



REQUEST FOR PROPOSALS

SUPPLY AND DELIVERY OF LIQUID ASPHALTS FOR PAVING

RFP No. PS20190496

Issue Date: June 27, 2019

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

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PART A - INFORMATION AND INSTRUCTIONS

SUMMARY

The City of Vancouver is seeking proponent(s) who are able to supply and deliver liquid asphalts for paving and meet the City's operational and budgetary requirements. Details of the City's objectives and requirements to which the RFP relates are set out in Part B of the RFP.

PART A - INFORMATION AND INSTRUCTIONS

1.0 THE RFP

- 1.1 Except where expressly stated otherwise in Appendix 1 of Part C of the Request for Proposals ("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 City is interested in selecting an entity, which is not, by the terms hereof, barred from submitting a Proposal, and which does submit a Proposal (each such entity, a "**Proponent**") with the capability and experience to efficiently and cost-effectively meet the objectives and requirements described in the RFP. The City currently expects to select such a Proponent and then enter into negotiations with that Proponent, which will conclude in the execution of a contract between the Proponent and the City (such a contract, an "**Agreement**"). However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any Agreement; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.
- 1.3 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 8.0 below, among others.
- 1.4 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 Part C - Form of Proposal.
- 1.5 The execution of an Agreement may be contingent on funding being approved, and the relevant Proposal being approved, by the Vancouver City Council.
- 1.6 The RFP consists of four parts, plus appendices:
- (a) **PART A - INFORMATION AND INSTRUCTIONS:** This part is intended to serve as a guide to the RFP process for Proponents.
 - (b) **PART B - SCOPE OF WORK:** This part describes the subject matter of the RFP, in respect of which the City invites Proposals.
 - (c) **PART C - FORM OF PROPOSAL:** This is the form in which the Proposal should be submitted.
 - (d) **PART D - FORM OF AGREEMENT:** This part contains a model Agreement (the "**Form of Agreement**"). Any Agreement resulting from the RFP is expected to be substantially in the form of the Form of Agreement.

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PART A - INFORMATION AND INSTRUCTIONS

2.0 KEY DATES

2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Enquiries	July 12, 2019
Closing Time	3:00pm on July 18, 2019

2.2 All references to time in the RFP are references to the time in the City of Vancouver, as indicated in the electronic timestamp the Proposal receives upon delivery to the email address specified herein, which is in turn synchronized to Network Time Protocol (NTP) provided by the National Research Council of Canada adjusted to local Pacific Time Zone.

3.0 CONTACT PERSON

3.1 All enquiries regarding the RFP must be addressed to:

Gordon Harvey, Contracting Specialist
Gordon.Harvey@vancouver.ca

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

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

4.0 SUBMISSION OF PROPOSALS

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

4.2 Each Proponent should submit its Proposal by email in accordance with the following:

- Subject of the file to be: PS20190496 - Supply and Delivery of Liquid Asphalts for Paving - Vendor name.
- Document format for submissions:
 - RFP Part C (except for Appendix 3) in PDF format - 1 combined PDF file,
 - Appendix 3 (Commercial Proposal) in in a separate PDF file, and;
 - Any other attachments if necessary
- Zip the files to reduce the size or email separately if needed.
- Send your submissions to Bids@vancouver.ca; do not deliver a physical copy to the City of Vancouver.
- If you did not receive an automated email within few minutes, check your junk folder first, and then contact Purchasing@vancouver.ca.

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- Submitting the files via Drop box, FTP, or similar programs, is not acceptable.
- 4.3 To be considered by the City, a Proposal must be submitted in the form set out in Part C (the “**Form of Proposal**”), completed and duly executed by the relevant Proponent.
- 4.4 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time.
- 4.5 Proposals are revocable and may be withdrawn at any time before or after the Closing Time.
- 4.6 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.
- 4.7 Unnecessarily elaborate Proposals are discouraged. Proposals should be limited to the items specified in Part C of the RFP.
- 4.8 The City is willing to consider any Proposal from two or more Proponents that wish to form a consortium for the purpose of responding to the RFP, provided that they disclose the names of all members of the consortium and all members complete and sign the first page of the Form of Proposal. Nonetheless, the City has a strong preference for Proposals submitted by a single Proponent, including a Proponent that would act as a general contractor and use subcontractors as required.
- 4.9 Proposals that are submitted after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City’s sole discretion.
- 5.0 **CHANGES TO THE RFP AND FURTHER INFORMATION**
- 5.1 The City may amend the RFP or make additions to it at any time.
- 5.2 It is the sole responsibility of Proponents to check the City’s website at: <http://vancouver.ca/doing-business/open-bids.aspx> regularly for amendments, addenda, and questions and answers in relation to the RFP.
- 5.3 Proponents must not rely on any information purported to be given on behalf of the City that contradicts the RFP, as amended or supplemented in accordance with the foregoing Section 5.2.
- 6.0 **PROPOSED TERM OF ENGAGEMENT**
- 6.1 The term of any Agreement is expected to be a 3-year period, with 2 possible 1-year extensions, for a maximum total term of 5 years.
- 7.0 **PRICING**
- 7.1 All prices quoted in any Proposal are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.
- 7.2 Prices must be quoted in Canadian currency and fixed prices must be quoted for the full term of the Proponent’s proposed agreement.
- 7.3 Prices are to be quoted CIP, destination (Incoterms, 2010). For the avoidance of doubt, freight, insurance, unloading at the destination designated by the City, import duties,

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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:

- Technical & Sustainability Requirements; which includes; (i) Appendix 2 - Questionnaire; (ii) Proponents' capabilities to meet the City's Technical Requirements (as defined in Part B), including quality and service factors; (iii) Appendix 4 - Proponent's References including skills, knowledge, reputations and previous experience(s), and experience(s) with the City (if any); (iv) Proponents' quality of response to Part C; (v) innovation; (vi) environmental or social sustainability impacts;
- Financial Requirements; Proponents' capabilities to offer overall best value in relation to Appendix 3 - Commercial Proposal.
- Certain other factors that may be mentioned in Part B or elsewhere in the RFP.

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

Evaluation Criteria	Evaluation Weighting
Technical*	65%
Financial	35%
Total	100%

*Sustainability requirements will be contemplated within the Technical Requirements category

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,

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including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to the Form of Agreement. The City will be at liberty to negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.

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

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

9.0 CITY POLICIES

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

9.2 The City's Alcohol, Controlled Drugs and Medications Policy applies to all contractors doing work on behalf of the City and can be found at <https://policy.vancouver.ca/ADMIN011.pdf>. The policy is intended to set expectations regarding the use of alcohol, medication and controlled drugs that may render an employee unfit for work, impair performance or cause risk of harm to health and safety. The successful Proponent will be required to ensure compliance with the policy by its employees when doing work for the City.

10.0 LIVING WAGE EMPLOYER [Deleted]

11.0 CERTAIN APPLICABLE LEGISLATION

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

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

12.0 LEGAL TERMS AND CONDITIONS

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PART A - INFORMATION AND INSTRUCTIONS**

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

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

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PART B - CITY REQUIREMENTS

PART B - SCOPE OF WORK

The scope of work stated in this Part B (collectively, the “Scope of Work”) is current as of the date hereof, but may change or be refined in the course of the evaluation of Proposals or otherwise.

Unless otherwise stated, if, and wherever, the Scope of Work states 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 under the heading “Alternative Solutions” 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.

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

1.0 INTRODUCTION

The City of Vancouver, Engineering Kent Materials Branch (Kent Yard), is seeking proponent(s) who are able to supply and deliver Liquid Asphalts for Paving and meet the City’s operational and budgetary requirements.

- a) The City of Vancouver operates its own asphalt plant at Kent Yard (900 S Kent Avenue E, Vancouver, BC) and typically produces approximately 80,000 to 100,000 tons of asphalt annually.
- b) The City paves its residential and arterial/major roads with Superpave asphalt mix which comprises of either liquid asphalt (bitumen) grades PG 58-22 or PG 64-22. The City is currently using CCM-5 Emulsion grade (similar to medium curing cutback asphalt) for cold-mix asphalt, for maintenance and repair work of existing pavement.
- c) The performance grade (PG) liquid asphalts (bitumen) used in Superpave production is determined by the requirements for each paving project. The City, at its own discretion, will select the PG grade liquid asphalts (bitumen) (e.g. PG 58-22 or PG 64-22) that is best suited for the project.
- d) PG grade liquid asphalt binder and cutback asphalt will be ordered on an as required basis and delivered FOB to the City’s Asphalt Plant at 900 S Kent Avenue E. The estimated annual volume of PG 58-22 and PG 64-22 combined is 4000 tonnes, and up to 100 tonnes of cutback or emulsified asphalt (for cold-mix asphalt).
- e) The Asphalt - Liquid and Paving to be supplied shall meet the standards as set out in section 2.0 and the specifications in section 3.0 - Asphalt Liquid Cement Specifications and Cutback Asphalt (Paving) Specifications.
- f) The Asphalt - Liquid and Paving to be supplied shall meet or exceed the latest edition(s) of the American Society for Testing Materials (ASTM); American Association of State Highway and Transportation Officials (AASHTO) and Canadian General Standards Board (CGSB).

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PART B - CITY REQUIREMENTS

2.0 MANDATORY REQUIREMENTS

- 2.1 The following are Mandatory Requirements. Failure to comply with Mandatory Requirements may or may not result in the Proposal being set aside and given no further consideration:

	Requirement	Complies (Yes or No)
A	Supplying and delivering asphalt - liquid (PG 58-22 and PG 64-22), and cold mix asphalt or equivalent alternative, as if and when required;	COMPLETE THIS TABLE IN PART C - FORM OF PROPOSAL APPENDIX 2 - QUESTIONNAIRE
B	Meeting the current specifications of asphalt (below), under ASTM, AASHTO and CGSB standards;	
C	Providing rack pricing and firm pricing;	
D	Providing fixed delivery cost for duration of the contract and any extension period;	
E	Providing fixed delivery cost for a 12 (twelve) month period;	
F	Providing 48 hour advance notification of any price changes;	
G	Delivery to site, prior to 6:00 am;	
H	Providing weekend deliveries;	
I	Entering into a long term agreement;	
J	Meeting environmental requirements;	
K	Complying to W.H.M.I.S legislation;	
L	Providing a means to track rack pricing;	
M	Provide safe delivery and transport of dangerous goods	
N	Provide quarterly mill certificates, or upon requests	
O	Provide notice of asphalt cement production shutdown	

- 2.2 Proponents are required to provide relevant information, including copies of valid certificates, attesting to their abilities to meet the above mandatory requirements.

3.0 PRODUCT RELATED REQUIREMENTS

The City has identified key desirable requirements which the Proponent should address, but should not be limited to addressing, within its Proposal.

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PART B - CITY REQUIREMENTS

3.1 Asphalt Liquid Cement Specifications

Asphalt cement shall be 'Performance Graded (PG) Binder' that meets the minimum design high and low pavement temperatures of 58° C and -22° C and a maximum design high and low temperatures of 64° C and - 22° C.

The asphalt cement shall be prepared by the refining of crude petroleum by suitable methods. The asphalt cement shall be homogeneous, free from water and shall not foam when heated to 175° C.

The asphalt cement shall comply with the requirements as prescribed in AASHTO M 320 - Standard Specification for Performance-Graded Asphalt Binder. The asphalt cement shall conform to the following requirements:

Asphalt Property	Units	Method	AASHTO M320
Flash Point (C.O.C)	°C	AASHTO T48	230 min
Apparent Viscosity at 35° C	Pa.s	AASHTO T316	3.00 max
Mass change, RTFO residue	mass%	AASHTO T240	1.00 max
DSRo ($G^*/\sin\delta$) at 64°	kPa	AASHTO T315	1.00 min
DSRo ($G^*/\sin\delta$) at 64° C	kPa	AASHTO T315	2.20 min
DSRo ($G^*/\sin\delta$) at 25° C	kPa	AASHTO T315	5000 max
BBR (Stiffness) at -12° C	MPa	AASHTO T313	300 max
BBR (m-value) at -12° C	-	AASHTO T313	0.300 min

Rotational Viscosity at 135° C, Pa`s 3 (maximum)

Dynamic Shear (Original, RTFO and PAV), $G^*/\sin\delta$, kPa..... 1, 2.20 & 5000 respectively (min.)

Creep Stiffness (PAV), at 60 sec., S and m-value S (Max. 300 MPa), m-value (min. 0.300)

Direct Tension (PAV), at 1.0 mm/min., Failure Strain 1.0% (minimum)

Method of sampling and testing shall be in accordance with the requirements of AASHTO T 48, T 313, T 314, T 315, and T 316.

Working Temperature

All PG graded asphalt binders shall also meet the following temperature limits shown or its recommended equivalent; that is to ensure sufficient fluidity for all three operation processes;

Operation	Temperature, °C	Kinematic Viscosity, mm ² /S
Spraying	160 - 175	150 maximum

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PART B - CITY REQUIREMENTS**

Mixing	135 - 160	300 maximum
Pumping	125 - 175	600 maximum

3.2 Cutback Asphalt (Paving) Specifications

- a) Cutback asphalt (medium curing type) for use in construction and treatment of pavements, shall comply with ASTM Designation D2027.
- b) Proponents may propose suitable alternative emulsion products. The final product should be uniformly blended at source.
- c) Products should not have any objectionable odors (refer to 3.4 below)

3.3 Air Quality and Health Information

- a) Proponents shall provide air quality and health hazard information on their asphalt cement binders in relation to placing hot mix asphalt onto City streets. The material supplied shall not generate objectionable odors in normal usage as determined by the City.
- b) When a health/safety or Quality Control issue is identified, the proponent will immediately be contacted with concerns or issues of excess smoke or odour. The proponent will investigate complaints and will take steps towards achieving a mutually acceptable and reasonable resolution, within one week of initial notification. If an acceptable resolution is not achieved, the City will begin the steps to identify an alternate supplier.

4.0 GENERAL REQUIREMENTS

4.1 Service Capabilities - Operations and Logistics

- a) The City requires a designated "Account Representative" to serve as point of contact and be responsible for managing the relationship between the City and the Contractor. The Account Representative will work with designated City staff to ensure that the City objectives are met as outlined within this section. Proponents are to provide an overview of their account management process and hierarchy;
- b) The City requires that the service level for delivery of Product direct to City sites be within twenty four (24) hours from the time the order is placed. It is also expected that the successful Proponent possess the capability of providing special same day delivery service under emergency conditions. All delivery is to be considered F.O.B. destination and no additional charges for freight or fuel surcharges will be accepted by the City;
- d) In the event that there are multiple orders placed by the same City location within a short period (approx. forty eight (48) hours), the Contractor will endeavour to communicate with the specific location and offer a consolidated order delivery option if acceptable to the City;

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PART B - CITY REQUIREMENTS

4.2 Specified Products and Product Substitution

- a) Where applicable, the Proponent is encouraged to offer substitute products which may provide an alternative to the City and offer good value to the City while maintaining or exceeding performance of the original product.
- b) The final product list for the City will be determined solely by the City. Any product substitution requests will require prior approval from the City before implementation of the Contract.

5.0 APPLICABLE CODES AND STANDARDS

- 5.1 Where a material or item is required to conform to standards set out in a standard specification such as A.A.S.H.T.O. or A.S.T.M. or C.G.S.B. or B.C.B.C., the Contractor shall obtain assurance from supplier, in writing, (including trade literature), that its product does so conform.
- 5.2 All codes/standards shall be the latest issue of specified codes/standards as amended and revised to the RFP closing date, except when a year date is mentioned.
- 5.3 The Contractor shall supply to the Engineer, on request, satisfactory evidence that all equipment and material complies with Standard Specification and mill certificates.
- 5.4 When references to the following capitalized abbreviations are made, they refer to specifications, standards or methods of the respective association. Abbreviations listed herein, but not mentioned in the specifications, shall be disregarded.
- 5.5 All references to specifications, standards or methods of technical associations refer to the latest adopted revision, including all amendments.

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PART C - FORM OF PROPOSAL

PART C - FORM OF PROPOSAL

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Proponent's Full Legal Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

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

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

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

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PART C - FORM OF PROPOSAL

APPENDICES

The Form of Proposal includes the following attached Appendices:

- APPENDIX 1 Legal Terms and Conditions of RFP
- APPENDIX 2 Questionnaire
- APPENDIX 3 Commercial Proposal
- APPENDIX 4 Proponents References
- APPENDIX 5 Certificate of Insurance
- APPENDIX 6 Declaration of Supplier Code of Conduct Compliance
- APPENDIX 7 Personal Information Consent Form(s) [Deleted]
- APPENDIX 8 Subcontractors
- APPENDIX 9 Proposed Amendments to Form of Agreement
- APPENDIX 10 Proof of WorkSafeBC Registration
- APPENDIX 11 Conflicts; Collusion; Lobbying

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PART C - FORM OF PROPOSAL

APPENDIX 1
LEGAL TERMS AND CONDITIONS OF RFP

1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

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

2 DEFINITIONS

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

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent following and as a result of the Proponent's selection by the City in the City's RFP process.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix 1 is appended.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20190496, as amended from time to time and including all addenda.

3 NO LEGAL OBLIGATION ASSUMED BY THE CITY

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

4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

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

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

5 EVALUATION OF PROPOSALS

5.1 Compliance / Non-Compliance

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

5.2 Reservation of Complete Control over Process

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

5.3 Discussions/Negotiations

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

5.4 Acceptance or Rejection of Proposals

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

6 PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

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

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

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- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process;
- (c) the Proponent preparing and submitting the Proposal;
- (d) the City accepting or rejecting the Proposal or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2 Indemnity by the Proponent

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

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

6.3 Limitation of City Liability

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

7 DISPUTE RESOLUTION

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

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

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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 right to publicly disclose information about or from the Proposal, including without limitation names and prices, in the course of publicly reporting to the Vancouver City Council about the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

8.3 All City Information Confidential

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

9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFP Process

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is: (i) an official or employee of the City; or (ii) related to or has any business or family relationship with an elected official or employee of the City, in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal in accordance with the form set out in Part C - Appendix 11.
- (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 in accordance with the form set out in Part C - Appendix 11.

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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 in accordance with the form set out in Part C - Appendix 11.

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 in accordance with the form set out in Part C - Appendix 11.

9.4 Declaration as to No 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, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal in accordance with the form set out in Part C - Appendix 11.

10 GENERAL

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

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**APPENDIX 2
QUESTIONNAIRE**

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

Executive Summary

In the space below, provide a brief executive summary of your Proposal.

Proponent Overview

In the space below, provide a description of the Proponent's company, number of employees, purpose and history of successes. If the head office of the 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, this section should also indicate whether the Proponent has a valid City of Vancouver business license (or, if available, a Metro West Inter-municipal Business License).

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Scope of Work - Requirements - Refer to Part B

<u>Mandatory Requirements</u>		
Complete the table below to confirm you comply with the mandatory requirements. Failure to comply with mandatory requirements may or may not result in the Proposal being set aside and given no further consideration:		
Requirement		Complies (Enter Yes or No)
A	Supplying and delivering asphalt - liquid (PG 58-22 and PG 64-22), and cold mix asphalt or equivalent alternative, as if and when required	
B	Meeting the current specifications of asphalt (below), under ASTM, AASHTO and CGSB standards	
C	Providing rack pricing and firm pricing	
D	Providing fixed delivery cost for duration of the contract and any extension period	
E	Providing fixed delivery cost for a 12 (twelve) month period	
F	Providing 48 hour advance notification of any price changes	
G	Delivery to site, prior to 6:00 am	
H	Providing weekend deliveries	
I	Entering into a long term agreement	
J	Meeting environmental requirements	
K	Complying to W.H.M.I.S legislation	
L	Providing a means to track rack pricing	
M	Provide safe delivery and transport of dangerous goods	
N	Provide quarterly mill certificates, or upon requests	
O	Provide notice of asphalt cement production shutdown	

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General Requirements - Service Capabilities - Operations and Logistics

In the spaces below, describe how your Proposal is responsive to the General Requirements listed below.

- a) The Proponent should detail customer service process and capabilities such as but not limited to, the order servicing process, multiple orders placed by the same location, related technologies, and recommended logistics solution including delivery schedules, size of vehicles, number of vehicles and the ability to provide delivery service to multiple locations;
- b) The City's preference is not to have a minimum order or short load, however indicate minimum ordering quantities and order value if applicable;
- c) Explain the process for handling emergency or special after hour requirements and how quickly from the time the order is placed until the City would receive those Products;
- d) State the location(s) from which deliveries would be dispatched for the City of Vancouver.
- e) Provide a sample packing slip, packing list, bill of lading or customer receipt that includes an itemized detail of the shipment which does not include pricing or demonstrate how it is separate from an invoice, which will accompany each delivery. Proponent will also provide mill certificate if requested.

a)

b)

c)

d)

Appendix 2 - Questionnaire continues on following page

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General Requirements - Service Improvement - Backorders

In the spaces below, describe how your Proposal is responsive to the General Requirements listed below;

One of the key objectives within this RFP is to eliminate or significantly reduce the instances of back-orders, whereby any order containing material placed on back-order, be completed on the next subsequent delivery.

- a) The Proponent is to explain the solutions in meeting this objective of how you propose to guarantee no or minimal back orders.
- b) Please explain how the City may be compensated (i.e. automated discount) for each instance of back-order occurrence.

a)

b)

General Requirements - Reporting Capabilities

The Successful Supplier may be asked to provide quarterly, semi-annual, or annual reporting on a number of performance measures and any other criteria determined by the City for products purchased under this Contract. The information may be required to be reported in aggregate in a matrix providing the following data, which may include but is not limited to:

Stock Maintenance and Usage - The City requires the ability to identify consumption of the Products used under this Contract. The Proponent is to provide a detailed sample of your solution in a periodical supply summary for the Product purchases for specific time frames, or on a monthly, quarterly, or annual basis, as requested by the City;

Back order status - including number of incidents and fulfilment rate (fill rate) per product category; and

Measures including cost reduction initiatives, market trends of key cost drivers or other price adjustment criteria, related/relevant market based indices for commodity items, etc.

In the space below, describe how your Proposal is responsive to the General Requirements listed above:

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General Requirements - Transition and Implementation

A timely and orderly transition to the servicing of the Contract is necessary. Include a detailed explanation as to how you envision the transition and implementation process. These issues should encompass, but not be limited to such factors as:

- i) determination of product requirements;
- ii) service levels for the respective facility including logistics arrangements;
- iii) ordering process;
- iv) establishment of a process addressing the reduction in the number of transactions; and
- v) Establishment of supply reports.

In the space below, describe how your Proposal is responsive to the General Requirements listed above:

General Requirements - Service Capabilities - Disaster Response

In the event of a major or serious disaster, such as but not limited to, earthquake, major fire, or extreme weather conditions, the City will be faced with the requirement to keep key services operable.

Explain any plans or abilities to provide support to the City in the event of a major disaster or emergency condition.

In the space below, describe how your Proposal is responsive to the General Requirements listed above:

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Value Added Products or Services

Proponent should describe any value added products or services that it is prepared to supply as part of the Agreement. Unless otherwise stated, it is understood that there are no extra costs for these products or services, however if there are any additional costs pertaining hereto, the summary and explanation of those costs are to be appended to Appendix 3 - Commercial Proposal.

Innovation

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 Scope of Work. In the space below, note any proposed innovative approaches to meeting the City's requirements.

Appendix 2 - Questionnaire concludes on following page

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Supplier Diversity

Please note that these Supplier Diversity questions are optional and will not form part of the evaluation of this RFP. Proponent answers to Supplier Diversity questions are for information gathering purposes only and will be kept confidential in accordance with the Legal Terms and Conditions of this RFP.

In the space below, indicate the Proponent's company profile with regards to social value and economic inclusion supporting equity, diversity, inclusion and reconciliation, including social/environmental certifications, workforce diversity and/or if owned/controlled by an equity-seeking demographic (including but not limited to non-profit, cooperative, Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ+ people).

Majority owned/controlled/ by:	Workforce Diversity:	Social / Environmental Certifications
<input type="checkbox"/> Women	% Women	<input type="checkbox"/> BCorp
<input type="checkbox"/> Indigenous Peoples	% Indigenous Peoples	<input type="checkbox"/> BuySocial
<input type="checkbox"/> Non-Profit/Charity (Social Enterprise)	% Ethno-cultural People	<input type="checkbox"/> Supplier Diversity Certification
<input type="checkbox"/> Coop	% People with Disabilities	<input type="checkbox"/> Fairtrade
<input type="checkbox"/> Community Contribution Corporation (3C/CCC)	% LGBTQ+	<input type="checkbox"/> Green Business Certification (i.e. LEED, ClimateSmart)
<input type="checkbox"/> Ethno-cultural Persons	% Other: please indicate	<input type="checkbox"/> Other: please indicate
<input type="checkbox"/> People with Disabilities		
<input type="checkbox"/> LGBTQ+		
<input type="checkbox"/> Other: please indicate		

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APPENDIX 3
COMMERCIAL PROPOSAL

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

Proponent to provide proposed pricing and payment terms, which should be in accordance with Part A, Section 7.0 of the RFP (as well as any other sections of the RFP imposing requirements as to pricing).

When submitting its Proposal by email, please ensure Appendix 3 - Commercial Proposal is provided as a separate file to the entire Proposal.

For City budget purposes, a preliminary cost estimate for the scope of work as outlined above is required. Rack pricing versus firm pricing for a twelve (12) month period for the asphalt and fixed delivery costs for the duration of the contract and any extension period versus fixed delivery costs for a 12 month period. The City shall review the pricing structure for all options. Proponents should assume the initial period will be from September 1, 2019 to August 31, 2020.

Prices quoted are to be in Canadian Funds, exclusive of GST only, F.O.B. destination with all freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.

1.0 PRICING

The Proponent should submit prices for each of the items listed in the following tables. Proponents may offer alternative pricing options, but are to submit these as an additional appendix within their Proposal.

(a) RACK (MARKET) CRUDE BASED PRICING:

Item No.	Twelve (12) Month Estimated Quantity Tonnes (T)	Product	Rack Price (as of Proposal Date)	Percentage Discount	COV - Unit Price per Tonne (T)
1	3000 T	PG 64-22			\$
2	1000 T	PG 58-22			\$
3	200 T	Cutback or Equivalent Emulsion			\$

(b) FIRM PRICING:

Item No.	12 Month Estimated Quantity - Tonnes (T)	Product	COV - Unit Priced per Tonne (1 Year fixed)
1	3000 T	PG 64-22	\$
2	1000 T	PG 58-22	\$
3	200 T	Cutback or Equivalent Emulsion	\$

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(c) **DELIVERY**

Delivery costs shown below shall be for PG 58-22, PG 64-22 and Cutback

Item No.	Delivery - Type	Unit Price per Tonne (T)
1	Fixed delivery cost, for duration of contract and any extension period.	\$
2	Fixed delivery cost, for a twelve (12) month period.	\$
3	Weekend deliveries (if applicable)	\$

2.0 MINIMUM ORDER QUANTITY

State if there is a minimum order quantity required for pricing to apply:

Product	YES	NO	If YES State Minimum Order Quantity Required (Tonnes)
PG 64-22			T
PG 58-22			T
Cutback or Equivalent			T

Prices are to be quoted in Canadian Funds, F.O.B. Destination, including freight, customs duties, and brokerage fees to designated City of Vancouver locations as described in Part A - Information and Instructions, Section 7.0.

GST is not to be included.

The Contract duration shall be thirty six (36) months beginning on the first day of the Term with the option to extend the Contract and negotiate pricing for up to two additional twelve (12) month periods. Proponents should offer BOTH rack pricing and firm pricing for the initial twelve (12) month period of the Contract.

The table in this Appendix 3 - Commercial Proposal contains a listing of products and quantities for which the Proponent should provide pricing. While the list represents a sample of the products that the City has purchased in the past this is not a complete list of the City's requirements. The City makes no guarantee that the quantities set forth represent the actual quantities of materials that the City will be purchasing annually during the term of the Contract. **These quantities are provided solely for the purpose of evaluating the Proposals.**

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**APPENDIX 4
PROPONENT'S REFERENCES**

Complete this Appendix 4 - Proponents References in the form set out below with references that are relevant to the Scope of Work set out in this RFP.

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

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

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

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APPENDIX 5
CERTIFICATE OF INSURANCE

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

[Instructions: Complete form on following Page and include with Proposal]

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APPENDIX 5 TO PROPOSAL FORM
CERTIFICATE OF EXISTING INSURANCE
TO BE COMPLETED AND APPENDED TO THE PROPOSAL

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 12th 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.
2. **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:

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

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

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

6. ☐ **UMBRELLA OR EXCESS LIABILITY INSURANCE** (Inclusive)

INSURER _____	Limits of Liability (Bodily Injury and Property Damage Inclusive)
POLICY NUMBER _____	Per Occurrence \$ _____
POLICY PERIOD From _____ to _____	Aggregate \$ _____
	Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE**

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

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APPENDIX 6
DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

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

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

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

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

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

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

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

Signature: _____

Name and Title: _____

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APPENDIX 7

PERSONAL INFORMATION CONSENT FORM(S)

[DELETED]

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**APPENDIX 8
SUBCONTRACTORS**

Complete this Appendix 8 - Subcontractors in the form set out below by listing all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors.

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

Subcontracted Scope		
Subcontractor		
Contact (name, title, email, telephone no.)		
Approximate Percent of the Work to be Subcontracted		
Social Value Business - shall mean a business that has a recognized environmental or social certification and/or is majority owned/controlled by an equity-seeking demographic (including but not limited to non-profit, cooperative, Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ+ people).	In the space below, detail the Proponent's proposed use of Social Value Businesses as sub-contractors/consultants (if any) and provide brief company profiles of those Social Value Businesses and descriptions of how they qualify as Social Value Businesses.	
The Subcontractor's Relevant Experience (identify at least three similar projects within the last five years, including the client)	1. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	2. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	3. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	

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APPENDIX 9
PROPOSED AMENDMENTS TO FORM OF AGREEMENT

Complete this Appendix 9 - Proposed Amendments to Form of Agreement in the form set out below by detailing any proposed amendments to the Form of Agreement attached as Schedule D. If no amendments to the Form of Agreement are proposed, state "none". It is at the City's sole discretion whether or not these proposed amendments will be considered for the Form of Agreement.

Section / General Condition	Proposed Amendment	Rationale and Benefit

REQUEST FOR PROPOSALS NO. PS20190496
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APPENDIX 10
PROOF OF WORKSAFEBC REGISTRATION

Attached as Appendix 10 to this Form of Proposal proof of valid WorkSafeBC registration.

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APPENDIX 11
CONFLICTS; COLLUSION; LOBBYING

Complete this Appendix 11 – Conflicts; Collusion; Lobbying in the form set out below by setting out any exceptions to the declarations in Section 9 of the Legal Terms and Conditions attached as Appendix 1 to this Part C - Form of Proposal or indicate that there are no exceptions, as applicable.

Exceptions to Declaration as to no Conflict of Interest in RFP Process (Section 9.1 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Conflict of Interest Respecting Proposed Supply (Section 9.2 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Collusion (Section 9.3 of Legal Terms and Conditions)	
Exceptions to Declarations as to No Lobbying (Section 9.4 of Legal Terms and Conditions)	

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

SUPPLY AGREEMENT [SAMPLE]

BETWEEN:

< SUPPLIER NAME >

AND:

CITY OF VANCOUVER

RELATING TO THE SUPPLY AND DELIVERY OF
LIQUID ASPHALTS FOR PAVING

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

(hereinafter referred to as the "City")

WHEREAS the Supplier is in the business of liquid asphalts for paving;

AND WHEREAS the City wishes to purchase liquid asphalts for paving, 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. ~~<NTD: Delete if not included.>~~
- (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>~~; ~~<Edit as necessary to add or remove entities that will benefit from the contract. If the City of Vancouver is not the primary contracting party, add it here, whether or not it is intended to benefit from the contract.>~~
- (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 ~~<the date>~~, submitted by the Supplier to the City in response to the PS20190496 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 PS20190496;
- (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>.

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, , 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.>

- (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. <☒NTD: Reference may be made to the estimates contained in an RFP, rather than including a schedule here.> 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. <☒ Delete this paragraph if inapplicable.>
- (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. <☒ Delete this paragraph if inapplicable.>

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 NTD: Delete foregoing limitation if inapplicable. 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>. <NTD: Consider whether the Ethical Purchasing Policy is applicable here (apparel or agricultural products) and, if so, make specific changes to the Agreement to implement it.>

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.
- (b) Delivery of the Products specified in an Order shall be complete on the completion of their unloading 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;
 - (ii) require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense;
 - (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.
- (b) 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 <[redacted]> duly organized, validly existing and in good standing under the laws of <[redacted]> and is lawfully authorized to do business in the Province of British Columbia;
- (c) the Supplier is not a party to or bound by any agreement (written or oral), indenture, instrument, licence, permit or understanding or other obligation or restriction under the terms of which the execution, delivery or performance of this Agreement does or shall constitute or result in a violation or breach;
- (d) 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 <[redacted]> year[s] from the time of delivery to the City, against defects in design, manufacturing, materials, workmanship and performance, and the Supplier affirms and covenants that such warranty is, and shall be, provided by the Supplier if and to the extent it is not fully and effectively provided to the City by 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.
- (d) If requested by the City, the Supplier shall handle and manage any claim on a manufacturer warranty for any defect in any Product.
- (e) 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, 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) The Supplier shall take out and maintain in force during the term of this Agreement, at its own cost, commercial general liability insurance with coverage of not less than \$5,000,000 per occurrence and at least \$5,000,000 of annual aggregate or other such amounts the City may approve from time to time, protecting the Supplier and Supplier's personnel against all claims for bodily injury including death, personal injury, advertising liability, completed operations, product liability, or property damage or loss arising out of the operations of the Supplier or the actions of the Supplier or Supplier's personnel. The policy must:
 - (i) name the City and the City's officials, employees and agents as additional insureds;
 - (ii) include a cross-liability or severability of interest clause or endorsement in favour of the City;
 - (iii) include blanket contractual liability coverage; and
 - (iv) include non-owned auto liability coverage.
- (b) The Supplier shall purchase and maintain during the entire term of this Agreement, at its own cost, automobile liability insurance on all licensed vehicle owned or leased to the Supplier with a limit of not less than \$5,000,000 per occurrence or other such amount as the City may approve from time to time protecting against damages arising from bodily injury including death, and from claims for property damage arising from the operations of the Supplier or the Supplier's personnel.
- (c) All required insurance policies specified in Sections 5.2(a) and 5.2(b) must remain in full force and effect at all times until completion of the Supply or earlier cancellation of this Agreement, and for a period of not less than two years thereafter, and must:
 - (i) be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City, acting reasonably;
 - (ii) be primary insurance with respect to all claims arising out of the Supplier, and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute to such policies; and
 - (iii) contain a provision that such insurance coverage will not be cancelled or endorsed to reduce the limits of liability without the insurer or their authorized representative giving the City at least 30 days' written

notice by registered mail. Should the policy be endorsed to restrict coverage midterm, written notice of such restriction will be sent by registered mail to the City no later than the effective date change; the exception is cancellation for non-payment of premium in which case the applicable statutory conditions will apply.

- (d) 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.
- (e) The Supplier and any Subcontractors will purchase and maintain, at its own cost, any additional insurance which it is required by law, or other lines of insurance coverages, endorsements or increased limits of insurance as deemed necessary by the City and as a reasonable and prudent distributor, vendor, manufacturer or similar supplier would require to protect their performance of Supply or their operations.
- (f) As a condition precedent to any payment from the City to the Supplier under this Agreement, the Supplier shall provide evidence of all required insurance to be taken out in the form of one or more certificate(s) of insurance. The certificate(s) of insurance will identify the Agreement title, Agreement number, policy holder, description of work, insurer name, insurer policy number, insurer policy period, and insurer limits. Proof of insurance, in the form of such certificate(s) of insurance (or copies of the policy(ies) themselves, if requested), will be made available to the City at any time during the performance of the Supply immediately upon request.
- (g) 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.
- (h) The cost of the insurances arising under this Section 5.2 shall be deemed to be incorporated into the prices specified in Schedule A.

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 15 days, the City may terminate this Agreement upon notice delivered to the Supplier at any time following the expiration of such period.

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 90 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 15 days or such longer period as agreed by the Parties, the City may by a further notice to the Supplier of at least 15 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: <☐>

<☐Change to Parks Board where required.>

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.>

The Vancouver Rack Price is defined as the posted price in the Argus Asphalt Report, specifically the Western Canada Posted Spot Prices for Asphalt. The posted pricing is based on a 64-25 (80/100A) which will be the Supplier's equivalent reference to the 64-22 and 58-22 products described below. An example of the Argus Asphalt report is included in Schedule D - Supplier Proposal - Part C.

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.> <☐>NTD: Delete if inapplicable.>

**SCHEDULE B -
PRODUCT SPECIFICATIONS**

Supplier shall supply and deliver Products in accordance with the requirements of the RFP. Supplier will practice sampling and testing in accordance with the requirements of AASHTO T 48, T313, T314, T315 and T316.

<u>ITEM</u>	<u>SPECIFICATIONS</u>
<☐ Name 1>	<☐ Description 1.>
<☐ Name 2>	<☐ Description 2.>
<☐ Name 3>	<☐ Description 3.>

SCHEDULE C -
ESTIMATE OF PRODUCT REQUIREMENTS



REQUEST FOR PROPOSALS NO. PS20190496
SUPPLY AND DELIVERY OF LIQUID ASPHALTS FOR PAVING
PART D - FORM OF AGREEMENT

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

(a) 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.

REQUEST FOR PROPOSALS NO. PS20190496
SUPPLY AND DELIVERY OF LIQUID ASPHALTS FOR PAVING
PART D - FORM OF AGREEMENT

(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: _____