



## REQUEST FOR PROPOSALS

### SUPPLY AND DELIVERY OF WIDE AREA MOWERS

RFP No. PS20140332

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1.0 THE RFP

- 1.1 This Request for Proposals (the "RFP") provides an opportunity to submit Proposals for review by the City and, depending on the City's evaluation of Proposals, among other factors, to potentially negotiate with the City to enter into an Agreement. **EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 1 TO PART C OF THE RFP: (I) NO PART OF THE RFP CONSISTS OF AN OFFER BY THE CITY TO ENTER INTO ANY CONTRACTUAL RELATIONSHIP; AND (II) NO PART OF THE RFP IS LEGALLY BINDING ON THE CITY.**
- 1.2 The RFP concerns the City's interest in procuring one (1) wide area mower with the option to purchase up to three (3) additional units during the term of the agreement. Details of the City's objectives and requirements to which the RFP relates are set out in Part B of the RFP. The City welcomes Proposals respecting innovative or novel approaches to the City's objectives and requirements.
- 1.3 The City is interested in selecting a single Proponent with the capability and experience to efficiently and cost-effectively meet the objectives and requirements described in the RFP. The City currently expects to select such a Proponent and then enter into negotiations with that Proponent, which will conclude in the execution of an Agreement between the Proponent and the City. However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any Agreement; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.
- 1.4 The City currently intends that Proposals will be evaluated by the City in relation to their overall value, which will be assessed in the City's sole and absolute discretion. In assessing value, the City expects to consider the factors described in Section 8 below, among others.
- 1.5 **NO BID SECURITY IS REQUIRED FROM PROPONENTS IN CONNECTION WITH THE SUBMISSION OF PROPOSALS BECAUSE NO PROPOSAL WILL BE DEEMED TO BE AN IRREVOCABLE OR OTHERWISE BINDING LEGAL OFFER BY A PROPONENT TO THE CITY. THE LEGAL OBLIGATIONS OF A PROPONENT THAT WILL ARISE UPON THE SUBMISSION OF ITS PROPOSAL WILL BE LIMITED TO THE TERMS AND CONDITIONS STATED UNDER THE HEADING "LEGAL TERMS & CONDITIONS" IN APPENDIX 1 TO THE PROPOSAL FORM (PART C).**
- 1.6 The execution of an Agreement may be contingent on funding being approved, and the relevant Proposal being approved, by the Vancouver City Council.
- 1.7 Certain capitalized terms used herein but not defined where first used are defined in Section 12 below.
- 1.8 The RFP consists of four parts:
- (a) PART A - INFORMATION AND INSTRUCTIONS: This part is intended to serve as a guide to the RFP process for Proponents.
  - (b) PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS: This part describes the subject matter of the RFP, in respect of which the City invites Proposals. This part also stipulates the information that should be contained in each Proposal.
  - (c) PART C - PROPOSAL FORM: This part consists of the Proposal Form to be completed by each Proponent in connection with its Proposal. Each Proposal must be submitted under the cover of a duly completed and executed Proposal Form.

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- (d) PART D - FORM OF AGREEMENT: This part contains a model Agreement. An Agreement or Agreements in this form may be entered into between the City and one or more successful Proponents.

**2.0 KEY DATES**

- 2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Enquiries	Tuesday May 13, 2014
Closing Time	Tuesday May 20, 2014

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

**3.0 CONTACT PERSON**

- 3.1 All enquiries regarding the RFP must be addressed to:

Julia Crosby, Buyer II  
[Julia.crosby@vancouver.ca](mailto:Julia.crosby@vancouver.ca)

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

- 3.3 **IF A POTENTIAL PROPONENT BELIEVES THAT THE CITY MAY BE UNABLE TO SELECT IT DUE TO A CONFLICT OF INTEREST, BUT IS UNCERTAIN ABOUT THIS, THE POTENTIAL PROPONENT IS URGED TO CONTACT THE ABOVE-MENTIONED INDIVIDUAL AS SOON AS POSSIBLE WITH THE RELEVANT INFORMATION SO THAT THE CITY MAY ADVISE THE POTENTIAL PROPONENT REGARDING THE MATTER. SEE SECTION 11.2(l), (m) and (n) BELOW FOR AN INDICATION OF THE TYPES OF CONFLICTS OF INTEREST THAT OFTEN ARISE.**

**4.0 SUBMISSION OF PROPOSALS**

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

- 4.2 Each Proponent should submit its Proposal in an envelope clearly marked with the Proponent's name and the RFP title and number ("Supply and Delivery of Wide Area Mowers; PS20140332") to the following address:

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

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

Information Desk, Main Floor Rotunda,  
Vancouver City Hall  
453 West 12th Avenue

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Vancouver, British Columbia  
Canada, V5Y 1V4

- 4.3 To be considered by the City, a Proposal must be submitted under the cover of a Proposal Form, completed and duly executed by the relevant Proponent, including Appendix 1 thereto.
- 4.4 Proposals must not be submitted by fax.
- 4.5 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time.
- 4.6 The City requests that one hard copy and one electronic copy (on a CD, flash drive, memory stick or similar medium) of each Proposal (or amendment) be submitted.
- 4.7 Proposals should not be bound in three-ring binders.
- 4.8 Proposals are revocable and may be withdrawn at any time before or after the Closing Time.
- 4.9 All costs associated with the preparation and submission of a Proposal, including any costs incurred by a Proponent after the Closing Time, will be borne solely by the Proponent.
- 4.10 Unnecessarily elaborate Proposals are discouraged. Proposals should generally be limited to the items specified in Part B of the RFP.
- 4.11 The City is willing to consider any Proposal from two or more Proponents that wish to form a consortium solely for the purpose of submitting a joint Proposal in response to the RFP, provided that they disclose the names of all members of the consortium and all members complete and execute a Proposal Form (Part C). Nonetheless, the City has a strong preference for Proposals submitted by a single Proponent, including a Proponent that would act as a general contractor and use subcontractors as required.
- 4.12 Proposals that are submitted after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City's sole discretion.
- 5.0 CHANGES TO THE RFP AND FURTHER INFORMATION**
- 5.1 The City may amend the RFP or make additions to it at any time.
- 5.2 It is the sole responsibility of Proponents to check the City's website at: <http://vancouver.ca/doing-business/open-bids.aspx> regularly for amendments, addenda, and questions and answers in relation to the RFP.
- 5.3 Proponents must not rely on any information purported to be given on behalf of the City that contradicts the RFP, as amended or supplemented in accordance with the foregoing Section 5.2
- 6.0 CONTRACT REQUIREMENTS**
- 6.1 In addition to addressing the other requirements of Part B hereof, each Proponent should indicate in its Proposal the extent to which the Form of Agreement included as Part D hereof is consistent with its Proposal. If the Proposal is inconsistent with any part of the Form of Agreement, the Proponent should so state and should propose alternative contract language as part of its Proposal.

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- 6.2 If the head office of a Proponent is located within the City of Vancouver or if the Proponent is to perform any work at a site located within the City of Vancouver, the execution of any Agreement will be contingent upon the Proponent having a valid City of Vancouver business license.
- 6.3 The term of any Agreement is expected to be a three-year period, with two possible one-year extensions, for a maximum total term of five years.
- 7.0 PRICING**
- 7.1 All prices quoted in any Proposal are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.
- 7.2 Prices must be quoted in Canadian currency.
- 7.3 Fixed prices must be quoted for the full term of the Proponent's proposed agreement.
- 7.4 Prices are to be quoted CIP, destination (Incoterms, 2010). For the avoidance of doubt, freight, insurance, unloading at the destination designated by the City, import duties, brokerage, royalties, handling, overhead, profit and all other similar costs are to be included in quoted prices.
- 8.0 EVALUATION OF PROPOSALS**
- 8.1 The City may open or decline to open Proposals in such manner and at such times and places as are determined by the City.
- 8.2 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated by City representatives, using quantitative and qualitative tools and assessments, as appropriate, to determine which Proposal or Proposals offer the overall best value to the City. In so doing, the City expects to examine not only financial terms, but also (i) Proponents' skills, knowledge, reputations and previous experience(s), including experience(s) with the City (if any); (ii) Proponents' capabilities to meet the City's Requirements (as defined in Part B) as and when needed, (iii) quality and service factors, (iv) innovation, (v) environmental or social sustainability impacts; and (vi) transition costs or challenges. Certain other factors may be mentioned in Part B or elsewhere in the RFP.
- 8.3 The City will retain complete control over the RFP process at all times until the execution and delivery of an Agreement or Agreements, if any. The City is not legally obligated to review, consider or evaluate Proposals, or any particular Proposal, and need not necessarily review, consider or evaluate Proposals, or any particular Proposal in accordance with the procedures set out in the RFP. The City may continue, interrupt, cease or modify its review, evaluation and negotiation process in respect of any or all Proposals at any time without further explanation or notification to any Proponents.
- 8.4 The City may, at any time prior to signing an Agreement, discuss or negotiate changes to the scope of the RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.
- 8.5 The City may elect to short-list Proponents and evaluate Proposals in stages. Short-listed Proponents may be asked to provide additional information or details for clarification, including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to the Form of Agreement.

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The City will be at liberty to negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.

- 8.6 Prior to approval of a Proposal, the City must be satisfied as to the Proponent's financial stability. Proponents may be asked to provide financial statements prepared by an accountant and covering at least the prior two years.
- 8.7 The City may request that any proposed subcontractors undergo evaluation by the City.
- 8.8 The City is not under any obligation to approve any Proposal and may elect to terminate the RFP at any time.
- 8.9 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to:
- (a) accept any Proposal;
  - (b) reject any Proposal;
  - (c) reject all Proposals;
  - (d) accept a Proposal which is not the lowest-price proposal;
  - (e) accept a Proposal that deviates from the Requirements or the conditions specified in the RFP;
  - (f) reject a Proposal even if it is the only Proposal received by the City;
  - (g) accept all or any part of a Proposal;
  - (h) split the Requirements between one or more Proponents; and
  - (i) enter into one or more agreements respecting the subject matter of the RFP with any entity or entities at any time.

Without limiting the foregoing, the City may reject any Proposal by a Proponent that has a conflict of interest, has engaged in collusion with another Proponent or has otherwise attempted to influence the outcome of the RFP other than through the submission of its Proposal.

**9.0 SUSTAINABILITY**

- 9.1 The City's Procurement Policy, Ethical Purchasing Policy and related Supplier Code of Conduct found at <http://vancouver.ca/doing-business/selling-to-and-buying-from-the-city.aspx> align the City's approach to procurement with its corporate social, environmental and economic sustainability values and goals. They evidence the City's commitment to maximize benefits to the environment through product and service selection, and to ensure safe and healthy workplaces, where human and civil rights are respected. Each Proponent is expected to adhere to the supplier performance standards set forth in the Supplier Code of Conduct. The Ethical Purchasing Policy shall be referred to in the evaluation of Proposals, to the extent applicable.
- 9.2 Proponents are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Proponent supply materials, and where such materials may cause adverse environmental effects, the Proponent is to indicate the nature of the

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hazard(s) in its Proposal. Furthermore, the Proponent is to advise the City of any known alternatives or substitutes for such materials that would mitigate such adverse effects.

**10.0 CERTAIN APPLICABLE LEGISLATION**

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

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

**11.0 LEGAL TERMS AND CONDITIONS**

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

11.2 Potential Proponents should review Appendix 1 to the Proposal Form carefully before submitting a Proposal. Among other things, potential Proponents should note that:

- (a) Except for limited duties in respect of the protection of confidential information and the resolution of legal disputes (as fully specified in Appendix 1 to the Proposal Form), the City does not have, and will not have, any legal obligations to a Proponent or to any proposed subcontractor of that Proponent in respect of the RFP or that Proponent's Proposal until such time as an Agreement is entered into with that Proponent.
- (b) The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process.
- (c) Except only and to the extent that the City is in breach of its duties with respect to a Proponent's confidential information, each Proponent is required to broadly release the City, its officials, its agents and its employees from liability for any losses incurred by the Proponent.
- (d) Except only and to the extent that the City is in breach of its duties with respect to a Proponent's confidential information, each Proponent is required to broadly indemnify and hold harmless the City, its officials, its agents and its employees from and against losses in respect of any claim or threatened claim against any of them.
- (e) Except with respect to the City's duties in respect of a Proponent's confidential information, even to the extent the city is found to have breached any duty to the Proponent, if any, the liability of the City, its officials, its agents and its employees to the Proponent will be limited to \$100.
- (f) With limited exceptions set forth in such Appendix 1 to the Proposal Form, any dispute between the City and a Proponent will be subject to arbitration.

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- (g) All RFP-related documents provided to any Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (h) The documentation containing any Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.
- (i) The City will treat any Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information, subject, however, to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council or announcing the results of the RFP to Proponents.
- (j) Proponents must not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City, which have been or are in the future provided or communicated to a Proponent at any time (whether before, during or after the RFP process). Furthermore, each Proponent must agree to not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (k) Each Proponent must waive any rights to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and must agree that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions), including, without limitation, records relating only to the Proponent.
- (l) Each Proponent must disclose whether any officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest is:
  - i. an elected official or employee of the City; or
  - ii. related to or has any business or family relationship with an elected official or employee of the City,in each case such that there could be any conflict of interest or an appearance of a conflict of interest in the evaluation or consideration of the Proponent's Proposal by the City. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.
- (m) Each Proponent must disclose whether any person having an interest (as defined above) is a former official, former employee or former contractor of the City who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.
- (n) Each Proponent must disclose whether the Proponent or any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or

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services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.

- (o) Each Proponent is required to disclose whether the Proponent is competing for purposes of the RFP with any entity with which it is legally or financially associated or affiliated. Each Proponent must also disclose whether it is cooperating in any manner in relation to the RFP with any other Proponent responding to the RFP. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.
- (p) Each Proponent is required to disclose whether it or any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors: (1) is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; or (2) has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of its Proposal, to influence the outcome of the RFP process. The City will evaluate each matter disclosed to determine whether and to what extent the Proponent can be given consideration in the RFP in light of the particular matter.
- (q) A Proponent must not disclose or promote any relationship between it and the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City. Each Proponent must undertake not to use the name, official emblem, mark, or logo of the City without the express prior written consent of the City.
- (r) Any Proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion. The City may also invite a Proponent to adjust its Proposal to remedy any such problem, without providing the other Proponents an opportunity to amend their Proposals.

## 12.0 DEFINITIONS

12.1 In the RFP, the following capitalized terms have the following meanings:

- (a) **"Agreement"** means a contract entered into between the City and a successful Proponent, if any, following the conclusion of the RFP process, which contract is expected to be in substantially the same form as the Form of Agreement;
- (b) **"City"** means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter;
- (c) **"Form of Agreement"** means the form of agreement contained in Part D of the RFP;
- (d) **"Proponent"** means an entity, which is not, by the terms hereof, restricted from submitting a Proposal, and which does submit a Proposal;
- (e) **"Proposal"** means a proposal submitted in response to the RFP; and

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- (f) **“Proposal Form”** means the form contained in Part C of the RFP.
- 12.2 All other capitalized terms used in the RFP have the meanings given to them elsewhere in the RFP.

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PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS

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**1.0 CITY REQUIREMENTS**

- 1.1 The City has the following objectives and requirements (together, the "Requirements"):
- (a) One (1) Wide Area Mower with the option to purchase up to three (3) additional units;
  - (b) Further information regarding the Requirements, is contained in Annex 1 to the RFP.
- 1.2 The Requirements stated herein are current as of the date hereof, but they may change or be refined in the course of the evaluation of Proposals or otherwise.
- 1.3 Unless otherwise stated, if, and wherever, the Requirements state a brand name, a make, the name of a manufacturer, a trade name or a vendor catalogue number; it is for the purpose of establishing a grade or quality of materials, goods or equipment only. It is not intended to rule out the use of other equivalent materials, goods or equipment. If, however, products other than those specified are proposed in any Proposal, the Proposal must explicitly include the names of such products and their manufacturers, any trade names and any applicable vendor catalogue numbers, and the City may request that the Proponent provide specific evidence of equivalency. Evidence of quality in the form of samples may also be requested.
- 1.4 To the extent that the Requirements express estimates of quantities or volumes of goods or services expected to be required by the City, the City cannot offer any assurances that such quantities or volumes will in fact be required.

**2.0 ITEMS TO BE ADDRESSED IN EACH PROPOSAL**

- 2.1 Each Proposal should have: (i) a title page that clearly indicates the name of the Proponent and the general nature of the Proposal; (ii) a detailed table of contents; and (iii) an executive summary no more than one page long.
- 2.2 Each Proposal should contain a section titled "Technical Proposal," which should address the Requirements. This section of the Proposal should be divided into paragraphs that correspond to the numbered paragraphs of the foregoing Section 1 of this Part B and the numbered sections of Annex 1 to the RFP.

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2.3 Each Proposal should contain a section titled "Commercial Proposal," which should contain full details of the Proponent's proposed pricing and payment terms, which should be in accordance with Part A of the RFP, and, which should include a completed table in the following form:

Item	Qty	Description	Total Price
1	1	Wide Area Mower in accordance with the specifications in Annex 1	\$

Please state the pricing methodology that will be applied to the future purchase of optional units under this contract: i.e. what factors (such as exchange rates) will affect the pricing of the future units and what portion of the price is subject to change?

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Optional Items:

Item	Qty	Description	Unit Price
1	1	Extended Warranty in accordance with the specifications in Annex 1 (Item 1 - Options, Section A)	\$
2	1	Mulching Blades and Deck Kit in accordance with the specifications in Annex 1 (Item 1 - Options, Section B)	\$
3	1	Spare Wheel and Tire in accordance with the specifications in Annex 1 (Item 1 - Options, Section C)	\$
4	1	Snow Blower in accordance with the specifications in Annex 1 (Item 1 - Options, Section D)	\$
5	1	Snow Plow in accordance with the specifications in Annex 1 (Item 1 - Options, Section E)	\$
6	1	Alternate Turf Tires in accordance with the specifications in Annex 1 (Item 1 - Options, Section F)	\$
7	1	Recommended Options in accordance with the specifications in Annex 1 (Item 1 - Options, Section G)	\$
8	1	Recommended Options in accordance with the specifications in Annex 1 (Item 1 - Options, Section H)	\$
9	1	Recommended Options in accordance with the specifications in Annex 1 (Item 1 - Options, Section I)	\$

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

Reference should be made to the foregoing Section 1 of this Part B and Annex 1 to the RFP for any further requirements concerning pricing or payment terms, which should be addressed in each Proposal.

- 2.4 Each Proposal should contain a section titled "Proponent Overview," which should provide a description of the Proponent's company, purpose and history of successes.
- 2.5 Each Proposal should contain a section titled "Key Personnel," which should identify and provide professional biographical information for the key personnel that would perform the Proponent's work, outlining their intended roles in meeting the Requirements. If appropriate, also include a complete organization chart, identifying all roles and areas of responsibility.
- 2.6 Preference may be given to Proponents and proposed personnel that demonstrate knowledge and experience involving wide area mowers. Each Proponent should make clear in its Proposal its relevant knowledge and experience, and that of its proposed personnel.
- 2.7 Each Proposal should contain a section titled "References," which should provide names and contact information for approximately three parties for whom the Proponent has done work in the past.
- 2.8 Each Proposal should contain a section titled "Subcontractors," which should list all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors. If selected to enter into an Agreement with the City, the Proponent may be limited to using subcontractors listed in its Proposal.
- 2.9 If the City objects to a subcontractor listed in a Proposal, the City may permit a Proponent to propose a substitute Subcontractor acceptable to the City.
- 2.10 Each Proposal should contain a section titled "Work Plan," which should detail the sequential process by which the Proponent proposes to undertake the work, and which should include a timeline as necessary. The Proponent's work plan should make reference to the Requirements as appropriate. This section of the Proposal may be completed by cross-referencing the "Technical Proposal" section where appropriate.
- 2.11 The City is committed to environmental and socio-economic sustainability. Therefore, each Proposal should contain a section titled "Sustainability," wherein the Proponent should describe the environmental aspects of its Proposal. In addition, this section of the Proposal should include a completed table in the following form:

Sustainability Initiative	Description	Details	Response
a. Packaging Reduction	The City aims to reduce the packaging associated with acquiring various products. More and more suppliers are adopting innovative programs to reduce packaging.	Tell us about your proposed measures to reduce product packaging such as recycle ability, percentage of recycled content, return/collections programs and/or re-use. Examples include providing	

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PART B - CITY REQUIREMENTS AND ITEMS TO BE ADDRESSED IN PROPOSALS**

Sustainability Initiative	Description	Details	Response
		products in reusable packaging such as plastic totes, reducing unnecessary packaging such as shrink wrap or offering packaging that is made from recycled material.	
b. Greenhouse Gas/Carbon Reduction	The City aims to reduce its greenhouse gas/carbon emissions, where possible as part of its Climate Protection Program.	Tell us how the design and use of your product or service takes into account strategies to reduce its carbon footprint. Examples could include offering products with a limited amount of embedded carbon, having a strategy for limiting transportation-related to service provision and/or purchasing carbon credits to offset emissions	
c. Waste Reduction	The City aims to reduce waste where possible.	Tell us how your firm addresses waste minimization and diversion of waste from the landfill in the design of your product or service and its associated delivery, use and disposal. Examples include take-back programs you may have for your products at end-of-life or products that are made from recycled materials.	
d. Toxic Reduction	The City aims to reduce toxins and hazardous substances in the workplace where possible.	Tell us what steps your firm has taken to use 'design for environment' principles to reduce toxic and hazardous substances found in your products. Examples could include products that contain polyvinyl chlorides (PVCs) or volatile organic compounds (VOCs).	
e. Third Party Eco-labelling	The City aims to purchase, when possible, products that are eco-certified or eco-labelled by a recognized third party.	Describe and explain third party certification for the products to be supplied, which includes labelling requirements. State the type of testing performed, and the standards applicable to support biodegradable products completely breaking down in the landfills.	

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Sustainability Initiative	Description	Details	Response
f. Socio-economic Sustainability	Socio-economic sustainability is important to the City. As such, The City aims to do business with suppliers who are striving to advance social and economic wellbeing in the community.	Tell us about your firm's efforts with regards to socio-economic sustainability. Examples include, but are not limited to, broadening educational and professional development opportunities, supporting minority/youth groups, and supporting low-threshold job programs for vulnerable people.	

Additionally, each Proposal should be accompanied by a duly completed Declaration of Supplier Code of Conduct Compliance in the form of Annex 3.

- 2.12 Notwithstanding any other provision hereof, the City welcomes Proposals respecting innovative or novel approaches to the City's objectives and requirements and may consider value-creating Proposals that derogate from the Requirements. Each Proposal should contain a section titled "Deviations and Variations," in which the Proponent should: (i) note proposed deviations or variations from the terms and conditions set out in the RFP or from the Requirements, even if such deviations or variation are also noted elsewhere in the Proposal; and (ii) detail proposed amendments to the Form of Agreement. If no amendments to the Form of Agreement are proposed, the Proponent should state that its Proposal is fully consistent with the Form of Agreement.
- 2.13 If, in addition to proposing services which meet the Requirements, the Proponent wishes to offer an alternative or alternatives, the alternative solution(s) should to be submitted separately as an appendix within the Proposal. Any pricing impact of the alternative solution(s) should be provided separately in the appendix.
- 2.14 Each Proponent should note Section 9 of Appendix 1 to Part C and should include in its Proposal a section entitled "Conflicts; Collusion; Lobbying" as necessary.
- 2.15 The sections of each Proposal should be arranged in the order in which they are referred to in this Part B. Proponents should avoid, to the extent possible, the inclusion of other top-level Proposal sections.
- 2.16 Each Proponent must submit with its Proposal a Certificate of Existing Insurance, in the form of Annex 2 to the RFP, duly completed and signed by its insurance agent or broker as evidence of its existing insurance, along with a letter from its insurance broker or agent indicating whether or not (and, if not, then to what extent) it will be able to comply with the insurance requirements set out in the Form of Agreement, should the Proponent be selected as a successful Proponent. (Any successful Proponent will also be required to provide proof of the satisfaction of all insurance requirements prior to or concurrently with the City entering into any Agreement.)
- 2.17 Each Proponent must submit with its Proposal proof of valid WorkSafeBC registration. Such registration should be maintained as required by the Form of Agreement.
- 2.18 Each Proposal must be submitted under the cover of a completed Proposal Form, including Appendix 1 thereto.

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PART C - PROPOSAL FORM

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PROPOSAL FORM

RFP No. PS20140332, Supply and Delivery of Wide Area Mowers (the "RFP")

Proponent's Name: \_\_\_\_\_  
"Proponent"

Address: \_\_\_\_\_  
\_\_\_\_\_

Jurisdiction of Legal Organization: \_\_\_\_\_

Date of Legal Organization: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

The Proponent further acknowledges that it has read and agreed to the Legal Terms & Conditions attached as Appendix 1 hereto and has separately executed such Appendix 1. .

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

\_\_\_\_\_  
Signature of Authorized Signatory for the Proponent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature of Authorized Signatory for the Proponent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title

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PART C - PROPOSAL FORM

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APPENDIX 1 TO PROPOSAL FORM

LEGAL TERMS AND CONDITIONS

**1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS**

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

**2 DEFINITIONS**

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

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent as a result of the RFP.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix 1 is appended.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20140332, as amended from time to time and including all addenda.

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**3 NO LEGAL OBLIGATION ASSUMED BY THE CITY**

Despite any other term of the RFP or the Proposal Form, including this Appendix 1 (except only Sections 7, 8.2 and 11 of this Appendix 1, in each case to the extent applicable), the City assumes no legal duty or obligation to the Proponent or to any proposed subcontractor in respect of the RFP, its subject matter or the Proposal unless and until the City enters into a Contract, which the City may decline to do in the City's sole discretion.

**4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT**

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

**5 EVALUATION OF PROPOSALS**

**5.1 Compliance / Non-Compliance**

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

**5.2 Reservation of Complete Control over Process**

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

**5.3 Discussions/Negotiations**

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

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PART C - PROPOSAL FORM**

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**5.4 Acceptance or Rejection of Proposals**

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

**6 PROTECTION OF CITY AGAINST LAWSUITS**

**6.1 Release by the Proponent**

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

- (a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially))
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process,
- (c) the Proponent preparing and submitting the Proposal;
- (d) the City accepting or rejecting the Proposal or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

**6.2 Indemnity by the Proponent**

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

- (a) any alleged (or judicially determined) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process, or
- (c) liability on any other basis related to the RFP or the proposal process.

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6.3     **Limitation of City Liability**

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

7        **DISPUTE RESOLUTION**

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

- (a)     The arbitrator will be selected by the City's Director of Legal Services;
- (b)     Section 6 of this Appendix 1 will:
  - i.       bind the City, the Proponent and the arbitrator; and
  - ii.      survive any and all awards made by the arbitrator; and
- (c)     The Proponent will bear all costs of the arbitration.

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PART C - PROPOSAL FORM

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**8 PROTECTION AND OWNERSHIP OF INFORMATION**

**8.1 RFP and Proposal Documents City's Property**

- (a) All RFP-related documents provided to the Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.

**8.2 Proponent's Submission Confidential**

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council on the proposal results or announcing the results of the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

**8.3 All City Information Confidential**

- (a) The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (b) The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

**9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING**

**9.1 Declaration as to no Conflict of Interest in RFP Process**

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:
  - i. an official or employee of the City; or
  - ii. related to or has any business or family relationship with an elected official or employee of the City,

in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

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PART C - PROPOSAL FORM**

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

**9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply**

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

**9.3 Declaration as to No Collusion**

The Proponent confirms and warrants that:

- (a) the Proponent is not competing within the RFP process with any entity with which it is legally or financially associated or affiliated, and
- (b) the Proponent is not cooperating in any manner in relation to the RFP with any other proponent responding to the RFP.

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

**9.4 Declaration as to Lobbying**

The Proponent confirms and warrants that:

- (a) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; and
- (b) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of the Proposal, to influence the outcome of the RFP process,

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

**10 NO PROMOTION OF RELATIONSHIP**

The Proponent must not disclose or promote any relationship between it and the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures, web sites or other written materials (whether in print, digital, electronic or other format) without the express prior written consent of the City. The Proponent undertakes not to use the name, official emblem, mark, or logo of the City, including without limitation, "City of Vancouver", "Vancouver Police Board", "Vancouver Public Library", "Vancouver Park Board", "Vancouver Board of Parks and Recreation", or any other reference to any of the foregoing, without the express prior written consent of the City.

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PART C - PROPOSAL FORM

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11 GENERAL

- (a) All of the terms of this Appendix 1 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.
- (b) The legal invalidity or unenforceability of any provision of this Appendix 1 will not affect the validity or enforceability of any other provision of this Appendix 1, which will remain in full force and effect.
- (c) The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP process.
- (d) The Proponent consents to the City contacting any references named by the Proponent in the Proposal.

AS EVIDENCE OF THE PROPONENT'S INTENT TO BE LEGALLY BOUND BY THIS APPENDIX 1, THE PROPONENT HAS EXECUTED AND DELIVERED THIS APPENDIX 1 AS AN INTEGRAL PART OF ITS PROPOSAL FORM IN THE MANNER AND SPACE SET OUT BELOW:

\_\_\_\_\_  
Signature of Authorized Signatory for the Proponent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature of Authorized Signatory for the Proponent

\_\_\_\_\_  
Date

\_\_\_\_\_

# SUPPLY AGREEMENT

BETWEEN:

[SUPPLIER NAME]

AND:

CITY OF VANCOUVER

RELATING TO PS20140332 SUPPLY AND DELIVERY OF WIDE AREA MOWERS

DATED [INSERT]

## SUPPLY AGREEMENT

THIS AGREEMENT is made as of [insert]

BETWEEN:

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

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

(hereinafter referred to as the "City")

WHEREAS the Supplier is in the business of wide area mowers;

AND WHEREAS the City wishes to procure wide area mowers from the Supplier upon and subject to the  
terms and conditions hereinafter set forth,

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

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PART D - FORM OF AGREEMENT

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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;
- (b) **"Background IP"** has the meaning ascribed thereto in Section Error! Reference source not found.;
- (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 H or notified to the Supplier from time to time, as the same may be updated, modified, expanded, revised, supplemented and/or replaced from time to time by the City (as notified to the Supplier);
- (f) **"City's Manager"** means a manager who at the relevant time carries such designation from the City under, or in accordance with, ARTICLE 4;
- (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
  - (iii) 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

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PART D - FORM OF AGREEMENT

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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 the Site;
  - (j) "Contract Price" means the 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 its obligations under this Agreement, as detailed in Schedule B;
  - (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;

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- (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;

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- (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 the persons named in Schedule I (Key Project Personnel) and any replacement(s) approved by the City in accordance with **Error! Reference source not found.**;
- (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) **“Parties”** means the City and the Supplier and **“Party”** means one of them or either of them, as the context requires;
- (y) **“Permitted Purpose”** has the meaning ascribed thereto in Section 11.3;
- (z) **“Preferred Supplier”** means a person named in Schedule F;
- (aa) **“Proposal”** means the Supplier’s proposal dated [insert], submitted by the Supplier to the City in response to the RFP;

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- (bb) "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;
- (cc) "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;
- (dd) "RFP" means the City's Request for Proposal number PS20140332;
- (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 12.1;
- (gg) "Site" means each of the City worksites and other places at which any part of the Supply shall be performed.
- (hh) "Subcontractor" means any person named in a schedule to this Agreement as a subcontractor, or any other person appointed by the Supplier, in accordance with this Agreement, to perform any part of the Supply;
- (ii) "Supplier's Manager" means a manager who at the relevant time carries such designation from the Supplier under, or in accordance with, ARTICLE 4;
- (jj) "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;
- (kk) "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;

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- (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;
- (II) **"Time(s) for Completion"** means the time(s) stated in Schedule E by which the Supply or any particular Supply or part thereof must be completed, as such time(s) may be adjusted (including in relation to a particular instance of Supply), 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

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- (f) "control" when used to describe a relationship between one person and any other person, has the following meanings:
- (i) a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
  - (ii) a person controls an unincorporated entity, other than a limited partnership, if more than 50% of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
  - (iii) the general partner of a limited partnership controls the limited partnership; and
  - (iv) a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

#### 1.4 Schedules

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

Schedule A	Scope of Goods
Schedule B	Prices for Supply
Schedule C	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 9 and subject to the below Section **Error! Reference source not found.**, this Agreement shall terminate on the third anniversary of the Effective Date or on such later date as the Parties may agree in writing.
- (b) Subject to termination pursuant to ARTICLE 9, but notwithstanding Section 2.2(a), the term of this Agreement may be extended for up two successive one-year periods following the third anniversary of the Effective Date, at the option of the City, upon written notice from the City to the Supplier.

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**ARTICLE 3  
SUPPLY; GENERAL TERMS**

**3.1 Supply**

- (a) 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.
- (b) Notwithstanding any other provision hereof, any goods, services or works described in Schedule A shall be provided to the City only upon receipt by the Supplier of a purchase order from the City or another instruction given by the City pursuant to Section 4.1 relating to such Supply.
- (c) The Supplier shall maintain at all times sufficient business capacity and inventories of the supplies necessary for the provision of the Supply, to meet the business plans and requirements of the City.
- (d) In connection with the Supply, the Supplier shall provide to the City, without additional compensation, all services, conveniences, materials or features proposed in the Proposal that are not otherwise expressly provided for herein, as well as all other ancillary materials or services that are not expressly mentioned either herein or in the Proposal, but are reasonably inferable from the descriptions of the Supply herein or from the descriptions of proposed services, conveniences, materials or features in the Proposal.

**3.2 Application to Prior Acts**

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

**3.3 Sufficiency and Competence of Personnel**

- (a) The Supplier shall have and maintain at all times and in accordance with all applicable Laws, sufficient numbers of fit, skilled, qualified and experienced personnel to carry out the provision of the Supply within the times and in the manner required 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.

**3.4 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

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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; or
  - (ii) its examination by or on behalf of the City.

### 3.5 Standards and Requirements

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

- (a) all applicable Laws and Consents;
- (b) the specific requirements of Schedule A (Scope of Goods and Services), Schedule D (Specific Deliverables), Schedule E (Time Schedule for Supply), Schedule G (Project Budget) and the instructions of the City;
- (c) the City Policies; and
- (d) 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 3.5(a) to 3.5(d) in the order of priority in which such standards or requirements are listed (with Section 3.5(a) being of highest priority).

### 3.6 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.

### 3.7 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) All goods or materials provided under the Agreement as part of the Supply shall be new and fully warranted for a period of one year 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.
- (c) 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.

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- (d) 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.
- (e) 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.
- (f) The Supplier shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 3.7 or to evidence the Supplier's compliance with this Section 3.7, 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 3.7.

**3.8 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 described in Schedule A; however the City is not bound to treat the Supplier as its exclusive supplier of any goods or services.

**3.9 Defects and Acceptance**

- (a) If a Defect appears in the Supply, the City shall notify the Supplier accordingly.
- (b) 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.
- (c) 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.
- (d) 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(d) 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.

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**3.10 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 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.
- (e) Notwithstanding the foregoing provisions of this Section 3.10, the Supplier is responsible for the care of, and bears all of the risk of loss or damage to, each good, work or improvements supplied hereunder and each material used in connection with the Supply, until the completion of the Supply to the satisfaction of the City.

**ARTICLE 4  
CONTRACT MANAGERS**

**4.1 City's Managers**

- (a) The City hereby designates each of [insert] and [insert] 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 only be effective if in writing or confirmed in writing within seven days of oral instruction. Failure to comply with this Section 4.1 shall render any purported City's instruction invalid. However, this restriction does not apply to any instruction issued in an emergency situation or which relates to a threat or potential threat to the life, health or safety of any individual.
- (c) Notwithstanding the foregoing, each City's Manager may, in writing, delegate his or her authority hereunder to others.

**4.2 Supplier's Managers**

- (a) The Supplier hereby designates each of [insert] and [insert] as a "Supplier's Manager." Each Supplier's Manager, including any additional Supplier's Managers designated by

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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 (through an executive officer or City's Manager) to either of them shall be deemed to be valid and effective, if given as stated in Section 4.1(b).

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

#### **4.3 Designation of New Managers**

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

### **ARTICLE 5 SUPPLIERS' WARRANTIES AND COVENANTS**

#### **5.1 General Representations and Warranties**

The Supplier represents and warrants that:

- (a) the Supplier has the full right, power, and authority to enter into this Agreement and to perform the Supply;
- (b) the Supplier is a [corporation] duly organized, validly existing and in good standing under the laws of [jurisdiction] and is lawfully authorized to do business in the Province of British Columbia;
- (c) the Supplier is not a party to or bound by any agreement (written or oral), indenture, instrument, licence, permit or understanding or other obligation or restriction under the terms of which the execution, delivery or performance of this Agreement does or shall constitute or result in a violation or breach;
- (d) the Supplier has a valid City of Vancouver business license;
- (e) all statements made by the Supplier in its Proposal are true and accurate;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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

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them are appropriately skilled, competent and experienced and possess relevant qualifications having regard to the nature and extent of the Supply and the Sites;

**5.2 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

**5.3 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

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- (e) without prejudice to the foregoing Section 5.3(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.

**5.4 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.

**5.5 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.

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**5.6 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 any 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 5.6(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 5.6(b).

**5.7 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 6  
PAYMENT; AUDITS**

**6.1 Payment to the Supplier**

- (a) Subject to ARTICLE 9 and Section 6.3, 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 6.2(b) and Section 6.3.
- (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:

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- (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 Schedule B (Prices for Supply) and to have obtained all information and to have taken into account all circumstances, risks and other contingencies that may affect the cost of performing the Supply (including any circumstances, risks or contingencies that a contractor exercising Good Industry Practice would typically expect to encounter) and any other obligation under this Agreement. The Supplier shall not be entitled to any additional compensation beyond the Contract Price (including without limitation for escalation in the prices of goods, materials and labour) except as otherwise expressly stated in this Agreement.
- (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.

**6.2 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 number of the purchase order of the City relating to the particular Supply to which the invoice relates;
  - (ii) an itemized list of the amounts owing;
  - (iii) the time period to which the invoice relates;

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- (iv) a description of the portion of the Supply to which the invoice relates;
  - (v) the total amounts payable under the invoice;
  - (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 the Supply that are contained in any invoice (or in any shipping document, packing list or similar document) are void and of no effect, notwithstanding any statement in such document concerning the means by which the City may accept or be deemed to accept such terms or conditions.

### 6.3 Procedure for Invoices

- (a) The Supplier shall submit each of its invoices to the City, Attention: Accounts Payable, by email to [APInvoice@vancouver.ca](mailto: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.

### 6.4 Currency of Payment

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

### 6.5 Contested Claims for Payment

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

### 6.6 Audits

- (a) The Supplier shall maintain up-to-date records and accounts which clearly document the provision of the Supply and shall make the same available to the City upon request. The City may request copies of all such records and accounts which shall be provided to the City by the Supplier (subject to reimbursement of the Supplier's reasonable copying costs and any other direct costs and expenses, if any) at any time prior to the expiry of 365 days after completion of all of the Supply or earlier termination of this Agreement. For avoidance of doubt, any records and accounts provided by the Supplier in accordance with this Section 6.6(a) shall be deemed to be Confidential Information;
- (b) Not later than three years after the completion of all of the Supply or earlier termination of this Agreement, the City can itself, on notice of not less than 14 days, require that a firm of accountants, surveyors or other auditors nominated by it audit any such records and accounts of the Supplier by attending during normal working hours at the office where the records are maintained. For avoidance of doubt, any records and accounts or other documents provided by the Supplier in accordance with this Section 6.6(b) shall be provided only subject to the accountants, surveyors or other

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auditors, and each of them, being subject to and agreeing to meet such of the Supplier's reasonable requirements as to confidentiality as the Supplier deems (at its sole discretion) to be appropriate in the circumstances; and

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

**6.7 Set Off**

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

**ARTICLE 7  
CERTAIN ADDITIONAL OBLIGATIONS OF THE CITY**

**7.1 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 Schedule C (Items to be Provided by the City), to the Supplier for the purpose of the Supply, the personnel, equipment, facilities, services (including services of third parties) and information described in such Schedule C (if any), and in accordance therewith.

**7.2 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.

**7.3 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.

**7.4 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 Effective Date 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.

**ARTICLE 8  
LIABILITY AND INSURANCE**

**8.1 Covenants of Indemnification by the Supplier**

- (a) The Supplier shall indemnify and keep indemnified and hold the City, 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 a Site or any part thereof, or any property whether located at a 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.

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- (b) Nothing in this Section 8.1 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 8.1 and the City accepts such appointment.

**8.2 Conduct of Claims**

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

- (a) subject to Sections 8.2(b), 8.2(c) and 8.2(d), where it appears that a person is or may be entitled to indemnification from the Supplier in respect of all (but not part only) of the liability arising out of a claim, such person entitled to indemnification may at its sole election and subject to:
  - (i) approval by any relevant insurers (without prejudice to Section 8.2(f); and
  - (ii) the Supplier providing the party entitled to indemnification with a secured indemnity to its reasonable satisfaction against all costs and expenses (including legal expenses) that it may incur by reason of such action,permit or require the Supplier to dispute the claim on behalf of the person entitled to indemnification at the Supplier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations; provided that the person entitled to indemnification shall give the Supplier (provided at the Supplier's cost) all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;
- (b) with respect to any claim conducted by the Supplier pursuant to Section 8.2(a):
  - (i) the Supplier shall keep the person entitled to indemnification fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Supplier shall not bring the name of the person entitled to indemnification (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;

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- (c) a person entitled to indemnification shall be free to pay or settle any claim on such terms as it thinks fit (and without prejudice to its rights and remedies under this Agreement) if:
- (i) the Supplier is not entitled to, or is not permitted or instructed, take conduct of the claim in accordance with Section 8.2(a); or
  - (ii) the Supplier fails to comply in any material respect with the provisions of Sections 8.2(a) or 8.2(b);
- (d) the person entitled to indemnification pursuant to ARTICLE 8 shall be free at any time to give notice to the Supplier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Section 8.2(a) applies. On receipt of such notice the Supplier shall promptly take all steps necessary to transfer the conduct of such claim to the person entitled to indemnification, and shall provide to the person entitled to indemnification all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (e) if the Supplier pays to the person entitled to indemnification an amount in respect of an indemnity and the person entitled to indemnification subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the person entitled to indemnification shall forthwith repay to the Supplier whichever is the lesser of:
- (i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses (including legal expenses) properly incurred by the person entitled to indemnification in recovering the same; and
  - (ii) the amount paid to the person entitled to indemnification by the Supplier in respect of the claim under the relevant indemnity,
- provided that there shall be no obligation on the part of the person entitled to indemnification to pursue such recovery and that the Supplier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Supplier exceeds any loss sustained by the person entitled to indemnification;
- (f) the Supplier shall inform the person entitled to indemnification of the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement and in relation to such the person entitled to indemnification shall issue instructions accordingly; and
- (g) any person entitled to an indemnity from the Supplier must take all reasonable measures to mitigate any loss, damage or liability that it may suffer in respect of any such matter.

### 8.3 Insurance

- (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 an insurance company(ies) duly licensed or authorized to conduct business in the Province

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of British Columbia, during the term of this Agreement, Commercial General Liability insurance with limits of not less than Five Million (\$5,000,000) Dollars per occurrence and a deductible not greater than Five Thousand (\$5,000) Dollars. The insurance policy shall name the City of Vancouver, its officials, officers, employees, servants and agents as an Additional Insured with respect to liability claims for death, bodily injury or property damage arising out of the operations of the supplier pursuant to the delivery of services required by this agreement and will provide a Waiver of Subrogation in favour of the City. The insurance policy shall provide the City with sixty (60) days prior written notice of cancellation or material change resulting in reduction of coverage. The insurance policy shall be primary and any insurance or self-insurance maintained by the City shall be in excess of this insurance and shall not contribute to it.

- (b) The Supplier shall ensure that any Subcontractors also maintain the same insurance as the Supplier, having regard to the obligations under this Agreement which they are contracted to fulfil.
- (c) The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Section 8.3(a).
- (d) The cost of the insurances arising under this Section 8.3 shall be deemed to be incorporated into the prices specified in Schedule B.
- (e) Prior to commencement of this agreement and upon the annual renewal of the Supplier's Commercial General Liability insurance policy, the Supplier will provide the City with evidence of the required insurance to be taken out in the form of a detailed certificate of insurance and the insurance certificate shall not contain any disclaimer whatsoever.

**ARTICLE 9  
FORCE MAJEURE; TERMINATION**

**9.1 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

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- (v) within five days of the cessation of any Force Majeure event, the Party affected thereby shall submit a written notice to the other Party, specifying the actual duration of the delay of its obligations caused by the event of Force Majeure and the consequences resulting from such delay, and submit a specific plan to minimize and mitigate those consequences.
- (c) The affected Party shall use all reasonable diligence in accordance with Good Industry Practice to mitigate the cause and the result of an event of Force Majeure and to remedy the situation and resume its obligations under this Agreement, including complying with any instructions from the City, as to how to do so.
- (d) Notwithstanding the obligations of a Party affected by an event of Force Majeure pursuant to Sections 9.1(b) and 9.1(c), if the event of Force Majeure renders it impossible or impractical for the Supplier to provide the Supply in accordance with this Agreement for a period of at least 45 days, the City may terminate this Agreement upon notice delivered to the Supplier at any time following the expiration of such period of 45 days.

## 9.2 City Suspension and Termination Rights

The City shall have the following rights:

- (a) The City may 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 the Supply, minimise expenditure and comply with any reasonable instructions of the City relating to such Safety Incident, including any investigations.
- (b) Without prejudice to Section 9.2(a), the City may suspend all or part of the Supply (for such period as its determines) or terminate this Agreement at any time (and for its convenience) upon 30 days' written notice to the Supplier, which shall immediately upon receipt of such notice take all reasonable steps to wind down the performance of the Supply and to minimise expenditure, including complying with any instructions from the City as to how to do so.
- (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

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

### 9.3 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.

### 9.4 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.

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- (b) The Supplier shall be entitled to be paid its reasonable properly incurred costs of compliance with Section 9.4(a) and its reasonable demobilization costs, up to a maximum of \$10,000, 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 Schedule B (Prices for Supply).

**9.5 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 3.7 and 6.6, ARTICLE 8, Error! Reference source not found., ARTICLE 11 and ARTICLE 13 shall remain in force.

**ARTICLE 10  
ASSIGNMENT AND SUBCONTRACTING**

**10.1 Assignment**

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

**10.2 Subcontracting**

- (a) The Supplier shall not subcontract the whole or substantially all of the Supply.
- (b) Without prejudice to the foregoing Section 10.2(a), save in the case of Subcontractor(s) whose role in the provision of the Supply is expressly provided for in the schedules hereto (and only to the extent so provided for), the Supplier may not subcontract any part of the Supply without the City's prior written consent.
- (c) The Supplier shall include in each contract by which it engages a Subcontractor a provision allowing the benefit of such contract to be assigned by the Supplier to the City upon request.
- (d) The Supplier shall not without the written consent of the City (which shall not be unreasonably withheld or delayed) initiate or terminate any contract with a Subcontractor.
- (e) If the Supplier is unable to enter into a contract with a Subcontractor whose role in the provision of the Supply is expressly provided for in the schedules hereto, it shall as soon as reasonably practicable inform the City of the reason for such inability and procure the services of a replacement subcontractor that is acceptable to the City, acting reasonably.

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

**ARTICLE 11**  
**PRIVACY; CONFIDENTIALITY**

**11.1 Freedom of Information and Protection of Privacy Act**

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

**11.2 No Promotion**

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

**11.3 Confidentiality Obligations**

Each Party shall keep the Confidential Information of the other Party confidential and each Party shall not use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement or where, in the case of the City, otherwise necessary to pursue the public business of the City (a "Permitted Purpose"), or disclose the Confidential Information in whole or in part to any third party, except as expressly permitted by this ARTICLE 11.

**11.4 Disclosure to 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 11.

**11.5 Disclosures Required by Law**

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

**11.6 Other Disclosures by the City**

The City's obligations under this ARTICLE 11 are wholly subject to and qualified by, the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and, notwithstanding any other provision of this ARTICLE 11, the City may disclose

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Confidential Information in any manner compliant with such statute or otherwise in furtherance of its public role or duties, including in the course of publicly reporting to the Vancouver City Council.

**11.7 Interpretation; Enforcement and Survival**

- (a) Notwithstanding anything in this ARTICLE 11 to the contrary, nothing in this ARTICLE 11 shall affect the Parties' rights and obligations under Error! Reference source not found..
- (b) The Parties acknowledge that a breach of any of the obligations or provisions contained in this ARTICLE 11 could cause the other Party to suffer loss which may not be adequately compensated for by damages and that the other Party may, in addition to any other remedy or relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily quantifiable, and such breaching Party must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief.

**ARTICLE 12  
TAXES**

**12.1 Taxes for Own Accounts**

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

**12.2 Withholding Taxes**

- (a) Notwithstanding any other provision to the contrary, if the City determines that it is necessary to satisfy its obligations under any Law relating to Taxes, the City may:
  - (i) withhold an amount from a payment made to the Supplier; and
  - (ii) pay the withheld amount directly to the relevant Competent Authority.
- (b) If an amount withheld in accordance with Section 12.2(a) is paid by the City to the relevant Competent Authority, it is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier.
- (c) The Supplier agrees and acknowledges that it has no claim against the City for any amounts withheld and paid to the relevant Competent Authority in accordance with Section 12.2(a).

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

**ARTICLE 13  
DISPUTE RESOLUTION**

**13.1 Optional Procedure**

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

**13.2 Arbitration**

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

- (a) the arbitration shall be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the Parties, and failing agreement by the Parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia;
- (b) the parties shall share equally the costs of the arbitration but shall be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements; and
- (c) the arbitration shall take place in Vancouver, British Columbia and shall be governed by the laws of British Columbia.

**ARTICLE 14  
MISCELLANEOUS**

**14.1 Time of the Essence**

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

**14.2 Costs**

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

**14.3 Benefit of this Agreement**

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

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

#### 14.4 Entire Agreement

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

#### 14.5 Amendments and Waiver

Subject to Section Error! Reference source not found., no modification of or amendment to this Agreement is valid or binding unless set forth in writing and fully executed by both of the Parties hereto and no waiver of any breach of any term or provision of this Agreement is effective or binding unless made in writing and signed by the Party purporting to give such waiver and, unless otherwise provided, is limited to the specific breach waiver.

#### 14.6 Notices

- (a) Any order, demand, notice or other communication to be given to a Party in connection with this Agreement must be given in writing and must be given by personal delivery to a City's Manager or a Supplier's Managers, as applicable, or delivered by registered mail, by courier or by electronic transmission (with delivery confirmation), 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. If given by registered mail, courier or electronic transmission, any such demand, notice or other communication must be given at the relevant address or facsimile number listed below:

- (i) if to the Supplier:

[Supplier Name]  
[address]

Attention: [insert]

Facsimile: [insert]

- (ii) if to the City:

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

Attention: Category Manager, Fleet and Logistics

Facsimile: 604-873-7057

or to 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

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invoices shall be addressed as specified in Section 6.3 or as otherwise specified in the relevant City purchase order.

- (b) Any order, demand, notice or other communication 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, on the tenth Business Day following the deposit thereof in the mail;
  - (iii) if given by courier, on the Business Day following confirmation by the courier that the notice has been delivered; and
  - (iv) if given by electronic transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

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

#### 14.7 Governing Law and Jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the laws of the Province of British Columbia.
- (b) All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.
- (c) This Agreement is subject to the exclusive jurisdiction of the courts in the Province of British Columbia except:
  - (i) as otherwise agreed by the Parties pursuant to ARTICLE 13; and
  - (ii) to the extent necessary to enforce, in another jurisdiction, any decision or award made pursuant to ARTICLE 13 or any judgment of any court in the Province of British Columbia.

#### 14.8 Further Assurances

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

#### 14.9 Severance

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this

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

**14.10 Counterparts**

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

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**14.11 Independent Legal Advice**

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

**14.12 Electronic Execution**

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

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

[SUPPLIER NAME]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

**CITY OF VANCOUVER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

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SCHEDULE A -  
SCOPE OF GOODS AND SERVICES

[To be inserted]

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SCHEDULE B -  
PRICES FOR SUPPLY

[To be inserted]

All prices are inclusive of any provincial sales tax payable by the City under the *Provincial Sales Tax Act*, S.B.C.2012, c.35 ("PST").

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SCHEDULE C -  
CITY POLICIES

1. The City's Supplier Code of Conduct referred to in Annex 3 of the RFP.

PLEASE SEE ATTACHED  
SUPPLY AND DELIVERY OF WIDE AREA MOWERS

*\*VENDOR IS TO FILL IN THE **YELLOW CELLS** IN THE PROVIDED EXCEL SPREADSHEET AND INCLUDE THE SPREADSHEET WITH ITS SUBMISSION ON A MEMORY STICK OR E-MAIL IT TO [Julia.crosby@vancouver.ca](mailto:Julia.crosby@vancouver.ca)*

*AND ALSO FILL IN A HARD COPY VERSION TO BE SUBMITTED WITH THE REST OF THE BID - (THE HARD COPY WILL TAKE PRECEDENCE IF THERE ARE ANY DIFFERENCES BETWEEN THE TWO VERSIONS)\**

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
<b>Overview</b>				
The City of Vancouver Board of Parks and Recreation requires a wide area, ride-on rotary mower for mowing turf and grass at its parks and sports fields.		Required	Please Choose	
The mowers shall be designed to withstand the rigors of mowing in various environments with various obstacles, such as trees and benches, and have a high capacity for acreage mowed to ensure mowing schedules are maintained.				
Make, model, and model year offered.		State		
Data sheets of model offered.		Provide		
<b>A Mower</b>				
<b>A.1</b>	Type - Ride-on wide area mower with hydrostatic drive.	Required	Please Choose	
<b>A.2</b>	Cutting Mechanism - Three cutting decks consisting of rotary-type cutting blades.	Required	Please Choose	
<b>A.3</b>	Turning - Unit must be able to turn 180° while mowing to leave no uncut grass.	Required	Please Choose	
<b>A.4</b>	Cutting Width - 16' cutting width must be available.	Required	Please Choose	
<b>A.5</b>	Cutting Height - Adjustment range of at least 1" to 6".	Required	Please Choose	
<b>A.6</b>	Mowing Capacity - Unit shall be capable of mowing 8 hectares/hour.	Required	Please Choose	
<b>A.7</b>	Transport Speed - Unit shall be capable of travelling at 30 kilometres/hour.	Required	Please Choose	
<b>A.8</b>	Roll-over Stability - Unit shall be compliant with ANSI B71.4 (2004 or later) Safety Specifications Standard.	Required	Please Choose	
<b>A.9</b>	Height of model offered.	State		<i>cm (inches)</i>
<b>A.10</b>	Width of model offered (while transporting).	State		<i>cm (inches)</i>
<b>A.11</b>	Width of model offered (while mowing at full capacity).	State		<i>cm (inches)</i>
<b>A.12</b>	Wheelbase of model offered.	State		<i>cm (inches)</i>
<b>A.13</b>	Turning radius.	State		<i>cm (inches)</i>
<b>A.14</b>	Diameter of uncut inside circle.	State		<i>cm (inches)</i>
<b>A.15</b>	Width of cut in all available configurations.	State		<i>cm (inches)</i>
<b>A.16</b>	Range of cutting heights.	State		<i>cm (inches)</i>
<b>A.17</b>	Increments of cutting heights.	State		<i>cm (inches)</i>
<b>A.18</b>	Maximum mowing capacity.	State		<i>hectares/hour (acres/hour)</i>
<b>A.19</b>	Recommended mowing capacity.	State		<i>hectares/hour (acres/hour)</i>
<b>A.20</b>	Maximum forward cutting speed.	State		<i>km/hour (miles/hour)</i>
<b>A.21</b>	Recommended forward cutting speed.	State		<i>km/hour (miles/hour)</i>
<b>A.22</b>	Maximum forward transport speed.	State		<i>km/hour (miles/hour)</i>

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
<b>A.23</b>	Degree of grade unit will operate safely while mowing up a slope.	State		o
<b>A.24</b>	Degree of grade unit will operate safely while mowing down a slope.	State		o
<b>A.25</b>	Degree of grade unit will operate safely while mowing laterally on a slope.	State		o
<b>B</b>	<b>Mowing Decks and Cutting Blades</b>			
<b>B.1</b>	Deck Discharge - Mowing decks shall discharge to the rear of deck.	Required	Please Choose	
<b>B.2</b>	Deck Construction - Mowing decks shall be constructed of at least 12 gauge high strength steel.	Required	Please Choose	
<b>B.3</b>	Breakaway Wing Decks - Wing decks shall have collision break away function with reset when decks are raised.	Required	Please Choose	
<b>B.4</b>	Deck Anti-scalp - Decks shall include protection from turf scalping.	Required	Please Choose	
<b>B.5</b>	Deck Articulation - Deck shall be designed to articulate (pitch, roll, and yaw) to suit uneven ground contours (full-floating).	Required	Please Choose	
<b>B.6</b>	Wing Deck Lift - Mechanism to raise side wing decks shall include latches to eliminate possibility of decks falling during transport.	Required	Please Choose	
<b>B.7</b>	Blade Drive - Cutting power train shall include hydraulic drive motors to each deck.	Required	Please Choose	
<b>B.8</b>	Wing Deck Blade Operation - Wing deck blade motors shall shut off automatically when deck is raised.	Required	Please Choose	
<b>B.9</b>	Blade Material - Cutting blades shall be heat treated alloy steel.	Required	Please Choose	
<b>B.10</b>	Blade Interchangeability - All cutting blades shall be interchangeable.	Required	Please Choose	
<b>B.11</b>	Gauge of HSS steel decks are constructed of.	State		
<b>B.12</b>	Type of anti-scalp device installed on mowing decks.	State		
<b>B.13</b>	Degree of angle that decks are able to operate relative to horizontal.	State		o
<b>B.14</b>	Cutting blade material and hardness rating.	State		
<b>B.15</b>	Description of the wing deck lifting and holding mechanism.	Provide		
<b>B.16</b>	Description of how rotary blades are driven.	Provide		

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description		Requirements	Compliance Yes / No	Identify All Deviations / Stated Values
<b>C</b>	<b>Cab</b>			
<b>C.1</b>	General - Tractor shall come with a factory installed cab.	Required	Please Choose	
<b>C.2</b>	Roll Over Protection - Cab shall come with roll over protection structure (ROPS).	Required	Please Choose	
<b>C.3</b>	Climate Control - Cab shall come with air conditioning and heater.	Required	Please Choose	
<b>C.4</b>	Mirrors - Cab shall come with side and interior mounted rear view mirrors.	Required	Please Choose	
<b>C.5</b>	Windshield - Cab shall come with windshield wiper and washer.	Required	Please Choose	
<b>C.6</b>	Availability of storage space for tools, lunch kit, etc. in cab of model offered.	State		
<b>C.7</b>	Description of climate controls in offered model.	Provide		
<b>D</b>	<b>Wheels and Tires</b>			
<b>D.1</b>	General - Wheels shall be fitted with de-mountable, turf tread, pneumatic tires.	Required	Please Choose	
<b>D.2</b>	Type of tires on front axle.	State		
<b>D.3</b>	Size of tires front axle.	State		
<b>D.4</b>	Overall tread width of tires on front axle.	State		
<b>D.5</b>	Type of tires on rear axle.	State		
<b>D.6</b>	Size of tires rear axle.	State		
<b>D.7</b>	Overall tread width of tires on rear axle.	State		
<b>D.8</b>	Tire ground pressure with all decks lowered.	State		
<b>D.9</b>	Tire ground pressure with decks in transport position.	State		
<b>E</b>	<b>Brakes</b>			
<b>E.1</b>	General - Mower braking system shall have braking on at least two (2) wheels.	Required	Please Choose	
<b>E.2</b>	Supplemental Brake - Model offered shall have a supplementary mechanized emergency and parking brake.	Required	Please Choose	
<b>E.3</b>	Number of braking wheels.	State		
<b>F</b>	<b>Operator Control</b>			
<b>F.1</b>	Steering Wheel - Operator shall have automobile-style steering wheel for control of unit.	Required	Please Choose	
<b>F.2</b>	Power Steering - Steering shall be power-assisted.	Required	Please Choose	
<b>F.3</b>	Steering Wheel Adjustment - Steering wheel shall be able to tilt for adjustment by operator.	Required	Please Choose	

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
<b>F.4</b>	Direction Control - Operator controls for forward and reverse shall be user-friendly and ergonomic in design.	Required	Please Choose	
<b>F.5</b>	Type of throttle control offered.	State		
<b>F.6</b>	Location of throttle controls.	State		
<b>G</b>	<b>Operator's Seat</b>			
<b>G.1</b>	General - Operator's seat shall include arm rests, heavy duty upholstery and a high back.	Required	Please Choose	
<b>G.2</b>	Adjustments - Seat shall be adjustable for height, distance from controls, and weight (resistance).	Required	Please Choose	
<b>G.3</b>	Air Suspension - Seat shall be equipped with air suspension.	Required	Please Choose	
<b>G.4</b>	Description of seat construction.	Provide		
<b>G.5</b>	Description of seat adjustments provided.	Provide		
<b>H</b>	<b>Lighting</b>			
<b>H.1</b>	General - Model offered shall come with appropriate lighting packages for road transportation and low-light working conditions.	Required	Please Choose	
<b>H.2</b>	Description of the lighting included.	Provide		
<b>I</b>	<b>Engine</b>			
<b>I.1</b>	General - Mower shall include a heavy duty industrial/commercial diesel engine with the highest EPA emission rating available.	Required	Please Choose	
<b>I.2</b>	Horsepower - Engine shall develop at least 95 HP or more at rated operating speed.	Required	Please Choose	
<b>I.3</b>	Debris Clearance - Unit shall have an automatic mechanism for clearing debris from cooling system.	Required	Please Choose	
<b>I.4</b>	Cold Start Aid - Engine shall have a cold starting aid.	Required	Please Choose	
<b>I.5</b>	B5 Biodiesel - Unit shall be able to operate on B5 biodiesel without voiding warranty.	Required	Please Choose	
<b>I.8</b>	Air Intake Filter - Model offered shall come with an engine air filter.	Required	Please Choose	
<b>I.9</b>	Crank Case Oil Filter - Model offered shall come with an engine crank case oil filter.	Required	Please Choose	

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
I.6	B20 Biodiesel - Unit to operate on B20 biodiesel without voiding warranty.	Preference	Please Choose	
I.7	Alternative Fuel - Unit to operate on alternative fuel to reduce emissions without voiding warranty.	Preference	Please Choose	
I.10	Make and model of engine.	State		
I.11	EPA emissions rating for engine included on model offered.	State		
I.12	Number of cylinders on engine offered.	State		
I.13	Rated net horsepower at RPM	State		HP @ RPM
I.14	Type of cold starting aid included.	State		
I.15	If and how engine RPM is governed.	State		
I.16	If B20 is an acceptable fuel while maintaining warranty.	State		
I.17	Any alternative fuel engine available while maintaining warranty.	State		
I.18	Description of daily maintenance is performed to clear debris from cooling system.	Provide		
<b>J</b>	<b>Hydrostatic Drive</b>			
J.1	General - Chassis of model offered shall be driven by hydrostatic drive system.	Required	Please Choose	
J.2	Hydraulic Fluid - Hydraulic fluid of model offered shall be compatible with Shell Tellus S2 V46.	Required	Please Choose	
J.3	Traction System - Chassis shall have a four wheel drive traction control.	Required	Please Choose	
J.4	Hydraulic Fluid Level - Method shall be provided for measuring fluid level of hydraulic system.	Required	Please Choose	
J.5	Oil Filter - Hydraulic system shall come with an oil filter that allows only particles of 10 microns or smaller.	Required	Please Choose	
J.6	Make and model of hydraulic pump.	State		
J.7	Pressure rating of hydraulic pump.	State		kPa (psi)
J.8	Flow rating of hydraulic pump.	State		litres/minute (gallons/minute)
J.9	Whether power is transferred to wheels through differential or individual wheel motors.	State		
J.10	Type of hydraulic fluid recommended.	State		
J.11	Maximum particle size passed by hydraulic fluid filter.	State		microns
J.12	Whether oil cooler is built into the system.	State		
J.13	Whether speed control is performed by variable hydraulic flow control or engine RPM.	State		
J.14	How many and to which wheels drive is supplied to.	State		
J.15	Method provided for gauging hydraulic fluid level.	State		

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
<b>J.16</b>	Schematic of drive system.	Provide		
<b>K</b>	<b>Starting Circuit</b>			
<b>K.1</b>	General - Electric charging/starting system to include a heavy duty battery capable of providing and maintaining cranking power required for starting the engine in Vancouver area ambient temperature in the months of March to November.	Required	Please Choose	
<b>K.2</b>	Number of cold cranking amps in supplied battery.	State		CCA
<b>L</b>	<b>Fuel System</b>			
<b>L.1</b>	Capacity - Fuel Capacity shall allow for a minimum of eight (8) hours of continuous full-load operation.	Required	Please Choose	
<b>L.2</b>	Fuel/Water Separator - Model offered shall come with a fuel/water separator that includes a filter passing only particles of 10 microns or smaller.	Required	Please Choose	
<b>L.3</b>	Capacity of fuel storage.	State		litres
<b>L.4</b>	Maximum operating time on a single tank of fuel based on full load operation.	State		hours
<b>L.5</b>	Construction material of fuel tank.	State		
<b>L.6</b>	Maximum particle size passed by fuel/water separator and filter.	State		microns
<b>M</b>	<b>Exhaust</b>			
<b>M.1</b>	General - Model offered shall come with quietest automotive-type muffler with exhaust routed to the rear of the mower.	Required	Please Choose	
<b>M.2</b>	Type of muffler offered.	State		
<b>M.3</b>	Where exhaust outlet located.	State		
<b>N</b>	<b>Safety System</b>			
<b>N.1</b>	Hazard Protection - Model offered shall be in certified compliance with ANSI B71.4 (2004 or later) Safety Specifications standard and meet WorkSafe BC requirements.	Required	Please Choose	
<b>N.2</b>	Noise Level Standards - Model offered shall conform to WorkSafe BC Occupational Health and Safety Regulation for operation without ear protection for a work shift consisting of 8 hours.	Required	Please Choose	
<b>N.3</b>	Operator Warnings - Model offered shall have warning lights or gauges to indicate low or non-operation of charging circuit and low oil pressure.	Required	Please Choose	

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
<b>N.4</b>	Fusing - All electrical wiring shall be properly protected against overloading with all wiring routed in trucks, and protected from damage by tie-ups, harness sheath, and rubber grommets in metal conduits.	Required	Please Choose	
<b>N.5</b>	Backup Beeper - Model offered shall include an audible alarm to alert passersby when the unit is moving in reverse. Beeper shall sound when the hydrostatic drive is in reverse mode.	Required	Please Choose	
<b>N.6</b>	Noise level at operator's ear with engine at full operating speed, at mowing speed, and with mowing blades engaged.	State		dBA
<b>N.7</b>	Noise level at 15 metres away (from any point on machine) with engine at full operating speed, at mowing speed, and with mowing blades engaged.	State		dBA
<b>O</b>	<b>Instrumentation</b>			
<b>O.1</b>	Hour Meter - Model offered shall include a dash mounted meter for displaying operational hours of mower.	Required	Please Choose	
<b>O.2</b>	Odometer - Model offered shall include a dash mounted meter for displaying distance travelled by mower.	Required	Please Choose	
<b>O.3</b>	Speedometer - Model offered shall include a dash mounted meter for displaying travel speed of mower.	Required	Please Choose	
<b>O.4</b>	Temperature Gauges - Model offered shall include gauges for critical systems on the mower.	Required	Please Choose	
<b>O.5</b>	Radio - Model offered shall include AM/FM radio tuner with at least two (2) speakers.	Required	Please Choose	
<b>O.6</b>	CD Player - Model offered preferred to include a CD player.	Preference	Please Choose	
<b>O.7</b>	Temperature gauges included and locations temperature readings are taken.	State		
<b>P</b>	<b>Service and Support</b>			
<b>P.1</b>	Maintenance Documentation - Complete checklist-style preventative maintenance schedule shall be provided upon delivery.	Required	Please Choose	
<b>P.2</b>	Lubrication Chart - Complete lubrication chart showing lube points and greasing frequency for intended application and environment upon delivery.	Required	Please Choose	
<b>P.3</b>	Schematics - Electrical and hydraulic schematics shall be provided upon delivery.	Required	Please Choose	
<b>P.4</b>	Service Manuals - Three (3) sets of service manuals shall be provided upon delivery.	Required	Please Choose	

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
P.5	Parts Manuals - Two (2) sets of parts manuals shall be provided upon delivery.	Required	Please Choose	
P.6	Operator Manuals - One (1) operator manual shall be provided upon delivery.	Required	Please Choose	
P.7	Parts and Inventory - Lead time for parts shall be a maximum of 24 hours.	Required	Please Choose	
P.8	Dollar value of parts stocked in Vancouver for make and model of offered.	State		\$
P.9	Location of nearest complete parts warehouse in-lieu-of Vancouver location.	State		
P.10	Parts List - List of part stock numbers and serial numbers for major system components shall be supplied as listed in Annex 2. Spreadsheet format is required.	Provide		
P.11	One (1) PDF copy of each manual (service, parts, and operator's).	Provide		
<b>Q</b>	<b>Demonstration and Training</b>			
Q.1	Demonstration - Within 2 weeks of the City's request, a demonstration unit shall be provided. Demonstration shall be available between the hours of 7:00am and 3:00pm at a site specified by the City.	Required	Please Choose	
Q.2	Operator Training - At the City's request, a training session outlining all information needed for the operator to safely and efficiently operate the mower shall be provided. Session shall be available between the hours of 7:00am and 3:00pm at a site specified by the City.	Required	Please Choose	
Q.3	Technician Training - At the City's request, a training session outlining all the prescribed maintenance, diagnostics, and common repair procedures of model offered shall be provided. Session shall be available between the hours of 7:00am and 3:00pm at a site specified by the City.	Required	Please Choose	
Q.4	Pre-requisites, if any, for trainees in either course.	State		
Q.5	Recommended length of training sessions.	State		
Q.6	Description of training methodology and aids used (CD's, DVD's, etc.) in training sessions.	Provide		
Q.7	Course outline with subject descriptions for operator training session.	Provide		
Q.8	Course outline with subject descriptions for technician training session.	Provide		

Item #1 - Wide Area Mower				
Supplier's Name: _____		Make & Model of Proposed Equipment: _____		
	Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values
<b>R</b>	<b>Warranty</b>			
<b>R.1</b>	Basic Coverage - Chassis, engine, and power train shall be covered for at least 1 year from the date machine is put into service by the City.	Required	Please Choose	
<b>R.2</b>	In-House Warranty - To reduce downtime and travel costs, City should have a warranty agreement with manufacturer whereby City staff, which are able to perform said work, will complete warranty work and for which the City will be reimbursed.	Required	Please Choose	
<b>R.3</b>	Applicable warranty period and terms.	State		
<b>R.4</b>	Warranty and terms with components and parts not covered within standard model warranty.	Provide		
<b>R.5</b>	Details of in-house warranty agreements.	Provide		
<b>S</b>	<b>Delivery</b>			
<b>S.1</b>	Lead Time - Shortest lead time from time of order shall be considered.	Required	Please Choose	
<b>S.2</b>	Fuel Tank - Fuel tank shall be full upon delivery.	Required	Please Choose	
<b>S.3</b>	Keys - Unit shall be delivered with three (3) full sets of keys.	Required	Please Choose	
<b>S.4</b>	Delivery Location - Unit shall be delivered F.O.B. to:  City of Vancouver Engineering - Equipment Services Manitoba Works Yard 250 West 70th Avenue Vancouver, BC V5X 2X1	Required	Please Choose	
<b>S.5</b>	Guaranteed delivery lead time from placement of order.	State		

Options				
Supplier's Name: _____				
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
<b>Options</b>				
	The City of Vancouver would like information on optional equipment that may be selected in addition to or in place of those specified in Item 1.			
<b>A</b>	<b>Extended Warranty</b>			
<b>A.1</b>	General - Warranty coverage beyond the standard coverage provided for model offered.	Required	Please Choose	
<b>A.2</b>	Description of what is offered.	Provide		
<b>A.3</b>	Details of manufacturer's extended warranty.	Provide		
<b>B</b>	<b>Mulching Blades and Deck Kit</b>			
<b>B.1</b>	General - Blades and kit for mulching during fall and winter months.	Required	Please Choose	
<b>B.2</b>	Description of what is offered.	Provide		
<b>C</b>	<b>Spare Wheel and Tire</b>			
<b>C.1</b>	General - Spare wheel and tire for front and rear axles.	Required	Please Choose	
<b>C.2</b>	Description of what is offered.	Provide		
<b>D</b>	<b>Snow Blower</b>			
<b>D.1</b>	General - Snow blower attachment for use in winter months.	Required	Please Choose	
<b>D.2</b>	Description of what is offered.	Provide		
<b>E</b>	<b>Snow Plow</b>			
<b>E.1</b>	General - Snow plow attachment for use in winter months.	Required	Please Choose	

Options				
Supplier's Name: _____				
Description	Requirements	Compliance Yes / No	Identify All Deviations / Stated Values	
E.2	Description of what is offered.	Provide		
<b>F</b>	<b>Alternate Turf Tires</b>			
F.1	General - Alternate tires with greater traction on turf surfaces for both front and rear axles.	Required	Please Choose	
F.2	Description of what is offered.	Provide		
<b>G.5</b>	<b>Recommended Option 1</b>			
G.1	General - Option recommended for consideration not included in this specification.		Please Choose	
G.2	Description of what is offered.	Provide		
<b>H</b>	<b>Recommended Option 2</b>			
H.1	General - Option recommended for consideration not included in this specification.		Please Choose	
H.2	Description of what is offered.	Provide		
<b>I</b>	<b>Recommended Option 3</b>			
I.1	General - Option recommended for consideration not included in this specification.		Please Choose	
I.2	Description of what is offered.	Provide		

REQUEST FOR PROPOSALS NO. PS20140332  
 SUPPLY AND DELIVERY OF WIDE AREA MOWERS  
 ANNEX 2 - CERTIFICATE OF EXISTING INSURANCE



**CERTIFICATE OF EXISTING INSURANCE  
 TO BE COMPLETED AND APPENDED TO THE PROPOSAL/TENDER**

Section 2 through 8 – to be completed and executed by the insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
*and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.*

**NAMED INSURED** *(must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)*

**BUSINESS TRADE NAME or DOING BUSINESS AS** \_\_\_\_\_

**BUSINESS ADDRESS** \_\_\_\_\_

**DESCRIPTION OF OPERATION** \_\_\_\_\_

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**

INSURER _____	Insured Values (Replacement Cost) -
TYPE OF COVERAGE _____	Building and Tenants' Improvements \$ _____
POLICY NUMBER _____	Contents and Equipment \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**

Including the following extensions:	INSURER _____
√ Personal Injury	POLICY NUMBER _____
√ Property Damage including Loss of Use	POLICY PERIOD From _____ to _____
√ Products and Completed Operations	<b>Limits of Liability (Bodily Injury and Property Damage Inclusive) -</b>
√ Cross Liability or Severability of Interest	Per Occurrence \$ _____
√ Employees as Additional Insureds	Aggregate \$ _____
√ Blanket Contractual Liability	All Risk Tenants' Legal Liability \$ _____
√ Non-Owned Auto Liability	Deductible Per Occurrence \$ _____

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles

INSURER _____	<b>Limits of Liability -</b>
POLICY NUMBER _____	Combined Single Limit \$ _____
POLICY PERIOD From _____ to _____	<i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i>

6.  **UMBRELLA OR**  **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive) -**

INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE** **Limits of Liability**

INSURER _____	Per Occurrence/Claim \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Occurrence/Claim \$ _____

*If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date:* \_\_\_\_\_

8. **OTHER INSURANCE**

TYPE OF INSURANCE _____	<b>Limits of Liability</b>
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____
TYPE OF INSURANCE _____	<b>Limits of Liability</b>
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

**SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE**

\_\_\_\_\_ Dated \_\_\_\_\_  
**PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER**

REQUEST FOR PROPOSALS NO. PS20140332  
SUPPLY AND DELIVERY OF WIDE AREA MOWERS  
ANNEX 3 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

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**DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE**

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

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

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

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

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

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

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_