ATTACHMENT 1 - CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

POLYGRAPH EXAMINATION SERVICES

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REFERENCE No.: 1220-031-2020-003
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BETWEEN:

       CITY OF SURREY, of 13450 – 104 Avenue, Surrey, British Columbia, V3T 1V8 (the "**City**")

AND:

_____

       [insert full legal name], [insert address] (the "**Proponent**")

WHEREAS:

A.   The City is engaging the Proponent in confidential discussions of a potential business relationship (the "**Initial Engagement**") during which the Proponent will receive Confidential information (as hereinafter defined) to enable the parties to determine the feasibility and terms of a further retainer (the "**Service Contract**") for the Proponent to assist the City with the planning and delivery of, and advice with respect to, pre-employment polygraph examination services including but not limited to: media, public and stakeholder relations; social media/digital strategy; brand management; issue management and community engagement (the "**Purpose**");

B.   The City may disclose information to the Proponent during the Initial Engagement, which information must be maintained in strict confidence despite a decision by either party not to enter into a Service Contract;

C.   During the Initial Engagement, the City intends for the Proponent to be present for confidential discussions and to receive information and written materials that will enable the Proponent and the City to determine the feasibility and terms of a subsequent Service Contract;

D.   During the Initial Engagement and, if applicable, the Service Contract, the Proponent will have access to confidential information;

E.   The City wishes, and the Proponent has agreed, that the information to which the Proponent has access will be kept confidential by the Proponent both during and after the term of the Initial Engagement;

F.   The City wishes, and the Proponent has agreed, that should a Service Contract be entered into, that the information to which the Proponent has access will be kept confidential by the Proponent both during and after the term of the Service Contract; and

G.   The City and the Proponent anticipate that the information to be shared between them, if disclosed to the general public, could reasonably be expected to harm the conduct by the Provincial government of relations between itself and one or more B.C. municipal councils and harm the financial or economic interests of a public body.

NOW THEREFORE in consideration of the mutual agreements and covenants in this Agreement and for other good and valuable consideration paid by each of the parties to each other (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1.0   Confidentiality

1.1   In this Agreement "**Confidential Information**" includes:

   (a)   all strategic, business, financial, operating, technical and other information and material, whether in written, oral, electronic, graphic or any other form obtained by the Proponent during the Initial Engagement and, if applicable, the Service Contract;

   (b)   all database files, computer records, computer software, specifications, contracts, reports, knowledge, know-how and related information;

   (c)   all information and discussions concerning the Initial Engagement, the Service Contract, or the Purpose, including without limitation the fact that the City has contacted the Proponent to discuss the Purpose and a potential Service Contract;

   (d)   all information relating to law enforcement, as defined in the *Freedom of Information and Protection of Privacy Act* (the "***Act***");

   (e)   all personal information, as defined in the *Act*;

   (f)   any research, reports, memoranda, notes, files or analyses, compilations, data studies or other documents prepared by the Proponent which contain or are based upon, in whole or in part, any of the information listed above,

   which the Proponent receives, receives access to, conceives or develops, in whole or in part, directly or indirectly, in connection with the Purpose or the provision of services to the City, or through the use of any of the City's facilities or resources, but exempting any information which at the date of this Agreement the Proponent can prove was already within the public domain or which, subsequent to the date of this Agreement, through no act or failure to act on the part of the Proponent, enters the public domain (but only after it becomes part of the public domain).

1.2   The Proponent will not, directly or indirectly, in any manner whatsoever, use the Confidential Information, whether for commercial or non-commercial purposes, other than to:

   (a)   discuss the feasibility and terms of a Service Contract with the City; and

   (b)   if applicable, perform the services expressly or implicitly permitted by the terms of a Service Contract.

1.3   All Confidential Information is and shall continue to be the exclusive property of the City.

2.0   Non-Disclosure

2.1   The Proponent acknowledges that the Confidential Information is a special, valuable and unique asset of the City and the Proponent agrees at all times during and after the period of the Initial Engagement and any Service Contract that it will hold all Confidential Information in trust for the City, except as permitted under Section 3.0, or for the Purpose and with the express prior written consent of the City.

2.2   The Proponent shall not copy the Confidential Information without the City's express prior written permission except as required to perform its duties under this Agreement. All copies, including partial copies, made by the Proponent must contain confidential or copyright notices

in the same form that appears in the original of the Confidential Information or such notices as the City informs the Proponent of, from time to time.

3.0   Permitted Disclosures

3.1   The Proponent shall be entitled to disclose Confidential Information if required by a court of competent jurisdiction or by any regulatory body, whether as a result of any application made by the Proponent or an investigation initiated by a regulatory body, or otherwise, provided that:

   (a)   the Proponent shall take such steps as are reasonably necessary and available to maintain the confidentiality by the Court or regulatory body; and

   (b)   the Proponent shall provide the City with immediate written notice of any request for disclosure so that the City may seek a protective order or other appropriate remedy.

4.0   Safeguard and Return of Confidential Information

4.1   The Proponent agrees to exercise the highest degree of care in safeguarding the Confidential Information against loss, theft, destruction or inadvertent disclosure. The Proponent shall limit disclosure of the Confidential Information to those of its employees, directors, officers, counsel or consultants who have a need to know for the purpose of the Initial Engagement or the Purpose and who are bound by an obligation of confidentiality similar to that set forth in this Agreement. The Proponent shall be responsible for any breach of this Agreement.

4.2   Upon completion of the Initial Engagement or at such other time as the City may request, the Proponent shall promptly return and deliver to the City all originals and copies of the Confidential Information, in whatever form the Proponent received, and destroy all extracts, analyses, notes or other documents in any form or medium, including computer files, prepared for the Initial Engagement or for the Purpose and that contain any portion of the Confidential Information, and shall certify such return and destruction in writing to the City.

5.0   Injunctive Relief

5.1   The Proponent acknowledges that the disclosure of Confidential Information contrary to the provisions of this Agreement will give rise to irreparable injury to the City inadequately compensable in damages; thus, the City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available.

6.0   General Provisions

6.1   The Proponent will not assign this Agreement without the prior written consent of the City. The City shall be entitled to assign this Agreement to any entity or authority involved in the Purpose without the consent of the Proponent and upon delivery of notice of such assignment to the Consultant, the City will have no further obligations hereunder.

6.2   This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Proponent and the City.

6.3   This Agreement and all matters arising under it shall be governed by and construed in accordance with the applicable laws of British Columbia and of Canada.

6.4 This Agreement shall remain in full force and effect for as long as the Proponent, or any person to whom it has disclosed such Confidential Information under the terms of this Agreement, is in possession of any Confidential Information and the rights of City to enforce such obligations shall survive the expiration or termination of this Agreement. Despite the foregoing, if the parties enter a Service Contract which imposes obligations on the Proponent with respect to confidential information, then the confidentiality provisions of the Service Contract will supersede and replace the confidentiality obligations hereunder with respect to confidential information as defined in the Services Contract, and this Agreement will continue in effect for all other Confidential Information.

6.5 Each of the parties acknowledges that it has had the opportunity to obtain its own independent legal advice with respect to the terms of this Agreement prior to signing this Agreement and further acknowledges that it fully understands this Agreement.

6.6 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

The foregoing Confidentiality Agreement and terms and conditions contained herein are accepted and agreed to on this _____ day of _____, 2020.

_____

Insert Full Legal Name of Proponent

_____

(Signature of Authorized Signatory)

_____

Printed Name and Title of Authorized Signatory

Business E-mail Address: _____

Business Telephone: _____

Business Facsimile: _____