



## **REQUEST FOR PROPOSALS**

**Title:** Traffic Count Video Processing Services

**Reference No.:** 1220-030-2023-010

## **FOR THE ACQUISITION OF INFORMATION TECHNOLOGY SERVICES AND SOLUTIONS**

(General Services)

Issue Date: April 6, 2023

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## REQUEST FOR PROPOSALS

### 1. INTRODUCTION

#### 1.1 Purpose

The City of Surrey (the “**City**”) is interested in receiving a proposal(s) (the “**Proposal**”) from a proponent(s) (the “**Proponent**”) who has experience, software and expertise to compile traffic data on behalf of the City into easily understandable report formats for the City to manage reporting for traffic movement counts and roadway data collection (“**Traffic Count Video Processing Services**”).

The purpose of this request for proposals (the “**RFP**”) is to solicit competitive proposals for the most appropriate Traffic Count Video Processing Services 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 Services meet or exceed the City’s requirements as described in Schedule A.

#### 1.2 Project Background

The City conducts approximately 300 intersection traffic movement counts for service requests and other operational needs. On average the City has 10 videos processed a week dependent on weather conditions and City staffing levels.

The counts are primarily conducted using video cameras and are collected typically on weekdays during the school year. The City currently has six Scout cameras from Miovision Technologies Inc. and utilizes other traffic cameras to collect the video footage. Once the videos are collected, they are processed using analytics software to count variety of data on roadway users such as vehicles, pedestrians, bicyclists, etc. The software generates a report in a defined exportable format along with an interface generating performance measures and indicators. The City is looking for Proponents with appropriate software and expertise to provide such reports as a deliverable to this RFP.

In addition, special data collection projects are conducted throughout the year to aid in transportation planning, traffic operations, design and optimization, and road safety. The anticipated increase in demand for data collection is required to meet the growing infrastructure needs, designed to connect people and places throughout the City.

#### 1.3 Definitions

In this RFP the following definitions shall apply:

“**BC Bid Website**” means [www.bcbid.gov.bc.ca](http://www.bcbid.gov.bc.ca);

“**City**” means the City of Surrey;

“**City Representative**” has the meaning set out in section 2.5;

“**City Website**” means [www.surrey.ca](http://www.surrey.ca);

“**Closing Time**” has the meaning set out in section 2.1;

“**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 (proposing a cloud computing Solution);

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

“**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 the cloud computing software to provide Traffic Count Video Processing Services;

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

“**Traffic Count Video Processing Services**” means qualified personnel from the Proponent who can deliver the Services through a Solution that is capable of performing the Services and report deliverables as described in Schedule A.

## **2. INSTRUCTIONS TO PROPONENTS**

### **2.1 Closing Time and Address for Proposal Delivery**

The Proponent should submit the Proposal **electronically** in a single pdf file which must be delivered by email at: [purchasing@surrey.ca](mailto:purchasing@surrey.ca)

**on or before the following date and time**

**Time: 3:00 p.m., local time**

**Date: May 2, 2023**

**(the “Closing Time”).**

Confirmation of receipt of email will be issued. Proposals that cannot be opened or viewed may be rejected. A Proponent bears all risk that the Owner's receiving computer equipment functions properly so that the Proposal is received by the Closing Time.

**Note:** The maximum file size the Owner can receive is 10Mb. If sending large email attachments, Proponents should phone [604-590-7274] to confirm receipt.

## 2.2 Information Meeting

An information meeting may be hosted by the City Representative to discuss the City's requirements under this RFP. 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.

## 2.3 Late Proposals

All pages and parts of the Proposal must be received by the Closing Time. Proposals submitted after the Closing Time will not be accepted or considered.

## 2.4 Amendments to Proposals

Proposals may be revised by written amendment, delivered to the location set out in Section 2.1, 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 4.2. 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.

## 2.5 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: Sunny Kaila, Manager, Procurement Services

E-mail: [purchasing@surrey.ca](mailto:purchasing@surrey.ca)

Reference: 1220-030-2023-010

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 2.6. No oral conversation will affect or modify the terms of this RFP or may be relied upon by any Proponent.

## **2.6 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](http://www.bcbid.gov.bc.ca) the “**BC Bid Website**”) and the City Website at [www.surrey.ca](http://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.

## **2.7 Examination of Contract Documents (Schedule B –1)**

The Contract that has been adopted by the City for cloud computing technology projects are included in this RFP solicitation: as **Schedule B-1 (for cloud computing solutions)**. 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 the attached Contract. The Proponents failure to execute a Contract substantially the same as the attached Contract 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.

The terms and conditions set out in the Contract is deemed to be accepted by the Proponent and incorporated into its Proposal except to the extent expressly excluded, supplemented, replaced or identified in a Proponent’s Proposal (refer to Schedule C-1 – Statement of Departures). Proponents should provide reasons for any changes proposed. Proponent departures may, at the sole discretion of the City, be grounds for disqualification from further consideration in award of a contract.

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.

## **2.8 Opening of Proposals**

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

## **2.9 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)**

The Evaluation Team may, at its discretion, invite some or all of the Proponents to appear before the Evaluation Team to provide a presentation/demonstration of your proposed Solution.

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 Supplemental Security Infrastructure Software System to the Evaluation Team.

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



## **4. PROPOSAL SUBMISSION FORM AND CONTENTS**

### **4.1 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.

### **4.2 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 Traffic Count Video Processing Services which is most advantageous to the City, using the following criteria:

### **Experience, Reputation and Resources**

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

### **Technical (Proposed Solution)**

The Evaluation Team will consider the Proponent's responses to items in Schedule C-3 and Schedule C-4. The City will evaluate Proposals and determine whether a Proponent has met the Traffic Count Video Processing Services 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.

### **Financial**

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

### **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 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), including financial terms, and such discussions may include:
  - (1) clarification of any outstanding issues arising from the Preferred Proponent's Proposal;
  - (2) request additional costing information for additional reports not provided in the Proposal;
  - (3) 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

- (4) 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 2.5, at any time prior to the award of a contract or the cancellation of this RFP and which could be viewed as one Proponent attempting to seek an unfair advantage over other Proponents.

## **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 Proposal, 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.

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## **SCHEDULE A – SCOPE OF SERVICES**

### **PROJECT TITLE: Traffic Count Video Processing Services**

#### **1. PURPOSE**

The City of Surrey (the “City”) invites Proposals from experienced and qualified Proponents for the provision of everything required including all skilled labour, tools, software, materials and equipment to provide Traffic Count Video Processing Services for the City.

The City is interested in procuring Traffic Count Video Processing Services from a Proponent who can provide the Services as specified in Schedule A-1 – Functional and Technical Specifications. The City is also be interested in a Proponent who may offer data hosting services in addition to providing the video processing services. The Proponent should have adequate security controls in place to safeguard information with data hosted through a secure service. Data should be stored within Canada.

#### **2. PROJECT DELIVERABLES**

The City’s functional and technical requirements are outlined in additional detail in Schedule A-1. The following is a summary of Project Deliverables based on the Scope of Services. The Proponent is expected to be able to:

- provide roadway user counts as described in Schedule A-1, Functional and Technical Requirements;
- furnish reports based on the City’s established reporting criteria;
- provide 5 business day turn around time for report generation and submission back to the City with a 24 hour rush option;
- ability to build and track performance measures and indicators for the City; and
- may provide data hosting services for the City’s video footage.

#### **3. SUPPORT AND TRAINING**

The Proponent will provide the City with the necessary support and training resources for ongoing usage of the software’s management/reporting system. At a minimum training should include:

1. Initial City user training
2. Operator and administrator training for any Proponent initiated software updates;
3. Ongoing training (i.e., refresher training, new employees); and
4. Access to user guides and as-built documentation for the system.

Proponents should provide details as to whether their training will be facilitated in person or virtual and will be instructor led or self-taught with any capacity limits noted for number of attendees.

#### 4. MANUFACTURER'S AUTHORIZATION

Proponents are to provide a letter from the manufacturer of the software authorizing the Proponent as an authorized distributor, dealer or service representative and that the Proponent is authorized to sell, license and offer in-house service, maintenance and technical assistance. This letter should indicate that the proposed software is suitable for the service intended, in accordance with the specifications therein.

#### 5. FUNCTIONAL AND TECHNICAL REQUIREMENTS

The requirements for this RFP are divisible into three general categories: functional requirements, technical requirements and security requirements (the "Traffic Count Video Processing Services Software **Requirements**"), all as described and embedded in Schedule A-1. The security requirements are further divisible into general, web application, mobile application, and cloud.

Proponents' Proposals will be evaluated based upon the suitability of their proposed Solution(s) in relation to the Traffic Count Video Processing Services Requirements. The functional requirements generally list the City's desired/preferred or required general Traffic Count Video Processing Services functionality. The technical requirements list the City's desired or required general Traffic Count Video Processing Services functionality in areas such as integration, user interface, analytics and reporting, and others. Most of the functional and technical requirements are preferred or highly preferred by the City, and Proponents will be evaluated on their ability to meet those requirements.

As part of their Proposal, Proponents should submit Schedule C-3-1 (Traffic Count Video Processing Services Requirements Response), which is available as a separate attachment to this RFP, after filling-in the spreadsheet's two right-most columns. Specifically, the Proponent should indicate if their Solution complies with each requirement by selecting the appropriate response code in the response code field, and also provide a description in the comments field that explains how their Solution meets each requirement. **Some of the Traffic Count Video Processing Services Requirements are identified as mandatory, and must be met for the Proponent's Solution to be considered.**

The Proponent should also respond to the cloud security and cloud service level requirements in the Traffic Count Video Processing Services Requirements Response (Sch. C-3-1).

- END OF PAGE -



## SCHEDULE A-1 – FUNCTIONAL AND TECHNICAL REQUIREMENTS

The functional and technical requirements for the Services set out below are for cloud solutions.

For greater certainty, the requirements listed in **Schedule A-1 (Traffic Count Video Processing Services Requirements)** and **Schedule C-3-1 (Traffic Count Video Processing Services 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.

FUNCTIONAL REQUIREMENTS					
Req. #	Requirement	Elaboration	Category	Theme	Level of Need
1000	Provide raw data to the City to obtain and view	Application	General	Reporting	Preferred
1001	Provide exportable reports in MS Excel and .pdf formats	Application	General	Reporting	Mandatory
1002	Ability to download raw data or aggregate data in a format that can be opened (using programs like Microsoft Excel, version Office 365)	Application	General	Reporting	Mandatory
1003	List additional exportable report types available	Application	General	Reporting	Preferred
1004	Confirm Windows 10 or web browser compatibility for Google Chrome and Microsoft Edge	Application	General	Compatibility	Preferred
1005	Provide delivery timeframes for traffic count data after successful completion of uploading the video (within 5 business days is preferred with options for rush delivery as quickly as 24 hours)	Application	General	Accessibility	Preferred
1006	Ability for public access to count data	Application	General	Accessibility	Preferred
1007	Data security features including restriction of distribution and dissemination of City owned videos	Application	Security	Accessibility	Preferred
1008	Please provide information on any limitation on retention period and quality.	Application	Security	Accessibility	Preferred
1009	Indicate if data storage would be in Canada and hosted through a secured server	Application	Security	Accessibility	Preferred
1010	Ability to measure speed and provide statistics (in metric units)	Application	General	Reporting	Preferred
1011	Provide data visualization, insights, and charts	Application	General	Reporting	Preferred
1012	Provide key indicators, including but not limited to peak hour factor, etc, and breakdown of peak hour statistics	Application	General	Reporting	Preferred
1013	Provide traffic data accuracy (preferred 90% or better)	Application	General	Data	Preferred
1014	Indicate how services charges are calculated, ie. Per study, per number of hours studied, per hours service is used, etc.	Application	Billing	Reporting	Preferred
1015	Ability in processing video recorded by Miovision Scout product	Application	General	Compatibility	Preferred
1016	Ability in processing video recorded by the City of Surrey traffic cameras <ul style="list-style-type: none"> <li>• Video is currently recorded at 800x450 or 4CIF resolution and 8 frames per second in H.264/H.265</li> <li>• Please confirm that software is compatible with higher resolution and frame rates should the City increase recording resolution and frame rates in the future.</li> </ul>	Application	General	Compatibility	Mandatory
1017	Digital upload platform of video data to be processed by the supplier. The platform must be capable of handling large file sizes expected of video data	Application	General	Capacity	Mandatory
1018	Digital delivery of reports and data from the supplier through an online portal	Application	General	Reporting	Mandatory
1019	Detail Customer Services capability to resolve issues	Customer Service	General	Accessibility	Preferred
1020	List additional video formats supported by software services offering	Different Range of Study Types	Tools and processes	Reporting	Preferred
1021	List additional codecs supported by software services offering	Different Range of Study Types	Tools and processes	Reporting	Preferred

Technical Requirements					
Req. #	Requirement	Elaboration	Category	Theme	Level of Need
2000	Provides intersection turning movement counts ("TMC") for vehicles, pedestrians, and cyclists	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2001	Provides midblock counts for vehicles, pedestrians, and cyclists	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2002	Provide at least 3 Vehicle types of classification by direction of travel matching Federal Highway Administration (FHWA) Classes: <ul style="list-style-type: none"> <li>• Passenger vehicles (FHWA Classes 1, 2 &amp; 3)</li> <li>• Single unit trucks and buses (FHWA Classes 4, 5, 6 &amp; 7)</li> <li>• Articulated trucks (FHWA Classes 8,9,10,11, 12 &amp; 13)</li> </ul>	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2003	Provide additional Division of FHWA vehicle classes, e.g. additional classification categories	Different Range of Study Types	Tools and processes	Reporting	Preferred
2004	Provide pedestrian counting by location/direction	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2005	Cyclist pathway counting by location/direction	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2006	Roadway two-way volume count	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2007	Video formats and codecs must be compatible with both .mp4 and .avi formats	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2008	Provide multiple bin summary report. For exported reports, aggregated data is formatted into 15 minute bin sizes/ time periods.	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2009	Clearly labelled location, movement directions, dates, times and vehicle, pedestrian and cyclists volumes on reports	Different Range of Study Types	Tools and processes	Reporting	Mandatory
2010	List additional study/classification types from software services offering	Different Range of Study Types	Tools and processes	Reporting	Preferred
2011	List the ability to classify pedestrians and vulnerable road users , such as adult, children, wheelchairs and scooters	Different Range of Study Types	Tools and processes	Reporting	Preferred
2012	Ability to process roundabout studies	Different Range of Study Types	Tools and processes	Reporting	Preferred
2013	Ability to provide travel time study	Different Range of Study Types	Tools and processes	Reporting	Preferred
2014	Ability to provide origin-destination study	Different Range of Study Types	Tools and processes	Reporting	Preferred
2015	Ability to slice report data by date, vehicle classification, pedestrians, cyclists and direction of movement.	Different Range of Study Types	Tools and processes	Reporting	Preferred
2016	Map based platform to search for and access completed reports	Different Range of Study Types	Tools and processes	Reporting	Preferred
2017	Ability to synchronize the video footage time with the respective data point on visual graphics.	Different Range of Study Types	Tools and processes	Reporting	Preferred
2018	Is there video compression technology used? If so, what is the compression ratio?	Data Compression	Tools and processes	Data Transfer	Preferred
2019	What are the methods that will be used to transfer the videos? (ie sftp, registered mail of physical memory cards, etc)	Data Transfer	Tools and processes	Data Transfer	Preferred
2020	Describe how will data be destroyed? What mechanisms will be in place to ensure that the data is destroyed?	Data Destruction	Tools and processes	Data Retention	Mandatory
2021	Vendor must adhere to the Information Privacy and Security Act (FOIPPA). Please acknowledge.	FOIPPA Requirements	Tools and processes	Data Disclosure	Mandatory
2022	What format is the data stored in? Can the data be exported?	Data Extraction	Tools and processes	Data Extraction	Preferred

**SERVICE LEVEL AND SUPPORT REQUIREMENTS**

Req. #	Category	Theme	Requirement	Level of Need
3000	Cloud	Availability	We consider system outages as:1) a complete inability to use the solution, or2) a reoccurring, temporary inability to use the solution, or3) an inability to use the features and functions integral to the solution's core business purpose. Does your solution's availability criteria meet this definition? If not please specify any departure.	Preferred
3001	Cloud	Availability	Please provide your service availability percentage (example: 99.99% Uptime). Please indicate if this percentage includes scheduled downtime. What is the frequency of measurement for service availability?	Preferred
3002	Cloud	Availability	Please indicate if the service provides geographic redundancy restricted to Canada.	Preferred
3003	Cloud	Planned Maintenance	Please indicate the minimum advanced notice period you give your customers for scheduled downtime.	Preferred
3004	Cloud	Planned Maintenance	What is the estimated maximum amount of outage time required for planned maintenance? How long a service outage does your planned maintenance require for a major release?	Preferred
3005	Cloud	Performance	Please indicate the services average latency from the south coast of BC to your services datacentre.	Preferred
3006	Cloud	Performance	Please describe your services response times.	Preferred
3007	Cloud	Capacity	Please describe your service's ability to scale to meet dynamic demand loads. Please provide details about how your service scales up or down.	Preferred
3008	Cloud	Data Residency	Can your service support Canadian data residency?	Preferred
3009	Cloud	Access to City Data	Does your service provide the ability for the City to export City Data, either in piecemeal or in entirety, entirely at the City's discretion? If so, are there any associated costs.	Preferred
3010	Cloud	Access to City Data	Please describe your services data export capabilities, inclusive of data formats.	Preferred
3011	Cloud	Access to City Data	Does your service provide programmatic access to the City data. If so, please describe.	Preferred
3012	Cloud	Access to City Data	Does you service support data portability (the ability to move City Data to another provider at the City's discretion).	Preferred
3013	Cloud	Access to City Data	Please describe your data destruction process. Are you able to provide the City with a Certificate of Destruction that includes (any or all of): 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 confirming destruction.	Preferred
3014	Cloud	Change Management	Please describe your change management process as it relates to service updates?	Preferred
3015	Cloud	Change Management	What is your change disclosure process and minimum notification period?	Preferred
3016	Cloud	Change Management	Does your service offer the ability to "Opt Out" of or "Roll Back" service changes?	Preferred
3017	Cloud	Reliability	Please describe your service reliability characteristics. If possible, please describe in terms of component Mean Time Between Failure (MTBF) and Mean Time to Recovery (MTTR).	Preferred
3018	Cloud	Disaster Recovery	In the event of a disaster, can your service support an RPO of 30 minutes? If not, please indicate what RPO the City can expect. Please identified if you support various tiers of DR with different RPOs, please provide details.	Preferred
3019	Cloud	Disaster Recovery	In the event of a disaster, can your service support an RTO of 1 hour? If not, please indicate what RTO the City can expect. Please identify if you support various tiers of DR with different RPOs, please provide details.	Preferred

SERVICE LEVEL AND SUPPORT REQUIREMENTS				
Req. #	Category	Theme	Requirement	Level of Need
3020	Cloud	Disaster Recovery	Please describe the process your service goes through to adequately test you fail over and disaster recovery process.	Preferred
3021	Cloud	Disaster Recovery	In the event of a disaster, does your service provide the same level of performance and availability? If not, please provide details regarding the availability and performance levels.	Preferred
3022	Cloud	Support	Please describe your customer/technical support model including: a) support tiers and associated incident classification levels (i.e. Critical, Major, Medium, Minor) b) response times and expected resolution times for each classification level at each tier of support c) support hours for each tier of support	Preferred
3023	Cloud	Service Credit	For service availability percentage not met, a service credit is required. Provide details on your service credits such as how calculated, how much, when applied, process for claiming.	Preferred

General Security Requirements				
Req. #	Category	Requirement	Level of Need	
4000	User Authentication / Secure Login	System access must be controlled by a secure login procedure the authenticates a user identity.	Mandatory	
4002	Role base Access / Authorization	The system should support role based access control ("RBAC").	Preferred	
4003	Password Management	System must enforce a complex password policy	Mandatory	
4004	Multi-Factor Authentication (MFA)	The system should support the use of the City's Multi-Factor authentication solution (AzureAD MFA) for access from untrusted locations.	Preferred	
4005	User Access Provisioning	The system should support automatic user provisioning/de-provisioning.	Preferred	
4007	Password Encryption	Any passwords stored in the database, the application, or configuration files must be encrypted.	Mandatory	

Encryption				
Req. #	Control Area	Requirement	Level of Need	
4008	Encryption of Data in Transit	The system must support the encryption of City data while in transit.	Mandatory	
4009	Encryption of Data at Rest	The system must support the encryption of City data while at rest.	Mandatory	
4010	Encryption Protocols	The system supports a minimum of 128-bit AES encryption using TLS 1.2 or higher for transit encryption and 256-bit AES encryption at rest. Encryption of authentication information (passwords, security questions, etc.) should use AES 128-bit encryption or SHA-2 + salt one way hashing.	Preferred	

Auditing and Logging			
Req. #	Control Area	Requirement	Level of Need
4011	Security Event Logging	All security events for the system must be logged for the purpose of performing breach investigations. At a minimum, log events should be created for the following events: failed logon attempts, failed data access attempts, and system configuration changes. Log entries should include (at a minimum): UserID, Type of Event, Date/Time of Event). The system should support integration into a Security Incident and Event Management system.	Mandatory
4012	Log Protection	Access to log files must be controlled and only given to those individuals who have been specifically authorized (system admin, security admin, etc.). Log file should be protected from modification and deletion.	Preferred
4013	Auditing	Systems must have the ability to produce an audit of a user's interaction with that data (viewing, modifying or deleting) in addition to producing an audit report for the security logs.	Preferred

WEB APP SECURITY REQUIREMENTS			
Req. #	Category	Requirement	Level of Need
5000	Web Authentication	Internally facing web application should have an authentication mechanism that uniquely identifies users and has a password policy which matches or improves upon the City's password policy. Externally (public) facing web based applications should provide or support strong authentication mechanisms (multi-factor authentication).	Preferred
5001	Session Management	All web applications components should appropriately manage sessions to prevent session highjacking and replay. Externally facing web applications should make use of the HTTPOnly flag and strict security headers.	Preferred
5002	Web Access Control	All web applications components should support robust role base access. Implementation of role base access is required for any web application collecting, processing, accessing or storing sensitive information.	Preferred
5003	Web Input Validation	All web application components should appropriately validate input. Externally facing applications should have protections in place to prevent against the OWASP top 10, and be tested for protection against these vulnerabilities/exploits: <a href="https://www.owasp.org/index.php/Category:OWASP_Top_Ten_Project">https://www.owasp.org/index.php/Category:OWASP_Top_Ten_Project</a>	Preferred
5004	Web Cryptography at Rest	All cryptographic functions performed by the web application (or web server) should be applied on the server side, and leverage the enterprise PKI (or a similar server side key management system) to manage and secure encryption keys.	Preferred
5005	Web Error Handling and Logging	All web applications should fail securely, and not reveal any sensitive or application configuration information in error messages.	Preferred
5006	Web Data Protection	All web applications should encrypt via HTTPS (TLS 1.2 or higher), and ensure no sensitive information is sent via a URL parameter. Sensitive data (PII, Credit Card Data, Financial and other sensitive City data) should never be cached client side in an unencrypted format, and should be purged after a configurable period of retention.	Preferred
5007	Web Service Security	All web services should be protected according to the OWASP Web Service Security cheat sheet: <a href="https://www.owasp.org/index.php/Web_Service_Security_Cheat_Sheet">https://www.owasp.org/index.php/Web_Service_Security_Cheat_Sheet</a>	Preferred

**CLOUD SEC. REQUIREMENTS**

Req. #	Category	Requirement	Level of Need
6000	Cloud Provider	Please provide your hosting provider and the physical location of the datacentre.	Preferred
6001	Governance and Risk Management – Management Program	An Information Security Management Program (ISMP) shall be developed, documented, approved, and implemented by the Cloud Provider that includes administrative, technical, and physical safeguards to protect assets and data from loss, misuse, unauthorized access, disclosure, alteration, and destruction. Describe the information security management program, including elements such as <ul style="list-style-type: none"><li>• Risk management</li><li>• Security policy</li><li>• Privacy Policy</li><li>• Organization of information security</li><li>• Asset management</li><li>• Human resources security</li><li>• Physical and environmental security</li><li>• Communications and operations management</li><li>• Access control</li><li>• Information systems acquisition, development, and maintenance</li></ul>	Mandatory



**SCHEDULE B-1 – CLOUD COMPUTING TRAFFIC COUNT VIDEO PROCESSING SERVICES AND IMPLEMENTATION SERVICES AGREEMENT**

**BETWEEN**

**CITY OF SURREY**

**and**

**<<INSERT LEGAL NAME OF CONTRACTOR>>**

**for**

**Provision of Traffic Count Video Processing Services**

**Reference No.: 1220-030-2023-010**



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**CLOUD COMPUTING TRAFFIC COUNT VIDEO PROCESSING SERVICES AND  
IMPLEMENTATION SERVICES AGREEMENT**

This Agreement is dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**AGREEMENT No.: 1220-030-2023-010**

**BETWEEN:**

**CITY OF SURREY**  
13450 - 104<sup>th</sup> 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 \_\_\_\_\_, 202\_, 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;

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

**“Dispute”** has the meaning set out in Section 26.1.1;

**“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;

**“Go-Live Date”** means the start date for the hosting services;

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

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

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

**“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;

**“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”** has the meaning as set out in Section 4;

**“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 – Traffic Count Video Processing Services Requirements
- (c) Appendix 2 – Fees and Payment;
- (d) Appendix 3 – Time Schedule;
- (a) Appendix 4 – Key Personnel and Sub-Contractors;
- (b) Appendix 5 – Additional Work;
- (c) Appendix 6 – Service Levels;
- (d) Appendix 7 – Training Plan;
- (e) Appendix 8 – Privacy Protection Schedule;
- (f) Appendix 9 – Confidentiality Agreement;
- (g) Appendix 10 – License Agreement; and
- (h) Appendix 11 – Support Services 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 Traffic Count Video Processing Services 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 Contractor grants to the City a non-exclusive, user License Agreement as described in Appendix 10 to use the Software and any upgrades or maintenance releases provided pursuant to this Agreement and the Support Services Agreement, attached as Appendix 11.

2.1.3. 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.

2.1.4. 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.

2.1.5. 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.

2.1.6. 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.

2.1.7. 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. If the 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. Based on the Quotation described in Section 2.2.3, 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 Hosting 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 described 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 upon request by the City, but no more frequently than on a quarterly basis during the Term, effective as of the Go-Live Date, 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 will provide the Goods and Services for a one year duration with the period commencing on (START DATE) and terminating on (END DATE) (the "Term").

4.2 The City may at any time prior to 90 days before the end of the Term, by written notice to the Contractor, extend the Term for a period of time not to exceed two (2) one-year periods. If the City elects to extend the Term, the provisions of this agreement will remain in force, including the Fees, except where amended in writing by the parties.

### **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 # \_\_\_\_\_**;
  - (i) description and date(s) of the Services;
  - (ii) Contractor's price per hour for each item, multiplied by the number of hours used of each item, and total for each item;
  - (iii) taxes (if any);

- (iv) other applicable charges (if any);
  - (v) payment terms including any available prompt payment discounts;
  - (vi) grand total of the Invoice; and
  - (vii) 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 **electronically** by email to: [surreyinvoices@surrey.ca](mailto:surreyinvoices@surrey.ca)
- 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:

- (d) 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
- (e) 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 an 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 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 amount owing to the Contractor under this Agreement, and at the completion of the Services pay to the Contractor any balance remaining; and
- (f) 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. 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**

14.2.1. 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 thirty (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 fifteen (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 with a summary of 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's 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 The Consultant acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia and agrees to any disclosure of information by the City required by law.
- 18.2 If, during the performance of the Services, the Consultant has access to any personal information (as that term is defined in the *Freedom of Information and Protection of Privacy Act*), the Privacy Protection Schedule and Confidentiality Agreement attached to this agreement applies and forms a part of and is incorporated into this agreement.
- 18.3 Refer to Appendix 8 – Privacy Protection Schedule for additional information.

## **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.
- 19.2 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. Should extra services be required by the Contractor, it shall be done at an agreed upon fee.

## **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 Services to the City; and
  - (B) is disputing an involuntary assignment or order described in subsection or (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.

## **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**

27.1 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 [insert dvision]  
Surrey City Hall, 13450 - 104<sup>th</sup> Avenue  
Surrey, British Columbia, V3T 1V8, Canada,

Attention:  
Fax:  
E-mail:

(b) **The Contractor:** [Full 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)

\_\_\_\_\_  
(Signature of Authorized Signatory)

\_\_\_\_\_  
(Print Name and Position of Authorized Signatory)

\_\_\_\_\_  
(Print Name and Position of Authorized Signatory)

**<<INSERT FULL LEGAL NAME OF CONTRACTOR>>  
I/We have the authority to bind the Contractor.**

\_\_\_\_\_  
(Print 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 11 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 – TRAFFIC COUNT VIDEO PROCESSING SERVICES REQUIREMENTS**

**APPENDIX 2 – FEES AND PAYMENT**

**APPENDIX 3 – TIME SCHEDULE**

**APPENDIX 4 – KEY PERSONNEL AND SUB-CONTRACTORS**

**APPENDIX 5 – ADDITIONAL WORK**

**APPENDIX 6 – HOSTING SERVICE LEVELS**

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

**APPENDIX 7 – TRAINING PLAN**

**APPENDIX 8 – PRIVACY PROTECTION SCHEDULE**

**APPENDIX 9 – CONFIDENTIALITY AGREEMENT**

**APPENDIX 10 – LICENSE AGREEMENT**

**APPENDIX 11 – SUPPORT SERVICES AGREEMENT**



## APPENDIX 6 – HOSTING SERVICE LEVELS

### 1. DEFINITIONS

In this Appendix 6 the following definitions shall apply:

- 1.1 “**Exclusions**” has the meaning specified in Section 2.2;
- 1.2 The “**Monthly Uptime Percentage**” for a given service instance is calculated by subtracting from 100% the percentage of minutes during the month when the Traffic Count Video Processing Services production instance was subject to an Outage. If the Traffic Count Video Processing Services production instance is run for only part of the month at the City’s request, that instance is assumed to be 100% available for that portion of the month during which it was not running. The monthly uptime percentage does not include downtime resulting directly or indirectly from any Exclusions;
- 1.3 “**Incident**” means any defect, problem or error regarding Software or Equipment purchased or leased from the Contractor;
- 1.4 “**Maintenance Window**” means the timeframe beginning at 11:30pm in the evening and ending at 5:00am the following morning (Pacific Time) any day during the Term of the agreement;
- 1.5 “**Outage**” has the meaning specified in Section 2.3;
- 1.6 “**Planned Maintenance**” has the meaning specified in Section 3; and
- 1.7 “**Service Credit**” is a credit on dollars, calculated as indicated in Section 7, which the Contractor may credit to an eligible account.

### 2. AVAILABILITY

- 2.1 The Contractor shall use commercially reasonable efforts to ensure the Traffic Count Video Processing Services availability, as measured by the Monthly Uptime Percentage for the Traffic Count Video Processing Services production instance, is at least 99.5% of the time, based on 24/7 availability. This commitment will commence from the Go-Live Date.

Incidents and Outages reported by the City will receive response(s) and resolution in accordance with the process and timeframes specified in Sections 2.3 and the SSA document provided by the Contractor attached as Appendix 11 of this Agreement.

If the Monthly Uptime Percentage in any month falls below 99.5%, the Contractor will provide the City with Service Credit in accordance with Section 7.

#### 2.2 Exclusions

The service commitment does not apply to the unavailability, suspension, or termination of the Traffic Count Video Processing Services or to any other performance issues in regard to the Traffic Count Video Processing Services that:

- (a) result from factors outside our reasonable control, including any superior *force*, service interruption by a public utility or third party provider such as Internet access, and related problems beyond the demarcation point of the Contractor and its suppliers;
- (b) result from any action or voluntary inaction by the Client or third parties (for example, restoring snapshot data, publishing customizations, misconfiguring security groups, divulging identification settings, etc.);
- (c) result from failure to comply with the guidelines described in the Contractor's user guide;
- (d) result from your equipment, software or any other third-party technology, device, or software (other than third-party equipment under our direct control);
- (e) result from Planned Maintenance in accordance with Section 3;
- (f) result from any interruption imposed by a judgment or any enforceable decision by a competent authority; and
- (g) result from the suspension and termination of your right to use the Traffic Count Video Processing Services in accordance with the Support Services Agreement, attached as Appendix 11.

(collectively, "**Exclusions**").

## **2.3 Outage**

- 2.3.1 When the City believes that an Outage has occurred, the City will report the Incident to the Contractor.
- 2.3.2 The City will be able to report its belief that an Outage may have occurred to Contractor twenty-four (24) hours per day, seven (7) days per week and three hundred sixty-five (365) days per year via the Support Services Agreement (SSA) document attached as Appendix 11 in this contract.
- 2.3.3 If the Contractor detects an Outage through its automated monitoring systems or other means, the Contractor shall notify the City that an Outage has occurred as soon as practicable, but in any event no later than two (2) business days after the first discovery of the Outage.
- 2.3.4 An Outage is deemed to occur if the City experiences and reports to the Contractor:
  - (a) a complete inability to use the Traffic Count Video Processing Services;
  - (b) a reoccurring, temporary inability to use the Traffic Count Video Processing Services; or
  - (c) an inability to use the Traffic Count Video Processing Services features or functions that are required for the City to perform its critical business functions; and
  - (d) the Contractor confirms the Outage when it issues its Follow-up Service Call as referenced in Section 2.3.7.

For the purposes of illustration, Section 2.3.4(c) would be activated if (among other things; this list is non-exhaustive):

- (i) staff or clients are unable to login; and
- (ii) payments cannot be processed.

- 2.3.5 Provided that an Outage is confirmed by the Contractor, the Outage is agreed to have started (for the purposes of calculating Monthly Uptime Percentage) as at the time when the City notified the Contractor.
- 2.3.6 An Outage is considered resolved at the time that the Contractor has completed investigating and rectifying the problem as is reasonably acceptable to the City.
- 2.3.7 For Suspected Outage Severity Level Critical and High incidents, a Follow-up Service Call as specified in Appendix 11 shall be made available by the Contractor to the City within **five (5)** days of the Outage.

### **3. PLANNED MAINTENANCE**

- 3.1 The Contractor may, upon providing at least **seven (7) days** prior written notice to the City (which may be given by email), cause the Traffic Count Video Processing Services to be un-Available for a period of time ("**Planned Maintenance**") that does not exceed three (3) consecutive hours, unless mutually agreed upon by the parties.
- 3.2 If Planned Maintenance will last longer than five (5) hours, the Contractor shall notify the City in writing at least 21 days in advance, unless mutually agreed upon by the parties, and obtain the City's approval, unless the Planned Maintenance is required by an urgent event as described in Section 3.3.
- 3.3 Planned Maintenance shall be performed during the Maintenance Window, and not more than once per month, unless such Planned Maintenance is required due to urgent events outside of the Contractor's direct control, in which case the Contractor will provide as much notice as is practicable.
- 3.4 Unless Planned Maintenance occurs during the Maintenance Window, it will apply against the Traffic Count Video Processing Services availability requirement.
- 3.5 Regarding delivery of customizations, the City will be notified at least one (1) day in advance, and there is no maximum of deliveries per month, and these deliveries will be carried out at times agreed with the City.

### **4. CAPACITY**

- 4.1 The Contractor shall maintain the capacity of the production environment such that the Supplemental Security Infrastructure Solution supports the City's current users, processing loads, and number of transactions and, at no additional cost to the City, will scale to accommodate any growth.
- 4.2 The Contractor's N-Tier computing provides a centralized common service platform, in this case the Contractor's Command Centre which communicates with distributed mobile field modules. The Command Centre manages users, security, messages and transaction data integrity. The advantage for the agency is great flexibility and interchangeability in

adapting workflows. This architecture supports the City's current number of users, transactions and processing loads and will accommodate future growth.

**5. DISASTER RECOVERY**

5.1 The Contractor shall be responsible for providing disaster recovery Services if the Contractor experiences or suffers a disaster. The Contractor shall take all necessary steps to ensure the City shall not be denied access to the services for more than, subject to the availability of the underlying hosting service provider, five (5) hours in the event there is a disaster impacting the any Contractor infrastructure necessary to provide the Service.

5.2 All hosting infrastructure required to support the Supplement Security Infrastructure Solution (including without limitation parking rights servers, and application and data servers) is redundant and will not suffer a loss of service.

**6. TECHNICAL SUPPORT**

Defined in the Appendix 11.

**7. SERVICE CREDITS**

Service credits are calculated as a percentage of the value of the monthly service, based on current listprices, during which the Contractor did not respect its commitment to monthly uptime.

Monthly Uptime Percentage	Percentage of Service Credit (per month)
Less than 99.5% but equal to or greater than 99.0%	10%
Less than 99%	20%

Service credits do not entitle the City to any refund or other payment owed to the Contractor or the Contractor's supplier. A Service Credit will be applicable and issued only if the amount of the credit is higher than one dollar (\$1 CAD).

**8. CREDIT REQUEST AND PAYMENT PROCEDURES**

In the event of a failure to maintain any of the Hosting Services, City shall be entitled to a service credit.

In order to claim a service credit, the City must:

- request all service credits in writing to the Contractor within thirty (30) days of the failure;
- identify the relevant incident number recorded in the Contractor's Incident Management System.

The Contractor will acknowledge receipt of a claim within seven (7) calendar days and will review all claims within ten (10) calendar days after receipt and inform the City in writing by electronic email whether the service credit will be issued or whether the claim is rejected

specifying the basis for rejection. The Contractor will pay in the form of a credit to the annual maintenance Hosting contract the amount calculated in the formula demonstrated in Section 7 of this Appendix 6.

The period of time will be calculated from the moment the incident was reported by the City to the Contractor's support team and according to the means and conditions specified in Appendix 11.

The Contractor and the City will hold a yearly meeting of a Joint Performance Review. This committee, which will be composed of the <<insert contractor representative>>, the Senior Manager, Business Applications, Information Technology and other representatives of the City as may be required, will be mandated to meet once a year, on the anniversary date of the Go Live Date, and to review the performance of the Contractor's support team for and only categorized incidents Priority 1 – Critical as defined in Appendix 11.

## SCHEDULE C – FORM OF PROPOSAL

**RFP Project Title:** Traffic Count Video Processing Services

**RFP Reference No.:** 1220-030-2023-010

**Legal Name of Proponent:**

**Contact Person and Title:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Business Telephone:** \_\_\_\_\_

**Business Fax:** \_\_\_\_\_

**Business E-Mail Address:** \_\_\_\_\_

TO:

City Representative: Sunny Kaila, Manager, Procurement Services

E-mail for PDF Files: [purchasing@surrey.ca](mailto: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 – Traffic Count Video Processing Services 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 \_\_\_\_\_, 202\_.

**I/We have the authority to bind the Proponent.**

\_\_\_\_\_  
(Print 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):

<b>Section</b>	<b>Requested Departure(s) / Alternative(s)</b>
_____	_____
_____	_____

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](http://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):

<b>Section</b>	<b>Requested Departure(s) / Alternative(s)</b>
_____	_____
_____	_____

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

<b>Section</b>	<b>Requested Departure(s) / Alternative(s)</b>
_____	_____
_____	_____



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 information on the following (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. The objectives for this RFP are as set out in Schedule A;
- (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:	<b>Name:</b>
	<b>Phone Number:</b>
	<b>Email Address:</b>
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. Key Personnel availability should be included indicating hours accessible, time zone, weekends and/or weekday availability. 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: \_\_\_\_\_  
\_\_\_\_\_

(use the spaces provided and/or attach additional pages, if necessary)

- (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 the following (use the spaces provided and/or attach additional pages, if necessary):

- (i) **Letter of Introduction.** Provide an introduction to the Proponent, including a short description of the Proponent and their administrative team;
- (ii) a narrative that illustrates an understanding of the City's requirements and Services and describing the proposed solution;
- (iii) a general description of the general approach and methodology that the Proponent would take in performing the Services including specifications and requirements;
- (iv) provide in detail how Proponent's proposed Solution meets the Traffic Count Video Processing Services Requirements. Please complete **Traffic Count Video Processing Services Requirements Response, Schedule C-3-1.**

**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: 1220-030-2023-010

- (v) **Value Added:** 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; and
- (vi) Examples of reports that would best demonstrate the Functional and Technical Requirements;
- (vii) Letter of Authorization (Note: Attach as separate document). Provide a letter from the manufacturer of the software authorizing the Proponent as an authorized distributor, dealer or service representative and that the Proponent is authorized to sell, license and offer in-house service, maintenance and technical assistance.

**SCHEDULE C-4 - PROPONENT'S EXAMPLE IMPLEMENTATION SCHEDULE**

Proponents should provide an estimated schedule, with major item descriptions and time indicating a commitment to perform the Contract within the time specified (use the spaces provided and/or attach additional pages, if necessary):

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 (Cloud Computing) (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: 1220-030-2023-010

### **2. 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:

### **3. 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 INCLUDING CLOUD SERVICES

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

This Attachment forms part of the agreement between \_\_\_\_\_ (the "Public Body") and \_\_\_\_\_ (the "Contractor") respecting Request for Proposals #1220-030-2023-010 (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*, R.S.B.C. 1996, c. 165, including any regulation made under it, as may be amended or replaced from time to time;
  - (c) **"Agreement"** means the agreement between the City and the Contractor to which this Schedule is attached;
  - (d) **"business day"** means any day that is not a Saturday, Sunday or statutory holiday;
  - (e) **"City"** means the City of Surrey;
  - (f) **"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;
  - (g) **"Contractor"** means the person retained to perform the services under the Agreement;
  - (h) **"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 City and the Contractor dealing with the same subject matter as the Agreement;
  - (i) **"privacy course"** means the City's online privacy and information sharing training course or another course approved by the City; and
  - (j) **"third party request for disclosure"** means a subpoena, warrant, order, demand or request from an authority inside or outside of Canada for the unauthorized disclosure of personal information to which the Act applies;
  - (k) **"service provider"** means a person retained under a contract to perform services for a public body; and
  - (l) **"Third Party Hosting Provider"** means a third party that provides a platform or hosting service through which the Contractor delivers the services under the Agreement and to whom personal information is not accessible and as such, for the purposes of this Schedule, is not considered a subcontractor.

## Purpose

2. The purpose of this Schedule is to:
  - (a) enable the City to comply with the City's 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 the Contractor's statutory obligations under the Act with respect to personal information.

### **Acknowledgements**

3. The Contractor acknowledges and agrees that:
  - (a) it is a service provider and, as such, the requirements and restrictions established by Part 3 of the Act apply to the Contractor in respect of personal information;
  - (b) unless the Agreement otherwise specifies, all personal information in the custody of the Contractor is and remains under the control of the City; and
  - (c) unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor may only collect, use, disclose or store personal information that relates directly to and is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

### **Collection of Personal Information**

4. Unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor may only collect or create personal information that relates directly to and is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
5. Unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about unless:
  - (a) the City provides personal information to the Contractor;
  - (b) the Agreement otherwise specifies; or
  - (c) the City otherwise directs in writing.
6. Unless the Agreement otherwise specifies or the City otherwise directs in writing, where the Contractor collects personal information directly from the individual the information is about, the Contractor must tell that individual:
  - (a) the purpose for collecting it;
  - (b) the legal authority for collecting it; and
  - (c) the contact information of the individual designated by the City to answer questions about the Contractor's collection of personal information.

### **Privacy Training**

7. The Contractor must ensure that each individual who will provide services under the Agreement that involve the access, collection or creation of personal information will complete, at the Contractor's expense, the privacy course prior to that individual providing those services.
8. The requirement in section 7 will only apply to individuals who have not previously completed the privacy course.

### **Accuracy of Personal Information**

9. 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 City to make a decision that directly affects the individual the information is about.



### **Requests for Access to Information**

10. If the Contractor receives a request for access to personal information from a person other than the City, the Contractor must promptly advise the person to make the request to the City unless the Agreement expressly requires the Contractor to provide such access. If the City has advised the Contractor of the name or title and contact information of an official of the City 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**

11. Within 5 business days of receiving a written direction from the City to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
12. When issuing a written direction under section 11, the City must advise the Contractor of the date the correction request was received by the City in order that the Contractor may comply with section 13.
13. Within 5 business days of correcting or annotating any personal information under section 11, 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 received by the City, the Contractor disclosed the information being corrected or annotated.
14. If the Contractor receives a request for correction of personal information from a person other than the City, the Contractor must promptly advise the person to make the request to the City and, if the City has advised the Contractor of the name or title and contact information of an official of the City 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**

15. Without limiting any other provision of the Agreement, the Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including without limitation by ensuring that the integrity of the personal information is preserved. Without limiting the general nature of the foregoing sentence, the Contractor will ensure that all personal information is securely segregated from any information under the control of the Contractor or third parties to prevent unintended mixing of personal information with other information or access to personal information by unauthorized persons and to enable personal information to be identified and separated from the information of the Contractor or third parties.

### **Storage of and Access to Personal Information**

16. The Contractor must comply with the requirements under the Act concerning storage of personal information outside of Canada, including, if required by the City, by supporting the City with completion of such assessments as may be required by law.
17. The Contractor must not change the location where personal information is stored without receiving prior authorization of the City in writing.
18. Without limiting any other provision of the Agreement, the Contractor will implement and maintain an access log documenting all access to personal information, including a list of all persons that access any personal information. The Contractor will provide a copy of the access log to the City upon request.
19. The Contractor will not authorize or assist a Third Party Hosting Provider to access any personal information without the prior written approval of the City.

### **Retention of Personal Information**

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

## Use of Personal Information

21. Unless the City 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. For clarity, unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor must not anonymize, aggregate or otherwise alter or modify personal information, including by converting personal information into non-personal information, or analyze personal information (whether by manual or automated means) for any purpose, including for the purpose of developing insights, conclusions or other information from personal information.

## Metadata

22. Where the Contractor has or generates metadata as a result of services provided to the City, where that metadata is personal information, the Contractor will:
- (a) not use it or disclose it to any other party except where the Agreement otherwise specifies; and
  - (b) remove or destroy individual identifiers, if practicable.

## Disclosure of Personal Information

23. Unless the City otherwise directs in writing, the Contractor may only disclose personal information to any person other than the City if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
24. If in relation to personal information, the Contractor:
- (a) receives a third party request 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 third party request for disclosure; or
  - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a third party request for disclosure,
- subject to section 25, the Contractor must immediately notify the City.
25. If the Contractor receives a third-party request described in section 24(a) or (b) but is unable to notify the City as required by section 24, the Contractor must instead:
- (a) use its best efforts to direct the party making the third party request for disclosure to the City;
  - (b) provide the City with reasonable assistance to contest the third party request for disclosure; and
  - (c) take reasonable steps to challenge the third party request for disclosure, including by presenting evidence with respect to:
    - (i) the control of personal information by the City as a public body under the Act;
    - (ii) the application of the Act to the Contractor as a service provider to the City;
    - (iii) the conflict between the Act and the third party request for disclosure; and
    - (iv) the potential for the Contractor to be liable for an offence under the Act as a result of complying with the third party request for disclosure.

### **Notice of Unauthorized Disclosure**

26. 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, the Contractor must immediately notify the City.
27. 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 City 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.

### **Inspection of Personal Information**

28. In addition to any other rights of inspection the City may have under the Agreement or under statute, the City 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**

29. 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 regulation made under the Act and the terms of this Schedule; and
  - (b) any direction given by the City under this Schedule.
30. 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.
31. The Contractor will provide the City with such information as may be reasonably requested by the City to assist the City in confirming the Contractor's compliance with this Schedule.

### **Notice of Non-Compliance**

32. If for any reason the Contractor does not comply or anticipates that it will be unable to comply in any respect, with any provision in this Schedule, the Contractor must promptly notify the City 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**

33. In addition to any other rights of termination which the City may have under the Agreement or otherwise at law, the City may, subject to any provisions in the Agreement establishing
34. 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**

35. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
36. Any reference to "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 the requirements of the Act applicable to them.

37. This Schedule will supersede and replace any Privacy Protection Schedule attached to any previous agreement between the City and the Contractor dealing with the same subject matter as the Agreement.
38. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
39. If a provision of the Agreement (including any direction given by the City under this Schedule) conflicts with a requirement of the Act, including any regulation made under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
40. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of the Agreement or the law of any jurisdiction outside Canada.
41. 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 Traffic Count Video Processing Services, Request For Proposals #1220-030-2023-010 (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)