

**TECHNICAL ASSISTANCE AGREEMENT  
FOR THE DEVELOPMENT OF THE  
SURREY POLICE DEPARTMENT TRANSITION PLAN**

This AGREEMENT dated for reference February 4, 2019

**BETWEEN**

**CITY OF SURREY**

13450 – 104<sup>th</sup> Avenue  
Surrey, British Columbia V3T 1V8

("Surrey")

**AND**

**CITY OF VANCOUVER**

453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia V5Y 1V4

("Vancouver")

**AND**

**VANCOUVER POLICE BOARD**

2120 Cambie Street  
Vancouver, British Columbia V5Z 4N6

(the "VPD")

**BACKGROUND:**

- A. Surrey's City Council resolved on November 5, 2018 to direct its staff to take all appropriate steps to create a Surrey Police Department in accordance with the *Police Act* (the "**Surrey PD Resolution**").
- B. Pursuant to Section 23 of the *Police Act*, Surrey is requesting that the Minister of Public Safety and Solicitor General ("**Minister**") approve the provision of policing within the City of Surrey by means of a municipal police department governed by a municipal police board (the "**SPD Transition**").
- C. The SPD Transition will entail development of a transition plan (the "**Transition Plan**"), including a transition proposal that will be submitted to the Minister for approval.
- D. Surrey has requested that Vancouver and the VPD provide technical advice and support for the development of the Transition Plan, and Vancouver and the VPD have agreed to provide advice and support as set out in this Agreement.

- E. Surrey has agreed to reimburse Vancouver and VPD for their reasonable costs of providing such technical advice and support, as outlined in this Agreement.
- F. The Parties anticipate sharing information between them which, if disclosed to the general public, could reasonably be expected to,
  - a. harm the conduct by the Provincial government of relations between itself and one or more B.C. municipal councils,
  - b. reveal information received in confidence from the federal government, provincial government, the council of one or more local or regional governments, or any agency of the above authorities,
  - c. be harmful to law enforcement,
  - d. reveal information subject to privilege, and
  - e. harm the financial or economic interests of a public body.

**THEREFORE**, in consideration of the mutual promises and covenants set out in this Agreement and other consideration (the receipt and sufficiency of which are now confirmed by each Party), the Parties agree as follows:

1. **Vancouver to Provide Services.** Subject to the limitations set out below, Vancouver and the VPD now each agree to provide to Surrey the services ("**Services**") described in Schedule A.
2. **Services Not Secondment.** Surrey now acknowledges that all Vancouver and VPD personnel providing the Services are doing so as the agents of Vancouver and VPD respectively and, for certainty, not as seconded employees. Accordingly, Surrey agrees to ensure that its communications with Vancouver and VPD personnel is solely on the basis that they are representatives of Vancouver and VPD as contracted service-providers and that all such personnel remain subject to and bound by the policies, disciplinary authority, and supervision and control of Vancouver and VPD respectively.
3. **Supervision and Management of Personnel.** In furtherance of Section 2, in the event that any personnel of the other party are considered to have engaged in any conduct, or have acted or failed to act in a way that such party considers inadequate or inappropriate in any way or on any basis (including such party's policies even though the other party's personnel are not bound by same), the other party's Designated Representative (as set in Section 18 [Notices] must be notified promptly and the other party's Designated Representative will then immediately remove that personnel (if requested by such party) from the further provision of the Services.
4. **Vancouver/VPD Statutory Duties Take Priority.** Surrey expressly acknowledges that the primary obligation of Vancouver and the VPD is their respective mandate for service delivery to the City of Vancouver and its citizens. If either Vancouver or the VPD is unable to deliver the Services as contemplated in this Agreement due to unforeseen or exigent circumstances, Vancouver or the VPD will notify Surrey at the earliest practical

opportunity regarding such circumstances and the associated impact on the delivery of Services. Despite any other term of this Agreement, Vancouver and the VPD's obligations under the *Vancouver Charter* and *Police Act* remain paramount throughout the Term of this Agreement, and at no time will any provision of this Agreement be construed to operate or operate to obligate Vancouver and VPD to perform the Services where to do so would adversely affect Vancouver's or the VPD's ability to respond to a higher priority incident or emergency. Surrey will not be entitled to any claim or compensation of any kind in the event that Vancouver's or the VPD's *Police Act* or *Vancouver Charter* obligations or mandates delay, interrupt, or prevent the performance of the Services.

5. **Surrey to Reimburse for Reasonable Costs.** Surrey will reimburse Vancouver and VPD for all reasonable costs that Vancouver and the VPD incur in relation to the provision of the Services.

6. **Reasonable Costs Defined.**

a. Reasonable costs will include

- i. the amounts payable by Vancouver and VPD for time spent by Vancouver or VPD employees (or contractors) engaged in the provision of the Services or in the administration of this Agreement,
- ii. reasonable mileage and parking costs for vehicles used for travel by Vancouver or VPD employees or contractors in the course of providing the Services, printing or document preparation costs, courier costs, and other related expenses specifically incurred for this assignment,
- iii. anything recoverable by Vancouver or the VPD under Section 13 [Indemnification], and
- iv. any applicable taxes (if same are levied on the amounts payable to Vancouver or VPD under this Agreement).

- b. Any disbursements other than those of the type described above in this Section 6, must be pre-approved in writing by Surrey prior to Vancouver or VPD incurring same, but once approved are deemed to be reasonable costs.

- c. The amounts referred to in paragraph 6(a)(i) above will be calculated by multiplying the Hourly Rate (as defined below) by the number of hours spent by the applicable Vancouver or VPD personnel in providing the Services or administering this Agreement. The Hourly Rate is agreed to be as follows:

For Vancouver and VPD personnel paid as

- i. an employee by the hour, the regular (as opposed to overtime) hourly rate,
- ii. an employee on salary, the hourly rate equivalent of the employee's base salary,

- iii. a contractor, the contractor's hourly rate,  
(the "Base Hourly Rate")

as determined by the applicable employment contract, collective agreement, or consulting or other contract, as well as an additional payment of the following percentage amounts in lieu of the benefit costs associated with each:

- iv. VPD sworn officers (unionized and exempt), 28% on top of the Base Hourly Rate
- v. VPD civilians (unionized and exempt), 26% on top of the Base Hourly Rate
- vi. Vancouver employees (unionized and exempt), 22.6% on top of the Base Hourly Rate
- vii. Vancouver and VPD contractors, no amount on account of benefits on top of the Base Hourly Rate (just applicable taxes).

So, for certainty, the Base Hourly Rate plus the above-noted applicable percentages in lieu of benefits will equal the Hourly Rate (exclusive of taxes).

- d. Vancouver and VPD agree not to permit their personnel to work overtime in the provision of the Services unless expressly authorized in advance, in writing, by Surrey (in which case, Surrey will reimburse Vancouver and VPD as applicable in accordance with paragraph 6(c) above for any and all extra costs (if any) associated with such overtime).
  - e. Subject to Section 7 and 20, Surrey will pay, within 30 days of receiving an invoice for same, all costs of the Services provided by Vancouver and VPD to Surrey on the basis set out above. The invoices will be issued separately by each of Vancouver and VPD in order to separately set out the costs and disbursements of Vancouver and VPD respectively, and Vancouver's invoices will be paid by Surrey to Vancouver and VPD's invoices will be paid by Surrey to VPD.
  - f. Surrey will provide Vancouver and the VPD with all the necessary data and ancillary information required to provide the Services.
7. **Cost Control.** Despite any other term of this Agreement (except Section 20 [Future Amendment], Surrey's maximum liability to reimburse Vancouver and the VPD for reasonable costs under paragraphs 6.a.i., 6.a.ii. and 6.b (but for certainty expressly excluding any and all costs to be reimbursed by Surrey under Section 6.a.iii. and 13 [Indemnification] is set at \$150,000 (including applicable taxes). Despite Section 20 [Future Amendment] (which requires mutual written signatures of Vancouver, VPD and Surrey to amend this Agreement), Surrey is permitted to increase this maximum amount by written notice from Surrey to Vancouver and VPD at any time and from time to time

and such notice will be deemed to be a written amendment of the \$150,000 limit to such other limit or increase as is set out in such notice.

8. **Audit Rights.** Subject to Sections 9 and 10 below, Surrey will have the right to review and inspect any and all relevant financial and other Services-related records of Vancouver and VPD relating to the calculation and invoicing by Vancouver and VPD for the recovery of reasonable cost under this Agreement. Vancouver and VPD agree to keep and maintain all such records in connection with this Agreement for at least 2 years following the expiry or sooner termination of this Agreement and make same available to Surrey upon reasonable request.

9. **Personal Information.** If personal information (as defined by the *Freedom of Information and Protection of Privacy Act*) is to be disclosed between parties in connection with this Agreement, the Parties agree that they will first execute an Information Sharing Agreement in respect of such activity.

10. **Confidentiality/Intellectual Property Rights.**

a. **Confidentiality**

i. All information received by any Party (a "**Receiving Party**") from a disclosing Party (a "**Disclosing Party**") shall be treated confidentially (the "**Confidential Information**") and, in any event, be protected to the highest degree of care that a Party would protect its own confidential information.

ii. Excluded from the definition of Confidential Information is:

1. information which is in, or becomes part of, the public domain, not due to the Receiving Party's breach of this Agreement or the Receiving Party's actions;
2. information which was previously in the Receiving Party's possession and did not originate from a Disclosing Party; and
3. information which lawfully becomes available to the Receiving Party from a third party not under an obligation of confidence to any Party regarding such information.

iii. A Receiving Party will not, without the prior written consent of the Disclosing Party, given on such terms and conditions as it prescribes in its sole discretion, disclose or allow access to the Confidential Information to any person, except to only those of its own employees and contractors who

1. have a need to know the Confidential Information for purposes related to the SPD Transition,
2. have been advised of its confidential nature, and

3. have been advised of this Agreement and have agreed to be bound by its terms.

The Receiving Party will take all reasonable precautions against the Confidential Information being used by or disclosed to any unauthorized person.

- iv. If the Receiving Party is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, the Receiving Party shall limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that prior to any disclosure the Receiving Party will promptly notify the Disclosing Party in writing of the existence and the terms, and conditions of the required disclosure and, at the Disclosing Party's request and expense, co-operate in obtaining a protective order or other assurance that confidential treatment and restrictions on use will be accorded such Confidential Information.

**b. Copyright and Intellectual Property.**

- i. Despite Section a. above, the Parties acknowledge that, as an integral part of the Services, a portion of the Confidential Information will form part of the Transition Plan and will, in order to fulfill the purposes of the SPD Transition, be disclosed to the Minister and all or part of the Transition Plan or versions or summaries of same may also need to be disclosed by Surrey in order to fulfill its public engagement and community consultation objectives.
- ii. Accordingly, the Parties have agreed to set out their respective rights and obligations with respect to the intellectual property rights in and to their respective Confidential Information and such rights and obligations are set out in the attached Schedule "B".

11. **Statement of Good Faith Intent/Disclaimer of Warranties.** Vancouver and VPD acknowledge their good faith intent to provide a best practices level, quality, and method of delivery of the Services to Surrey. However, Vancouver and VPD are not providing the Services on a "for-profit" basis and so will not be earning a risk-based premium on the cost of the Services that would normally provide a service-provider with the financial ability to warrant their services and assume the risks of providing services in the marketplace. Therefore, in order to protect their legal interests and ensure that Vancouver and VPD do not assume any contingent legal or financial liabilities as a result of providing the Services (and thereby ensure that the Services are provided on a true cost recovery basis), this Section 11 and the following Sections 12 and 13 are integral to this Agreement. Accordingly, Surrey acknowledges and agrees to accept the Services on an "as is where is" basis. No warranty of quality, fitness for purpose, or any other aspect of the Services is expressed or implied. Vancouver and VPD disclaim all representations or warranties, express or implied, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of the Services or any

reports, analyses, or other deliverables provided incidental to the Services provided under this Agreement.

12. **Limitation of Liability.** To the maximum extent permitted by applicable law, under no circumstances will Vancouver or the VPD be liable to Surrey for any direct, indirect, special, incidental, consequential or other loss, injury or damage, whether foreseeable or unforeseeable (including without limitation claims for damages, use of or inability to use the Services, failure to obtain the Minister's approval, mistakes, omissions, interruptions, deletion or corruption of data shared as part of the Services), errors, defects or delays arising out of or in any way connected with the Services suffered or incurred by Surrey or any of its employees, contractors or other agents whether based on contract, tort, strict liability or otherwise, except where (but only to the extent that)

- a. such loss, injury or damage results from an act or omission by Vancouver, VPD or their respective employees, contractors and agents that constitutes dishonesty, gross negligence or malicious or wilful misconduct,
- b. Vancouver's or VPD's liability would have been incurred or would have arisen independently of the Services and whether or not this Agreement had been entered into, or
- c. such loss, injury or damage results from a breach of section 10b. [Intellectual Property Rights] by Vancouver, VPD or their respective employees, contractors and agents

13. **Indemnification.**

- a. Surrey agrees to indemnify, defend and hold harmless Vancouver and the VPD and all of their respective employees, contractors and other agents from and against all claims, demands, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to reasonable legal fees) arising from: (a) Surrey's receipt and use of the Services or any of Surrey's employees or agents' use or reliance on the Services, or (b) any breach by Surrey of this Agreement.
- b. Surrey's obligation to release, hold harmless and indemnify the persons and entities described in this Section 13 does not apply where the loss or injury was caused by any act or omission which constitutes a breach of this Agreement, or the loss or injury was caused by an act or omission by Vancouver, VPD, or their respective employees, contractors, and agents (a "**person**"), that constitutes:
  - i. dishonesty, gross negligence or wilful or malicious misconduct;
  - ii. a discipline default contrary to the *Police Act* or regulations passed pursuant to it; or

- iii. an offence under an enactment of the government of Canada or of British Columbia of which the person was convicted, except where the person was acting in good faith.
  - c. Surrey's obligations under paragraph 13.a. above are also limited as follows: Where Surrey pays the costs of legal defence in a matter potentially covered by paragraph 13.a., above and the ultimate court decision (after all applicable appeals), settlement, or other form of resolution of the matter is that paragraph a. does not apply to the matter, Vancouver agrees to reimburse Surrey for those legal defence costs paid but which are later determined to not be payable.
  - d. The parties agree to provide reasonable notice to the others of all claims or demands to which this indemnity may apply, and the parties now agree to fully cooperate with each other in retaining and instructing legal counsel in any and all matters involving this indemnity.
14. **Termination.** Any Party may terminate this Agreement and its participation in the SPD Transition at any time during the Term by providing written notice to the other Parties, in accordance with Section 18 [Notices].
15. **Full Legal Force and Effect.** Upon its execution and delivery by each of Surrey to Vancouver and the VPD and by Vancouver and VPD to Surrey, this Agreement will be legally-binding and fully enforceable in accordance with its terms.
16. **Compliance with Law.** The Parties shall each comply with all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Parties and the activities contemplated herein, all as may be in force from time to time.
17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the parties now irrevocably agree that any and all disputes will be resolved by reference to arbitration pursuant to the *Commercial Arbitration Act* (British Columbia).
18. **Notices.** Any notice, consent, request, demand or other communication ("Notice") that may or is required to be given pursuant to this Agreement will be in writing and will be delivered, or sent by email, to that party's designated representative ("Designated Representative") which in the case of:



- i. Surrey, is as follows:

City of Surrey  
13450 – 104<sup>th</sup> Avenue  
Surrey, BC V3T 1V8

Attention: Terry Waterhouse, General Manager, Policing Transition  
Email: [Terry.Waterhouse@surrey.ca](mailto:Terry.Waterhouse@surrey.ca)

- ii. Vancouver, is as follows:

City of Vancouver  
453 West 12<sup>th</sup> Avenue  
Vancouver, BC V5Y 1V4

Attention: Paul Mochrie, Deputy City Manager  
Email: [paul.mochrie@vancouver.ca](mailto:paul.mochrie@vancouver.ca)

- iii. VPD, is as follows:

Vancouver Police Board  
2120 Cambie Street  
Vancouver, British Columbia V5Z 4N6

Attention: Adam Palmer, Chief  
Email: [Adam.Palmer@vpd.ca](mailto:Adam.Palmer@vpd.ca)

Any Notice will be effective as of the date of delivery if delivered during the recipient's normal business hours. Otherwise a physical delivered notice shall be effective on the next following business day. Email notices will be deemed to be delivered upon the business day following their receipt unless the recipient has an "auto-reply" function enabled in which case, delivery will be deemed complete on the earlier of receipt by an alternative email recipient specified in the "auto-reply" or an actual non-automated reply of the initial recipient of the email.

**19. Counterparts and Email.** This Agreement may be executed by the Parties in separate counterparts, which counterparts when combined will constitute a single document, and the Parties may execute this Agreement by email and such email(s) will have the same effect as an originally executed document pursuant to the *Electronic Transactions Act* (BC).


**20. Future Amendment.** Except for the exception set out in Section 7 [Cost Control], this Agreement may only be amended by mutual agreement of the Parties in writing.

TO CONFIRM THEIR INTENT TO BE LEGALLY BOUND BY THIS AGREEMENT, the Parties' authorized signatories have duly signed this Agreement, and confirm that this Agreement will take effect as of the date first above written.


**CITY OF SURREY**

  
Name: Doug McCallum  
Title: Mayor

**CITY OF VANCOUVER**

  
Name: Sadhu Johnston  
Title: City Manager

**VANCOUVER POLICE BOARD**

  
Name: Mayor Kennedy Stewart  
Title: Chair, Vancouver Police Board

## Schedule "A" SERVICES

A.1 The scope of services and related deliverables are described in this Schedule "A" (collectively, the "Services"). However, for certainty, all of the Services in this Schedule (as they may be modified from time to time) remain subject to the terms and conditions of the Agreement (including Schedule "B") to which this Schedule "A" is attached and in the event of any conflict or inconsistency between the two, the main body of this Agreement (including Schedule "B") prevails.

A.2 The parties expect that the development and implementation of the Transition Plan will proceed in a series of phases. The following scope of services pertains to the first phase of work, with an anticipated cost limit of \$150,000.00 (which may only be changed in accordance with Section 7 [Cost Control]). The objective for the first phase of work is completion of a report including: analysis of the current state of the policing model in Surrey, the necessary elements for the future state of a new Surrey Police Department, and a framework for implementation of the Transition Plan.

A.3 The report will form the basis of the Transition Plan to be submitted by Surrey to the Minister.

A.4 The report will include the following elements:

(a) **Current State Analysis** - Review of the existing policing operating model for the City of Surrey, including the role of municipal employees.

(b) **Future State** – Building the elements of the Transition Plan including consideration of:

- i. **Governance** (policies, procedures and appropriate governance structures for the Police Board and the Police Department); and
- ii. **Operating Model** (staffing levels, organisation structure, administration, approach to integrated services (e.g., Integrated Homicide Investigation Team), finance, human resources and infrastructure (i.e., IT, facilities)).

(c) **Framework for Implementation** – a suggested framework and approach to implementation of the elements in the Transition Plan, once the Transition Plan is approved.

A.5 Analysis of programs and approaches led by Surrey that complement policing, and the framework for implementation related to community engagement are the responsibility of Surrey.

A.6 As necessary to address future phases of work, and pursuant to Section 20 of this Agreement, this Schedule is subject to amendment by mutual written agreement of the Parties.

**Schedule "B"**  
**INTELLECTUAL PROPERTY RIGHTS**

**B.1     Definitions**

For the purposes of this Schedule B and this Agreement, the following terms have the following meanings:

- (a)     **"Vancouver Material"** means any and all reports, records, and other information supplied by Vancouver to Surrey in the course of providing the Services which Surrey intends to incorporate in any way into the Transition Plan or incorporate into any other information or material that Surrey intends to publish or disclose in any way to any third party, whether or not such third party is the Minister, other third parties, or the general public.
- (b)     **"VPD Material"** means any and all reports, records, and other information supplied by VPD to Surrey in the course of providing the Services which Surrey intends to incorporate in any way into the Transition Plan or incorporate into any other information or material that Surrey intends to publish or disclose in any way to any third party, whether or not such third party is the Minister, other third parties, or the general public.
- (c)     **"Vancouver/VPD Material"** means, collectively, all VPD Material and Vancouver Material.
- (d)     **"Surrey Material"** means any and all reports, records, and other information supplied by Surrey to either or both Vancouver and VPD in the course of receiving the Services.
- (e)     **"Produced Materials"** means any and all findings, data, working papers, policies, process documents, reports, surveys, spread sheets, evaluations, analyses, documents, data, software code, databases or other compilations of data, technology, curricula and training or other materials or records, both printed and electronic, whether complete or not, that are jointly produced by Surrey and either Vancouver or VPD, or both, and that are extrapolated or derived from Vancouver/VPD Material or Surrey Material, or both, but excludes Vancouver/VPD Material and Surrey Material.

**B.2     **Intellectual Property Rights****

- (a) Vancouver and VPD exclusively own all property and intellectual property rights, including copyright, in the Vancouver/VPD Materials.
- (b) Vancouver, VPD, and Surrey jointly own all property and intellectual property rights, including copyright, in the Produced Material.

- (c) Surrey exclusively owns all property and intellectual property rights, including copyright, in the Surrey Material.

### **B.3 Limited Licence**

Vancouver and the VPD now each grant, with respect to the Vancouver/VPD Material, to Surrey a perpetual, non-exclusive, royalty-free limited licence to utilize the Vancouver/VPD Material for:

- (a) the purposes of incorporation into the Transition Plan, and
- (b) such other purposes as are reasonably related to and in support of the SPD Transition,

provided always that all such uses must first be reviewed and approved by Vancouver and the VPD, acting reasonably, to ensure that Surrey's utilization of the Vancouver/VPD Material does not unreasonably alter, modify, misrepresent or otherwise utilize same in such a way as to create a possible law enforcement, reputational, or other risk to Vancouver or the VPD.

Surrey now agrees to ensure that Vancouver and the VPD are given reasonable opportunity to review and approve all proposed uses of the Vancouver/VPD Material prior to Surrey's use of same under this licence.

Surrey further agrees to include all such copyright and other appropriate legal notices and disclaimers as are reasonably requested by Vancouver and VPD with respect to all proposed publications by Surrey utilizing the Vancouver/VPD Material under this licence.

### **B.4 Produced Material**

Vancouver, Surrey, and the VPD all agree to limit their use of the Produced Material as follows:

All parties own the Produced Material jointly and may not charge or levy any other party a royalty or seek any other compensation for the use of the Produced Material.

Each party will obtain the consent, acting reasonably, of the other parties prior to using same so as to ensure that the requesting party's use of the Produced Material does not unreasonably alter, modify, misrepresent or otherwise utilize same in such a way as to create a possible law enforcement, reputational, or other risk to the other parties.

The requesting party agrees to ensure that the other parties are given reasonable opportunity to review and approve all proposed uses of the Produced Material prior to the requesting party's use of same under this Agreement. The party receiving the request shall not unreasonably withhold its consent.

The requesting party further agrees to include all such joint copyright and other appropriate legal notices and disclaimers as are reasonably requested by the other parties with respect to all proposed publications by the requesting party utilizing the Produced Material under this Agreement.