given by the Public Body under this Schedule.
22. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

Notice of non-compliance

23. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the Public Body of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

24. In addition to any other rights of termination which the Public Body may have under the Agreement or otherwise at law, the Public Body may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

Interpretation

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by the Public Body under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.

ATTACHMENT 2 – CONFIDENTIALITY AGREEMENT

This Schedule forms part of the agreement between City of Surrey (the "Public Body") and _____ (the "Contractor") respecting Drupal Hosting Solution, Request For Proposals #1220-030-2018-024 (the "Agreement").

WHEREAS:

- A. The Contractor and the City acknowledge that the process of the Contractor having access to information or software will involve the verbal, electronic, written, or other disclosure of information, and documentation to the Contractor. In this Agreement "Confidential Information" means any information, technical data, or know how, including, but not limited to that which relates to services, processes, designs, drawings, diagrams, specifications, business strategies, finances whether communicated orally or in writing, specifications and associated documentation, and any equipment, machinery, or other property all of which owned by the City.
- B. The Contractor has agreed to maintain the Confidential Information as confidential and to the non-disclosure of same, all in accordance with the following terms:

THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. The Contractor shall hold the Confidential Information in strict confidence recognizing that the Confidential Information, or any portion thereof, is comprised of highly sensitive information. The Contractor acknowledges that the disclosure or use of the Confidential Information, or any portion thereof, will cause the City substantial and irreparable harm and injury and the City shall have the right to equitable and injunctive relief to prevent the unauthorized use or disclosure, and to such damages as there are occasioned by such unauthorized use or disclosure, and the Contractor hereby consents to the granting of such equitable and injunctive relief.
2. The Contractor shall not divulge or allow disclosure of the Confidential Information, or any part thereof, to any person or entity for any purpose except as described in this Agreement, unless expressly authorized in writing to do so by the City, provided however, the Contractor may permit the limited disclosure of the Confidential Information or portion thereof only to those of the Contractor's directors, officers, employees, and sub-contractors who have a clear and *bonafide* need to know the Confidential Information, and provided further that, before the Contractor divulges or discloses any of the Confidential Information to such directors, officers, employees, and sub-contractors, the Contractor shall inform each of the said directors, officers, employees, and sub-contractors of the provisions of this Agreement and shall issue appropriate instructions to them to satisfy the obligations of the Contractor set out in this Agreement and shall, at the request of the City, cause each of the said directors, officers, employees, and sub-contractors to execute a confidentiality agreement in a form satisfactory to the City, in its sole discretion.
3. The Contractor agrees not to use any of the Confidential Information disclosed to it by the City for its own use or for any purpose except to carry out the specific purposes designated by this Agreement.
4. The Contractor shall take all necessary precautions to prevent unauthorized disclosure of the Confidential Information or any portion thereof to any person, or entity in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that the Contractor utilizes to protect its own confidential information of a similar nature.
5. The Contractor shall notify the City in writing of any misuse or misappropriation of Confidential Information which may come to its attention.
6. The Contractor shall not mechanically or electronically copy or otherwise reproduce the Confidential Information, or any portion thereof, without the express advance written permission of the City, except for such copies as the Contractor may require pursuant to this Agreement in order to prepare the Report. All copies of the Confidential Information shall, upon reproduction by the Contractor, contain the same the City proprietary and confidential notices and legends that appear on the original Confidential Information provided by the City unless authorized otherwise by the City. All copies shall be returned to the City upon request.
7. The Confidential Information received by the Contractor and all formatting of the Confidential Information, including any alterations to the Confidential Information, shall remain the exclusive property of the City, and shall be delivered to the City by the Contractor forthwith upon demand by the City.
8. The Contractor acknowledges that the City is a public body subject to the *Freedom of Information and Protection of Privacy Act ("FIPPA")* and as such the Confidential Information is protected pursuant to the

provisions of FIPPA. The Contractor further acknowledges that the collection, use, storage, access, and disposal of the Confidential Information shall be performed in compliance with the requirements of FIPPA. Information which is sent to the City by the Contractor in performance of this Agreement is subject to FIPPA and may be disclosed as required by FIPPA. The Contractor shall allow the City to disclose any of the information in accordance with FIPPA, and where it is alleged that disclosure of the information, or portion thereof, may cause harm to the Contractor, the Contractor shall provide details of such harm in accordance with section 21 of FIPPA.

9. The Contractor acknowledges and agrees that nothing in this Agreement does or is intended to grant any rights to the Contractor under any patent, copyright, or other proprietary right, either directly or indirectly, nor shall this Agreement grant any rights in or to the Confidential Information.
10. Disclosure of the Confidential Information to the Contractor the terms of this Agreement shall not constitute public disclosure of the Confidential Information for the purposes of section 28.2 of the *Patent Act*, R.S.C. 1985, c. p-4.
11. This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors, and assigns and the Contractor hereby acknowledges that the obligations imposed on the Contractor hereunder shall survive the termination of the Contractor's dealings or engagement with the City.
12. The Contractor represents that is not now a party to, and shall not enter into any agreement or assignment in conflict with this Agreement.
13. This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia and the Contractor and the City irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia to adjudicate any dispute arising out of this Agreement.
14. No provision of this Agreement shall be deemed to be waived by the City and no breach of this Agreement shall be deemed to be excused by the City unless such waiver or consent excusing such breach is in writing and duly executed by the City.

1. **Primary Contact Person and Title:** _____

Business Address: _____

Business Telephone: _____

Business Fax: _____

Business E-mail Address: _____

(Signature of Authorized Signatory)

2. **Secondary Contact Person and Title:** _____

Business Address: _____

Business Telephone: _____

Business Fax: _____

Business E-mail Address: _____

(Signature of Authorized Signatory)