REQUEST FOR PROPOSALS

SUPPLY AND DELIVERY OF FORKLIFTS

RFP No. PS20171694

Issue Date: October 16, 2017

Issued by: City of Vancouver (the "City")

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PART A – INFORMATION AND INSTRUCTIONS

1.0 THE RFP

1.1 This Request for Proposals (the **"RFP"**) provides an opportunity to submit proposals for review by the City and, depending on the City's evaluation of proposals, among other factors, to potentially negotiate with the City to enter into a contract. **EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 1 TO PART C OF THE RFP: (I) NO PART OF THE RFP CONSISTS OF AN OFFER BY THE CITY TO ENTER INTO ANY CONTRACTUAL RELATIONSHIP; AND (II) NO PART OF THE RFP IS LEGALLY BINDING ON THE CITY.**

1.2 The RFP concerns the City's interest in the immediate procurement of two (2) light duty forklifts, two (2) medium duty forklifts and one (1) heavy duty forklift, with an option to purchase additional units as, if and when needed during the term of the contract. Details of the City's objectives and requirements to which the RFP relates are set out in Part B of the RFP. The City welcomes proposals that are responsive to this RFP ("Proposals") respecting innovative or novel approaches to the City's objectives and requirements.

1.3 The City is interested in selecting an entity, which is not, by the terms hereof, barred from submitting a Proposal, and which does submit a Proposal (each such entity, a "**Proponent**") with the capability and experience to efficiently and cost-effectively meet the objectives and requirements described in the RFP. The City currently expects to select such a Proponent and then enter into negotiations with that Proponent, which will conclude in the execution of a contract between the Proponent and the City (such a contract, an "**Agreement**"). However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any Agreement; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.

1.4 The City currently intends that Proposals will be evaluated by the City in relation to their overall value, which will be assessed in the City's sole and absolute discretion. In assessing value, the City expects to consider the factors described in Section 8 below, among others.

1.5 **NO BID SECURITY IS REQUIRED FROM PROPONENTS IN CONNECTION WITH THE SUBMISSION OF PROPOSALS BECAUSE NO PROPOSAL WILL BE DEEMED TO BE AN IRREVOCABLE OR OTHERWISE BINDING LEGAL OFFER BY A PROPONENT TO THE CITY. THE LEGAL OBLIGATIONS OF A PROPONENT THAT WILL ARISE UPON THE SUBMISSION OF ITS PROPOSAL WILL BE LIMITED TO THE TERMS AND CONDITIONS STATED UNDER THE HEADING "LEGAL TERMS & CONDITIONS" IN APPENDIX 1 TO THE FORM OF PROPOSAL.**

1.6 The execution of an Agreement may be contingent on funding being approved, and the relevant Proposal being approved, by the Vancouver City Council.

1.7 The RFP consists of four parts, plus appendices:

(a) PART A – INFORMATION AND INSTRUCTIONS: This part is intended to serve as a guide to the RFP process for Proponents.

(b) PART B – CITY REQUIREMENTS: This part describes the subject matter of the RFP, in respect of which the City invites Proposals.

(c) PART C – FORM OF PROPOSAL: This is the form in which the Proposal should be submitted.

(d) PART D - FORM OF AGREEMENT: This part contains a model Agreement (the "**Form of Agreement**"). Any Agreement resulting from the RFP is expected to be substantially in the form of the Form of Agreement.

2.0 KEY DATES

2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Enquiries	Noon on November 2, 2017
Closing Time	3:00pm on Tuesday November 7, 2017

2.2 All references to time in the RFP are references to the time in the City of Vancouver, as shown on the clock used by the City for the purposes of requests for proposals.

3.0 CONTACT PERSON

3.1 All enquiries regarding the RFP must be addressed to:

Michael Sachdev, Buyer
michael.sachdev@vancouver.ca

3.2 All enquiries must be made in writing. In-person or telephone enquiries are not permitted.

3.3 **IF A POTENTIAL PROPONENT BELIEVES THAT THE CITY MAY BE UNABLE TO SELECT IT DUE TO A CONFLICT OF INTEREST, BUT IS UNCERTAIN ABOUT THIS, THE POTENTIAL PROPONENT IS URGED TO CONTACT THE ABOVE-MENTIONED INDIVIDUAL AS SOON AS POSSIBLE WITH THE RELEVANT INFORMATION SO THAT THE CITY MAY ADVISE THE POTENTIAL PROPONENT REGARDING THE MATTER.**

4.0 SUBMISSION OF PROPOSALS

4.1 Proponents should submit their Proposals on or before the time and date specified in the bottom row of the table in Section 2.1 above (the "**Closing Time**").

4.2 Each Proponent should submit its Proposal in an envelope clearly marked with the Proponent's name and the RFP title and number ("Supply and Delivery of Forklifts; PS20171694") to the following address:

City of Vancouver
Supply Chain Management Department
4th Floor, Vancouver City Hall
453 West 12th Avenue
Vancouver, British Columbia
Canada, V5Y 1V4

Notwithstanding the foregoing, envelopes submitted by courier or otherwise in-person should be delivered to the drop box at:

Supply Chain Management
4th Floor, Vancouver City Hall
453 West 12th Avenue

Vancouver, British Columbia
Canada, V5Y 1V4

4.3 To be considered by the City, a Proposal must be submitted in the form set out in Part C (the "**Form of Proposal**"), completed and duly executed by the relevant Proponent.

4.4 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time.

4.5 Proposals must not be submitted by fax

4.6 The City requests that three (3) hard copies and one electronic copy (on a flash drive, memory stick or similar medium) of each Proposal (or amendment) be submitted. Proponents must include a completed version of Appendix 1 to Part B (attached Spreadsheet) in excel (.xlsx) format with their electronic copy.

4.7 Proposals should not be bound in three-ring binders.

4.8 Proposals are revocable and may be withdrawn at any time before or after the Closing Time.

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

4.10 Unnecessarily elaborate Proposals are discouraged. Proposals should be limited to the items specified in Part C of the RFP.

4.11 The City is willing to consider any Proposal from two or more Proponents that wish to form a consortium solely for the purpose of submitting a joint Proposal in response to the RFP, provided that they disclose the names of all members of the consortium and all members complete and sign the first page of the Form of Proposal. Nonetheless, the City has a strong preference for Proposals submitted by a single Proponent, including a Proponent that would act as a general contractor and use subcontractors as required.

4.12 Proposals that are submitted after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City's sole discretion.

5.0 CHANGES TO THE RFP AND FURTHER INFORMATION

5.1 The City may amend the RFP or make additions to it at any time.

5.2 It is the sole responsibility of Proponents to check the City's website at: http://vancouver.ca/doing-business/open-bids.aspx regularly for amendments, addenda, and questions and answers in relation to the RFP.

5.3 Proponents must not rely on any information purported to be given on behalf of the City that contradicts the RFP, as amended or supplemented in accordance with the foregoing Section 5.2

6.0 PROPOSED TERM OF ENGAGEMENT

6.1 The term of any Agreement is expected to be a three (3) year term with two (2) possible one (1) year extensions, for a maximum total term of 5 years.

7.0 PRICING

7.1 All prices quoted in any Proposal are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.

7.2 Prices must be quoted in Canadian currency

7.3 Prices are to be quoted CIP, destination (Incoterms, 2010). For the avoidance of doubt, freight, insurance, unloading at the destination designated by the City, import duties, brokerage, royalties, handling, overhead, profit and all other similar costs are to be included in quoted prices.

8.0 EVALUATION OF PROPOSALS

8.1 The City may open or decline to open Proposals in such manner and at such times and places as are determined by the City.

8.2 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated by City representatives, using quantitative and qualitative tools and assessments, as appropriate, to determine which Proposal or Proposals offer the overall best value to the City. In so doing, the City expects to examine not only financial terms, but also the following:

- Technical Requirements; which includes; (i) Appendix 2 – Questionnaire; (ii) Proponents' capabilities to meet the City's Technical Requirements (as defined in Part B and Appendix 1 to Part B), including quality and service factors; (iii) Appendix 4 - Proponent's References including skills, knowledge, reputations and previous experience(s), and experience(s) with the City (if any); (iv) Proponents' quality of response to Part C; (v) innovation; (vi) environmental or social sustainability impacts;

- Financial Requirements; Proponents' capabilities to offer overall best value in relation to Appendix 3 – Commercial Proposal.

- Sustainability Requirements; Proponents capabilities to offer overall best value in relation to Appendix 7 - Corporate Sustainability Leadership Questionnaire; and Appendix 8 - Sustainability Requirements Questionnaire; and;

- Certain other factors that may be mentioned in Part B or elsewhere in the RFP.

Proposal will be evaluated by the City based on the evaluation criteria and evaluation criteria weightings below:

Evaluation Criteria	Evaluation Weighting
Technical Requirements	60%
Financial Requirements	35%
Sustainability Requirements	5%
Total	100%

8.3 The City will retain complete control over the RFP process at all times until the execution and delivery of an Agreement or Agreements, if any. The City is not legally obligated to review, consider or evaluate Proposals, or any particular Proposal, and need not necessarily review, consider or evaluate Proposals, or any particular Proposal in accordance with the procedures set out in the RFP. The City may continue, interrupt, cease or modify its review, evaluation and negotiation process in respect of any or all Proposals at any time without further explanation or notification to any Proponents.

8.4 The City may, at any time prior to signing an Agreement, discuss or negotiate changes to the scope of the RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.

8.5 The City may elect to short-list Proponents and evaluate Proposals in stages. Short-listed Proponents may be asked to provide additional information or details for clarification, including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to the Form of Agreement. The City will be at liberty to negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.

8.6 The City may also require that any proposed subcontractors undergo evaluation by the City.

8.7 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to: (a) accept any Proposal; (b) reject any Proposal; (c) reject all Proposals; (d) accept a Proposal which is not the lowest-price proposal; (e) accept a Proposal that deviates from the Requirements or the conditions specified in the RFP; (f) reject a Proposal even if it is the only Proposal received by the City; (g) accept all or any part of a Proposal; (h) split the Requirements between one or more Proponents; and (i) enter into one or more agreements respecting the subject matter of the RFP with any entity or entities at any time. Without limiting the foregoing, the City may reject any Proposal by a Proponent that has a conflict of interest, has engaged in collusion with another Proponent or has otherwise attempted to influence the outcome of the RFP other than through the submission of its Proposal.

9.0 CITY POLICIES

9.1 The City's Procurement Policy, Ethical Purchasing Policy and related Supplier Code of Conduct found at http://vancouver.ca/doing-business/selling-to-and-buying-from-the-city.aspx align the City's approach to procurement with its corporate social, environmental and economic sustainability values and goals. They evidence the City's commitment to maximize benefits to the environment and the community through product and service selection, and to ensure safe and healthy workplaces, where human and civil rights are respected. Each Proponent is expected to adhere to the supplier performance standards set forth in the Supplier Code of Conduct. The Ethical Purchasing Policy shall be referred to in the evaluation of Proposals, to the extent applicable.

10.0 LIVING WAGE EMPLOYER [INTENTIONALLY DELETED]

11.0 CERTAIN APPLICABLE LEGISLATION

11.1 Proponents should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's consultants or contractors to protect all personal information acquired from the City in the course of providing any service to the City.

11.2 Proponents should note that the *Income Tax Act* (Canada) requires that certain payments to non-residents be subject to tax withholding. Proponents are responsible for informing themselves regarding the requirements of the *Income Tax Act* (Canada), including the requirements to qualify for any available exemptions from withholding.

12.0 LEGAL TERMS AND CONDITIONS

12.1 **The legal obligations of a Proponent that will arise upon the submission of its Proposal are stated in this Appendix 1 to the Form of Proposal. Except where expressly stated in these Legal Terms and Conditions: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City.**

POTENTIAL PROPONENTS MUST REVIEW THESE LEGAL TERMS AND CONDITIONS CAREFULLY BEFORE SUBMITTING A PROPOSAL.

PART B – CITY REQUIREMENTS

The requirements stated in this Part B (collectively, the "**Requirements**") are current as of the date hereof, but they may change or be refined in the course of the evaluation of Proposals or otherwise.

To the extent that the Requirements express estimates of quantities or volumes of goods or services expected to be required by the City, the City cannot offer any assurances that such quantities or volumes will in fact be required.

1.0 REQUIREMENTS

The City has an immediate requirement for two (2) light duty forklift, two (2) medium duty forklifts and one (1) heavy duty forklift, with an option to purchase additional units as, if and when needed during the term of the contract as per the specifications set out in **Appendix 1 to Part B 1 – Technical Requirements found at:** http://vancouver.ca/doing-business/open-bids.aspx

1.1 LIGHT DUTY FORKLIFT

- Diesel, Propane or Electric powered forklift with minimum lift capacity of 5000 lbs. Equipped with Solid or Pneumatic tires depending on application.

1.2 MEDIUM DUTY FORKLIFT

- Diesel, Propane or Electric powered forklift with minimum lift capacity of 9000 lbs. Equipped with Solid or Pneumatic tires depending on application.

1.3 HEAVY DUTY FORKLIFT

- Diesel, Propane or Electric powered forklift with minimum lift capacity of 15,500 lbs. Equipped with Solid or Pneumatic tires depending on application.

1.4 DEMONSTRATIONS

The City will conduct demonstrations, at its discretion, as part of the evaluation process; the City will communicate a formal request for demonstration, with sufficient notice, to allow Proponents time to prepare for the demonstrations. The demonstrations will take place approximately three weeks after the closing date. See Appendix 1 to Part B – Technical Requirements -Tab No.3 General - item 7.0.

Refer to Appendix 1 to Part B – Technical Requirements (Attached Spreadsheet)
Here is a list of the Tabs:

1. Cover
2. Instructions
3. General
4. Forklift # 1 – Heavy Duty Forklift
5. Forklift # 2 – Light Duty Forklift
6. Forklift # 3 – Medium Duty Forklift
7. Forklift # 4 – Light Duty Forklift
8. Forklift # 5 – Medium Duty Forklift

PART C – FORM OF PROPOSAL

RFP No. PS20171694, SUPPLY AND DELIVERY OF FORKLIFTS (the "RFP")

Proponent's Name:_____
"**Proponent**"

Address:_____

_____

Jurisdiction of Legal Organization:_____

Date of Legal Organization:_____

Key Contact Person:_____

Telephone:_____**Fax:**_____

E-mail: _____

The Proponent, having carefully examined and read the RFP, including all amendments and addenda thereto, if any, and all other related information published on the City's website, hereby acknowledges that it has understood all of the foregoing, and in response thereto hereby submits the enclosed Proposal.

The Proponent further acknowledges that it has read and agrees to the Legal Terms & Conditions attached as Appendix 1 to this Form of Proposal.

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

_____ _____
Signature of Authorized Signatory for the Proponent Date

_____
Name and Title

_____ _____
Signature of Authorized Signatory for the Proponent Date

_____
Name and Title

APPENDICES

The Form of Proposal includes the following attached Appendices:

APPENDIX 1	Legal Terms and Conditions of RFP
APPENDIX 2	Questionnaire
APPENDIX 3	Commercial Proposal
APPENDIX 4	Proponents References
APPENDIX 5	Certificate of Insurance
APPENDIX 6	Declaration of Supplier Code of Conduct Compliance
APPENDIX 7	Corporate Sustainability Leadership Questionnaire
APPENDIX 8	Sustainability Requirements Questionnaire
APPENDIX 9	Personal Information Consent Form(s) **[INTENTIONALLY DELETED]**
APPENDIX 10	Subcontractors
APPENDIX 11	Proposed Amendments to Form of Agreement
APPENDIX 12	Financial Statements **[INTENTIONALLY DELETED]**
APPENDIX 13	Proof of WorkSafeBC Registration
APPENDIX 14	Conflicts; Collusion; Lobbying

APPENDIX 1
LEGAL TERMS AND CONDITIONS OF RFP

1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

These legal terms and conditions set out the City's and the Proponent's legal rights and obligations only with respect to the RFP proposal process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix 1 apply to, or have the effect of supplementing, any Contract formed between the City and the Proponent, or otherwise apply as between the Proponent and the City following the signing of any such Contract.

2 DEFINITIONS

In this Appendix 1, the following terms have the following meanings:

(a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.

(b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent following and as a result of the Proponent's selection by the City in the City's RFP process.

(c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).

(d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.

(e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.

(f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix 1 is appended.

(g) "RFP" means the document issued by the City as Request for Proposals No. PS20171694, as amended from time to time and including all addenda.

3 NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFP or the Proposal Form, including this Appendix 1 (except only Sections 7, 8.2 and 10 of this Appendix 1, in each case to the extent applicable), the City assumes no legal duty or obligation to the Proponent or to any proposed subcontractor in respect of the RFP, its subject matter or the Proposal unless and until the City enters into a Contract, which the City may decline to do in the City's sole discretion.

4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP

process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

5 EVALUATION OF PROPOSALS

5.1 Compliance / Non-Compliance

Any proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion. The City may also invite a proponent to adjust its proposal to remedy any such problem, without providing the other proponents an opportunity to amend their proposals.

5.2 Reservation of Complete Control over Process

The City reserves the right to retain complete control over the RFP and proposal processes at all times. Accordingly, the City is not legally obligated to review, consider or evaluate the proposals, or any particular proposal, and need not necessarily review, consider or evaluate the proposals, or any particular proposal, in accordance with the procedures set out in the RFP, and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation processes in respect of any or all proposals at any time without further explanation or notification to any proponents.

5.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss or negotiate changes to the scope of the RFP, any proposal or any proposed agreement with any one or more of the proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of such discussions or negotiations with other proponents or changes to the RFP or such proposals or proposed agreements, and, without limiting the general scope of Section 6 of this Appendix 1, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

5.4 Acceptance or Rejection of Proposals

The City has in its sole discretion, the unfettered right to: accept any proposal; reject any proposal; reject all proposals; accept a proposal which is not the lowest-price proposal; accept a proposal that deviates from the requirements of the RFP or the conditions specified in the RFP; reject a proposal even if it is the only proposal received by the City; accept all or any part of a proposal; enter into agreements respecting the subject matter of the RFP with one or more proponents; or enter into one or more agreements respecting the subject matter of the RFP with any other person at any time.

6 PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

Except only and to the extent that the City is in breach of Section 8.2 of this Appendix 1, the Proponent now releases the City, its officials, its agents and its employees from all liability for any Losses incurred in connection with the RFP or the Proposal, including any Losses in connection with:

(a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially))

(b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process,

(c) the Proponent preparing and submitting the Proposal;

(d) the City accepting or rejecting the Proposal or any other submission; or

(e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2 Indemnity by the Proponent

Except only and to the extent that the City breaches Section 8.2 of this Appendix 1, the Proponent indemnifies and will protect, save and hold harmless the City, its officials, its agents and its employees from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its proposed subcontractors or agents alleging or pleading:

(a) any alleged (or judicially determined) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));

(b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process, or

(c) liability on any other basis related to the RFP or the proposal process.

6.3 Limitation of City Liability

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the City breaches Section 8.2 of this Appendix 1), the City or its officials, agents or employees are found to have breached (including fundamentally breached) any duty or obligation of any kind to the Proponent or its subcontractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its subcontractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of $100, despite any other term or agreement to the contrary.

7 DISPUTE RESOLUTION

Any dispute relating in any manner to the RFP or the proposal process (except to the extent that the City breaches this Section 7 or Section 8.2 of this Appendix 1, and also excepting any disputes arising between the City and the Proponent under a Contract (or a similar contract between the City and a proponent other than the Proponent)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

(a) The arbitrator will be selected by the City's Director of Legal Services;

(b) Section 6 of this Appendix 1 will: (i) bind the City, the Proponent and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and

(c) The Proponent will bear all costs of the arbitration.

8 PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFP and Proposal Documents City's Property

(a) All RFP-related documents provided to the Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.

(b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.

8.2 Proponent's Submission Confidential

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's right to publicly disclose information about or from the Proposal, including without limitation names and prices, in the course of publicly reporting to the Vancouver City Council about the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

8.3 All City Information Confidential

(a) The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.

(b) The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFP Process

(a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is: (i) an official or employee of the City; or (ii) related to or has any business or family relationship with an elected official or employee of the City, in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

(b) The Proponent confirms and warrants that there is no person having an interest (as defined above) who is a former official, former employee or former contractor of the City and who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

The Proponent confirms and warrants that neither the Proponent nor any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

9.3 Declaration as to No Collusion

The Proponent confirms and warrants that:

(a) the Proponent is not competing within the RFP process with any entity with which it is legally or financially associated or affiliated, and

(b) the Proponent is not cooperating in any manner in relation to the RFP with any other proponent responding to the RFP,

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal.

9.4 Declaration as to Lobbying

The Proponent confirms and warrants that:

(a) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; and

(b) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of the Proposal, to influence the outcome of the RFP process,

in each case as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal.

10 GENERAL

(a) All of the terms of this Appendix 1 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.

(b) The legal invalidity or unenforceability of any provision of this Appendix 1 will not affect the validity or enforceability of any other provision of this Appendix 1, which will remain in full force and effect.

(c) The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP process.

11 INDEPENDENT LEGAL ADVICE

THE PROPONENT ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SUBMITTING ITS PROPOSAL FORM, INCLUDING THIS APPENDIX 1.

APPENDIX 2
QUESTIONNAIRE

Complete this Appendix 2 - Questionnaire in the form set out below.

Manufacturer Overview

Provide a description of the Manufacturer's company, purpose and history

Local Vendor Overview (if different)

Provide a description of the Vendor's company, purpose and history. Additionally, please supply information on vendor service staff size, qualifications/certifications and experience.

Account Management

Identify and provide information on how you propose to manage our account? Will we be assigned an account manager? Who will provide technical support for the lifespan of the units?

References (These references may also be used to complete Appendix 4)

Identify and provide references for a minimum of two (2) municipalities in Canada that use the proposed pavers.	
Name of Municipality:	**Contact Info (Name, Title, Phone Number, and Email Address):**

APPENDIX 3
COMMERCIAL PROPOSAL

Complete this Appendix 3 - Commercial Proposal in the form set out below.

Proponent to provide proposed pricing and payment terms, which should be in accordance with Part A, Section 7 of the RFP (as well as any other sections of the RFP imposing requirements as to pricing).

If Proponent is submitting its Proposal by email please ensure Appendix 3 – Commercial Proposal is provided as a separate file to the entire Proposal. If the Proponent is submitting its Proposal via envelope please ensure Appendix 3 – Commercial Proposal is provided in a separate sealed envelope.

Est. Qty.	Description	Unit Price (ea.)
	FORKLIFT # 1- Heavy Duty Forklift	
1	Forklift, in accordance with the Requirements (including Appendix 1 to Part B – Item 1) except as otherwise stated in the Proponent's Proposal.	**$**
	FORKLIFT # 2 – Light Duty Forklift	
1	Forklift, in accordance with the Requirements (including Appendix 1 to Part B – Item 2) except as otherwise stated in the Proponent's Proposal.	**$**
	FORKLIFT # 3 – Medium Duty Forklift	
1	Forklift, in accordance with the Requirements (including Appendix 1 to Part B – Item 3) except as otherwise stated in the Proponent's Proposal.	**$**
	FORKLIFT # 4 – Light Duty Forklift	
1	Forklift, in accordance with the Requirements (including Appendix 1 to Part B – Item 4) except as otherwise stated in the Proponent's Proposal.	**$**
	FORKLIFT # 5 – Medium Duty Forklift	
1	Forklift, in accordance with the Requirements (including Appendix 1 to Part B – Item 5) except as otherwise stated in the Proponent's Proposal.	**$**
Describe Proposed Pricing Formula for Additional Units in accordance with the Requirements stated above.		

Optional elements to be priced for Item 1, 3 & 4 (as specified in the corresponding spreadsheet forming part of Appendix 1 to Part B)		
Est. Qty.	**Description**	**Unit Price (ea.)**
1	Fork extensions to 72" total fork length for **Forklift # 1**	**$**
1	Forklift Hook Attachment, sleeved over forks with lifting chain for **Forklift #3**	**$**
1	Electric Powered for **Forklift # 4**	**$**
1	Propane Powered for **Forklift # 4**	**$**
Any other suggested options that may enhance the operation of these units: **SPECIFY BELOW**		
Description		**Unit Price (ea.)**
		$
		$
		$
		$

APPENDIX 4
PROPONENT'S REFERENCES

Complete this Appendix 4 - Proponents References in the form set out below.

Client Name # 1	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Type of Goods and/or Services provided to this Client	

Client Name # 2	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Type of Goods and/or Services provided to this Client	

Client Name # 3	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Type of Goods and/or Services provided to this Client	

APPENDIX 5
CERTIFICATE OF INSURANCE

Appendix 5 is to be duly completed and signed by the Proponent's insurance agent or broker as evidence of its existing insurance, along with a letter from its insurance broker or agent indicating whether or not (and, if not, then to what extent) it will be able to comply with the insurance requirements set out in the Form of Agreement, should the Proponent be selected as a successful Proponent. (Any successful Proponent will also be required to provide proof of the satisfaction of all insurance requirements prior to or concurrently with the City entering into any Agreement.)

FOLLOWING PAGE

APPENDIX 6
DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

Complete this Appendix 6 - Declaration of Supplier Code of Conduct Compliance in the form set out below.

Purpose:
All proposed suppliers are to complete and submit this form to certify compliance with the supplier performance standards set out in the Supplier Code of Conduct.

The City of Vancouver expects each supplier of goods and services to the City to comply with the supplier performance standards set out in the City's Supplier Code of Conduct (SCC) <http://vancouver.ca/policy_pdf/AF01401P1.pdf>. The SCC defines minimum labour and environmental standards for City suppliers and their subcontractors.

Suppliers are expected to comply with the aforementioned standards upon submitting a tender, proposal, application, expression of interest or quotation to the City, or have a plan in place to comply within a specific period of time. The City reserves the right to determine an appropriate timeframe in which suppliers must come into compliance with these standards. To give effect to these requirements, an authorized signatory of each proposed vendor must complete the following declaration and include this declaration with its submission:

As an authorized signatory of _____*(vendor name),* I declare that I have reviewed the SCC and to the best of my knowledge, _____ *(vendor name)* and its proposed subcontractors have not been and are not currently in violation of the SCC or convicted of an offence under national and other applicable laws referred to in the SCC, other than as noted in the table below *(include all violations/convictions that have occurred in the past three years as well as plans for corrective action).*

Section of SCC / title of law	Date of violation /conviction	Description of violation / conviction	Regulatory / adjudication body and document file number	Corrective action plan

I understand that a false declaration and/or lack of a corrective action plan may result in no further consideration being given to the submission of _____ *(vendor name).*

Signature: _____

Name and Title: _____

APPENDIX 7
CORPORATE SUSTAINABILITY LEADERSHIP QUESTIONNAIRE

Complete this Appendix 7 – Corporate Sustainability Leadership Questionnaire in the form set out below.

As part of the City's Corporate Procurement Policy and related Supplier Code of Conduct described in Section 9.1 of Part A, all City vendors must meet minimum requirements related to ethical, social and environmental standards.

Beyond these basic requirements, the City would like to recognize vendors that are demonstrating leadership and innovation in sustainability. In order to be able to do so, the City requires that Proponents answer the following questions. The answers provided will be evaluated as part of the Proposal evaluation described in Section 8.0 of Part A.

Please keep in mind that these questions relate to your company's internal operations and overall sustainability leadership.

The City may request that the Proponent provide additional information to support any of the responses provided.

If additional space is required, the Proponent may attach its response(s) to this Annex and reference the relevant question and section number.

For all questions where the answer is 'Yes' and additional information is requested, if this information is not included in the proposal, the answer may not be evaluated.

For all questions where there is a word limit, responses are to be kept within this word limit. Information in excess of the word limit may not be evaluated.

Questionnaire Structure

Section 1: Environmental Impact	Environmental or Sustainability Policy Reducing greenhouse gas (GHG) emissions Reducing waste Sustainable purchasing
Section 2: Social Impact	Living wage employer Workplace development programs Supporting social enterprises Sustainable business
Section 3: Definitions	Definitions for key terms used in this Annex.

SECTION 1: ENVIRONMENTAL IMPACT

This section of the leadership questionnaire addresses the following:

- *Environmental or Sustainability Policy or Statement*
- *reducing greenhouse gas (GHG) emissions*
- *reducing waste*
- *sustainable purchasing*

1. Do you have a documented Environmental or Sustainability Policy or Statement?

   ☐ Yes ☐ No

   If no, go to question 2.

   If yes, please address the following:

   a. Attach a copy of the policy or statement to your Proposal.

   b. If the policy is publicly available, please provide a link to the document:

   _____

2. Does your company measure its greenhouse gas (GHG) emissions?

   ☐ Yes ☐ No

If yes, state total annual GHG emissions (tC02e): _____

3. Has your company adopted GHG reduction targets or goals?

   ☐ Yes ☐ No

If yes, state target(s) and year by which they will be achieved (e.g., 33% reduction by 2020):

_____

4. Do you report your GHG emissions to a third party? (e.g., Carbon Disclosure Project, Global Reporting Initiative, Climate Registry, Climate Smart, Ecobase, Offsetters, etc.)

   ☐ Yes ☐ No

If yes, state the name of the 3rd party: _____

5. Does your company own buildings in Metro Vancouver?

   ☐ Yes ☐ No

   If no, skip to question 7.

If yes, describe efforts in the past three (3) years to improve the energy efficiency of owned buildings in Metro Vancouver with respect to each of the elements listed below. **Please limit answer to 400 words or less.**

a. equipment and lighting upgrades (e.g., HVAC, water heaters, LED lighting)
b. building envelope improvements (e.g., insulation, windows)

c. staff conservation and engagement programs (e.g., turning off lights and computers, etc.

_____
_____
_____

6. Has your company (or has any of your buildings) been recognized for building energy management excellence by a recognized third party such as BC Hydro Power Smart, BOMA BESt, LEED, Portfolio Manager Energy Star, etc.)?

☐ Yes ☐ No

If yes, state the name(s) of the 3rd party(ies) and type of recognition:

_____
_____

7. Does your company own or lease fleet vehicles and/or heavy off-road equipment to be operated in Metro Vancouver?

☐ Yes ☐ No

In no, skip to question 9.

If yes, please address the following questions:

a) what size is your fleet (including heavy off-road equipment)?

_____

b) Describe actions in the past three (3) years to reduce the GHG emissions of vehicles and heavy equipment operated in Metro Vancouver. (Actions could include: purchase of low emissions vehicles, use of alternative fuels, deployment of telematics software; driver training programs, etc.). **Please limit answer to 250 words or less.**

_____
_____
_____

8. Does your company encourage employees to take more environmentally friendly transportation to get to work?

☐ Yes ☐ No

If yes, describe incentives in place to encourage employees to take more environmentally friendly transportation to get to work (e.g., car sharing, secure bike parking and on-site change facilities, public transit incentives). **Please limit answer to 250 words or less.**

_____
_____
_____

9. Describe any other initiatives undertaken in past three (3) years that have significantly reduced the GHG emissions of your operations. **Please limit answer to 250 words or less.**

_____
_____
_____

10. Does your company measure the total amount of solid waste generated by your operations annually?

☐ Yes ☐ No

If yes, state annual solid waste figures (kg or tonnes): _____

11. Does your company have waste reduction and/or diversion targets or goals?

If yes, state targets and by what year they are to be achieved?

_____

12. Does your company have an office or operations recycling program in place?

☐ Yes ☐ No

If yes, which materials does your company recycle - **check only those that apply**:

- ☐ office paper
- ☐ plastic and glass containers
- ☐ soft plastic
- ☐ food waste/compostables
- ☐ batteries
- ☐ printer or toner cartridges
- ☐ Styrofoam
- ☐ IT equipment / electronics / mobile devices
- ☐ clean wood (e.g., pallets)
- ☐ metals

13. Describe any other initiatives undertaken in past three (3) years that have significantly reduced waste from your operations. **Please limit answer to 250 words or less.**

_____
_____
_____

14. Does your company have a Sustainable or Ethical Purchasing Policy or a Code of Conduct for Suppliers that outlines minimum ethical labour standards that must be followed by suppliers?

    ☐ Yes ☐ No

    In no, skip to question 16.

    If yes, please address the following:

    a. Attach a copy of the policy and/or code to the Proposal
    b. If the policy or code of conduct is publicly available, please provide a link to document: _____

15. Indicate which environmentally preferable and/or sustainable goods or services your company currently purchases – **check only those that apply**:
    - ☐ Sustainable food items (e.g., Fairtrade coffee; organic produce; OceanWise seafood)
    - ☐ Copy paper (e.g., 100 per cent post-consumer waste; Forest Stewardship Council certified; tree free)
    - ☐ Janitorial supplies (e.g., ECOLOGO or Green Seal certified)
    - ☐ IT equipment (e.g., EPEAT Gold, EnergyStar qualified)
    - ☐ Office products (e.g., ECOLOGO; recycled; non-toxic)
    - ☐ Printing services (e.g., Forest Stewardship Council certified paper and printer)
    - ☐ Promotional / marketing items (e.g., fair labour practices; reusable; recyclable)
    - ☐ Courier services (e.g., use energy efficient, low carbon or alternative fuel vehicles)
    - ☐ Catering services (e.g., serve sustainable food; employ social enterprises; use reusable serving ware)
    - ☐ Landscaping services (e.g., use energy efficient equipment; employ social enterprises)
    - ☐ Other: (list)

      _____
      _____
      _____
      _____

SECTION 2: SOCIAL IMPACT

This section of the leadership questionnaire addresses the following elements:

- *living wage employer*
- *workplace development programs*
- *supporting social enterprises*
- *sustainable business*

1. Is your company already a certified Living Wage employer, or working towards becoming one? See definition of *Living wage employer* in Section 3 below.

   ☐ Yes ☐ No

If yes, please state either:

a) date of certification; OR

b) date by which you expect to become certified _____
_____

2. Does your company provide employment and/or training opportunities for *person(s) with barriers to employment* (e.g., people with addictions, disabilities, mental health issues; people who are newcomers or refugees, etc.) that go beyond the hiring practices required by law? See definition of *person with barriers to employment* in Section 3 below.

☐ Yes ☐ No

If yes, describe the program including the name of the non-profit organization or educational institution or government agency that you work with to identify potential trainees and employees; and the number of employees/trainees that work in your company.
_____
_____
_____

3. Does your company conduct business with, or support in other ways, one or more *social enterprises* (as defined in Section 3 below).

☐ Yes ☐ No

If yes, name the social enterprise(s) and describe the nature of the business conducted and/or support provided.

_____
_____
_____

4. Is your company structure either of the following:

a. Social enterprise (as defined in Section 3 below)

☐ Yes ☐ No

If yes, state the name of the registered non-profit or co-operative (including society and/or charitable number):

_____

b. Community Contribution Company (C3) (as defined in Section 3 below)

☐ Yes ☐ No

5. Has your company's sustainability performance been reviewed or certified by a third party? (e.g., B Lab, ISO14001, SA8000, Social Fingerprint, etc.)

☐ Yes ☐ No

If yes, state the name of the third party and date of certification or date of last review:

_____
_____
_____

6. Describe any additional social sustainability initiatives that demonstrate your company's commitment to the health and well-being of local communities. **Please limit answers to 250 words or less.**

_____
_____
_____

SECTION 3: DEFINITIONS

Living Wage Employer:

Living wage employers adhere to the following criteria:

- All employees – full-time, part-time and casual – are paid the current living wage rate for their region. See www.livingwageforfamilies.ca for current Metro Vancouver and Fraser Valley living wage rates.
- The living wage rate calculation for an employer takes into account its employees' *total* compensation package (wage + benefits). If employees receive non-mandatory benefits, the living wage rate is reduced to take this into account. External contract staff (not direct employees) who provide services to their employer on a regular and ongoing basis must also be paid a living wage.
- Employees who receive incentive-based pay (tips) or commissions can be paid less than a living wage, provided their total earnings – including incentive-based pay and/or commissions – equal or exceed the living wage.

Social Enterprise:

"Social enterprises are businesses owned by non-profit organizations, that are directly involved in the production and/or selling of goods and services for the [combined] purpose of generating income and achieving social, cultural, and/or environmental aims (Social Enterprise Council of Canada)." See www.socialenterprisecanada.ca.

In addition to having the aforesaid combined purpose, to qualify as a "Social Enterprise" for purposes hereof, an entity must:

- be a business operated by a registered non-profit or community services co-operative;
- have a product or service that it sells to customers;
- have a defined social and/or environmental mandate.

Person with Barriers to Employment:

A "person with barriers to employment" is someone who faces one or more circumstances that can lead to underemployment or unemployment. There are a wide range of circumstances that can create barriers to employment including but not limited to: addictions, disabilities, mental health issues, and being a newcomer or refugee. For purposes hereof, to qualify as a "person with barriers to employment", the employee or trainee must be participating in a recognized, pre-approved employment program for person(s) with barriers to employment run by a non-profit organization or educational institution or government agency.

Community Contribution Company (C3):

"Community Contribution Company" means a corporation formed under the laws of British Columbia that includes in its articles the following statement:

This company is a community contribution company, and, as such, has purposes beneficial to society. This company is restricted, in accordance with Part 2.2 of the *Business Corporations Act*, in its ability to pay dividends and to distribute its assets on dissolution or otherwise.

Or, a company incorporated under another jurisdiction that includes in its articles substantively similar restrictions related to dividends and distribution of assets.

Refer to www.fin.gov.bc.ca/prs/ccc for more information.

APPENDIX 8
SUSTAINABILITY REQUIREMENTS QUESTIONNAIRE

Complete this Appendix 8 –Sustainability Requirements in the form set out below.

Introduction:

The City seeks goods with the following environmentally preferable attributes:

a. energy efficient
b. delivered using the most energy efficient method possible
c. highest possible post-consumer recycled content
d. no or minimal packaging
e. carries a 3rd party eco-certification
f. does not contain substances of concern or create substances of concern in its manufacture, use or disposal
g. is a Fairtrade certified agricultural good such as coffee, tea, or sugar
h. is produced using fair and ethical labour practices

The Proponent is to address the sustainability requirements below regarding the environmentally preferable attributes of the product(s) being offered:

1. Energy Efficiency – Goods

2. Fleet GHG Reductions

3. Environmentally Preferable Products – Goods

APPENDIX 9
PERSONAL INFORMATION CONSENT FORM(S)

[INTENTIONALLY DELETED]

APPENDIX 10
SUBCONTRACTORS

Complete this Appendix 10 - Subcontractors in the form set out below by listing all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors.

If selected to enter into an Agreement with the City, the Proponent may be limited to using subcontractors listed in its Proposal. If the City objects to a subcontractor listed in a Proposal, the City may permit a Proponent to propose a substitute Subcontractor acceptable to the City.

Subcontracted Scope		
Subcontractor		
Contact (name, title, email, telephone no.)		
Approximate Percent of the Work to be Subcontracted		
The Subcontractor's Relevant Experience (identify at least three similar projects within the last five years, including the client)	1. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	2. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	3. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	

APPENDIX 11
PROPOSED AMENDMENTS TO FORM OF AGREEMENT

Complete this Appendix 11 – Proposed Amendments to Form of Agreement in the form set out below by detailing any proposed amendments to the Form of Agreement. If no amendments to the Form of Agreement are proposed, state "none". It is at the City's sole discretion whether or not these proposed amendments will be considered for the Form of Agreement.

Section / General Condition	Proposed Amendment	Rationale and Benefit

APPENDIX 12
FINANCIAL STATEMENTS

[INTENTIONALLY DELETED]

APPENDIX 13
PROOF OF WORKSAFEBC REGISTRATION

Please attach

APPENDIX 14
CONFLICTS; COLLUSION; LOBBYING

Complete this Appendix 14 – Conflicts; Collusion; Lobbying in the form set out below by setting out any exceptions to the declarations in Section 9 of the Legal Terms and Conditions attached as Appendix 1 to this Form of Proposal or indicate that there are no exceptions, as applicable.

Exceptions to Declaration as to no Conflict of Interest in RFP Process (Section 9.1 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Conflict of Interest Respecting Proposed Supply (Section 9.2 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Collusion (Section 9.3 of Legal Terms and Conditions)	

PART D
FORM OF AGREEMENT

[NOTE: THIS TEMPLATE IS EXPECTED TO BE MODIFIED TO REFLECT A FINAL BUSINESS AGREEMENT BETWEEN THE CITY AND A SUCCESSFUL PROPONENT, IF ANY.]

SUPPLY AGREEMENT

BETWEEN:

<SUPPLIER NAME>

AND:

CITY OF VANCOUVER

RELATING TO THE SUPPLY AND DELIVERY OF FORKLIFTS

DATED <>

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THIS AGREEMENT is made as of <>

BETWEEN:

> **<SUPPLIER NAME>**, a <corporation> organized under the laws of <> and having an office at <>
>
> (hereinafter referred to as the "**Supplier**")

AND:

> **CITY OF VANCOUVER**, a municipal corporation continued under the *Vancouver Charter* (British Columbia) and having an office at 453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4 (hereinafter referred to as the "**City**")

WHEREAS the Supplier is in the business of manufacturing and/or selling Forklifts

AND WHEREAS the City wishes to procure certain Forklifts from the Supplier upon and subject to the terms and conditions hereinafter set forth,

NOW THEREFORE, in consideration of the premises and the covenants herein contained, the parties hereto agree as set forth herein.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

(a) "**Agreement**" means this agreement, including the schedules hereto, and all amendments made hereto or thereto by written agreement between the Supplier and the City;

(b) "**Business Day**" means a day on which banks are open for business in Vancouver, British Columbia, except a Saturday, Sunday or statutory holiday;

(c) "**Change in Control**" means an occurrence whereby a person (or persons acting in concert) acquires control of the relevant entity;

(d) "**City Policies**" means any or all (as the context requires) of those procedures, standards and/or standard specifications, requirements, policies and the like listed in Schedule H or notified to the Supplier from time to time, as the same may be updated, modified, expanded, revised, supplemented and/or replaced from time to time by the City (as notified to the Supplier);

(e) "**City's Manager**" means a manager who at the relevant time carries such designation from the City under, or in accordance with, ARTICLE 4;

(f) "**Competent Authority**" means:

(i) any multinational, federal, provincial, state, regional, municipal, local or other government or governmental body and any ministry, department, division, bureau, agent, agency, commission, board or authority of any government or governmental body, domestic or foreign;

(ii) any domestic, foreign or international judicial, quasi-judicial or administrative court, tribunal, commission, board, panel, arbitrator or arbitral body acting under the authority of any of the foregoing; or

(iii) any quasi-governmental or private body exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing;

(g) "**Confidential Information**" means all or any confidential information (however recorded or preserved) disclosed before, on or after the date of this Agreement by either Party to the other Party in connection with this Agreement, concerning:

(i) this Agreement; or

(ii) the affairs, operations, processes, know-how, suppliers, plans or intentions of the disclosing Party, including, without limitation, any information which is not generally known to the public or which has been specifically identified as confidential or proprietary by the disclosing Party,

but does not include:

(iii) any information that is or becomes generally available to the public or to industry professionals (other than as a result of its disclosure by the receiving Party in breach of this Agreement);

(iv) any information that was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party;

(v) any information that was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement or other duty of confidentiality with or to the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;

(vi) any information that was known to the receiving Party before the information was disclosed to it by the disclosing Party and was not subject to a confidentiality agreement or other duty of confidentiality (including any obligation under this Agreement) with or to the disclosing Party;

(vii) any information that the Parties agree in writing is not confidential or may be disclosed; and

(viii) any information unrelated to this Agreement that is developed by or for the receiving Party independently of and without reference to the information disclosed by the disclosing Party;

(h) "**Consent**" means an approval, clearance, registration, franchise, right, privilege, certification, quota, consent, permit, licence, qualification, filing, exemption, certificate or permission and any such other matter or authorization whatsoever, including any condition thereof, that is lawfully and necessarily required under any Law or from any Competent Authority in connection with the Supply or the Site;

(i) "**Contract Price**" means the amount or amounts payable by the City to the Supplier under this Agreement, as detailed in Schedule B, in return for the Supplier's proper performance of its obligations under this Agreement;

(j) "**Defect**" means any defect, flaw, deficiency, inadequacy, mistake, error or malfunction in the Supply or any part of it;

(k) "**Effective Date**" has the meaning ascribed to such term in Section 2.1;

(l) "**Encumbrance**" means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien or claim of lien (statutory or otherwise), easement, deemed or statutory trust, restrictive covenant, adverse claim, exception, reservation, right of occupation, any matter capable of registration against title, right of pre-emption, privilege or other encumbrance or third party right of any nature or any other arrangement or condition that, in substance, secures payment or performance of an obligation;

(m) "**Environmental Law**" means any Law which imposes any obligations relating to:

(i) the protection, management, conservation or restoration of the natural environment;

(ii) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances; and

(iii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.

(n) "**Force Majeure**" means, exhaustively, any:

(i) war, hostilities (whether war is declared or not), invasion, act of foreign enemies;

(ii) rebellion, terrorism (or threat of terrorism), revolution, insurrection, military or usurped power or civil war;

(iii) riot, civil commotion or disorder, strike or lockout by persons other than the Supplier's personnel and other employees, Subcontractors or any other person for whom the Supplier is responsible;

(iv) natural catastrophe such as an earthquake, forest fire, landslide or flood; or

(v) change in Law or action by a Competent Authority, which makes it illegal or impossible for either Party to perform its obligations under this Agreement;

(o) "**Good Industry Practice**" means, in relation to the Supply or the performance of any other obligation under this Agreement, the practices, and the application of the skill, care, diligence, prudence and foresight, which would reasonably and ordinarily be expected from a skilled and experienced international contractor carrying out or procuring equivalent services of similar type, scope and value, in the same or similar location and in similar circumstances to those pertaining to the Supplier;

(p) "**Hazardous Substance**" means any substance or material that is prohibited, controlled or regulated by any Competent Authority pursuant to any Environmental Law including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law;

(q) "**Laws**" means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings, determinations or awards of any Competent Authority whether or not having the force of law and any legal requirements or bases of liability under the common law or civil law, including all such Laws relating to Taxes, the environment, human health or safety, pollution and other environmental degradation, and hazardous materials , which affect or are otherwise applicable to the Supply, the Supplier, the Site or any other lands affected by the Supply;

(r) "**Parties**" means the City and the Supplier and "**Party**" means one of them or either of them, as the context requires;

(s) "**Proposal**" means the Supplier's proposal dated <>, submitted by the Supplier to the City in response to the RFP;

(t) "**Purchase Order**" means a written order from the City to the Supplier for the provision to the City of the Supply or any specified part thereof pursuant to this Agreement;

(u) "**Release**" means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit,

spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal;

(v) "**RFP**" means the City's Request for Proposals number PS20171694;

(w) "**Sales Tax**" has the meaning ascribed to such term in Section 12.1;

(x) "**Supplier's Manager**" means a manager who at the relevant time carries such designation from the Supplier under, or in accordance with, ARTICLE 4;

(y) "**Supply**" means the provision of the goods and services described in Schedule A and any other services to be provided by the Supplier pursuant to this Agreement;

(z) "**Taxes**" means all taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Competent Authority, including:

(i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, import, customs, profits, windfall profits, environmental, carbon, emissions, pollution, payroll, employment, employer health, pension plan, anti-dumping, countervailing, or excise tax, duty, import, levy, assessment, tariff or other charge;

(ii) all withholdings on amounts paid to or by the relevant person;

(iii) all statutory remittances, employment insurance premiums and social security or pension plan contributions or premiums and Canada pension plan contributions;

(iv) any fine, penalty, interest or addition to tax;

(v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee; and

(vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law;

(aa) "**Warranties**" means all product warranties provided by the Supplier to the City pursuant to this Agreement and/or in connection with goods included in the Supply;

(bb) "**Warranty Periods**" means all periods of time during which the Supplier provides Warranties.

1.2 Headings

This division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement, including its schedules, and not to any particular article, section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to articles, sections and schedules are to articles, sections and schedules of this Agreement.

1.3 Extended Meanings

In this Agreement:

(a) words importing the singular include the plural and vice versa, words importing a gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, except where the context requires otherwise;

(b) any provision calling for "agreement" requires the relevant agreement to be recorded in writing and signed by both Parties;

(c) the words "include", "includes", "including" and "included" shall be construed without implying limitation by the words which follow those words and without prejudice to the generality of the provisions to which such words relate, unless inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply;

(d) each reference to a specific statute, regulation, law or any subordinate instrument or statutory or regulatory provision shall be construed as including any legal or regulatory provision which subsequently amends or replaces the same, and shall include any and all subordinate instruments, orders, rules, regulations and bylaws made thereunder or guidelines issued in respect thereof;

(e) each reference to a writing means a writing that is hand-written, type-written, printed or electronically made, and which results in a permanent un-editable record; and

(f) "control" when used to describe a relationship between one person and any other person, has the following meanings:

(i) a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;

(ii) a person controls an unincorporated entity, other than a limited partnership, if more than 50% of the ownership interests, however designated, into which the entity is divided are beneficially owned by

that person and the person is able to direct the business and affairs of the entity;

(iii) the general partner of a limited partnership controls the limited partnership; and

(iv) a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

1.4 Schedules

The following are the schedules hereto, each of which is deemed to be part hereof:

Schedule A Scope of Goods and Services
Schedule B Prices for Supply
Schedule C Time Schedule for Supply

ARTICLE 2
EFFECTIVENESS

2.1 Effective Date

This Agreement shall come into full force and effect on the date hereof (the "**Effective Date**").

2.2 Term

(a) Unless earlier terminated pursuant to ARTICLE 9, this Agreement shall terminate <on the [●] anniversary of the Effective Date> <days after the completion of the Supply in accordance herewith> or on such later date as the Parties may agree in writing.

(b) Notwithstanding the foregoing, if the City and the Supplier continue to deal with each other in respect of the subject matter of this Agreement following the expiry of this Agreement, without any additional or other written agreement in respect thereof, this Agreement shall be deemed to have been renewed on a month-to-month basis on the same terms and conditions as before the expiry of the Agreement and it may be cancelled without cause by either party on thirty (30) days' prior written notice to the other.

ARTICLE 3
SUPPLY; GENERAL TERMS

3.1 Supply

(a) The Supplier shall provide the Supply to the City in accordance with this Agreement.

(b) Notwithstanding any other provision hereof, the Supply shall be provided to the City only upon the Supplier receiving from the City a Purchase Order(s)

therefor and shall be provided in accordance with the contents of the Purchase Order(s) and with the time requirements set out in Schedule C.

(c) In connection with the Supply, the Supplier shall provide to the City, without additional compensation, all services, conveniences, materials or features proposed in the Proposal that are not otherwise expressly provided for herein, as well as all other ancillary materials or services that are not expressly mentioned either herein or in the Proposal, but are reasonably inferable from the descriptions of the Supply herein or from the descriptions of proposed services, conveniences, materials or features in the Proposal.

3.2 Application to Prior Acts

Insofar as the Supplier has commenced any part of the Supply prior to the Effective Date, such services shall, as of the Effective Date, be deemed to be performed under and subject to the terms of this Agreement, unless otherwise expressly agreed between the Supplier and the City.

3.3 Sufficiency and Competence of Personnel

(a) The Supplier shall have and maintain at all times and in accordance with all applicable Laws, sufficient numbers of fit, skilled, qualified and experienced personnel to carry out the provision of the Supply within the times and in the manner required under this Agreement or by the City pursuant to this Agreement as the case may be.

(b) The Supplier warrants that it has the experience, competence, certifications, qualifications and capacity necessary to perform its obligations under this Agreement in accordance herewith.

3.4 Standards and Requirements

The Supplier shall (and shall procure that its Subcontractors) provide the Supply and perform all other obligations under this Agreement in an expeditious manner and at all times in accordance with:

(a) all applicable Laws and Consents;

(b) the specific requirements of Schedule A (Scope of Goods and Services), Schedule C (Time Schedule for Supply), and the instructions of the City; and

(c) where no higher standard is expressly required of the Supplier under this Agreement, Good Industry Practice,

and the Supplier shall comply with the standards and requirements in this Section 3.4(a) in the order of priority in which such standards or requirements are listed.

3.5 Consents

The Supplier shall, at the Supplier's sole expense, obtain, maintain and comply with all Consents required by Law to enable it to perform its obligations under this Agreement, except to the extent otherwise expressly stated in the schedules hereto.

3.6 Warranties

(a) The Supplier warrants that the Supply shall be performed in accordance with this Agreement and to the best practice standards of diligence, skill, care and efficiency expected of a competent contractor performing work of a similar nature to the Supply.

(b) The goods provided to the City in the Supply shall, upon delivery to the City pursuant hereto, be fully functional and ready for immediate use and operation and fit for the purpose for which they are intended, and the Supplier warrants that they shall be without defect or imperfection and shall function correctly and adequately and without any need of repair or improvement for at least [●] months following delivery or such defects, imperfections or failures to function correctly and adequately shall be remedied by, or such repairs or improvements shall be undertaken by, the Supplier, without cost or liability to the City and the Supplier shall indemnify and hold the City harmless in relation thereto.

(c) All goods or materials provided under the Agreement as part of the Supply shall be new and fully warranted for a period of <> year[s] from the time of delivery to the City, against defects in design, manufacturing, materials, workmanship and performance, and the Supplier affirms and covenants that such warranty is, and shall be, provided by the Supplier if and to the extent it is not fully and effectively provided to the City by third-party manufacturers or suppliers of the goods or materials.

(d) All goods, works and materials provided under the Agreement as part of the Supply shall be non-defective and fit for their intended purposes and shall function safely in all respects.

(e) All costs associated with warranty replacements or repairs shall be the responsibility of the Supplier, including repair, adjustment, and shipping costs, and replacements of goods or materials.

(f) If requested by the City, the Supplier shall handle and manage any claim on a manufacturer warranty for any defect in goods or materials provided as part of the Supply.

(g) The Supplier shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 3.6 or to evidence the Supplier's compliance with this Section 3.6, and the Supplier shall assign all warranties, and do all other things necessary, to ensure that the City receives the full benefit of each warranty or other covenant set forth in this Section 3.6.

3.7 Relationship Between the Parties

The Supplier in its provision of the Supply and its performance of its obligations under this Agreement shall at all times act as an independent contractor on its own account and shall have no authority to act as the City's agent unless expressly empowered to do so by the City. This Agreement shall not be deemed to create any relationship of partnership, agency,

joint enterprise or other like relationship between the Parties, and the Supplier shall be solely responsible for all employment-related obligations in connection with its employees.

3.8 Defects

(a) If, at any time during the Warranty Periods, there is any Defect in the Supply or any part of it to which any Warranties apply, the Supplier, at its own cost and risk, and within a reasonable time, shall remedy such Defect in accordance with the Warranties provided under this Agreement.

(b) If the Supplier fails to remedy any Defect in the Supply as required under this Agreement, a date may be fixed by the City on or by which the Defect is to be remedied. The Supplier shall be given reasonable notice of this date.

(c) If the Supplier fails, without reasonable excuse, to remedy any Defect in the Supply by this notified date, the City may (at its option) elect to carry out the work itself or by others and shall be entitled to recover from the Supplier all direct, proper and reasonable costs of so doing (as a debt due on demand). The City's exercise of its election under this Section 3.8(c) shall in no event absolve the Supplier of its responsibility for remediation of other Defects or otherwise constitute a waiver by the City of its rights and remedies in relation to other Defects, nor shall it preclude or restrict the further exercise of such rights or remedies.

3.9 Title and Risk

(a) The Supplier warrants that title in each good, work or improvement supplied by the Supplier hereunder, when it passes to the City hereunder, shall be free and clear of Encumbrances.

(b) Title to any good, work or improvement supplied by the Supplier hereunder shall pass to the City upon payment therefor by the City;

(c) The Supplier shall deliver to the City all documentation, including a bill of sale, which the City may reasonably require to evidence the transfer of title in and to goods to the City, free and clear of all Encumbrances.

(d) The Supplier must not enter into or be party to any contract that reserves ownership of goods or materials supplied by the Supplier hereunder in favour of any third party and, at the request of the City, the Supplier must provide evidence that no such contract has been entered into.

(e) Notwithstanding the foregoing provisions of this Section 3.9, the Supplier is responsible for the care of, and bears all of the risk of loss or damage to, all goods supplied hereunder and all materials used in connection with the Supply, until satisfactory delivery thereof to the City pursuant to this Agreement.

ARTICLE 4
CONTRACT MANAGERS

4.1 City's Managers

(a) The City hereby designates each of <> and <> as a "City's Manager." Each City's Manager, including any additional City's Managers designated by the City in accordance herewith, has, for so long as he or she remains a City's Manager, full authority to act on behalf of the City in relation to all matters arising under this Agreement.

(b) Any instruction from the City to the Supplier pursuant to this Agreement shall be issued through an executive officer of the City or through a City's Manager and shall be effective if in writing or confirmed in writing within seven days of oral instruction. Failure to comply with this Section 4.1 shall render any purported City's instruction invalid, unless it is later ratified by the City. However, this restriction does not apply to any instruction issued in an emergency situation or which relates to a threat or potential threat to the life, health or safety of any individual.

(c) Notwithstanding the foregoing, each City's Manager may, in writing, delegate his or her authority hereunder to others.

4.2 Supplier's Managers

(a) The Supplier hereby designates each of <> and <> as a "Supplier's Manager." Each Supplier's Manager, including any additional Supplier's Managers designated by the Supplier in accordance herewith, has, for so long as he or she remains a Supplier's Manager, full authority to act on behalf of the Supplier in relation to all matters arising under this Agreement, and any instruction given by the City to either of them shall be deemed to be valid and effective.

(b) Each Supplier's manager may, in writing, delegate his or her authority hereunder to others, upon the written agreement of the City.

4.3 Designation of New Managers

The City may designate new City's Managers, or remove that designation from any individual, and the Supplier may designate new Supplier's Managers, or remove that designation from any individual, from time to time, each at its own discretion, through notice to the other Party. In the case of the Supplier, any such designation or removal must be in writing to the City.

ARTICLE 5
SUPPLIER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 General Representations and Warranties

The Supplier represents and warrants that:

(a) the Supplier has the full right, power, and authority to enter into this Agreement and to perform the Supply;

(b) the Supplier is a <> duly organized, validly existing and in good standing under the laws of <> and is lawfully authorized to do business in the Province of British Columbia;

(c) the Supplier is not a party to or bound by any agreement (written or oral), indenture, instrument, licence, permit or understanding or other obligation or restriction under the terms of which the execution, delivery or performance of this Agreement does or shall constitute or result in a violation or breach;

(d) the Supplier, if and as required by law, has a valid City of Vancouver business license or a Metro West Inter-Municipal business license that applies to all of the Supply;

(e) all statements made by the Supplier in its Proposal are true and accurate;

(f) the Supplier possesses a level of skill and expertise commensurate with Good Industry Practice, which it shall utilize in the performance of its obligations under this Agreement;

(g) the Supplier understands that the City is relying upon the skill, judgment and expertise of the Supplier in the providing the Supply and the co-ordination and planning thereof;

(h) the Supplier's employees are accredited to carry out the relevant portions of the Supply to the extent required by applicable Laws and all of them are appropriately skilled, competent and experienced and possess relevant qualifications having regard to the nature and extent of the Supply and the Sites;

5.2 Covenants Regarding the Environment

(a) The Supplier, in its provision of the Supply, shall:

(i) at all times, be conscious of the importance of the protection of the natural, physical and biological environment at and in the vicinity of any City property;

(ii) carry out the Supply in a manner that shall have the least possible adverse effect on the natural environment and in compliance with all Environmental Laws and Consents, all at the Supplier's expense;

(iii) perform the Supply with the least degree of environmental degradation during and as a result of such performance; and

(iv) without restricting the generality or application of any other provisions of this Agreement, comply with all applicable Laws and Consents and with all plans and instructions contained in this Agreement or issued in writing by the City concerning the existence, Release, removal, handling, transport, storage, disposal and treatment of any Hazardous

Substances or other materials that are or may be hazardous to the life or health of any person or that endanger the environment or that are regulated by applicable Law.

(b) During the term of this Agreement, the Supplier shall not bring or store or permit to be used at any City property, any Hazardous Substances unless such Hazardous Substances are (i) reasonably required to carry out the Supply, and (ii) brought or stored or permitted to be used there in compliance with all Laws (including Environmental Laws). The Supplier shall not Release nor permit the Release of any Hazardous Substances into the environment. The Supplier is solely responsible for all Hazardous Substances introduced to the environment by the Supplier, and the Supplier shall promptly and fully remediate, to the City's satisfaction, any release of Hazardous Substances on or from City property.

5.3 Further Covenants Regarding City Property

The Supplier shall:

(a) at its sole cost, keep any portion of any City property it uses or enters onto in connection with the Supply in a safe and tidy condition and to maintain and operate the Supplier's equipment in a good, workmanlike and safe manner; and

(b) not to do anything at any City property which is or may become a nuisance, danger or disturbance to the City or to any other occupants or users of the Site or adjacent areas or to any works or structures or installations thereon.

5.4 Covenants Against Encumbrances

(a) The Supplier shall do all things necessary to ensure that all goods included in the Supply free are at all times kept free of any Supplier related Encumbrances.

(b) The Supplier acknowledges and agrees that, in the event the Supplier fails to discharge any Encumbrance contemplated in Section 5.4(a) within 60 days of written notice of such Encumbrance being given by the City, in addition to any other right or remedy, the City may, but shall not be obligated to, discharge the Encumbrance by paying to the applicable Competent Authority, the amount claimed to be due or the amount due, together with a reasonable amount for costs and the amount paid by the City shall be paid by the Supplier to the City forthwith upon demand. In no case shall the City be required to investigate the validity of the Encumbrance prior to discharging the same in accordance with this Section 5.4(b).

5.5 Absence of Conflicts of Interest

(a) Neither the Supplier nor anyone in any way on its behalf or for its benefit has given nor will give or offer to give to the City or any official, officer, employee or agent of the City any gratuity, reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act in connection with this Agreement.

(b) To the best of the Supplier's knowledge, the Supplier, its Subcontractors, and their respective directors, officers, employees and agents have no pecuniary interests or any other current or past interests or dealings, including with any officials, officers or employees of the City, that would cause any conflict of interest or be seen to cause a conflict of interest in respect of the Supply. Should such a conflict or perceived conflict arise during the term of this Agreement, the Supplier shall declare it immediately in writing to the City. The City may direct the Supplier to resolve any conflict or perceived conflict to the satisfaction of the City. The Supplier warrants that neither the Supplier nor any of its Subcontractors, or any of their respective directors, officers, employees or agents, has any predisposition, affinity or association with any third party which would impair or be seen to impair or qualify the Supplier's provision of the Supply.

5.6 Changes in Personnel

The City may request the removal or replacement of any personnel engaged by the Supplier in relation to any part of the Supply, provided that such request is made in writing stating the City's detailed reasons. The Supplier shall comply with such request as soon as reasonably practicable and shall bear the cost of replacement where the City is of the opinion that the personnel in question are guilty of misconduct, do not have acceptable qualifications or are otherwise unable or unfit to perform satisfactorily and safely. If the City requests a replacement for a reason other than the immediately aforementioned reasons, the City shall reimburse the Supplier its reasonable properly incurred costs of replacement.

ARTICLE 6
PAYMENT; AUDITS

6.1 Payment to the Supplier

(a) Subject to the provisions of this Agreement, the City shall pay the Contract Price as payable hereunder, or any parts thereof as payable from time to time hereunder, in accordance with the invoicing procedures set out in Section 6.2 and Section 6.3.

(b) Unless otherwise expressly stated in the schedules hereto, the Supplier shall pay any and all costs, including freight, marine and transit insurance, Taxes, and transportation and delivery charges on all equipment or things of whatsoever nature provided by the Supplier as required by it for the purposes of the Supply and any other incidental costs and all such costs shall be deemed to be included in the Contract Price.

(c) The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of Schedule B (Prices for Supply) and to have obtained all information and to have taken into account all circumstances, risks and other contingencies that may affect the cost of performing the Supply (including any circumstances, risks or contingencies that a contractor exercising Good Industry Practice would typically expect to encounter) and any other obligation under this Agreement. The Supplier shall not be entitled to any additional compensation beyond the Contract Price (including without limitation for

escalation in the prices of goods, materials and labour) except as otherwise expressly stated in this Agreement.

(d) Notwithstanding any other provisions of this Agreement, the Supplier shall not be entitled to payment of any part of the Contract Price for any Supply that has not been performed in compliance with the provisions of this Agreement.

6.2 Invoices

(a) The City will not be obligated to pay the Supplier for the Contract Price or any part thereof as payable hereunder, until the Supplier has provided the Supply to the City pursuant to a Purchase Order and delivered an invoice or invoices to the City in accordance herewith.

(b) Each of the Supplier's invoices shall set out, as a minimum (and in such form or format as required by the City):

(i) the City Purchase Order number(s) relating to the particular Supply to which the invoice relates;

(ii) an itemized list of the amounts owing;

(iii) the invoice date and the time period to which the invoice relates;

(iv) a description of the portion of the Supply to which the invoice relates;

(i) the total amounts payable under the invoice and details of any applicable taxes;

(ii) all supporting documentation relating to disbursements; and

(iii) such other information as the City may require from time to time.

(c) Any terms or conditions proposed by the Supplier to govern the Supply that are contained in any invoice (or in any shipping document, packing list or similar document) are void and of no effect, notwithstanding any statement in such document concerning the means by which the City may accept or be deemed to accept such terms or conditions.

6.3 Procedure for Invoices

(a) The Supplier shall address each of its invoices to the City, Attention: Accounts Payable, and email it to APInvoice@vancouver.ca, or to such other address as is specified in an applicable Purchase Order. The City shall thereafter pay the invoice within 30 days, provided the other requirements of this Agreement have been satisfied and subject to the other provisions hereof.

(b) The City shall not be liable for any interest on any invoice amount in respect of any period for any reason.

(c) The City expects to make payments by electronic funds transfer and the Supplier shall provide banking information to the City to enable it to do so.

6.4 Currency of Payment

All currency amounts stated herein are denominated in, all invoices hereunder shall be stated in, and all payments hereunder shall be made in, Canadian dollars.

6.5 Contested Claims for Payment

If any item contained in an invoice submitted by the Supplier is contested by the City, the City shall give prompt notice thereof, together with reasons to the Supplier.

6.6 Audits

(a) The Supplier shall maintain up-to-date records and accounts which clearly document the provision of the Supply and shall make the same available to the City upon request. The City may request copies of all such records and accounts which shall be provided to the City by the Supplier (subject to reimbursement of the Supplier's reasonable copying costs and any other direct costs and expenses, if any) at any time prior to the expiry of 365 days after completion of all of the Supply or earlier termination of this Agreement. For avoidance of doubt, any records and accounts provided by the Supplier in accordance with this Section 6.6(a) shall be deemed to be Confidential Information;

(b) Not later than three years after the completion of all of the Supply or earlier termination of this Agreement, the City can itself, on notice of not less than 14 days, require that a firm of accountants, surveyors or other auditors nominated by it audit any such records and accounts of the Supplier by attending during normal working hours at the office where the records are maintained. For avoidance of doubt, any records and accounts or other documents provided by the Supplier in accordance with this Section 6.6(b) shall be provided only subject to the accountants, surveyors or other auditors, and each of them, being subject to and agreeing to meet such of the Supplier's reasonable requirements as to confidentiality as the Supplier deems (at its sole discretion) to be appropriate in the circumstances; and

(c) Any overpayments by the City discovered during the course of any such audit pursuant to Section 6.6(b)shall be payable by the Supplier to the City within 30 days of such discovery, and if the overpayments have been caused by an act or omission of the Supplier and the amount of those overpayments is no less than one quarter of the total amount paid by the City to the Supplier in respect of the Supply, then the costs of the relevant audit shall be for the account of the Supplier.

6.7 Set Off

Notwithstanding any provision to the contrary in this Agreement and without prejudice to any other remedy which the City may have (whether in common law or equity), the City shall be entitled to deduct from and set off against any sum(s) otherwise due to the Supplier hereunder any sums which are due from the Supplier to the City or which the Supplier is liable to pay to the City under this Agreement or in connection herewith (including without

limitation any monies overpaid to the Supplier under this Agreement or otherwise due and payable to the City by reason of any error in payment under this Agreement).

ARTICLE 7
CERTAIN ADDITIONAL OBLIGATIONS OF THE CITY

7.1 Other Information

The City shall, within a reasonable time following a written request by the Supplier, provide to the Supplier free of cost such further information, which the City considers relevant to provision of the Supply and which is either already in its possession or reasonably within its power to obtain.

7.2 Decisions in Writing

On all matters properly referred to it in writing by the Supplier, the City shall (wherever practicable) give its decision in writing within a reasonable time having regard to the Time(s) for Completion and the Supplier's obligations with regard to the Supply.

ARTICLE 8
LIABILITY AND INSURANCE

8.1 Covenants of Indemnification by the Supplier

(a) The Supplier shall indemnify and keep indemnified and hold the City and its officials, officers, employees and agents harmless against all losses, liabilities, claims, demands, costs and expenses (including legal fees), fines, penalties and charges (including those imposed by statute or otherwise imposed), arising out of or in connection with, or consisting of:

(i) any:

(A) damage to any City property or any part thereof which occurs during the provision of the Supply;

(B) damage to the natural environment which occurs during the provision of the Supply, including any remediation cost recovery claims;

(C) loss or damage arising from a claim by any third party concerning or arising out of the Supply, or by any employee of the Supplier for any reason;

(D) occupational illness, injury or death of any person, whether at a Site or otherwise, which occurs during, or as a result of, the provision of the Supply;

(E) failure by the Supplier to fully comply with the provisions of this Agreement;

(F) breach by the Supplier of any Law in the course of, or as a result of, the provision of the Supply;

(G) actual or alleged infringement of any Intellectual Property Rights caused by the provision of the Supply or the use of any process, work, material, matter, thing or method used or supplied by the Supplier or any Subcontractor in the provision of the Supply; or

(H) breach of the warranties of the Supplier contained herein,

in each case to the extent that it is due to any act, omission or default, or any breach of Law or this Agreement, of the Supplier or any officer, employee, agent or contractor of any of it; or

(ii) any defect in a good, work or material provided as part of the Supply or any failure of any such good, work or material to function safely or to satisfy any applicable safety standard.

(b) Nothing in this Section nor otherwise in this Agreement shall limit or exclude any direct liability (whether in contract, tort, for breach of statutory duty or any other legal basis) of the Supplier to any person, including without limitation any liability for:

(i) the Supplier's default hereunder or fraud, fraudulent misrepresentation or reckless misconduct in the provision of the Supply; or

(ii) any loss or damage flowing from the termination of this Agreement.

(c) The Supplier appoints the City as the trustee of the Other City Entities and of their and the City's officials, officers, employees and agents in relation to the covenants of indemnification of the Supplier contained in this Section 8.1 and the City accepts such appointment.

8.2 Conduct of Claims

In the event of any claims, statutory fees, costs, charges, penalties (including without limitation any legal costs), contributions, compensations, cost recoveries, expenses or fines being levied or claimed from a person in respect of which an indemnity is provided by the Supplier pursuant to ARTICLE 8, the following provisions shall apply:

(a) subject to Sections 8.2(c) and (d), where it appears that a person is or may be entitled to indemnification from the Supplier in respect of all (but not part only) of the liability arising out of a claim, such person entitled to indemnification may at its sole election and subject to:

(i) approval by any relevant insurers (without prejudice to Section 8.2(f); and

(ii) the Supplier providing the party entitled to indemnification with a secured indemnity to its reasonable satisfaction against all costs and expenses (including legal expenses) that it may incur by reason of such action,

permit or require the Supplier to dispute the claim on behalf of the person entitled to indemnification at the Supplier's own expense and take conduct of

any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations; provided that the person entitled to indemnification shall give the Supplier (provided at the Supplier's cost) all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;

(b) with respect to any claim conducted by the Supplier pursuant to Section 8.2(a):

(i) the Supplier shall keep the person entitled to indemnification fully informed and consult with it about material elements of the conduct of the claim;

(ii) the Supplier shall not bring the name of the person entitled to indemnification into disrepute; and

(iii) the Supplier shall not pay or settle such claims without the prior consent of the person entitled to indemnification, such consent not to be unreasonably withheld or delayed;

(c) a person entitled to indemnification shall be free to pay or settle any claim on such terms as it thinks fit (and without prejudice to its rights and remedies under this Agreement) if:

(i) the Supplier is not entitled to, or is not permitted or instructed, take conduct of the claim in accordance with Section 8.2(a); or

(ii) the Supplier fails to comply in any material respect with the provisions of Sections 8.2(a) or (b);

(d) the person entitled to indemnification pursuant to ARTICLE 8 shall be free at any time to give notice to the Supplier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Section 8.2(a) applies. On receipt of such notice the Supplier shall promptly take all steps necessary to transfer the conduct of such claim to the person entitled to indemnification, and shall provide to the person entitled to indemnification all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

(e) if the Supplier pays to the person entitled to indemnification an amount in respect of an indemnity and the person entitled to indemnification subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the person entitled to indemnification shall forthwith repay to the Supplier whichever is the lesser of:

(i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses (including legal expenses) properly incurred by the person entitled to indemnification in recovering the same; and

(ii) the amount paid to the person entitled to indemnification by the Supplier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the part of the person entitled to indemnification to pursue such recovery and that the Supplier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Supplier exceeds any loss sustained by the person entitled to indemnification;

(f) the Supplier shall inform the person entitled to indemnification of the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement and in relation to such the person entitled to indemnification shall issue instructions accordingly; and

(g) any person entitled to an indemnity from the Supplier must take all reasonable measures to mitigate any loss, damage or liability that it may suffer in respect of any such matter.

8.3 Insurance

<NTD: Insurance section to be reviewed by Risk Management.>

(a) In addition to those mandatory insurance policies that the Supplier is required to carry by any applicable Laws, the Supplier shall take out and maintain in force, with a reputable insurance company legally authorized to conduct business in British Columbia, during the term of this Agreement and for a period of five years afterwards, commercial general liability insurance with coverage of not less than $<> million per occurrence and at least $<> million of annual aggregate coverage endorsing the City as an additional insured on a primary and non-contributory basis and providing a waiver of subrogation in favour of the City.

(b) The Supplier shall ensure that any Subcontractors also maintain the same insurance as the Supplier, having regard to the obligations under this Agreement which they are contracted to fulfil.

(c) The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Section 8.3(a).

(d) The cost of the insurances arising under this Section 8.3 shall be deemed to be incorporated into the prices specified in Schedule B.

(e) As a condition precedent to any payment from the City to the Supplier under this Agreement, and as and when reasonably requested by the City, the Supplier shall provide documentary evidence (to the reasonable satisfaction of the City, including by completing the City's standard reporting documents used for this purpose) that the insurances required by this Section 8.3 have been taken out and are being maintained.

ARTICLE 9
FORCE MAJEURE; TERMINATION

9.1 Force Majeure

(a) Neither Party shall be in breach of this Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement reasonably due to Force Majeure.

(b) If either Party's performance of its obligations under this Agreement is affected by an event of Force Majeure, then:

(i) it shall give written notice to the other Party, specifying the nature and extent of the event of Force Majeure, within ten days after becoming aware of the event of Force Majeure;

(ii) performance of such obligation(s) shall be deemed suspended but only for a period equal to the delay reasonably caused by such event;

(iii) it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the event of Force Majeure;

(iv) the Time(s) for Completion shall be extended to take into account such delay; and

(v) within five days of the cessation of any Force Majeure event, the Party affected thereby shall submit a written notice to the other Party, specifying the actual duration of the delay of its obligations caused by the event of Force Majeure and the consequences resulting from such delay, and submit a specific plan to minimize and mitigate those consequences.

(c) The affected Party shall use all reasonable diligence in accordance with Good Industry Practice to mitigate the cause and the result of an event of Force Majeure and to remedy the situation and resume its obligations under this Agreement, including complying with any instructions from the City, as to how to do so.

(d) Notwithstanding the obligations of a Party affected by an event of Force Majeure pursuant to Sections 9.1(b) and 9.1(c), if the event of Force Majeure renders it impossible or impractical for the Supplier to provide the Supply in accordance with this Agreement for a period of at least <45> days, the City may terminate this Agreement upon notice delivered to the Supplier at any time following the expiration of such period of <45> days.

9.2 City Suspension and Termination Rights

The City shall have the following rights:

(a) The City may suspend all or part of the Supply (for such period as its determines) or terminate this Agreement at any time (and for its convenience)

upon <> days' written notice to the Supplier, which shall immediately upon receipt of such notice take all reasonable steps to wind down the performance of the Supply and to minimise expenditure, including complying with any instructions from the City as to how to do so.

(b) If the City reasonably considers that the Supplier is not discharging in accordance herewith any of its material obligations under this Agreement, the City may inform the Supplier by notice stating the grounds for the notice. If evidence of remediation satisfactory to the City, is not received as soon as practicable or in any case within <14> days or such longer period as agreed by the Parties, the City may by a further notice to the Supplier of at least <14> days terminate this Agreement.

(c) The City may terminate this Agreement with immediate effect if:

(i) the Supplier becomes bankrupt or insolvent, goes into liquidation, has a receiver or administrator appointed over it or any of its assets of undertaking, enters into any arrangement for the benefit of its creditors, becomes the subject of any moratorium or carries on business under a receiver, trustee, manager or arrangement for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or

(ii) a Change in Control of the Supplier occurs and the City reasonably considers that the Change in Control shall substantively affect the Supplier's ability to perform its obligations under this Agreement.

9.3 Consequences of Termination

On termination of this Agreement for any reason, the Supplier shall be entitled to payment for any completed portion of the Supply rendered in full compliance herewith prior to the time of termination, in accordance with Schedule B.

9.4 Other Surviving Rights and Liabilities of Parties

(a) Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

(b) After termination of this Agreement, the provisions of Sections 3.66 and 6.6, Article 8, Article 11 and ARTICLE 13 shall remain in force.

ARTICLE 10
ASSIGNMENT AND SUBCONTRACTING

10.1 Assignment

Neither Party shall assign, transfer, mortgage, charge or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of the Agreement (or any document referred to herein), or purport to take any such action without the prior written consent of the other.

10.2 Subcontracting

(a) The Supplier shall not subcontract the whole or substantially all of the Supply.

(b) Without prejudice to the foregoing Section 10.2(a), save in the case of Subcontractor(s) whose role in the provision of the Supply is expressly provided for in the schedules hereto (and only to the extent so provided for), the Supplier may not subcontract any part of the Supply without the City's prior written consent.

(c) The Supplier shall include in each contract by which it engages a Subcontractor a provision allowing the benefit of such contract to be assigned by the Supplier to the City upon request.

(d) The Supplier shall not without the written consent of the City (which shall not be unreasonably withheld or delayed) initiate or terminate any contract with a Subcontractor.

(e) If the Supplier is unable to enter into a contract with a Subcontractor whose role in the provision of the Supply is expressly provided for in the schedules hereto, it shall as soon as reasonably practicable inform the City of the reason for such inability and procure the services of a replacement subcontractor that is acceptable to the City, acting reasonably.

(f) The Supplier shall be responsible for the acts, defaults or neglect or any omission of each Subcontractor, its employees and agents in all respects as if they were the acts and defaults or neglect or omission of the Supplier its employees or agents themselves.

ARTICLE 11
PRIVACY; CONFIDENTIALITY

11.1 Freedom of Information and Protection of Privacy Act

The Supplier acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's contractors to protect all personal information acquired from the City in the course of providing any service to the City.

11.2 No Promotion

The Supplier shall not, and shall ensure that its Subcontractors shall not, disclose or promote any relationship with the City, including by means of any oral declarations, announcements, sales literature, letters, client lists, press releases, brochures or other written materials, without, in each case, the express prior written consent of the City. The Supplier shall not use the City's logo or any of the City's official marks without the express prior written consent of the City.

11.3 Confidentiality Obligations

Each Party shall keep the Confidential Information of the other Party confidential and each Party shall not use such Confidential Information except for the purpose of exercising or

performing its rights and obligations under this Agreement or where, in the case of the City, otherwise necessary to pursue the public business of the City (a "**Permitted Purpose**"), or disclose the Confidential Information in whole or in part to any third party, except as expressly permitted by this ARTICLE 11.

11.4 Disclosure to Personnel

A Party may disclose the other Party's Confidential Information to those of its personnel who need to know such Confidential Information for the Permitted Purpose, provided that it informs such personnel of the confidential nature of the Confidential Information prior to disclosure, and at all times it is responsible for such personnel's compliance with the confidentiality obligations set out in this ARTICLE 11.

11.5 Disclosures Required by Law

A Party may disclose Confidential Information to the extent required by any applicable Laws or by any Competent Authority provided that, where legally permitted, it notifies the other Party before doing so, gives the other Party a reasonable opportunity to take any steps that the Party considers necessary to protect the confidentiality of that information, and notifies the third person that the information is Confidential Information. In any event, a Party shall furnish only that portion of the Confidential Information which it is legally required to disclose and shall use its reasonable endeavours to obtain a protective order or other reliable assurance that the Confidential Information shall be accorded confidential treatment.

11.6 Other Disclosures by the City

The City's obligations under this ARTICLE 11 are wholly subject to and qualified by, the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and, notwithstanding any other provision of this ARTICLE 111, the City may disclose Confidential Information in any manner compliant with such statute or otherwise in furtherance of its public role or duties, including in the course of publicly reporting to the Vancouver City Council.

11.7 Interpretation; Enforcement and Survival

The Parties acknowledge that a breach of any of the obligations or provisions contained in this ARTICLE 11 could cause the other Party to suffer loss which may not be adequately compensated for by damages and that the other Party may, in addition to any other remedy or relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily quantifiable, and such breaching Party must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief.

ARTICLE 12
TAXES

12.1 Taxes for Own Accounts

Unless otherwise expressly stated in this Agreement, any Taxes becoming due and payable by either Party pursuant to any applicable Laws as a result of the entering into, the

performance of obligations under or the taking of payment pursuant to this Agreement, shall be for the account of that Party, and for greater certainty the Contract Price includes all such Taxes, except for applicable Taxes arising under all sales, excise and value added tax legislation (including, without limitation, the *Excise Tax Act* (Canada) and similar Canadian provincial legislation) (collectively, "**Sales Tax**") as a result of the sale of the Supply within Canada hereunder, unless it is clearly stated that they are intended to be Sales Tax-inclusive.

12.2 Withholding Taxes

(a) Notwithstanding any other provision to the contrary, if the City determines that it is necessary to satisfy its obligations under any Law relating to Taxes, the City may:

(i) withhold an amount from a payment made to the Supplier; and

(ii) pay the withheld amount directly to the relevant Competent Authority.

(b) If an amount withheld in accordance with Section 12.2(a) is paid by the City to the relevant Competent Authority, it is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier.

(c) The Supplier agrees and acknowledges that it has no claim against the City for any amounts withheld and paid to the relevant Competent Authority in accordance with Section 12.2(a).

(d) If the City does not withhold an amount under Section 12.2(a) which it is required to withhold pursuant to any laws relating to Taxes, the Supplier agrees to pay that amount to the City, upon request by the City.

(e) The Supplier agrees that the City shall not be required to increase any payment to the Supplier by the amount withheld by the City under Section 12.2(a)

ARTICLE 13
DISPUTE RESOLUTION

13.1 Optional Procedure

All claims, disputes or issues in dispute between the City and the Supplier in relation to this Agreement shall be decided by mediation or arbitration, if the Parties so agree in writing, or, failing any such agreement, by the courts of competent jurisdiction in the Province of British Columbia.

13.2 Arbitration

In the event that Parties agree to arbitration pursuant to Section 13.1:

(a) the arbitration shall be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the Parties, and failing agreement by the

Parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia;

(b) the parties shall share equally the costs of the arbitration but shall be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements; and

(c) the arbitration shall take place in Vancouver, British Columbia and shall be governed by the laws of British Columbia.

ARTICLE 14
MISCELLANEOUS

14.1 Time of the Essence

Time is of the essence of this Agreement, including without limitation in relation to the Time(s) for Completion.

14.2 Costs

Each of the Parties hereto shall pay their respective legal fees and other costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

14.3 Benefit of this Agreement

(a) This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.

(b) Except as expressly set forth in the foregoing Section 14.3(a) or Section 8.1, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Supplier.

14.4 Entire Agreement

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties in relation to the subject matter hereof other than as expressly set forth in this Agreement.

14.5 Amendments and Waiver

No modification of or amendment to this Agreement is valid or binding unless set forth in writing and fully executed by both of the Parties hereto and no waiver of any breach of any term or provision of this Agreement is effective or binding unless made in writing and signed by the Party purporting to give such waiver and, unless otherwise provided, is limited to the specific breach waiver.

14.6 Notices

(a) Any order, demand, notice or other similar communication to be given to a Party in connection with this Agreement must be given in writing and shall be deemed to be validly given if given by personal delivery to a City's Manager or a Supplier's Manager, as applicable, or delivered by registered mail, by courier or by electronic transmission (with delivery confirmation or receipt of a reply email effectively acknowledging delivery), addressed to a City's Manager or a Supplier's Manager, as the case may be, or, in each case to such other individual as is designated in writing by the relevant recipient Party (including as designated in writing hereinbelow) at the relevant address or facsimile number listed below:

(i) if to the Supplier:

<Supplier Name>
<address>

Attention: <>
Facsimile: <>
Email: <>

(ii) if to the City:

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

Attention: <>
Facsimile: <>

< Change to Parks Board where required.>

or such other address or facsimile number as may be designated by notice given by either Party to the other, provided that, notwithstanding the foregoing, the Supplier's invoices shall be addressed as specified in Section 6.3 or as otherwise specified in the relevant Purchase Order.

(b) Any order, demand, notice or other communication given (and, in the case of electronic transmission, confirmed or acknowledged) in accordance with Section 14.6(a) shall be conclusively deemed to have been given:

(i) if given by personal delivery, on the day of actual delivery thereof;

(ii) if given by registered mail or courier, on the Business Day following confirmation by the postal service or the courier that the notice has been delivered; and

(iii) if given by electronic transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the

Business Day during which such normal business hours next occur if not given during such hours on any day.

Notwithstanding the foregoing, if the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery, courier or electronic transmission.

14.7 Governing Law and Jurisdiction

(a) This Agreement is governed by and must be construed in accordance with the laws of the Province of British Columbia.

(b) All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.

(c) This Agreement is subject to the exclusive jurisdiction of the courts in the Province of British Columbia except:

(i) as otherwise agreed by the Parties pursuant to ARTICLE 13; and

(ii) to the extent necessary to enforce, in another jurisdiction, any decision or award made pursuant to ARTICLE 13 or any judgment of any court in the Province of British Columbia.

14.8 Further Assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

14.9 Severance

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby. If any term or condition of this Agreement is found to be illegal, invalid ineffective, inoperable or otherwise unenforceable, but would not be so if some part of it were deleted, the term or condition shall apply with such modifications as may be necessary to make it enforceable.

14.10 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A Party may execute this Agreement by signing any counterpart.

14.11 Independent Legal Advice

THE SUPPLIER ACKNOWLEDGES THAT THE SUPPLIER HAS BEEN GIVEN THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE BEFORE EXECUTING THIS AGREEMENT.

14.12 Electronic Execution

Delivery of an executed signature page to this Agreement by either Party by electronic transmission shall be as effective as delivery of a manually executed copy of this Agreement by such party.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written by and on behalf of the Parties by their duly authorized signatories.

<SUPPLIER NAME>

Signature	Print Name and Title
Signature	Print Name and Title

CITY OF VANCOUVER<When required add: “, as represented by its Board of Parks and Recreation.”>

Signature	Print Name and Title
Signature	Print Name and Title

SCHEDULE A -
SCOPE OF GOODS AND SERVICES

<The Scope of the Supplier's Supply, as finally negotiated and agreed, shall be clearly expressed in this Schedule A.>

ITEM	DESCRIPTION
<Name 1>	<Description 1.>
<Name 2>	<Description 2.>
<Name 3>	<Description 3.>

SCHEDULE B -
PRICES FOR SUPPLY

<The contents of this schedule should be comprehensive, detailed and tied to the descriptions of Supply in Schedule A.>

ITEM	PRICE/UNIT
<Name 1>	$<> per <[unit type]>
<Name 2>	$<> per <[unit type]>
<Name 3>	$<> per <[unit type]>
All obligations of the Supplier described in the Agreement and not specifically listed above in this table, or for which no separate price is given.	None. (The cost of the discharge of such Supplier obligations is included in the prices set forth above.)

<Notwithstanding any other provision hereof, if the Supplier is, at any time during the term of effectiveness of this Agreement, party to a contract with another customer pursuant to which the Supplier charges effective prices lower than the prices charged to the City for reasonably comparable services, the above-listed prices shall be adjusted, retroactively to the date of effectiveness of such other contract, so that the prices charged hereunder are at least as low as the effective prices charged pursuant to such other contract.> **<NTD: Delete if not applicable.>**

SCHEDULE C -
TIME SCHEDULE FOR SUPPLY

<NTD: To describe the time for the completion of the Supply and any applicable milestones to be achieved by particular dates prior to the completion of the Supply.>