SUPPLY AGREEMENT

BETWEEN:

<SUPPLIER NAME>

AND:

CITY OF VANCOUVER

RELATING TO <>

DATED <>

SUPPLY AGREEMENT

THIS AGREEMENT is made as of <>

BETWEEN:

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

AND:

> **CITY OF VANCOUVER**, a municipal corporation continued under the *Vancouver Charter* (British Columbia) and having an office at 453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4**< When required add: ", as represented by its Board of Parks and Recreation.">**
>
> (hereinafter referred to as the "**City**")

WHEREAS the Supplier is in the business of <>;

AND WHEREAS the City wishes to purchase <>, upon and subject to the terms and conditions hereinafter set forth,

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

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ARTICLE 1
INTERPRETATION

1.1 Definitions

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

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

(b) "**Business Day**" means a day that is not a Saturday, a Sunday or a public holiday in Vancouver, British Columbia;

(c) "**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;

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

(i) this Agreement; or

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

but does not include:

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

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

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

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

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

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

(e) "**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 from any Competent Authority in connection with the Supply;

(f) "**Delivery**" means the completion of delivery of the Products ordered in a particular Order, as amended, in accordance with Section 3.4;

(g) "**Delivery Date**" has the meaning ascribed to such term in Section 3.2(b)(iv);

(h) "**Delivery Location**" has the meaning ascribed to such term in Section 3.2(b)(iv);

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

(j) "**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;

(k) "**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 a Party to perform its obligations under this Agreement;

(l) "**Group**" means:

(i) in respect of the Supplier, the group constituted from time to time by:

(A) the Supplier;

(B) all persons that directly or indirectly control or are controlled by the Supplier; and

(C) all persons that are directly or indirectly controlled by any person that directly or indirectly controls the Supplier; and

(ii) in respect of the City, the group constituted from time to time by:

(A) the City; and

(B) all bodies corporate directly or indirectly controlled by the City.

(m) "**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;

(n) "**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;

(o) "**Letter Agreement**" means an agreement in the form of Schedule D.

(p) "**Order**" means an order for Products submitted by the City in accordance with Section 3.2, which may be titled "Purchase Order";

(q) "**Other City Entity**" means each of: <⌨ the Vancouver Public Library Board, the Vancouver Police Board, the Vancouver Art Gallery Association and the Parking Corporation of Vancouver>;

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

(s) "**Permitted Purpose**" has the meaning ascribed thereto in Section 7.1;

(t) "**Products**" means the products set out in Schedule A, and, where the context requires, Products ordered or supplied hereunder;

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

(v) "**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;

(w) "**RFP**" means the City's Request for Proposal number PS<⌨>;

(x) "**Sales Tax**" has the meaning ascribed to such term in Section 8.1;

(y) "**Specifications**" means, for each Product, the specifications therefor set forth in Schedule B;

(z) "**Subcontractor**" means any person engaged by the Supplier to perform any part of the Supply;

(aa) "**Supply**" means the supply of Products by the Supplier to the City pursuant to Orders;

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

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

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

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

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

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

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

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;

(d) the rule of interpretation known as ejusdem generis shall not apply;

(e) 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;

(f) 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

(g) "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 Products and Prices
Schedule B Product Specifications
<Schedule C Estimate of Product Requirements>.
<Schedule D Form of Letter Agreement>.

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 6< and subject to the below Section 2.2(b)>, this Agreement shall terminate <on the [●] anniversary of the Effective Date> or on such later date as the Parties may agree in writing.

(b) < Subject to termination pursuant to ARTICLE 6, but notwithstanding Section, the term of this Agreement may be extended for up two successive one-year periods following the [●] anniversary of the Effective Date, at the option of the City, upon written notice from the City to the Supplier.>

(c) Notwithstanding the foregoing, if the City and the Supplier continue to deal with each other in respect of the subject matter of this Agreement following the expiry of this Agreement, without any additional or other written agreement in respect thereof, this Agreement shall be deemed to have been renewed on a month-to-month basis on the same terms and conditions as

before the expiry of the Agreement and it may be cancelled without cause by either party on thirty (30) days' prior written notice to the other.

ARTICLE 3
SUPPLY; GENERAL TERMS

3.1 Supply

(a) During the term of effectiveness of this Agreement, the Supplier shall supply, and the City shall purchase, such quantities of Products as the City may order under Section 3.2, in accordance with this Agreement.

(b) The Supplier shall maintain at all times sufficient inventories of the Products to meet the business plans and requirements of the City.

(c) Without limiting the foregoing Section 3.1(a) <⌨ Schedule C hereto> contains a current estimate of the City's Product requirements for each of the three successive 12 month periods beginning on the Effective Date. The Supplier acknowledges such estimates and affirms its capacity to supply Products to the City in accordance therewith; although the City can offer no assurances that it shall purchase Products in accordance with such estimates.

(d) During the term of effectiveness of this Agreement, the City may also, from time to time, direct the Supplier to supply Products to one or more of the Other City Entities at the price(s) specified herein and otherwise on the terms and conditions stated herein, and the Supplier shall comply with each such direction. Moreover, the Supplier shall, upon the further request of the City, promptly enter into a Letter Agreement (or failing that shall be deemed to have entered into a Letter Agreement) with each relevant Other City Entity memorializing that the Supplier shall supply Products to such Other City Entity in accordance herewith.

3.2 Orders

(a) The City may deliver Orders to the Supplier from time to time during the term of effectiveness of this Agreement.

(b) Each Order shall:

(i) be given in writing;

(ii) refer to this Agreement;

(iii) specify the Products ordered; and

(iv) specify the date by which the Products ordered pursuant to the Order are to be delivered (the "**Delivery Date**"), and the location or address to which they are to be delivered (the "**Delivery Location**"), <⌨provided that the Delivery Date for each Order must not be earlier than [●] after the date on which the relevant Order is submitted to the Supplier; and> provided <⌨further> that the Delivery Location for each Order must be one of:

(A) <>;

(B) <>; and

(C) <>.

3.3 Product and Supply Requirements

(a) The Supplier shall manufacture, pack, transport and supply the Products (in each case to the extent applicable) in accordance with all:

(i) Product manufacturer recommendations and requirements;

(ii) generally accepted industry standards and practices; and

(iii) applicable Laws.

(b) The Products supplied to the City by the Supplier under this agreement shall:

(i) be new;

(ii) conform to the Specifications;

(iii) be free from defects in design, material and workmanship and remain so for <> months after Delivery; and

(iv) comply with all applicable Laws.

(c) The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.

(d) The Supplier shall obtain and maintain in force at all times all Consents needed to manufacture (if applicable) and supply the Products in accordance with the terms of this Agreement.

(e) The Supplier shall ensure that title in Products supplied by the Supplier hereunder, when such title passes to the City hereunder, shall be free and clear of Encumbrances. The Supplier shall not enter any contract that reserves ownership of Products 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.

(f) The Supplier shall adhere to, and shall ensure that the Products and Supply conform to, the City's Supplier Code of Conduct referred to on page <> of the <RFP>.

3.4 Delivery Requirements

(a) The Supplier shall deliver the Products ordered in each Order to the applicable Delivery Location by the applicable Delivery Date. <The Supplier shall not, however, deliver the Products ordered in an Order more than [●] Business Days in advance of the Delivery Date without the prior written consent of the City.>

(b) Delivery of the Products specified in an Order shall be complete on <their delivery to [●] at the Delivery Location> <the completion of their unloading at the Delivery Location> <their arrival at the Delivery Location>.

(c) The Supplier shall not deliver the Products specified in an Order by instalments except with the prior written consent of the City.

(d) If the Products specified in an Order are not delivered in accordance herewith by the specified Delivery Date, then, without limiting any other right or remedy the City may have under this Agreement or otherwise, the City may:

(i) refuse to take any subsequent attempted delivery of such Products associated with such Order;

(ii) obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the City in obtaining such substitute products; or

(iii) claim damages against the Supplier for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Products specified in the Order by the Delivery Date,

provided that the Supplier shall have no liability for any failure or delay in delivering the Products specified in an Order to the extent that such failure or delay is caused by the City's failure to comply with its obligations under this Agreement.

(e) Each shipment of Products shall be accompanied by a delivery document from the Supplier showing the Order number, the date of the Order, the type and quantity of Products included in the Order, and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.

(f) If the Supplier requires the City to return any shipping containers, or other packaging or shipping materials, to the Supplier, that fact must be clearly stated on the delivery document accompanying the relevant Products, and any such returns shall be at the Supplier's expense.

(g) In respect of any Products that originate outside Canada, the Supplier shall be responsible for all customs and import Taxes, costs, expenses, administrative duties and formalities.

3.5 Rejection of Defective Products

(a) The City shall not be deemed to have accepted any particular Products until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Products, until a reasonable time after the latent defect has become apparent.

(b) If any Products delivered to the City do not comply with the Specifications, or are otherwise not in conformity with the terms of this Agreement, then,

without limiting any other right or remedy that the City may have, the City may at any time reject those Products and:

(i) require the Supplier to remove the rejected Products from any City facility or work site at the Supplier's risk and expense within <> Business Days of being requested to do so;

(ii) require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within <> Business Days of being requested to do so;

(iii) require the Supplier to repay the price of the rejected Products in full (whether or not the City has previously required the Supplier to repair or replace the rejected Products); and

(iv) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that are not in conformity with the terms of this Agreement.

(c) The City's rights and remedies under this Section 3.5 are in addition to the rights and remedies available to it under ARTICLE 5, ARTICLE 6 and applicable Laws.

(d) The terms of this Agreement shall apply to any repaired or replacement Products supplied by the Supplier pursuant to Section 3.5(b).

(e) If the Supplier fails to promptly repair or replace rejected Products in accordance with clause 3.5(b), the City may, without affecting any of its other rights hereunder, obtain substitute products from a third-party supplier, or have the rejected Products repaired by a third party, and the Supplier shall reimburse the City for the costs it incurs in doing so.

3.6 Risk and Title

(a) The risk in Products delivered to the City hereunder shall pass to the City <on Delivery>. Title to Products delivered to the City hereunder shall pass to the City <on Delivery>. 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 Products to the City, free and clear of all Encumbrances.

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

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

(d) <the Supplier has a valid City of Vancouver business license or a Metro West Inter-Municipal business license that applies to all of the Supply>;

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

(f) the Supplier is an authorized distributor of the Products; and

(g) the Supplier and the Supplier's personnel and Subcontractors have the skills, training, experience and expertise which are necessary to supply the Products in accordance with the terms of this Agreement.

3.8 Product Warranties

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

(b) All Products provided under the Agreement shall be non-defective and fit for their respective intended purposes, shall function correctly, as intended, and shall be safe.

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

(a) If requested by the City, the Supplier shall handle and manage any claim on a manufacturer warranty for any defect in any Product.

(d) The Supplier shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 3.8 or to evidence the Supplier's compliance with this Section 3.8, 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 3.8.

3.9 No Exclusivity

(a) The **<**City intends to use the Supplier as a preferred supplier of the Products; however the**>** City is not bound to treat the Supplier as its exclusive supplier of any Products.

(b) The City shall be entitled, in its sole discretion, to purchase products of the same type as, or similar to, the Products, from any supplier at any time.

3.10 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 4
PAYMENT

4.1 Payment to the Supplier

(a) The Supplier shall be entitled to invoice the City for each Order made by the City, on or at any time after Delivery.

(b) Subject to ARTICLE 6, the City shall pay the Supplier in respect of each Order in accordance with Section 4.3, Schedule A and ARTICLE 8, following the receipt of an invoice relating to such Order prepared and delivered in accordance with Section 4.1(a), Section 4.2 and Section 4.3 <and upon compliance with Section 4.6>

(c) 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.

4.2 Content of Invoices

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

(i) the relevant Order number;

(ii) the invoice date;

(iii) an itemized list of the amounts owing and details of any applicable taxes;

(iv) a description of the Products to which the invoice relates; and

(v) the total amount payable under the invoice; and

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

(b) 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.

4.3 Procedure for Invoices

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

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

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

4.4 Currency of Payment

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

4.5 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).

4.6 Fuel Usage Reporting

The Supplier shall <together with each invoice submitted to the City by the Supplier hereunder> <annually on each anniversary of the Effective Date> deliver a written report to the City<, in the form of Appendix <>,> **>** detailing the type(s) and quantity(ies) of fuel(s) used by the Supplier and its Subcontractors to operate vehicles, equipment and machinery in the manufacture and delivery of the Products from the date of the last such report (or, if none, from the Effective Date) to the date of the report.

ARTICLE 5
LIABILITY AND INSURANCE

5.1 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 or charges (including those imposed by statute or otherwise imposed), arising out of, in connection with or consisting of:

(i) any loss or damage arising from a claim by any third party concerning or arising out of the Supply or the use of the Products, to the extent that such claim arises out of any negligence, wilful misconduct or failure to adhere to this Agreement by the Supplier or any of its Representatives;

(ii) any occupational illness, injury or death of any person, which occurs during, or as a result of, the Supply or the use of the Products, to the extent that such illness, injury or death is attributable to the acts or omissions of the Supplier or any of its Representatives or is attributable to a Product attribute, feature, defect or failure;

(iii) any other failure by the Supplier to fully comply with the provisions of this Agreement;

(iv) any defect in any of the Products or any failure of any Product or any failure of any Product to meet reasonable safety standards or applicable safety requirements;

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

(vi) any actual or alleged infringement of any Intellectual Property Rights caused by the Supply or the use of the Products, and

(vii) any breach of the warranties of the Supplier contained herein.

(b) Nothing in this Section 5.1 or 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.

(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 5.1 and the City accepts such appointment.

5.2 Insurance

(a) In addition to those mandatory insurance policies that the Supplier is required to carry by any applicable Laws, the Supplier shall take out and maintain in force, with a reputable insurance company legally authorized to conduct

business in British Columbia, during the term of this Agreement and for a period of five years afterwards, commercial general liability insurance with coverage of not less than $<⌨> million per occurrence and at least $<⌨> million of annual aggregate coverage endorsing the City as an additional insured on a primary and non-contributory basis and providing a waiver of subrogation in favour of the City.

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

(c) The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Section 5.2(a).

(d) The cost of the insurances arising under this Section 5.2 shall be deemed to be incorporated into the prices specified in Schedule A.

(e) As a condition precedent to any payment from the City to the Supplier under this Agreement, and as and when reasonably requested by the City, the Supplier shall provide documentary evidence (to the reasonable satisfaction of the City, including by completing the City's standard reporting documents used for this purpose) that the insurances required by this Section 5.2 have been taken out and are being maintained.

ARTICLE 6
FORCE MAJEURE; TERMINATION

6.1 Force Majeure

(a) No Party shall be deemed to be in breach of this Agreement or otherwise liable to another 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 Parties, specifying the nature and extent of the event of Force Majeure, as soon as reasonably practicable 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 any of the other Parties in respect of extra costs and expenses incurred as a result of the event of Force Majeure; and

(iv) it shall use all reasonable diligence to mitigate the cause and the result of the event of Force Majeure and to remedy the situation and resume its obligations under this Agreement.

(c) Notwithstanding the obligations of a Party affected by an event of Force Majeure pursuant to Section (b), 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 <> days, the City may terminate this Agreement upon notice delivered to the Supplier at any time following the expiration of such period of <> days.

6.2 Purchaser Termination Rights

The City shall have the following rights:

(a) The City may terminate this Agreement at any time (and for its convenience) upon <> days' written notice to the Supplier.

(b) 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 <> days or such longer period as agreed by the Parties, the City may by a further notice to the Supplier of at least <> days terminate this Agreement.

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

6.3 Supplier Termination Rights

After giving at least seven days' written notice to the City, the Supplier may terminate this Agreement when:

(a) 90 days after the due date for payment of an invoice issued by the Supplier to the City hereunder, 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 45 days following the issue of such reminder notice; or

(b) the City commits any material persistent breaches of its obligations under this Agreement, which render performance by the Supplier of its obligations under this Agreement or a substantial part thereof impossible or significantly adversely affect such performance of this Agreement as a whole, and further which remain irremediable after 90 days.

6.4 Consequences of Termination

(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 Section 3.7, ARTICLE 5, ARTICLE 7 and ARTICLE 9 shall remain in force.

ARTICLE 7
RIGHTS AND OBLIGATIONS CONCERNING INFORMATION

7.1 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.

7.2 No Promotion

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

7.3 Confidentiality Obligation

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 making use of the Products (a "**Permitted Purpose**"), or disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this ARTICLE 7.

7.4 Disclosure to Representatives

A Party may disclose another 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 7.

7.5 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 such 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.

7.6 Other Disclosures by the City

The City's obligations under this ARTICLE 7 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 7, the City may disclose Confidential Information in any manner compliant with such statute or otherwise in furtherance of its public role or duties, including in the course of publicly reporting to the Vancouver City Council.

ARTICLE 8
TAXES

8.1 Taxes for Own Accounts

Unless otherwise expressly stated in this ARTICLE 8, any Taxes becoming due and payable by either Party pursuant to any applicable Laws by either Party 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 prices set forth in Schedule A include 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.

8.2 Withholding Taxes

(a) Notwithstanding any other provision to the contrary, if the City considers it 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 8.2(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 8.2(a).

(d) If the City does not withhold an amount under Section 8.2(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 8.2(a).

ARTICLE 9
DISPUTE RESOLUTION

9.1 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.

9.2 Arbitration

In the event that Parties agree to arbitration pursuant to Section 9.1:

(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. 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

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

ARTICLE 10
MISCELLANEOUS

10.1 Assignment

(a) The Supplier shall not assign this Agreement (including by operation of law) without the express prior written consent of the City.

(b) If the Supplier is a company, then any change in the control of the company shall be deemed to constitute an assignment for the purposes of Section 10.1(a).

(c) No assignment permitted by the City shall relieve the Supplier from any obligation under this Agreement or impose any liability upon the City.

(d) The City may at any time and from time to time assign this Agreement, in whole or in part, upon notice to (and without the consent of) the Supplier.

10.2 Subcontracting

<The Supplier may, on its own behalf and not on behalf of the City, engage a Subcontractor to assist in the performance of the Supply, provided that:

(a) the engagement of such Subcontractor has been previously specifically approved by the City in writing;

(b) such Subcontractor has given a written deed to the City in which it has undertaken to abide by the terms of this Agreement; and

(c) the Supplier shall remain wholly liable for the due performance of its obligations under this Agreement and shall be wholly responsible for the acts and omissions of such Subcontractor.>

10.3 Time of the Essence

Time is of the essence of this Agreement.

10.4 Costs

Each of the Parties hereto shall pay its 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.

10.5 Benefit of this Agreement

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

(b) Except as expressly set forth in the foregoing Section 10.5(a) or Section 5.1, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Supplier.

10.6 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.

10.7 Amendments and Waiver

No modification of or amendment to this Agreement is valid or binding unless set forth in writing and fully executed by 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.

10.8 Notices

(a) Any Order, demand, notice or other similar communication to be given to a Party in connection with this Agreement must be given in writing and shall be deemed to be validly given if given by personal delivery to an authorized agent of a Party, or delivered by registered mail, by courier or by electronic transmission (with delivery confirmation or an email reply effectively acknowledging delivery), addressed to a Party as follows:

(i) if to the Supplier:

<Supplier>
<address>

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

(ii) if to the City:

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

Attention: <>
Facsimile: <>

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 invoices shall be addressed as specified in Section 4.3 or as otherwise specified in the relevant Order.

(b) Any Order, demand, notice or other communication given (and, in the case of electronic transmission, confirmed or acknowledged) in accordance with Section 10.8(a) shall be conclusively deemed to have been given:

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

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

(iii) if given by electronic transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

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

10.9 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 9; and

(ii) to the extent necessary to enforce, in another jurisdiction, any decision or award made pursuant to ARTICLE 9 or any judgment of any court in the Province of British Columbia.

10.10 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.

10.11 Severance

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

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

10.12 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.

10.13 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.

10.14 Voluntary Agreement

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

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

<SUPPLIER NAME>

Signature	Print Name and Title
Signature	Print Name and Title

CITY OF VANCOUVER

Signature	Print Name and Title
Signature	Print Name and Title

SCHEDULE A -
PRODUCTS AND PRICES

<To describe each of the Products by name and/or the Supplier's product number, and set out for each the price.>

ITEM	PRICE/UNIT
<Name 1>	$<> per < [unit type]>
<Name 2>	$<> per < [unit type]>
<Name 3>	$<> per < [unit type]>

<If applicable, include here price escalation or adjustment formulas (e.g. for inflation, exchange rate changes, etc.)>

<Notwithstanding any other provision hereof, if the Supplier is, at any time during the term of effectiveness of this Agreement, party to a contract with another customer pursuant to which the Supplier charges effective prices lower than the prices charged to the City for the same goods, the above-listed prices shall be adjusted, retroactively to the date of effectiveness of such other contract, so that the prices charged hereunder are at least as low as the effective prices charged pursuant to such other contract.>

SCHEDULE B -
PRODUCT SPECIFICATIONS

<To describe required product specifications for each Product, including any relevant functional, technical, compositional, operational, performance, quality or similar specifications relating to such Product.>

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

SCHEDULE C -
ESTIMATE OF PRODUCT REQUIREMENTS

SCHEDULE D -
FORM OF LETTER AGREEMENT

[Date]

<✍ Add Supplier Name and Address>

Dear Sir or Madam,

Re: Agreement based upon the Supply Agreement between <✍ Supplier Name> and City of Vancouver <✍ When required add: ", as represented by its Board of Parks and Recreation,"> dated <✍> (the "**Base Agreement**")

The purpose of this letter agreement (this "**Agreement**") is to set out the terms and conditions upon which <✍ Supplier Name> (the "**Supplier**") shall supply <✍ Describe> to **[Name of Other City Entity]** (the "**Purchaser**").

Please have a duly authorized representative of the Supplier execute this Agreement and return one copy to the Purchaser.

1. Application of Base Agreement

The Supplier shall supply <✍ Describe> to the Purchaser at the price(s) and otherwise pursuant to the terms and conditions stated in the Base Agreement, as though each reference to the City of Vancouver or the "City" in the Base Agreement were instead a reference to the Purchaser, with the exceptions stated in the following Section 2.

2. Variations from the Base Agreement

(a) The Supplier's invoices to the Purchaser shall be submitted to the following mailing and/or email addresses, rather than the addresses stated in Section 4.3 of the Base Agreement: **[Address].** The Purchaser's contact information for purposes of the application of Section 10.8 of the Base Agreement shall be the following in lieu of the City of Vancouver address, contact name and facsimile number stated in the Base Agreement: **[Address, Contact Name and Fax number]**

(b) Section 3.1(c) and Section 3.1(d) of the Base Agreement shall be excluded from the agreement between the Supplier and the Purchaser.

3. Miscellaneous

(a) This Agreement shall terminate upon the expiry or termination of the Base Agreement.

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

(c) 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. 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.

Yours truly,

_____

[Name and Title of Other City Entity Signatory]

Accepted and agreed on behalf of <Supplier Name>:

Signed: _____ Date: _____

Name: _____

Title: _____