



STANDING OFFER AGREEMENT

BETWEEN

<🚗> SUPPLIER NAME >

AND

CITY OF VANCOUVER

RELATING TO ELECTRIC AND PLUG-IN HYBRID

PASSENGER VEHICLES

DATED: <📅>

STANDING OFFER AGREEMENT

THIS AGREEMENT is made as of <[redacted]>

BETWEEN:

<[redacted] SUPPLIER NAME>, a <[redacted] corporation> organized under the laws of <[redacted]> and having an office at <[redacted]>

(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 <[redacted]>;

AND WHEREAS the Supplier is desirous of being included on the City’s internal list(s) of approved suppliers of <[redacted]>, who may be contacted by the City from time to time to provide <[redacted]>;

AND WHEREAS, in consideration of the terms and conditions set forth herein, the City wishes to include the Supplier on such list(s) so that the City may have the option of procuring <[redacted]> from the Supplier from time to time 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.

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**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, including Terms Agreements;
- (b) **“Background IP”** has the meaning ascribed thereto in Section 14.4;
- (c) **“Business Day”** means a day on which banks are open for business in Vancouver, British Columbia, except a Saturday, Sunday or statutory holiday;
- (d) **“Change in Control”** means an occurrence whereby a person (or persons acting in concert) acquires control of the relevant entity;
- (e) **“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 D 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);
- (f) **“City’s Manager”** means a manager who at the relevant time carries such designation from the City under, or in accordance with, ARTICLE 5;
- (g) **“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
 - (ii) any quasi-governmental or private body exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing;
- (h) **“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 or any of its Representatives to the other Party or its Representatives 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 or of any member of the disclosing Party’s Group, 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 or its Representatives 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 a member of the disclosing Party's Group 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 or its Representatives 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 or a member of the disclosing Party's Group;
 - (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;
- (i) **"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 a Site;
 - (j) **"Contract Price"** means amounts payable (subject to and in accordance with the terms of this Agreement) by the City to the Supplier in return for the proper performance by the Supplier of obligations under this Agreement, as detailed in Terms Agreements from time to time, which shall be in accordance with Schedule B, except as otherwise agreed in writing by the Parties;
 - (k) **"Defect"** means any part of the Supply (or omission therefrom) which is defective, deficient or incomplete or does not otherwise comply with the requirements of this Agreement;
 - (l) **"Documentation"** means calculations, computer programs and other software, drawings, designs, plans, manuals, records, reports, documents, papers, photos, typographical arrangements, models, contract documents, deliverables, agreements, tender/enquiry documents, and all other materials in whatever form, including but not limited to tangible copies and electronic forms, supplied either by or on behalf of the Supplier or generated collaboratively by the Parties in the course of the provision of the Supply under this Agreement;
 - (m) **"Effective Date"** has the meaning ascribed to such term in Section 2.1;
 - (n) **"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;

- (o) **“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.
- (p) **“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;
- (q) **“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;
- (r) **“Group”** means:
- (i) in respect of the Supplier, the group constituted from time to time by:
 - (A) the Supplier;
 - (B) all persons that directly or indirectly control or are controlled by the Supplier; and
 - (C) all persons that are directly or indirectly controlled by any person that directly or indirectly controls the Supplier; and
 - (ii) in respect of the City, the group constituted from time to time by:
 - (A) the City; and
 - (B) all bodies corporate directly or indirectly controlled by the City.
- (s) **“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;

- (t) **“Intellectual Property Rights”** means any and all current and future proprietary rights provided under patent law, copyright law, design patent or industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, computer software, database or design, or the expression or use thereof, whether registered or unregistered, together with any right to apply for or register any of the foregoing;
- (u) **“Key Project Personnel”** means any persons named as such in an applicable Terms Agreement;
- (v) **“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;
- (w) **“OHS Requirements”** means all Laws applicable to the Supply and related to occupational health or safety, and all of the City Policies that relate to occupational health or safety, and includes without limitation the WCA;
- (x) **“Other City Entity”** means each of: the Vancouver Public Library Board, the Vancouver Police Board, the Vancouver Art Gallery Association and the Parking Corporation of Vancouver;
- (y) **“Parties”** means the City and the Supplier and **“Party”** means one of them or either of them, as the context requires;
- (z) **“Permitted Purpose”** has the meaning ascribed thereto in Section 15.3;
- (aa) **“Preferred Supplier”** means a person named as such in an applicable Terms Agreement;
- (bb) **“Proposal”** means the Supplier’s <☐>Describe as proposal or application as appropriate< ☐>, submitted by the Supplier to the City in response to <☐>;
- (cc) **“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;
- (dd) **“Representative”** means a Group member of a Party, or an official, officer, employee, agent, subcontractor or other representative of a Party or any member of its Group, or any other person for whom the Party is responsible;
- (ee) **“Safety Incident”** means:
 - (i) a failure by the Supplier or any Subcontractor to comply with any OHS Requirements; or
 - (ii) any hazard, incident or accident caused by the Supplier or a Subcontractor.
- (ff) **“Sales Tax”** has the meaning ascribed to such term in Section 16.1;

- (gg) **“Supplier’s Manager”** means a manager who at the relevant time carries such designation from the Supplier under, or in accordance with, ARTICLE 5;
- (hh) **“Site”** means each of the City worksites and other places at which any part of the Supply shall be performed, including a site specified in a Terms Agreement.
- (ii) **“Subcontractor”** means any person named in a schedule to this Agreement or a Terms Agreement as a subcontractor, or any other person appointed by the Supplier, in accordance with this Agreement, to perform any part of the Supply;
- (a) **“Supply”** means the provision of the goods, services and works described in Schedule A (or, as the context requires, the particular such goods, services or works provided or to be provided by the Supplier to the City at a particular time or times and in the particular combinations and quantities directed by the City in accordance herewith), and any other services to be provided by the Supplier pursuant to this Agreement;
- (jj) **“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;
- (kk) **“Terms Agreement”** means a document substantially in the form of Schedule C setting out in relation to the particular Supply to be provided thereunder:
- (i) the particular work and deliverables to be delivered by the Supplier;
 - (ii) any items to be provided by the City to allow the Supplier to perform the Supply;
 - (iii) the time schedule, including the Time(s) for Completion therefor;
 - (iv) any Preferred Suppliers;
 - (v) the Key Project Personnel therefor;
 - (vi) any specific Site(s) therefor; and

- (vii) the price to be paid by the City therefor.
- (ll) “**Time(s) for Completion**” means the time(s) stated in a Terms Agreement by which a particular Supply or any part thereof must be completed, as such time(s) may be adjusted, strictly in accordance with this Agreement;
- (mm) “**WCA**” means the *Workers Compensation Act* (British Columbia), and the regulations thereunder.

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 *eiusdem 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:

- (a) Schedule A Scope of Goods and Services
- (b) Schedule B Prices for Supply
- (c) Schedule C Form of Terms Agreement
- (d) Schedule D City Policies

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 12 and subject to the below Section 2.2(b)>, this Agreement shall terminate on the [●] anniversary of the Effective Date> 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) During the term of effectiveness of this Agreement, the City agrees to maintain the Supplier on its internal list(s) of approved suppliers of , who may be contacted from time to time to supply to the City.
- (b) During the term of effectiveness of this Agreement, the Supplier shall provide the Supply to the City, at the times and in the quantities directed by the City, and otherwise in accordance with the directions of the City and in conformity with this Agreement.
- (c) Notwithstanding any other provision hereof, no Supply shall be provided to the City other than upon execution by each of the City and the Supplier of a Terms Agreement in respect of the particular Supply and receipt by the Supplier of a purchase order from the City relating to the particular Supply.

- (d) The City and the Supplier shall adhere to the following procedure in respect of Supply:
- (i) First, the City may identify a need for Supply and, if it does so, it may complete a draft of the Terms Agreement and send the draft to the Supplier, leaving the price provisions blank.
 - (ii) Second, the Supplier, upon receipt of a draft Terms Agreement, shall promptly complete the price provisions of the draft Terms Agreement (provided that the price provisions must be completed consistently with Schedule B hereof) and otherwise amend and complete the Terms Agreement, have it executed on behalf of the Supplier by the Supplier's Manager, and return it to the City.
 - (iii) Third, the City shall review Supplier's finalized Terms Agreement, including price, and if it approves of the Terms Agreement, it shall have it executed on behalf of the City by the City's Manager and return it to the Supplier. If it does not approve, the City may in its discretion cease discussions with the Supplier in relation to the particular Supply or request that the Supplier propose a varied Terms Agreement.
- (e) The City makes no representations, warranties or covenants hereunder respecting the volume of Supply, if any, to be procured from the Supplier.
- (f) During the term of effectiveness of this Agreement, the City may also, from time to time, direct the Supplier to make Supply to one or more of the Other City Entities at the price(s) specified herein and otherwise on the terms and conditions stated herein, and the Supplier shall comply with each such direction. Moreover, the Supplier shall, upon the further request of the City, promptly enter into a Letter Agreement (or failing that shall be deemed to have entered into a Letter Agreement) with each relevant Other City Entity memorializing that the Supplier shall make Supply to such Other City Entity in accordance herewith.

3.2 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 by the City.
- (b) The Supplier warrants that it has (and its Subcontractors, if any, have) the experience, competence, certifications, qualifications and capacity necessary for the Supply.
- (c) Insofar as the Supply involves the Supplier in performing design work, such design work shall be carried out by qualified designers who are engineers or other professionals who comply with the criteria stated in Schedule A (Scope of Goods and Services) or, where not so stated, in accordance with Good Industry Practice.

3.3 Design Review

- (a) Where so specified in Schedule A (Scope of Goods and Services) or as otherwise instructed by the City, the Supplier shall submit design-related Documentation for review by the City, and shall not proceed with work on the basis of such design Documentation until the City's approval of such Documentation has been received in writing.
- (b) None of:
 - (i) the submission of Documentation to the City by the Supplier;

- (ii) its examination by or on behalf of the City; or
- (iii) the making of any comment thereon (including any approval thereof) shall in any way relieve the Supplier of any of its obligations under this Agreement or of its duty to take reasonable steps to ensure the accuracy and correctness of such Documentation, and its suitability to the matter to which it relates.

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 City's written instructions relating to the particular Supply given in conformity herewith;
- (c) the applicable Terms Agreement;
- (d) the requirements of Schedule A (Scope of Goods and Services);
- (e) the City Policies; and
- (f) 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 Sections 3.4(a) to 3.4(f) above in the order of priority in which such standards or requirements are listed (with Section 3.4(a) being of highest priority).

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 Supply shall be fit for the use for which it is intended, and the Supplier warrants that it shall be without defects or imperfections and that any goods or works constituting part of the Supply shall function correctly and adequately, and without any need of repair or improvement, for at least <[redacted]> months following the completion of the relevant Supply, 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 <[redacted]> 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

- (a) 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, its other Representatives and its Subcontractors and their employees.
- (b) The City intends to use the Supplier as a preferred supplier of the goods, services and works described in Schedule A; however the City is not bound to treat the Supplier as its exclusive supplier of any goods or services.
- (c) The Supplier acknowledges and agrees that the City shall retain complete discretion over the allocation of work, if any, to or among the Supplier and others included on the City's internal list(s) of standing-offer suppliers and, in connection therewith, may use a ranked list, consistent with the City's ranking of applicants in the City's Request for Applications PS[]>.

3.8 Tests; Defects and Acceptance

- (a) When, in the Supplier's judgement, a given item of Supply is complete in accordance herewith, the Supplier shall give written notice to that effect to the City. Thereafter, the City shall reasonably promptly perform such practical tests of the Supply as the City reasonably deems necessary, and the Supplier shall assist the City with all such tests, if and to the extent so requested by the City.
- (b) If a Defect appears the testing described in the foregoing Section 3.9(a) reveals, in the judgement of the City, any Defects in the Supply, the City shall notify the Supplier accordingly.
- (c) The Supplier shall remedy at its own cost and risk Defects in the Supply that the Supplier discovers or that are notified by the City, as soon as reasonably practicable following discovery or notification of such Defects, as the case may be.

- (d) If the Supplier fails to remedy any Defect in the Supply within a reasonable time, 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.
- (e) 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 3.9(e) 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.
- (f) When the City is reasonably satisfied that a particular Supply has been completed and is without Defects, the City shall promptly issue to the Supplier a Certificate of Completion.

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 the earlier of:
 - (i) payment therefor by the City;
 - (ii) its its delivery to a / fixture to any part of the Site; and
 - (iii) its incorporation into a work supplied by the Supplier.
- (c) The Supplier shall deliver to the City any 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 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.

ARTICLE 4 PREFERRED SUPPLIERS

4.1 Procurement of Supplies

- (a) If so required by a particular Terms Agreement, the Supplier shall procure, in the name of and on behalf of the City those materials and/or services specified in the Terms Agreement as being required to be procured from a particular Preferred Supplier from such Preferred Supplier; and
- (b) Where no particular materials and/or services are specified in as being required to be procured from a particular Preferred Supplier, materials or services that are in any event required for purposes of the Supply shall be procured by the Supplier in accordance with Good Industry Practice.
- (c) Every procurement referred to in Sections 4.1(a) and 4.1(b) shall be in accordance with the City Policies (if and insofar as applicable) and otherwise the provisions of this Agreement.

4.2 Information Concerning Alternative Suppliers

Exercising Good Industry Practice, the Supplier shall use all reasonable endeavours to submit to the City details of alternatives to each Preferred Supplier where:

- (a) it would be more economical to purchase the relevant materials or services from an alternative supplier; or
- (b) a better quality of materials or services may be obtained from an alternative supplier; or
- (c) it would be more beneficial to the City to procure such materials or services from an alternative supplier.

4.3 Use of Alternative Suppliers

If the Supplier needs to procure any materials or services for which a Preferred Supplier is specified in the applicable Terms Agreement and the Supplier wishes to procure such materials or services from an alternative supplier, the Supplier shall provide written notification to the City within a reasonable time so as not to delay the applicable Time(s) for Completion. Such notice shall be in the form acceptable to the City and shall contain, as a minimum, the following information:

- (a) the relevant materials or services to be procured;
- (b) the name of the Preferred Supplier;
- (c) the name of the alternative supplier;
- (d) corporate, financial, technical, insurance and commercial information concerning the alternative supplier that is reasonably adequate to permit the City to evaluate the alternative supplier; and
- (e) the Supplier's reason(s) for recommending that such materials or services be procured from the alternative source (supported by evidence).

The City shall provide its acceptance or rejection of such recommendation within a reasonable period so as not to delay the Time(s) for Completion. The City's decision shall be at its absolute discretion and shall be final and binding on the Parties.

ARTICLE 5 CONTRACT MANAGERS

5.1 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 5.1 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.

5.2 Supplier's Managers

- (a) The Supplier hereby designates each of <redacted> and <redacted> 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.

5.3 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 6 SUPPLIERS' WARRANTIES AND COVENANTS

6.1 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 <redacted> duly organized, validly existing and in good standing under the laws of <redacted> 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) all statements made by the Supplier in its Proposal are true and accurate;
- (e) the Supplier is fully experienced in the design and management of projects or works of a similar scope, purpose, complexity, size and technical sophistication as the Supply;
- (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 and its Subcontractors (if any) in the carrying out of the Supply and the co-ordination and planning thereof; and
- (h) the Supplier's and any Subcontractors' 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,

and each of the foregoing representations and warranties shall be deemed to be repeated by the Supplier at the time of execution of each Terms Agreement.

6.2 General Health and Safety-Related Acknowledgements and Covenants

The Supplier shall:

- (a) in the provision of the Supply, comply at all times with the OHS Requirements and take all reasonably necessary steps to ensure similar compliance from its Representatives and its Subcontractors, if any;
- (b) if the Supply involves any type of manual labour, prior to their attendance at any Site, deliver to each of its Representatives and each of its Subcontractors, if any, and to their employees, if applicable, copies of the OHS Requirements relevant to the Site;
- (c) at all times take all reasonable precautions to maintain the health and safety of workers;
- (d) be at all times registered and in good standing with the relevant workers' compensation insurance Competent Authorities, and provide to the City copies of any notices, correspondence or directions issued by any government or Competent Authority relating to workplace-related employment, human rights, labour, immigration policy, health, safety or environmental matters within 24 hours of the Supplier's receipt of such notice, correspondence or direction;
- (e) appoint a qualified health and safety coordinator to ensure coordination of health and safety activities in the provision of the Supply;
- (f) report (with full details) any accident, injury, illness or other incident relating to workplace health and safety or the environment to the City as soon as reasonably practicable, investigate the accident, injury, illness or other incident reasonably thoroughly (and in any event in accordance with any applicable OHS Requirements) and promptly report to the City the results of each such investigation;
- (g) maintain such records and make such reports concerning health, safety and welfare of persons, and damage to property, or the natural, physical or biological environment, as the City may reasonably require; and

6.3 Covenants Regarding Violations of Health and Safety Requirements

Without prejudice to any remedies available to the City hereunder, if any Subcontractor or person employed or engaged by the Supplier (or by a Subcontractor) violates any OHS Requirement, the Supplier shall:

- (a) ensure that the violation is promptly resolved;
- (b) ensure the violation is promptly and appropriately reported to the City and to the applicable competent authorities (if and to the extent required by the OHS Requirements);
- (c) promptly take all reasonable steps necessary to avoid recurrence of the violation;
- (d) communicate to the City its plan to avoid recurrence of the violation; and
- (e) without prejudice to the foregoing Section 6.3(c), promptly remove any person responsible for the violation from the provision of the Supply if reasonable to do so or if requested to do so by the City.

6.4 Covenants Regarding the Environment

- (a) The Supplier 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 the Sites;
 - (ii) conduct, and cause its Representatives to conduct, their respective activities that relate to 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, and cause its Representatives to 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 Site, 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 at any Site 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 Sites or the environment by the Supplier or its Representatives or Subcontractors, and the Supplier shall promptly and fully remediate, to the City's satisfaction, any release of Hazardous Substances on or from any Site, or in the vicinity of any Site.

6.5 Further Covenants Regarding the Sites

The Supplier shall:

- (a) at its sole cost, keep any portion of any Site used 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 Site 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.

6.6 Covenants Against Encumbrances

- (a) The Supplier shall keep each Site, and the goods included in the Supply, and each part thereof, free of all Encumbrances filed pursuant to any Law or otherwise in respect of any such work or materials. In any event, if any Encumbrance has been filed in relation to the Site or any improvement thereon, or in relation to the goods included in the Supply, the Supplier shall cause any such Encumbrance to be

discharged within 30 days after the Encumbrance has come to the notice of the Supplier.

- (b) The Supplier acknowledges and agrees that, in the event the Supplier fails to discharge any Encumbrance contemplated in Section 6.6(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 6.6(b).

6.7 Absence of Conflicts of Interest

- (a) Neither the Supplier, nor any of its Representatives has given or shall 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.

ARTICLE 7 PERSONNEL

7.1 Separate Personnel

- (a) It is the intention of the Parties that any personnel utilized or supplied by the Supplier or any Subcontractor hereunder shall remain employees of the Supplier or Subcontractor, respectively, for the purposes of any applicable Law and no activity performed by such personnel shall be deemed to create or imply any employment or other like relationship between such personnel and the City. If contrary to this intention such personnel are treated as employees of the City for the purposes of any applicable Law, the Supplier shall indemnify the City against any loss, cost, expense, complaint, claim, levy, assessment, penalty or fine (including any Tax liability) resulting therefrom.

7.2 Changes in Personnel

The City may request the removal or replacement of any personnel engaged by the Supplier or any Subcontractor 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.

7.3 Key Project Personnel

- (a) Where there are Key Project Personnel the Supplier shall:
- (i) use best endeavours to retain Key Project Personnel for the duration of the provision of the Supply;
 - (ii) take reasonable steps to ensure that Key Project Personnel dedicate their time fully to the Supply (unless otherwise agreed or approved by the City in writing);
 - (iii) promptly inform the City should any of the Key Project Personnel leave, or give notice of an intention to leave the Supplier, and obtain a substitute or substitutes;
 - (iv) not reassign or allow the reassignment of the Key Project Personnel to other projects during the term of this Agreement without the City's prior written consent (such consent not to be unreasonably withheld or delayed); and
 - (v) take all reasonable steps to ensure that the Key Project Personnel perform their roles and responsibilities in accordance with any organisational structure agreed in writing between the Parties.
- (b) If:
- (i) the Supplier wishes to reassign or to replace an individual designated as Key Project Personnel; or
 - (ii) an individual designated as Key Project Personnel gives notice of his or her intention to leave or is otherwise no longer able to perform the duties, including for reasons of illness, injury or personal hardship,
- the Supplier shall provide a substitute with experience and qualifications equivalent or greater than the Key Project Personnel to be replaced, and shall provide documentation to the City to establish such experience and qualifications.
- (c) Key Project Personnel who are reassigned to other work shall, to the extent possible, remain available to the project team until completion of the relevant Supply.
- (d) All the Supplier's Key Project Personnel must be fluent in both spoken and written English, except as may be agreed to the contrary between the City and the Supplier in relation to specific individuals or positions to be filled from time to time.

ARTICLE 8 REPORTING

8.1 Progress Reports

- (a) ~~Quarterly~~ ~~Monthly~~ progress reports shall be prepared by the Supplier and submitted to the City in ~~a~~ a format reasonably acceptable to the City ~~the~~ the format required by the schedules hereto, if any, or as otherwise required by the City, each within seven days after the last day of the ~~month/quarter~~ to which it relates, provided that no such reports shall be required to be prepared or submitted during any period in which the Supplier has not been engaged to provide any Supply.
- (b) Each such progress report shall include (as a minimum): ~~NOTE: Amend as necessary or delete.~~

- (i) charts and detailed descriptions of progress in preparing Documentation and in otherwise delivering the Supply;
- (ii) copies of any quality assurance documents;
- (iii) information and statistics relating to health, safety, environmental and community relations aspects of the Supply;
- (iv) health and safety statistics, including details of:
 - (A) any Safety Incidents or other injuries, accidents, or safety or near-miss incidents relating to the safety of the Supply; and
 - (B) any hazardous accidents, incidents and activities relating to environmental aspects of the Supply or community relations, including any Releases of any Hazardous Substances; and
- (v) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise any aspect of the Supply or the timing therefor.

8.2 Assistance Regarding Reporting Requirements

The Supplier shall, and shall cause its Representatives to, provide the City with reasonable assistance and information which is necessary to enable the City to comply with any Law.

8.3 Other Reports

The Supplier shall provide any additional reports and information regarding the Supply or the Site reasonably requested by the City at any time.

ARTICLE 9 PAYMENT; AUDITS

9.1 Payment to the Supplier

- (a) Subject to ARTICLE 12 and Section 9.3, the City shall pay the Supplier for the Supply in accordance with Schedule B (Prices for Supply), following the receipt of invoices prepared and delivered in accordance with Section 9.2(b) and Section 9.3.
- (b) Notwithstanding any other provision hereof, prior to making any payment under this Agreement, the City shall determine whether the *Builders Lien Act* (British Columbia) applies to this Agreement and, if so:
 - (i) payments made under this Agreement shall be subject to ten percent withholding, in the form of a lien holdback, to be held by the City in accordance with the provisions of the statute; and
 - (ii) the lien holdback shall be released by the City 56 days after the issuance of a certificate of completion in conformity with the *Builders Lien Act* (British Columbia) in relation to the Supply if no liens then exist.
- (c) If any lien claim based on the provisions of the *Builders Lien Act* (British Columbia) relating directly or indirectly to this Agreement exists at any time, the Supplier agrees to immediately take all steps and do all things necessary or required to remove, cancel and dismiss such lien and until such lien is removed, cancelled or dismissed (as appropriate, to the satisfaction of the City), or all further payments under this Agreement may be withheld by the City or, at the discretion of the City, amounts payable to the Supplier may be used by the City to obtain the removal, cancellation or dismissal of any such lien.

- (d) 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.
- (e) The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the prices stated in each Terms Agreement 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 established by the applicable Terms Agreement (including without limitation for escalation in the prices of materials and labour), except as otherwise expressly stated in this Agreement.
- (f) Notwithstanding any other provisions of this Agreement, the Supplier shall not be entitled to payment for any Supply that has not been performed in compliance with the provisions of this Agreement.

9.2 Purchase Orders; Content of Invoices

- (a) The City shall from time to time issue purchase orders to the Supplier in relation to the Supply. These shall not have the effect of amending or waiving the application of any provision of this Agreement.
- (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;
 - (v) the total amounts payable under the invoice and details of any applicable taxes;
 - (vi) all supporting documentation relating to disbursements; and
 - (vii) such other information as the City may require from time to time.
- (c) Any terms or conditions proposed by the Supplier to govern any 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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 the relevant Supply or the earlier termination of this Agreement. For avoidance of doubt, any records and accounts provided by the Supplier in accordance with this Section 9.6(a) shall be deemed to be Confidential Information;
- (b) Not later than three years after the completion of the relevant Supply or the 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 9.6(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 9.6(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 relevant Supply, then the costs of the relevant audit shall be for the account of the Supplier.

9.7 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 10
CERTAIN ADDITIONAL OBLIGATIONS OF THE CITY**

10.1 Scheduled Items

The City shall make available, free of cost and without delay or in accordance with any agreed timetable or schedule set forth in an applicable Terms Agreement, to the Supplier for the purpose of the Supply, the personnel, equipment, facilities, services (including services of third parties) and information described in such Terms Agreement as being required to be supplied by the City.

10.2 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.

10.3 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.

10.4 Access to the Site

Except to the extent prohibited by applicable Law or any Consent, the City shall grant to the Supplier non-exclusive, timely and in accordance with any agreed schedule, access (as the City is reasonably able to provide) to all necessary areas of the Site on and from the date established in a Terms Agreement for the provision of the Supply at the Site, and such other non-exclusive access as is necessary or appropriate to perform the Supply and the Supplier's other obligations in accordance with this Agreement, for so long as the City deems reasonable.

**ARTICLE 11
LIABILITY AND INSURANCE**

11.1 Covenants of Indemnification by the Supplier

- (a) The Supplier shall indemnify and keep indemnified and hold the City, the Other City Entities and their respective 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 the Site or any part thereof, or any property whether located at the Site or otherwise, which occurs during the provision of the Supply;
 - (B) any claim by a Subcontractor under the *Builders Lien Act* (British Columbia);
 - (C) damage to the natural environment, including any remediation cost recovery claims;
 - (D) loss or damage arising from a claim by any third party concerning or arising out of the Supply, or by any employee or Subcontractor of the Supplier for any reason;

- (E) 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;
- (F) failure by the Supplier to fully comply with the provisions of this Agreement;
- (G) breach by the Supplier or any Subcontractor of any Law in the course of, or as a result of, the provision of the Supply;
- (H) 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
- (I) 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, a Subcontractor or any Representative of the Supplier or any employee, agent or contractor of any of them; 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 11.1 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 11.1 and the City accepts such appointment.

11.2 Contamination of Lands

Without limiting any other provision hereof or any other remedy available to the City hereunder, the Supplier agrees and covenants that if, at any time during the term or following the expiry of this Agreement, the Site or any other lands affected by the Supply are found to be contaminated or polluted (as determined pursuant to Environmental Laws) as a result of or in connection with the Supply, the Supplier shall forthwith at its sole cost:

- (a) undertake all necessary audits, investigations, tests and surveys to determine the nature and extent of the contamination or pollution;
- (b) notify the City of the nature and extent of the contamination or pollution and any proposed or required work necessary to control, abate, dissipate or remove (as appropriate) the pollution or contamination as required by Environmental Laws; and
- (c) undertake the work referred to in the foregoing 11.2(b).

11.3 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 11, the following provisions shall apply:

- (a) subject to Sections 11.3(b), 11.3(c) and 11.3(d) below, 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 11.3(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 11.3(a) above:
 - (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 (or any Group Member thereof) 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 11.3(a) above; or
 - (ii) the Supplier fails to comply in any material respect with the provisions of Sections 11.3(a) and 11.3(b) above;
- (d) the person entitled to indemnification pursuant to ARTICLE 11 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 11.3(a) above 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.

11.4 Insurance

- (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 \$<[REDACTED]> million per occurrence and at least \$<[REDACTED]> 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 11.4(a).
- (d) The cost of the insurances arising under this Section 11.4 shall be deemed to be incorporated into the prices specified in Schedule B and the prices specified in any Terms Agreement.
- (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 11.4 have been taken out and are being maintained.

ARTICLE 12
FORCE MAJEURE; TERMINATION

12.1 Force Majeure

- (a) Neither Party shall be deemed to 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 12.1(b) and 12.1(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.

12.2 City Suspension and Termination Rights

The City shall have the following rights:

- (a) The City may order the suspension of all or part of the Supply at any time and for such period as it determines, by notice with immediate effect to the Supplier, in the event of a Safety Incident; and upon receipt of any such notice of suspension, the Supplier shall immediately cease performing any Supply, minimize expenditure and comply with any reasonable instructions of the City relating to such Safety Incident, including any investigations.
- (b) Without prejudice to Section 12.2(a), the City may suspend all or part of the Supply (for such period as it determines) or terminate this Agreement at any time (and for its convenience) upon <45> days' written notice to the Supplier, which shall immediately upon receipt of such notice take all reasonable steps to wind down the performance of any Supply and to minimize expenditure, including complying with any instructions from the City as to how to do so.

- (c) If the City reasonably considers that the Supplier is not discharging 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.
- (d) 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.

12.3 Supplier Termination Rights

After giving at least seven days' written notice to the City, the Supplier may terminate this Agreement, or at its discretion and without prejudice to the right to terminate, may suspend or continue suspension of performance of the whole or part of the Supply when:

- (a) 90 days after the due date for payment of an invoice, it has not received payment of that part which has not by that time been contested in writing by the City and provided always that:
 - (i) the Supplier has issued a notice of reminder to the City following the due date for payment in relation to such unpaid sum; and
 - (ii) the termination notice may not be issued until the expiry of 30 days following the issue of such reminder notice; or
- (b) the City commits any material or persistent breach(es) of its obligations under this Agreement which render(s) performance by the Supplier of its obligations under this Agreement or a substantial part thereof impossible or significantly adversely affect(s) such performance of this Agreement as a whole and further which, remain(s) irremediable after 60 days.

12.4 Consequences of Termination

The following consequences shall apply upon a termination:

- (a) On termination of this Agreement for any reason, the Supplier shall, as soon as reasonably practicable:
 - (i) deliver to the City all work and Documentation produced by or on behalf of the Supplier during the course of performing the Supply;
 - (ii) return (or destroy if otherwise directed by the City in writing) all Confidential Information provided to it for the purposes of this Agreement;
 - (iii) return all of the City's Site access cards, equipment and other items provided under this Agreement, failing which, the City may enter the relevant premises and take possession thereof, and, until any such access

cards, equipment and other items have been returned or repossessed, the Supplier shall be solely responsible for its or their safe-keeping;

- (iv) if so requested by the City, take reasonable steps to assign any Subcontractor contracts to the City and do all things and execute all documents necessary to give effect thereto; and
 - (v) otherwise comply with all reasonable requirements of the City arising from the cessation of the Supply or the continuing development of the Site.
- (b) The Supplier shall be entitled to be paid its reasonable properly incurred costs of compliance with 12.04(a) and its reasonable demobilization costs, up to a maximum of \$100,000, in aggregate, save in circumstances in which the City reasonably claims that the termination was a consequence of a Safety Incident or a default by the Supplier in the provision of any part of the Supply, in which case all such costs shall be for the Supplier's own account.
- (c) 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 the applicable Terms Agreement.

12.5 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 3.6 and 9.6 and ARTICLE 11, ARTICLE 14, ARTICLE 15 and ARTICLE 17 shall remain in force.

ARTICLE 13 ASSIGNMENT AND SUBCONTRACTING

13.1 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.

13.2 Subcontracting

- (a) The Supplier shall not subcontract the whole or substantially all of the Supply.
- (b) Without prejudice to the foregoing Section 13.2(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 14 INTELLECTUAL PROPERTY

14.1 Assignment

The Supplier acknowledges and agrees that the City is the exclusive owner of all right, title, and interests in and to the Documentation, including, without limitation, all Intellectual Property Rights therein. The Supplier shall assign and hereby assigns to the City all right, title, and interests in and to the Documentation, including, without limitation, all existing and future Intellectual Property Rights in and to the Documentation, effective upon their creation to the fullest extent permitted by Law. Insofar as such right, title, and interest do not so vest automatically or immediately in the City by operation of law or under this Agreement, subject to Section 14.2, the Supplier holds legal title of all right, title, and interests in and to the Documentation, including, without limitation, all Intellectual Property Rights therein, in trust for the City and grants to the City an irrevocable, perpetual, fully paid-up, royalty-free, worldwide, transferable and non-exclusive licence to, itself and through contractors and agents, use, copy, amend, reproduce, modify and create derivative works of such Documentation for any purpose. Such licence shall include the right to sub licence to any third party without restriction.

14.2 Further Assistance

If and to the extent that any of the right, title, and interest in and to the Documentation, including, without limitation, all Intellectual Property Rights therein, is not assigned automatically or immediately to the City under Section 14.1, the Supplier undertakes, at the expense of the City and at any time either during or after this Agreement upon request from the City (notwithstanding that the City may do so in its own name and at its own cost), to execute all documents, make all applications, give all assistance and do all acts and things as may, in the reasonable opinion of the City, be necessary or desirable to vest all right, title, and interest in and to the Documentation, including, without limitation, all Intellectual Property Rights therein, in the City and to register them in, the name of the City and otherwise to protect and maintain such right, title, and interest. The Supplier further agrees to cooperate fully with the City both during and after the termination of this Agreement, with respect to signing further documents and doing such acts and other things reasonably requested by the City to confirm the transfer of ownership of the Documentation or to obtain or enforce patent, copyright, trade secret, or other protection for the Documentation. The Supplier shall not receive any consideration or royalties in respect of such transfer of ownership, beyond the fees, provided that the expense of obtaining or enforcing intellectual property protection shall be borne by the City.

14.3 Supplier Undertakings and Representations and Warranties

- (a) The Supplier undertakes:
 - (i) to notify the City in writing of the full details of Documentation promptly upon its creation;
 - (ii) whenever requested to do so by the City and in any event on the termination of this Agreement (as provided for in ARTICLE 12), promptly to deliver to the City all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any parts of the Documentation which are in its possession, custody or power;

- (iii) that the Supplier shall not, either during the term of this Agreement or thereafter, directly or indirectly, contest, or assist any third party to contest, the City's ownership of the Documentation or of any Intellectual Property Rights related thereto, and
 - (iv) not to register nor attempt to register any Intellectual Property Rights in the Documentation unless requested to do so by the City.
- (b) The Supplier represents and warrants to the City that:
- (i) it has not given and shall not give permission to any Subcontractor or third party to use any of the Documentation, nor any of the Intellectual Property Rights in the Documentation, other than as provided for in this Agreement or otherwise in accordance with the instructions of the City;
 - (ii) it has not given, and shall not give, to the City, nor shall it use in the provision of the Supply, any confidential material or documents of any former client or customer of the Supplier or of any other third party, unless the Supplier has received prior written authorization to do so from the City and from the owner of the confidential material or documents;
 - (iii) it has the absolute right to make the assignments of the right, title, and interest in and to the Documentation contemplated in this Agreement and to grant the rights granted under this Agreement;
 - (iv) it is unaware of any use by any third party or any unauthorized use by a Subcontractor of any of the Documentation or any Intellectual Property Rights in the Documentation; and
 - (v) the use of the Documentation or the Intellectual Property Rights in the Documentation by the City shall not, to the knowledge of the Supplier, infringe any Intellectual Property Rights of any third party.

14.4 Background Intellectual Property

Notwithstanding and superseding anything to the contrary in this ARTICLE 14, each Party retains title to all Intellectual Property Rights owned or possessed by it or any of its affiliates prior to or independent of performance of this Agreement and used by it in fulfilling its obligations under this Agreement, as well as any modifications or improvements made thereto in the course of performing this Agreement (“**Background IP**”). To the extent that one Party acquires any right, title, or interest in and to any aspect of the modifications or improvements to the Background IP of the other Party, such first Party shall assign such right, title, and interest to the second Party, immediately following such acquisition. If any of the Supplier's Background IP is included in or required to use the Documentation provided by the Supplier to the City, the Supplier hereby grants to the City an irrevocable, perpetual, fully paid-up, royalty-free, worldwide, transferable and non-exclusive licence (including the right to sub-licence only to members of the City's Group) to, itself and through contractors and agents, use, copy, amend, reproduce, modify, create derivative works of, use, commercialize, and otherwise exploit the Supplier's Background IP but only to the extent required to use such Documentation for the purpose (or any reasonably inferred purpose) for which it has been provided or for the provision of the Supply under this Agreement (excluding any software source code).

14.5 Supplier Employees' and Subcontractors' Rights

The Supplier:

- (a) warrants that the Supplier's employees, Subcontractors and agents have waived or shall have waived in whole all moral rights (including, without limitation, any similar rights allowing the rights holder to restrain or claim damages for any distortion, mutilation, or other modification of works or any part thereof, and to

restrain use or reproduction of works in any manner) they may have in the Documentation;

- (b) indemnifies the City, its officers, agents, contractors and employees against any liability, cost, loss or damage (including legal costs on a solicitor-client basis) suffered or incurred that arises under any breach of the warranty contained in Section 14.5(a) above; and
- (c) must do all things requested by the City, including signing or procuring the signature of particular forms, to give full effect to Section 14.5(a) above.

14.6 No Additional Remuneration

The Supplier acknowledges that, except as provided by Law, no further remuneration or compensation (beyond that expressly provided for in this Agreement) is or may become due to the Supplier in respect of the performance of its obligations under this ARTICLE 14.

ARTICLE 15 PRIVACY; CONFIDENTIALITY

15.1 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.

15.2 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.

15.3 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 15.

15.4 Disclosure to Representatives

A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure, and at all times it is responsible for such Representatives' compliance with the confidentiality obligations set out in this ARTICLE 15.

15.5 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.

15.6 Other Disclosures by the City

The City's obligations under this ARTICLE 15 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 15, 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.

15.7 Interpretation; Enforcement and Survival

- (a) Notwithstanding anything in this ARTICLE 15 to the contrary, nothing in this ARTICLE 15 shall affect the Parties' rights and obligations under ARTICLE 14.
- (b) The Parties acknowledge that a breach of any of the obligations or provisions contained in this ARTICLE 15 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 16 TAXES

16.1 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, the "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.

16.2 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 16.2(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 16.2(a).

- (d) If the City does not withhold an amount under Section 16.2(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 16.2(a).

ARTICLE 17 DISPUTE RESOLUTION

17.1 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.

17.2 Arbitration

- (a) In the event that Parties agree to arbitration pursuant to Section 17.1:
 - (i) 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;
 - (ii) 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
 - (iii) the arbitration shall take place in Vancouver, British Columbia and shall be governed by the laws of British Columbia.

ARTICLE 18 MISCELLANEOUS

18.1 Time of the Essence

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

18.2 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.

18.3 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 18.3(a) or ARTICLE 11, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Supplier.

18.4 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.

18.5 Amendments and Waiver

Subject to Section 3.8, 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.

18.6 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 designed in writing hereinbelow) at the relevant address or facsimile number listed below:

- (i) If to the Supplier:

<Supplier Name>
<address>

Attention: <>
Fax: <>
Email: <>

- (ii) If to the City:

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

Attention: <>
Facsimile: <>

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 9.3 or as otherwise specified in the relevant City 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 18.6(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.

18.7 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 17; and
 - (ii) to the extent necessary to enforce, in another jurisdiction, any decision or award made pursuant to ARTICLE 17 or any judgment of any court in the Province of British Columbia.

18.8 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.

18.9 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.

[The remainder of this page is intentionally left blank.]

18.10 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.

18.11 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.

18.12 Voluntary Agreement

THE SUPPLIER ACKNOWLEDGES AND DECLARES THAT IT HAS CAREFULLY CONSIDERED AND UNDERSTOOD THE TERMS OF THIS AGREEMENT, THAT IT HAS EITHER CONSULTED LEGAL COUNSEL OR WAIVED THE RIGHT TO DO SO, AND THAT IT IS EXECUTING THIS AGREEMENT VOLUNTARILY.

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 >

By:	_____	_____
	Signature	Print Name and Title
	_____	_____
	Signature	Print Name and Title

CITY OF VANCOUVER

By:	_____	_____
	Signature	Print Name and Title
	_____	_____
	Signature	Print Name and Title
	_____	_____
	Signature	Print Name and Title

**SCHEDULE A
SCOPE OF GOODS AND SERVICES**

[The scope of the Supplier's Supply shall be clearly expressed in this Schedule A; provided that some specifics may be left to individual Terms Agreements.]

**SCHEDULE B
PRICES FOR SUPPLY**

[The contents of this schedule should be as detailed as possible and tied to the descriptions of Supply in Schedule A.]

[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.]

SCHEDULE C
FORM OF TERMS AGREEMENT
TERMS AGREEMENT

THIS TERMS AGREEMENT is made as of <[]>, 20<[]>

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")

PURSUANT AND SUBJECT TO that certain Standing Offer Agreement between the Supplier and the City dated as of <[]> (the "Standing Offer Agreement").

- 1. Capitalized terms used herein but not defined herein have the respective meanings ascribed thereto in the Standing Offer Agreement.
- 2. The Supply to which this Terms Agreement applies, and the requirements to be achieved by the Supplier in relation thereto are the following:

SPECIFIC WORK AND DELIVERABLES:

[NOTE: Set out above the work or projects to be undertaken and/or the certain specific, measurable outcomes, which the supplier is to achieve.]

ITEMS TO BE PROVIDED BY THE CITY:

[NOTE: List above the personnel, equipment, facilities, services and information to be provided by the City. If none, write "None".]

SCHEDULE AND TIME(S) FOR COMPLETION:

[NOTE: Describe above 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.]

PREFERRED SUPPLIERS:

[NOTE: Name preferred suppliers above and give details if applicable. If not, write "None".]

KEY PROJECT PERSONNEL:

[NOTE: List above key individuals responsible for the supply, if applicable. If none, write "None".]

PRICE:

[NOTE: Above, specify clearly the price provisions.]

3. Supplier's Offer

Subject to the terms and conditions of the Agreement, the Supplier hereby offers to perform the Supply described above, upon the terms and conditions described above, and for the price specified above.

Signature on behalf of the Supplier:

_____ Date: _____

4. City's Acceptance

Subject to the terms and conditions of the Agreement, the Supplier is hereby directed to promptly proceed with the Supply described above, upon the terms and conditions described above, and for the price described above.

Signature of the City's Project Manager:

_____ Date: _____

**SCHEDULE D
CITY POLICIES**

1. The City's Supplier Code of Conduct referred to on page <{00}> of <{00}>.