



## REQUEST FOR PROPOSALS

SUPPLY AND DELIVERY OF  
VARIOUS TRUCK BODY EQUIPMENT

RFP No. PS20200086

Issue Date: June 12, 2020

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

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PART A - INFORMATION AND INSTRUCTIONS

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SUMMARY

The City of Vancouver is seeking proponent(s) who are able to provide a variety of vehicle truck body equipment including but not limited to Class 4 to Class 8 dump bodies, cube vans, step vans, cranes, flat decks, and aerial lifts while meeting 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:
- 1.6.1 PART A - INFORMATION AND INSTRUCTIONS: This part is intended to serve as a guide to the RFP process for Proponents.
- 1.6.2 PART B - SCOPE OF WORK: This part describes the subject matter of the RFP, in respect of which the City invites Proposals.
- 1.6.3 PART C - FORM OF PROPOSAL: This is the form in which the Proposal should be submitted.
- 1.6.4 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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2.0 KEY DATES

2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Enquiries	Noon on Tuesday July 28, 2020
Closing Time	3:00pm on Thursday, August 6, 2020

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: **PS20200086 - Supply and Delivery of Various Truck Body Equipment - Vendor Name**
- Document format for submissions:
  - RFP Part C - Fillable (except for Appendix 3) in PDF format - 1 combined PDF file,
  - Appendix 1 to Part B (Technical Specifications) in Excel format,
  - Appendix 3 (Commercial Proposal) in in a separate Excel format, and;
  - Any other attachments if necessary
- Zip the files to reduce the size or email separately if needed.

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- Send your submissions to [bids@vancouver.ca](mailto: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](mailto:purchasing@vancouver.ca).
  - 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 5-year period, with 2 possible 1-year extensions, for a maximum total term of 7 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.

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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, 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 and Sustainability Requirements; which includes; (i) Appendix 2 - Questionnaire; (ii) Proponents' capabilities to meet the City's Technical Requirements (as defined in Part B and Appendix 1 to Part B), including quality and service factors; (iii) Appendix 4 - Proponent's References including skills, knowledge, reputations and previous experience(s), and experience(s) with the City (if any); (iv) Proponents' quality of response to Part C; (v) innovation; (vi) environmental or social sustainability impacts;
  - Financial Requirements; Proponents' capabilities to offer overall best value in relation to Appendix 3 - Commercial Proposal;
- a) 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.

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- 8.4 The City may, at any time prior to signing an Agreement, discuss or negotiate changes to the scope of the RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.
- 8.5 The City may elect to short-list Proponents and evaluate Proposals in stages. Short-listed Proponents may be asked to provide additional information or details for clarification, including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to the Form of Agreement. The City will be at liberty to negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.
- 8.6 The City may also require that any proposed subcontractors undergo evaluation by the City.
- 8.7 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to: (a) accept any Proposal; (b) reject any Proposal; (c) reject all Proposals; (d) accept a Proposal which is not the lowest-price proposal; (e) accept a Proposal that deviates from the requirements or the conditions specified in the RFP; (f) reject a Proposal even if it is the only Proposal received by the City; (g) accept all or any part of a Proposal; (h) split the 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.

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

12.0 **LEGAL TERMS AND CONDITIONS**

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

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



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PART B - SCOPE OF WORK

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## 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 REQUIREMENTS

The City has an ongoing requirement for various Truck Body Equipment (TBE) and to develop a plan to determine Engineering’s future course. Engineering utilizes the current contracts to purchase a variety of vehicle equipment including but not limited to Class 4 to Class 8 dump bodies, cube vans, step vans, cranes, flat decks, and aerial lifts as per the specifications set out in **Appendix 1 to Part B - Technical Requirements**.

This contract will allow for the Fleet Strategy & Asset Management (FSAM) team to purchase a variety of outfitted vehicles for several City departments. If possible, the final contract would be awarded in full to a single vendor.

To align with the City’s Greenest City Action Plan, vendors will be expected to work with a variety of chassis manufacturers that make electric, hybrid-electric, and CNG alternatives. It is also expected that vendors will have an engineering department that is willing to work with the City to produce sustainable environmentally conscious designs. In the years that follow the contract award, it is likely that there will be new environment friendly technology available, and the City would expect to work with the winning vendor to implement new technology provided it meets the project needs.

Once this contract is in place, it is expected that the City and the vendor will work together for each outfitting project. This will include collaboration with the vendor’s engineering and project management team throughout the planning, design, manufacturing, and delivery stages of each project.

1.1 Detailed Technical Specifications for the Truck Body Types are listed in the attached spreadsheet.

Here is a list of the Tabs:

1. Cover
2. Instructions
3. Common Requirements
4. Aerial Lift - 34 foot
5. Class 4 - 1 Yard Dump
6. Cube Van
7. Aerial Lift & Chip Box
8. Class 7 - 3 Yard Dump
9. Class 8 - 17 Yard Dump

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PART B - SCOPE OF WORK

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- 10. Common Options
- 11. Additional TBE

Refer to Appendix 1 to Part B - Technical Requirements (Attached Spreadsheet)

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PART C - FORM OF PROPOSAL

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**PART C - FORM OF PROPOSAL**

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(the "RFP")

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

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**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

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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. PS20200086, 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

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PART C - FORM OF PROPOSAL

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

## 5 EVALUATION OF PROPOSALS

### 5.1 Compliance / Non-Compliance

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

### 5.2 Reservation of Complete Control over Process

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

### 5.3 Discussions/Negotiations

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

### 5.4 Acceptance or Rejection of Proposals

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

## 6 PROTECTION OF CITY AGAINST LAWSUITS

### 6.1 Release by the Proponent

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

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

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PART C - FORM OF PROPOSAL

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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



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“Conflicts; Collusion; Lobbying” in the Proposal in accordance with the form set out in Part C - Appendix 11.

**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.

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- (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 in Word format.

**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 qualified employees, their company's number of years in service, 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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**Technical Requirements Part I - Department Makeup and Experience**

In the space below, Proponents should answer the following questions:

1. Does the Proponent have an engineering department? If yes, describe the overall make-up of the department, outlining disciplines, specialties and key personnel.
2. Provide specific information on how the experience/expertise of the engineering personnel/department applies to the design, outfitting and build of truck body equipment.
3. What are the primary responsibilities of the engineering department for truck body equipment projects?
4. Does the Proponent have a National Safety Mark for completed vehicles, and how does the company ensure projects meet all CMVSS certification standards.
5. Does the Proponent have the ability to complete any CMVSS certification and/or testing (i.e. aerial stability, seat anchorage, noise emissions)? If yes, provide examples of the project or tests.

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**Technical Requirements Part II - Processes**

In the space below, Proponents should answer the following questions:

6. Does the company have a process in place for reviewing equipment compatibility, ensuring safety and equipment standards are met, proposing and signing off on engineering drawings? If yes, describe the overall process.
7. Does the engineering department utilize any analysis tools when completing project review? If yes, describe programs and how they are applied to the projects
8. How does the company design and plan projects that involve multiple systems (i.e., hydraulic, electrical, mechanical)?
9. Describe the company's approach when taking on a new project.
10. Describe how the engineering team is involved in a project from initiation, to build to final delivery. If possible, provide a specific example.

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**Technical Requirements Part III - Client and Project Management**

In the space below, Proponents should answer the following questions:

11. Does the Proponent have a process in place for managing customers and ongoing projects (i.e. account managers, project managers, weekly meetings, design reviews, pre-delivery walk through)? If yes, describe the overall process.
12. If the Proponent has designated project managers, how does the company promote interaction amongst the project managers, engineers, production employees, and other employees involved in projects?
13. Describe the overall process for providing updates on projects, and describe measures the company takes to ensure projects remain on schedule and on budget.
14. Does the Proponent utilize any project management tools such as Project Management Framework, Work Breakdown Structure, or Failure Mode Effects Analysis to map out project components and identify potential risks? If yes, describe how they are applied to the project.
15. Does the Project Management team have their Project Management Professional (PMP) designation?

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**Sustainability Part I - Truck Body Equipment Electric Options**

In the space below, Proponents should answer the following questions:

16. Does the company offer any services or outfitting options that would help the City of Vancouver reach our Greenest City goals and reduce our fleets overall emissions (i.e. fully electric equipment, hybrid power systems, or weight optimization)?
17. Does the company have experience working with electric power take offs or hybrid powered systems? If so please elaborate to the extent of the experience and provide a summary of the project.
18. How does the company manage projects that include the design review, purchasing and installation of equipment that is new to the market and/or company (i.e. fully electric truck body equipment)?
19. How does the company stay educated and informed on new technology being introduced to the truck body equipment market?
20. Does the company have a means to work with and offer green-powered truck body equipment offered by smaller startup companies, or is the company limited to current supplier relationships?

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**Sustainability Part II - Truck Body Equipment Experience with EV Chassis**

In the space below, Proponents should answer the following questions:

21. How has the company adapted to the growing demands of electric vehicles and outfitting alternate powered chassis (i.e. personnel, training, etc.)?
22. How does the company track and monitor safety and transportation regulations relating to electric vehicles?
23. Does the company have experience outfitting chassis' powered by alternative fuel sources? If so, what types of alternative fuels does your organization have experience with?
24. Does the company have a strategy for working with chassis' that have not been previously outfitted by the company? If yes, describe the overall process.
25. What challenges have been experienced by your company when outfitting battery-electric chassis or chassis' powered by alternative fuels, and how were these challenges overcome?



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**Sustainability Part III - Environmental Impact of Truck Body Equipment (TBE)**

In the space below, Proponents should answer the following questions:

26. Does the company have any policies or strategies in place to minimize the environmental footprint of produced truck body equipment (i.e. locally manufactured products, reducing freight, recycled components)?
27. Of the products offered by the company, have any environmental life-cycle analysis been completed by the suppliers (environmental impact of the product throughout its entire life cycle)? If yes, for which pieces of equipment and please provide a short summary.
28. Does the organization or the company's suppliers consider the end of life disposal of the equipment? If so, is there a sustainable recycling program in place for any of the equipment referenced in Appendix 1 to Part B - Technical Requirements

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**Transition and Implementation**

Depending on the outcome of the RFP process, a timely and orderly transition to the servicing of the Contract may be 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:

- determination of requirements;
- ordering process; and
- any value added options;

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

**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.

## Social Sustainability

(Complete and submit the following as part of Appendix 2 - Questionnaire)

### EMPLOYMENT EQUITY & WORKFORCE DIVERSITY

#### EMPLOYMENT EQUITY;

1. In addition to being an equal opportunity employer, please describe any policies/programs or how you advance employee equity, diversity and inclusion for under-represented populations (such as Women, Indigenous People, People with Disabilities)
2. Do you regularly conduct an employee equity “survey” or similar information/data collection on workforce diversity? Y/N
  - a. Please describe how you track/monitor your workforce diversity including frequency
3. Do you source/hire from Workforce Development and/or Skill Training programs, including pre-employment support, apprenticeships or ongoing employment support, for people who are under-represented and/or face barriers to traditional employment (such as Indigenous persons, Women, youth, Minorities, People with Disabilities including mental health)? Y/N
  - a. Please describe and/or use the table below

Category of Partnership Organizations	Name of the Partnership Organization(s)	# of staff (optional if makes sense)
Indigenous Peoples		
Women		
Ethno-Cultural Peoples		
People with Disabilities		
LGBTQ2+		
Youth/Seniors		
Other		

4. Do you support training for career advancement and/or skills development?
  - a. If yes, please describe
5. Do you compensate at or above a Living Wage (currently \$20.91/hr.) Y/N  
 Do you provide non-mandatory benefits (i.e. extended health) to your employees? Y/N, if yes, please describe

#### WORKFORCE DIVERSITY

Vendors’ are required to answer to the following question, which is for information gathering purposes only, and will be kept confidential in accordance with the Legal Terms and Conditions.

As best known, in the space below, indicate the vendor’s company profile with regards to economic inclusion supporting employment equity, diversity, inclusion and reconciliation by an equity-seeking

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demographic (including but not limited to Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ2+ people). <i>Confidential &amp; for information only</i>	
<b>Overall Workforce Diversity:</b>  % Women  % Indigenous Peoples  % Ethno-cultural People  % People with Disabilities  % LGBTQ2+  % Other: please indicate	<b>Leadership/Management/Executive Workforce Diversity:</b>  % Women  % Indigenous Peoples  % Ethno-cultural People  % People with Disabilities  % LGBTQ2+  % Other: please indicate
<b><u>If you choose not to respond please indicate why:</u></b>  <input type="checkbox"/> <b><u>Do not track this information</u></b> <input type="checkbox"/> <b><u>Do not want to share this information</u></b>	

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APPENDIX 3  
COMMERCIAL PROPOSAL

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

Refer to **Appendix 3 - Schedule of Prices (Attached Spreadsheet)**

### 1.0 PRICING

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 Excel file to the entire Proposal.

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.

### 1.1 Pricing Table

A separate attached Excel Spreadsheet is provided for the proposal. Pricing is to be entered and submitted into the Excel spreadsheet.

The pricing should be in accordance with PART A - INFORMATION AND INSTRUCTIONS, Section 7.0 of the RFP. The spreadsheet in the attached **Appendix 3 - Schedule of Prices** 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.**

### 1.2 Pricing Formula

The Proponent should submit prices for each of the items listed in the attached spreadsheet. The pricing formula in the attached spreadsheet utilizes the following variables:

- a) Quantity ranges relevant to the base models are specified for each type to ensure that certain volume discounts are provided. The quantity discounts should be applied on all orders placed within the year for each Truck Body Equipment (TBE) type. The volume discount unit prices would be submitted to us for review on an annual basis.
- b) Unit Price (Vendor pricing for each type for 2020 base model)
- c) Cost Adder = Overhead + Profit Margin  
Assumptions of overhead costs include (i.e. parts, materials, whole product cost, foreign exchange rates, transportation & fuel, inflation/CPI).  
Profit Margin will be solely determined by the Proponent
- d) Labour Cost Adder is assumed to be direct labour hours projected within the upcoming year to building each body type multiplied by an average labour hourly rate.
- e) Total Price is assumed to be the total costs found in Column (E) multiply by the approximate quantities. An assumption would be that there will be volume discounts generated with the quantity ranges specified.

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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 THE FORM ON THE 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 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
*and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.*
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 _____	<b>Insured Values (Replacement Cost)</b>	-
TYPE OF COVERAGE _____	Building and Tenants' Improvements	\$ _____
POLICY NUMBER _____	Contents and Equipment	\$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss	\$ _____

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

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

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

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

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

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

**7. PROFESSIONAL LIABILITY INSURANCE**

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

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

Dated \_\_\_\_\_

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



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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](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:		

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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 Part 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

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**APPENDIX 10**  
PROOF OF WORKSAFEBC REGISTRATION

Attach 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 10 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)	

REQUEST FOR PROPOSALS NO. PS20200086  
SUPPLY AND DELIVERY OF VARIOUS TRUCK BODY EQUIPMENT  
PART D - FORM OF AGREEMENT

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PART D  
FORM OF AGREEMENT [SAMPLE]

**BEGINS ON FOLLOWING PAGE**



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

# STANDING OFFER AGREEMENT [SAMPLE]

BETWEEN

<  SUPPLIER NAME >

AND

CITY OF VANCOUVER

RELATING TO PS20200086 - SUPPLY AND DELIVERY OF  
VARIOUS TRUCK BODY EQUIPMENT

DATED: <  >



---

## STANDING OFFER AGREEMENT

THIS AGREEMENT is made as of <[redacted]>

BETWEEN:

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

(hereinafter referred to as the "Supplier")

AND:

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

(hereinafter referred to as the "City").

WHEREAS the Supplier is in the business of <[redacted]>;

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

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

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

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SAMPLE

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

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

- (a) **"Agreement"** means this agreement, including the schedules hereto, and all amendments made hereto or thereto by written agreement between the Supplier and the City, including Terms Agreements;
- (b) **"Background IP"** has the meaning ascribed thereto in Section 14.4;
- (c) **"Business Day"** means a day on which banks are open for business in Vancouver, British Columbia, except a Saturday, Sunday or statutory holiday;
- (d) **"Certificate of Completion"** means a certificate issued by the City, which shall confirm the Supplier's completion of a relevant Supply under and in accordance with this Agreement and shall include, or meet the requirements for, a certificate of completion pursuant to the *Builders Lien Act* (British Columbia) if the City determines that is required. ~~<Note: Delete if inapplicable.>~~;
- (e) **"Change in Control"** means an occurrence whereby a person (or persons acting in concert) acquires control of the relevant entity;
- (f) **"City Policies"** means any or all (as the context requires) of those procedures, standards and/or standard specifications, requirements, policies and the like listed in Schedule E or notified to the Supplier from time to time, as the same may be updated, modified, expanded, revised, supplemented and/or replaced from time to time by the City (as notified to the Supplier);
- (g) **"City's Manager"** means a manager who at the relevant time carries such designation from the City under, or in accordance with, ARTICLE 5;
- (h) **"Competent Authority"** means:
  - (i) any multinational, federal, provincial, state, regional, municipal, local or other government or governmental body and any ministry, department, division, bureau, agent, agency, commission, board or authority of any government or governmental body, domestic or foreign, (ii) any domestic, foreign or international judicial, quasi-judicial or administrative court, tribunal, commission, board, panel, arbitrator or arbitral body acting under the authority of any of the foregoing; or
  - (ii) any quasi-governmental or private body exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing;
- (i) **"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;
- (j) **"Consent"** means an approval, clearance, registration, franchise, right, privilege, certification, quota, consent, permit, licence, qualification, filing, exemption, certificate or permission and any such other matter or authorization whatsoever, including any condition thereof, that is lawfully and necessarily required under any Law or from any Competent Authority in connection with the Supply or a Site;
- (k) **"Contract Price"** means amounts payable (subject to and in accordance with the terms of this Agreement) by the City to the Supplier in return for the proper performance by the Supplier of obligations under this Agreement, as detailed in Terms Agreements from time to time, which shall be in accordance with Schedule B, except as otherwise agreed in writing by the Parties;
- (l) **"Defect"** means any part of the Supply (or omission therefrom) which is defective, deficient or incomplete or does not otherwise comply with the requirements of this Agreement;
- (m) **"Documentation"** means calculations, computer programs and other software, drawings, designs, plans, manuals, records, reports, documents, papers, photos, typographical arrangements, models, contract documents, deliverables, agreements, tender/enquiry documents, and all other materials in whatever form, including but not limited to tangible copies and electronic forms, supplied either by or on behalf of the Supplier or generated collaboratively by the Parties in the course of the provision of the Supply under this Agreement;
- (n) **"Effective Date"** has the meaning ascribed to such term in Section 2.1;
- (o) **"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;

- (p) **“Environmental Law”** means any Law which imposes any obligations relating to:
- (i) the protection, management, conservation or restoration of the natural environment;
  - (ii) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances; and
  - (iii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.
- (q) **“Force Majeure”** means, exhaustively, any:
- (i) war, hostilities (whether war is declared or not), invasion, act of foreign enemies;
  - (ii) rebellion, terrorism (or threat of terrorism), revolution, insurrection, military or usurped power or civil war;
  - (iii) riot, civil commotion or disorder, strike or lockout by persons other than the Supplier’s personnel and other employees, Subcontractors or any other person for whom the Supplier is responsible;
  - (iv) natural catastrophe such as an earthquake, forest fire, landslide or flood; or
  - (v) change in Law or action by a Competent Authority, which makes it illegal or impossible for either Party to perform its obligations under this Agreement;
- (r) **“Good Industry Practice”** means, in relation to the Supply or the performance of any other obligation under this Agreement, the practices, and the application of the skill, care, diligence, prudence and foresight, which would reasonably and ordinarily be expected from a skilled and experienced international contractor carrying out or procuring equivalent services of similar type, scope and value, in the same or similar location and in similar circumstances to those pertaining to the Supplier;
- (s) **“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.
- (t) **"Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated by any Competent Authority pursuant to any Environmental Law including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law;
- (u) **"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;
- (v) **"Key Project Personnel"** means any persons named as such in an applicable Terms Agreement;
- (w) **"Laws"** means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings, determinations or awards of any Competent Authority whether or not having the force of law and any legal requirements or bases of liability under the common law or civil law, including all such Laws relating to Taxes, the environment, human health or safety, pollution and other environmental degradation, and hazardous materials, which affect or are otherwise applicable to the Supply, the Supplier, the Site or any other lands affected by the Supply;
- (x) **"OHS Requirements"** means all Laws applicable to the Supply and related to occupational health or safety, and all of the City Policies that relate to occupational health or safety, and includes without limitation the WCA;
- (y) **"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.>
- (z) **"Parties"** means the City and the Supplier and "Party" means one of them or either of them, as the context requires;
- (aa) **"Permitted Purpose"** has the meaning ascribed thereto in Section 15.3;
- (bb) **"Preferred Supplier"** means a person named as such in an applicable Terms Agreement;
- (cc) **"Proposal"** means the Supplier's <☐ Describe as proposal or application as appropriate> dated <☐>, submitted by the Supplier to the City in response to <☐>; <☐ NOTE: Delete if applicable.>
- (dd) **"Release"** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal;

- (ee) **“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;
- (ff) **“Safety Incident”** means:
- (i) a failure by the Supplier or any Subcontractor to comply with any OHS Requirements; or
  - (ii) any hazard, incident or accident caused by the Supplier or a Subcontractor.
- (gg) **“Sales Tax”** has the meaning ascribed to such term in Section 16.1;
- (hh) **“Supplier’s Manager”** means a manager who at the relevant time carries such designation from the Supplier under, or in accordance with, ARTICLE 5;
- (ii) **“Site”** means each of the City worksites and other places at which any part of the Supply shall be performed, including a site specified in a Terms Agreement.
- (jj) **“Social Enterprise”** means a business that: (i) is owned by a non-profit organization or community services co-operative; (ii) is directly involved in the production and/or selling of goods and services for the combined purpose of generating income and achieving social, cultural, and/or environmental aims; and (iii) has a defined social and/or environmental mandate. ~~<NTD: Delete if Living Wage Policy does not apply.>~~
- (kk) **“Student”** means an individual who is enrolled in a school, college, university or other educational institution and is employed by the Supplier or a Subcontractor, as the case may be, to obtain practical workplace experience as a requirement of or credit for their education; ~~<NTD: Delete if Living Wage Policy does not apply.>~~
- (ll) **“Subcontractor”** means any person named in a schedule to this Agreement or a Terms Agreement as a subcontractor, or any other person appointed by the Supplier, in accordance with this Agreement, to perform any part of the Supply;
- (a) **“Supply”** means the provision of the goods, services and works described in Schedule A (or, as the context requires, the particular such goods, services or works provided or to be provided by the Supplier to the City at a particular time or times and in the particular combinations and quantities directed by the City in accordance herewith), and any other services to be provided by the Supplier pursuant to this Agreement;
- (mm) **“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;
- (nn) **"Terms Agreement"** means a document substantially in the form of Schedule C setting out in relation to the particular Supply to be provided thereunder:
- (i) the particular work and deliverables to be delivered by the Supplier;
  - (ii) any items to be provided by the City to allow the Supplier to perform the Supply;
  - (iii) the time schedule, including the Time(s) for Completion therefor;
  - (iv) any Preferred Suppliers;
  - (v) the Key Project Personnel therefor;
  - (vi) any specific Site(s) therefor; and
  - (vii) the price to be paid by the City therefor.
- (oo) **"Time(s) for Completion"** means the time(s) stated in a Terms Agreement by which a particular Supply or any part thereof must be completed, as such time(s) may be adjusted, strictly in accordance with this Agreement;
- (pp) **"Variation"** has the meaning ascribed to such term in Section 3.8(a); and  
<del>NOTE: Delete if Section 3.9 is deleted.>
- (qq) **"WCA"** means the *Workers Compensation Act* (British Columbia), and the regulations thereunder.

## 1.2 Headings

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

## 1.3 Extended Meanings

In this Agreement:

- (a) words importing the singular include the plural and vice versa, words importing a gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, except where the context requires otherwise;
- (b) any provision calling for "agreement" requires the relevant agreement to be recorded in writing and signed by both Parties;
- (c) the words "include", "includes", "including" and "included" shall be construed without implying limitation by the words which follow those words and without prejudice to the generality of the provisions to which such words relate, unless

inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply;

- (d) each reference to a specific statute, regulation, law or any subordinate instrument or statutory or regulatory provision shall be construed as including any legal or regulatory provision which subsequently amends or replaces the same, and shall include any and all subordinate instruments, orders, rules, regulations and bylaws made thereunder or guidelines issued in respect thereof;
- (e) each reference to a writing means a writing that is hand-written, type-written, printed or electronically made, and which results in a permanent un-editable record; and
- (f) "control" when used to describe a relationship between one person and any other person, has the following meanings:
  - (i) a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
  - (ii) a person controls an unincorporated entity, other than a limited partnership, if more than 50% of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
  - (iii) the general partner of a limited partnership controls the limited partnership; and
  - (iv) a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

#### 1.4 Schedules

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

- (a) Schedule A Scope of Goods and Services
- (b) Schedule B Prices for Supply
- (c) Schedule C Rules of Engagement
- (d) Schedule D Request for Goods
- (e) Schedule E City Policies

### ARTICLE 2 EFFECTIVENESS

#### 2.1 Effective Date

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

#### 2.2 Term

- (a) Unless earlier terminated pursuant to ARTICLE 12 <del>and</del> and subject to the below Section 2.2(b)>, this Agreement shall terminate <del>on the [●] anniversary of the Effective Date</del> or on such later date as the Parties may agree in writing.

- (b) <☐> Subject to termination pursuant to ARTICLE 12, but notwithstanding Section 2.2(a), the term of this Agreement may be extended for up two successive one-year periods following the [●] anniversary of the Effective Date, at the option of the City, upon written notice from the City to the Supplier.>
- (c) Notwithstanding the foregoing, if the City and the Supplier continue to deal with each other in respect of the subject matter of this Agreement following the expiry of this Agreement, without any additional or other written agreement in respect thereof, this Agreement shall be deemed to have been renewed on a month-to-month basis on the same terms and conditions as before the expiry of the Agreement and it may be cancelled without cause by either party on thirty (30) days' prior written notice to the other.

### ARTICLE 3 SUPPLY; GENERAL TERMS

#### 3.1 Supply

- (a) During the term of effectiveness of this Agreement, the City agrees to maintain the Supplier on its internal list(s) of approved suppliers of <☐>, who may be contacted from time to time to supply <☐> to the City.
- (b) During the term of effectiveness of this Agreement, the Supplier shall provide the Supply to the City, at the times and in the quantities directed by the City, and otherwise in accordance with the directions of the City and in conformity with this Agreement.
- (c) Notwithstanding any other provision hereof, no Supply shall be provided to the City other than upon execution by each of the City and the Supplier of a Terms Agreement in respect of the particular Supply and receipt by the Supplier of a purchase order from the City relating to the particular Supply.
- (d) The City and the Supplier shall adhere to the following procedure in respect of Supply:
  - (i) First, the City may identify a need for Supply and, if it does so, it may complete a draft of the Terms Agreement and send the draft to the Supplier, leaving the price provisions blank.
  - (ii) Second, the Supplier, upon receipt of a draft Terms Agreement, shall promptly complete the price provisions of the draft Terms Agreement (provided that the price provisions must be completed consistently with Schedule B hereof) and otherwise amend and complete the Terms Agreement, have it executed on behalf of the Supplier by the Supplier's Manager, and return it to the City.
  - (iii) Third, the City shall review Supplier's finalized Terms Agreement, including price, and if it approves of the Terms Agreement, it shall have it executed on behalf of the City by the City's Manager and return it to the Supplier. If it does not approve, the City may in its discretion cease discussions with the Supplier in relation to the particular Supply or request that the Supplier propose a varied Terms Agreement.
- (e) The City makes no representations, warranties or covenants hereunder respecting the volume of Supply, if any, to be procured from the Supplier.
- (f) During the term of effectiveness of this Agreement, the City may also, from time to time, direct the Supplier to make Supply to one or more of the Other City Entities at the price(s) specified herein and otherwise on the terms and conditions stated herein, and the Supplier shall comply with each such direction. Moreover, the

Supplier shall, upon the further request of the City, promptly enter into a Letter Agreement (or failing that shall be deemed to have entered into a Letter Agreement) with each relevant Other City Entity memorializing that the Supplier shall make Supply to such Other City Entity in accordance herewith. ~~☒~~ Delete this paragraph if inapplicable.>

- (g) ~~☒~~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.>

### 3.2 Sufficiency and Competence of Personnel

- (a) The Supplier shall have and maintain at all times and in accordance with all applicable Laws, sufficient numbers of fit, skilled, qualified and experienced personnel to carry out the provision of the Supply within the times and in the manner required by the City.
- (b) The Supplier warrants that it has (and its Subcontractors, if any, have) the experience, competence, certifications, qualifications and capacity necessary for the Supply.
- (c) Insofar as the Supply involves the Supplier in performing design work, such design work shall be carried out by qualified designers who are engineers or other professionals who comply with the criteria stated in Schedule A (Scope of Goods and Services) or, where not so stated, in accordance with Good Industry Practice.

### 3.3 Design Review

- (a) Where so specified in Schedule A (Scope of Goods and Services) or as otherwise instructed by the City, the Supplier shall submit design-related Documentation for review by the City, and shall not proceed with work on the basis of such design Documentation until the City's approval of such Documentation has been received in writing.
- (b) None of:
- (i) the submission of Documentation to the City by the Supplier;
  - (ii) its examination by or on behalf of the City; or
  - (iii) the making of any comment thereon (including any approval thereof) shall in any way relieve the Supplier of any of its obligations under this Agreement or of its duty to take reasonable steps to ensure the accuracy and correctness of such Documentation, and its suitability to the matter to which it relates.

~~☒~~NOTE: Delete Section 3.3 if there is no design work involved in the services, and update subsequent cross-references to sections in ARTICLE 3.>

### 3.4 Standards and Requirements

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

- (a) all applicable Laws and Consents;
- (b) the City's written instructions relating to the particular Supply given in conformity herewith;

- (c) the applicable Terms Agreement;
- (d) the requirements of Schedule A (Scope of Goods and Services);
- (e) the City Policies; and
- (f) where no higher standard is expressly required of the Supplier under this Agreement, Good Industry Practice,

and the Supplier shall comply with the standards and requirements in Sections 3.4(a) to 3.4(f) above in the order of priority in which such standards or requirements are listed (with Section 3.4(a) being of highest priority).

### 3.5 Consents

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

### 3.6 Warranties

- (a) The Supplier warrants that the Supply shall be performed in accordance with this Agreement and to the best practice standards of diligence, skill, care and efficiency expected of a competent contractor performing work of a similar nature to the Supply;
- (b) The Supply shall be fit for the use for which it is intended, and the Supplier warrants that it shall be without defects or imperfections and that any goods or works constituting part of the Supply shall function correctly and adequately, and without any need of repair or improvement, for at least <[redacted]> months following the completion of the relevant Supply, or such defects, imperfections or failures to function correctly and adequately, shall be remedied by, or such repairs or improvements shall be undertaken by, the Supplier, without cost or liability to the City and the Supplier shall indemnify and hold the City harmless in relation thereto. <[redacted]NOTE: Modify or delete as necessary.>
- (c) All goods or materials provided under the Agreement as part of the Supply shall be new and fully warranted for a period of <[redacted]> year[s] from the time of delivery to the City, against defects in design, manufacturing, materials, workmanship and performance, and the Supplier affirms and covenants that such warranty is, and shall be, provided by the Supplier if and to the extent it is not fully and effectively provided to the City by third-party manufacturers or suppliers of the goods or materials. <[redacted]NTD: Edit as necessary.><[redacted]NOTE: Edit as necessary.>
- (d) All goods, works and materials provided under the Agreement as part of the Supply shall be non-defective and fit for their intended purposes and shall function safely in all respects.
- (e) All costs associated with warranty replacements or repairs shall be the responsibility of the Supplier, including repair, adjustment, and shipping costs, and replacements of goods or materials.
- (f) If requested by the City, the Supplier shall handle and manage any claim on a manufacturer warranty for any defect in goods or materials provided as part of the Supply.
- (g) The Supplier shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 3.6 or to evidence the Supplier's compliance with this Section 3.6, and the Supplier shall assign all

warranties, and do all other things necessary, to ensure that the City receives the full benefit of each warranty or other covenant set forth in this Section 3.6.

### 3.7 Relationship Between the Parties

- (a) The Supplier in its provision of the Supply and its performance of its obligations under this Agreement shall at all times act as an independent contractor on its own account and shall have no authority to act as the City's agent unless expressly empowered to do so by the City. This Agreement shall not be deemed to create any relationship of partnership, agency, joint enterprise or other like relationship between the Parties, and the Supplier shall be solely responsible for all employment-related obligations in connection with its employees, its other Representatives and its Subcontractors and their employees.
- (b) The <☒ City intends to use the Supplier as a preferred supplier of the goods, services and works described in Schedule A; however the> City is not bound to treat the Supplier as its exclusive supplier of any goods or services.
- (c) The Supplier acknowledges and agrees that the City shall retain complete discretion over the allocation of work, if any, to or among the Supplier and others included on the City's internal list(s) of standing-offer suppliers and, in connection therewith, may use a ranked list<, consistent with the City's ranking of applicants in the City's Request for Applications PS[ ]>. <☒ NOTE: Edit as necessary.>

### 3.8 Variations Requested by the City

<☒ NOTE: Delete this Section 3.8 if the City doesn't require, or it is not appropriate for the City to have, the ability to force a change to the work.>

- (a) Any instruction given by the City which constitutes or gives rise to a change to the scope of the Supply expressed in Schedule A (Scope of Goods and Services) or to the items expressed in an applicable Terms Agreement, shall constitute a "Variation" and shall be governed by and subject to this Section 3.8.
- (b) During the term of this Agreement, the City may at any time effect a Variation by notice in writing to the Supplier, and the Supplier shall not be entitled to refuse to implement any Variation unless the carrying out of such Variation would contravene any Law (in which case the Supplier shall promptly give notice to the City).
- (c) If the Supplier is of the opinion that a Variation justifies an increase to the Contract Price or a change to the Time(s) for Completion, the Supplier must, as a condition to being entitled to any such increase to the Contract Price or change to the Time(s) for Completion, no later than 10 Business Days after the City gives notice of the Variation, submit a claim to the City which sets out the Supplier's assessment of the impact the Variation should have on the Contract Price and the Time(s) for Completion, and thereafter:
  - (i) the City shall consider that claim as soon as possible and may request the Supplier to supply such further evidence as is reasonably required to confirm the details of such claim (and, as soon as practicable after such further evidence is available to it, the Supplier shall provide it to the City); and
  - (ii) within ten Business Days after the receipt of all the information requested by the City, the Supplier and the City shall meet in order to agree any variations to the Contract Price or the Time(s) for Completion, as necessary, which such agreement must be evidenced in writing.

- (d) If no agreement is reached under 3.8(c)(ii) within 20 Business Days of the Parties' first meeting (or such other period as the Parties may agree), the Parties may then refer the matter for arbitration in accordance with ARTICLE 17.
- (e) Notwithstanding the foregoing, the City shall be entitled to replace, revise, expand or modify the City Policies at any time upon notice to the Supplier, and no such change shall be considered to be a Variation.

### 3.9 Tests; Defects and Acceptance

- (a) When, in the Supplier's judgement, a given item of Supply is complete in accordance herewith, the Supplier shall give written notice to that effect to the City. Thereafter, the City shall reasonably promptly perform such practical tests of the Supply as the City reasonably deems necessary, and the Supplier shall assist the City with all such tests, if and to the extent so requested by the City. ~~NOTE: Delete if not applicable.~~
- (b) If ~~a~~ Defect appears ~~the~~ testing described in the foregoing Section 3.9(a) reveals, in the judgement of the City, any Defects in the Supply, the City shall notify the Supplier accordingly.
- (c) The Supplier shall remedy at its own cost and risk Defects in the Supply that the Supplier discovers or that are notified by the City, as soon as reasonably practicable following discovery or notification of such Defects, as the case may be.
- (d) If the Supplier fails to remedy any Defect in the Supply within a reasonable time, a date may be fixed by the City on or by which the Defect is to be remedied. The Supplier shall be given reasonable notice of this date.
- (e) If the Supplier fails, without reasonable excuse, to remedy any Defect in the Supply by this notified date, the City may (at its option) elect to carry out the work itself or by others and shall be entitled to recover from the Supplier all direct, proper and reasonable costs of so doing (as a debt due on demand). The City's exercise of its election under this Section 3.9(e) shall in no event absolve the Supplier of its responsibility for remediation of other Defects or otherwise constitute a waiver by the City of its rights and remedies in relation to other Defects, nor shall it preclude or restrict the further exercise of such rights or remedies.
- (f) When the City is reasonably satisfied that a particular Supply has been completed and is without Defects, the City shall promptly issue to the Supplier a Certificate of Completion.
- (g) Without prejudice to any right or remedy of the City under this Agreement, performance of the Supplier's obligations in respect of the particular Supply shall not be considered to have been completed until the corresponding Certificate of Completion is issued in accordance with Section 3.9(f). ~~NOTE: Delete the foregoing two paragraphs if inapplicable.~~

### 3.10 Title and Risk

- (a) The Supplier warrants that title in each good, work or improvement supplied by the Supplier hereunder, when it passes to the City hereunder, shall be free and clear of Encumbrances.
- (b) Title to any good, work or improvement supplied by the Supplier hereunder shall pass to the City upon the earlier of:
  - (i) payment therefor by the City;
  - (ii) ~~its~~ delivery to a ~~fixture~~ to any part of the Site; and

- (iii) its incorporation into a work supplied by the Supplier.
- (c) The Supplier shall deliver to the City any documentation, including a bill of sale, which the City may reasonably require to evidence the transfer of title in and to goods to the City, free and clear of all Encumbrances.
- (d) The Supplier must not enter any contract that reserves ownership of goods or materials supplied by the Supplier hereunder in favour of any third party and, at the request of the City, the Supplier must provide evidence that no such contract has been entered into.
- (e) Notwithstanding the foregoing provisions of this Section 3.10, the Supplier is responsible for the care of, and bears all of the risk of loss or damage to, each good, work or improvements supplied hereunder and each material used in connection with the Supply, until the <del>the completion of the Supply to the satisfaction of the City</del> <del>the Certificate of Completion has been issued</del>.

### 3.11 Living Wage [Intentionally Deleted]

## ARTICLE 4 PREFERRED SUPPLIERS

<del>NOTE: Delete this ARTICLE 4 if not relevant. If deleted, update all numbering, and also delete references to "Preferred Supplier" elsewhere.>

### 4.1 Procurement of Supplies

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

### 4.2 Information Concerning Alternative Suppliers

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

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

### 4.3 Use of Alternative Suppliers

If the Supplier needs to procure any materials or services for which a Preferred Supplier is specified in the applicable Terms Agreement and the Supplier wishes to procure such materials or services from an alternative supplier, the Supplier shall provide written notification to the City



within a reasonable time so as not to delay the applicable Time(s) for Completion. Such notice shall be in the form acceptable to the City and shall contain, as a minimum, the following information:

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

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

## ARTICLE 5 CONTRACT MANAGERS

### 5.1 City's Managers

- (a) The City hereby designates each of <redacted> and <redacted> as a "City's Manager." Each City's Manager, including any additional City's Managers designated by the City in accordance herewith, has, for so long as he or she remains a City's Manager, full authority to act on behalf of the City in relation to all matters arising under this Agreement.
- (b) Any instruction from the City to the Supplier pursuant to this Agreement shall be issued through an executive officer of the City or through a City's Manager and shall be effective if in writing or confirmed in writing within seven days of oral instruction. Failure to comply with this Section 5.1 shall render any purported City's instruction invalid, unless it is later ratified by the City. However, this restriction does not apply to any instruction issued in an emergency situation or which relates to a threat or potential threat to the life, health or safety of any individual.
- (c) Notwithstanding the foregoing, each City's Manager may, in writing, delegate his or her authority hereunder to others.

### 5.2 Supplier's Managers

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

### 5.3 Designation of New Managers

The City may designate new City's Managers, or remove that designation from any individual, and the Supplier may designate new Supplier's Managers, or remove that designation

from any individual, from time to time, each at its own discretion, through notice to the other Party. In the case of the Supplier, any such designation or removal must be in writing to the City.

## ARTICLE 6 SUPPLIERS' WARRANTIES AND COVENANTS

### 6.1 General Representations and Warranties

The Supplier represents and warrants that:

- (a) the Supplier has the full right, power, and authority to enter into this Agreement and to perform the Supply;
- (b) the Supplier is a <☐> duly organized, validly existing and in good standing under the laws of <☐> and is lawfully authorized to do business in the Province of British Columbia;
- (c) the Supplier is not a party to or bound by any agreement (written or oral), indenture, instrument, licence, permit or understanding or other obligation or restriction under the terms of which the execution, delivery or performance of this Agreement does or shall constitute or result in a violation or breach;
- (d) the Supplier has a valid City of Vancouver business license or a Metro West Inter-Municipal business license that applies to all of the Supply; <☐NOTE: Delete if inapplicable.>
- (e) all statements made by the Supplier in its Proposal are true and accurate; <☐NOTE: Delete if inapplicable.>
- (f) the Supplier is fully experienced in the design and management of projects or works of a similar scope, purpose, complexity, size and technical sophistication as the Supply;
- (g) the Supplier possesses a level of skill and expertise commensurate with Good Industry Practice, which it shall utilize in the performance of its obligations under this Agreement;
- (h) the Supplier understands that the City is relying upon the skill, judgment and expertise of the Supplier and its Subcontractors (if any) in the carrying out of the Supply and the co-ordination and planning thereof; and
- (i) the Supplier's and any Subcontractors' employees are accredited to carry out the relevant portions of the Supply to the extent required by applicable Laws and all of them are appropriately skilled, competent and experienced and possess relevant qualifications having regard to the nature and extent of the Supply and the Sites,

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

### 6.2 General Health and Safety-Related Acknowledgements and Covenants

The Supplier shall:

- (a) in the provision of the Supply, comply at all times with the OHS Requirements and take all reasonably necessary steps to ensure similar compliance from its Representatives and its Subcontractors, if any;
- (b) if the Supply involves any type of manual labour, prior to their attendance at any Site, deliver to each of its Representatives and each of its Subcontractors, if any,

and to their employees, if applicable, copies of the OHS Requirements relevant to the Site;

- (c) at all times take all reasonable precautions to maintain the health and safety of workers;
- (d) be at all times registered and in good standing with the relevant workers' compensation insurance Competent Authorities, and provide to the City copies of any notices, correspondence or directions issued by any government or Competent Authority relating to workplace-related employment, human rights, labour, immigration policy, health, safety or environmental matters within 24 hours of the Supplier's receipt of such notice, correspondence or direction;
- (e) appoint a qualified health and safety coordinator to ensure coordination of health and safety activities in the provision of the Supply;
- (f) report (with full details) any accident, injury, illness or other incident relating to workplace health and safety or the environment to the City as soon as reasonably practicable, investigate the accident, injury, illness or other incident reasonably thoroughly (and in any event in accordance with any applicable OHS Requirements) and promptly report to the City the results of each such investigation;
- (g) maintain such records and make such reports concerning health, safety and welfare of persons, and damage to property, or the natural, physical or biological environment, as the City may reasonably require; and
- (h) to the extent a "prime contractor", as defined in the WCA, is not already designated by the City for any portion of a Site, be and act as the prime contractor, and the Supplier assumes and is wholly responsible for the health and safety of all persons at such locations on the basis described in the WCA. **<del>Consider whether to strike this paragraph (e.g. where we do not want the Supplier to be the prime contractor). Discuss also with the City's Occupational Health and Safety Coordinator whether additional prime contractor provisions need to be added.>**

### 6.3 Covenants Regarding Violations of Health and Safety Requirements

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

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

### 6.4 Covenants Regarding the Environment

- (a) The Supplier shall:

- (i) at all times, be conscious of the importance of the protection of the natural, physical and biological environment at and in the vicinity of the Sites;
  - (ii) conduct, and cause its Representatives to conduct, their respective activities that relate to the Supply in a manner that shall have the least possible adverse effect on the natural environment and in compliance with all Environmental Laws and Consents, all at the Supplier's expense;
  - (iii) perform the Supply with the least degree of environmental degradation during and as a result of such performance; and
  - (iv) without restricting the generality or application of any other provisions of this Agreement, comply, and cause its Representatives to comply, with all applicable Laws and Consents and with all plans and instructions contained in this Agreement or issued in writing by the City concerning the existence, Release, removal, handling, transport, storage, disposal and treatment of any Hazardous Substances or other materials that are or may be hazardous to the life or health of any person or that endanger the environment or that are regulated by applicable Law.
- (b) During the term of this Agreement, the Supplier shall not bring or store or permit to be used at any Site, any Hazardous Substances unless such Hazardous Substances are:
- (i) reasonably required to carry out the Supply, and
  - (ii) brought or stored or permitted to be used at any Site in compliance with all Laws (including Environmental Laws).

The Supplier shall not Release nor permit the Release of any Hazardous Substances into the environment. The Supplier is solely responsible for all Hazardous Substances introduced to the Sites or the environment by the Supplier or its Representatives or Subcontractors, and the Supplier shall promptly and fully remediate, to the City's satisfaction, any release of Hazardous Substances on or from any Site, or in the vicinity of any Site.

## 6.5 Further Covenants Regarding the Sites

The Supplier shall:

- (a) at its sole cost, keep any portion of any Site used in connection with the Supply in a safe and tidy condition and to maintain and operate the Supplier's equipment in a good, workmanlike and safe manner; and
- (b) not to do anything at any Site which is or may become a nuisance, danger or disturbance to the City or to any other occupants or users of the Site or adjacent areas or to any works or structures or installations thereon.

## 6.6 Covenants Against Encumbrances

- (a) The Supplier shall keep each Site, and the goods included in the Supply, and each part thereof, free of all Encumbrances filed pursuant to any Law or otherwise in respect of any such work or materials. In any event, if any Encumbrance has been filed in relation to the Site or any improvement thereon, or in relation to the goods included in the Supply, the Supplier shall cause any such Encumbrance to be discharged within 30 days after the Encumbrance has come to the notice of the Supplier.

- (b) The Supplier acknowledges and agrees that, in the event the Supplier fails to discharge any Encumbrance contemplated in Section 6.6(a) within 60 days of written notice of such Encumbrance being given by the City, in addition to any other right or remedy, the City may, but shall not be obligated to, discharge the Encumbrance by paying to the applicable Competent Authority, the amount claimed to be due or the amount due, together with a reasonable amount for costs and the amount paid by the City shall be paid by the Supplier to the City forthwith upon demand. In no case shall the City be required to investigate the validity of the Encumbrance prior to discharging the same in accordance with this Section 6.6(b).

#### 6.7 Absence of Conflicts of Interest

- (a) Neither the Supplier, nor any of its Representatives has given or shall give or offer to give to the City or any official, officer, employee or agent of the City any gratuity, reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act in connection with this Agreement.
- (b) To the best of the Supplier's knowledge, the Supplier, its Subcontractors, and their respective directors, officers, employees and agents have no pecuniary interests or any other current or past interests or dealings, including with any officials, officers or employees of the City, that would cause any conflict of interest or be seen to cause a conflict of interest in respect of the Supply. Should such a conflict or perceived conflict arise during the term of this Agreement, the Supplier shall declare it immediately in writing to the City. The City may direct the Supplier to resolve any conflict or perceived conflict to the satisfaction of the City. The Supplier warrants that neither the Supplier nor any of its Subcontractors, or any of their respective directors, officers, employees or agents, has any predisposition, affinity or association with any third party which would impair or be seen to impair or qualify the Supplier's provision of the Supply.

#### ARTICLE 7 PERSONNEL

<🗑️NOTE: Delete this ARTICLE 7 if inapplicable.>

#### 7.1 Separate Personnel

- (a) It is the intention of the Parties that any personnel utilized or supplied by the Supplier or any Subcontractor hereunder shall remain employees of the Supplier or Subcontractor, respectively, for the purposes of any applicable Law and no activity performed by such personnel shall be deemed to create or imply any employment or other like relationship between such personnel and the City. If contrary to this intention such personnel are treated as employees of the City for the purposes of any applicable Law, the Supplier shall indemnify the City against any loss, cost, expense, complaint, claim, levy, assessment, penalty or fine (including any Tax liability) resulting therefrom.
- (b) Neither the City nor the Supplier shall, and the Supplier shall ensure that none of its Representatives or Subcontractors shall, induce any employee of the other, who may work in connection with the Supply, to leave his or her current employer, and neither of them shall, and the Supplier shall ensure that none of its Representatives or Subcontractors shall, employ or make an offer of employment to any such employee of the other during the term of this Agreement or the period of 365 days after the termination of this Agreement without the express prior approval in writing of the employee's current employer.
- (c) If any persons are brought by the Supplier into Canada for purposes of the Supply, the Supplier shall be responsible for all immigration matters, and for the

expatriation and repatriation of such personnel, and the costs of the same shall be deemed included in the Contract Price. <☒NTD: Delete the foregoing two if irrelevant.>

## 7.2 Changes in Personnel

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

## 7.3 Key Project Personnel

- (a) Where there are Key Project Personnel the Supplier shall:
- (i) use best endeavours to retain Key Project Personnel for the duration of the provision of the Supply;
  - (ii) take reasonable steps to ensure that Key Project Personnel dedicate their time fully to the Supply (unless otherwise agreed or approved by the City in writing);
  - (iii) promptly inform the City should any of the Key Project Personnel leave, or give notice of an intention to leave the Supplier, and obtain a substitute or substitutes;
  - (iv) not reassign or allow the reassignment of the Key Project Personnel to other projects during the term of this Agreement without the City's prior written consent (such consent not to be unreasonably withheld or delayed); and
  - (v) take all reasonable steps to ensure that the Key Project Personnel perform their roles and responsibilities in accordance with any organisational structure agreed in writing between the Parties.
- (b) If:
- (i) the Supplier wishes to reassign or to replace an individual designated as Key Project Personnel; or
  - (ii) an individual designated as Key Project Personnel gives notice of his or her intention to leave or is otherwise no longer able to perform the duties, including for reasons of illness, injury or personal hardship,

the Supplier shall provide a substitute with experience and qualifications equivalent or greater than the Key Project Personnel to be replaced, and shall provide documentation to the City to establish such experience and qualifications.

- (c) Key Project Personnel who are reassigned to other work shall, to the extent possible, remain available to the project team until completion of the relevant Supply.
- (d) All the Supplier's Key Project Personnel must be fluent in both spoken and written English, except as may be agreed to the contrary between the City and the Supplier in relation to specific individuals or positions to be filled from time to time.

## ARTICLE 8 REPORTING

<☒ NTD: Delete this Article 8 if not required.>

### 8.1 Progress Reports

- (a) <☒ Quarterly> <☒ Monthly> progress reports shall be prepared by the Supplier and submitted to the City in <☒ a format reasonably acceptable to the City> <☒ the format required by the schedules hereto, if any, or as otherwise required by the City>, each within seven days after the last day of the <☒ month/quarter> to which it relates, provided that no such reports shall be required to be prepared or submitted during any period in which the Supplier has not been engaged to provide any Supply.
- (b) Each such progress report shall include (as a minimum): <☒ NOTE: Amend as necessary or delete.>
- (i) charts and detailed descriptions of progress in preparing Documentation and in otherwise delivering the Supply;
  - (ii) copies of any quality assurance documents;
  - (iii) disclosure <☒, in the form of Appendix \_\_>, <☒ NOTE: Add appendix and references if applicable> 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 delivery of the Supply from the date of the last such report (or, if none, from the Effective Date) to the date that is 15 days before the date of the report. <☒ NOTE: Delete this paragraph if inapplicable.>
  - (iv) information and statistics relating to health, safety, environmental and community relations aspects of the Supply;
  - (v) health and safety statistics, including details of:
    - (A) any Safety Incidents or other injuries, accidents, or safety or near-miss incidents relating to the safety of the Supply; and
    - (B) any hazardous accidents, incidents and activities relating to environmental aspects of the Supply or community relations, including any Releases of any Hazardous Substances; and
  - (vi) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise any aspect of the Supply or the timing therefor.

### 8.2 Assistance Regarding Reporting Requirements

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

### 8.3 Other Reports

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

**ARTICLE 9  
PAYMENT; AUDITS**

**9.1 Payment to the Supplier**

- (a) Subject to ARTICLE 12 and Section 9.3, the City shall pay the Supplier for the Supply in accordance with Schedule B (Prices for Supply), following the receipt of invoices prepared and delivered in accordance with Section 9.2(b) and Section 9.3.
- (b) Unless otherwise expressly stated in the schedules hereto, the Supplier shall pay any and all costs, including freight, marine and transit insurance, Taxes, and transportation and delivery charges on all equipment or things of whatsoever nature provided by the Supplier as required by it for the purposes of the Supply and any other incidental costs and all such costs shall be deemed to be included in the Contract Price.
- (c) The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the prices stated in each Terms Agreement and to have obtained all information and to have taken into account all circumstances, risks and other contingencies that may affect the cost of performing the Supply (including any circumstances, risks or contingencies that a contractor exercising Good Industry Practice would typically expect to encounter) and any other obligation under this Agreement. The Supplier shall not be entitled to any additional compensation beyond the Contract Price established by the applicable Terms Agreement (including without limitation for escalation in the prices of materials and labour), except as otherwise expressly stated in this Agreement.
- (d) Notwithstanding any other provisions of this Agreement, the Supplier shall not be entitled to payment for any Supply that has not been performed in compliance with the provisions of this Agreement.

**9.2 Purchase Orders; Content of Invoices**

- (a) The City shall from time to time issue purchase orders to the Supplier in relation to the Supply. These shall not have the effect of amending or waiving the application of any provision of this Agreement.
- (b) Each of the Supplier's invoices shall set out, as a minimum (and in such form or format as required by the City):
  - (i) the City purchase order number(s) relating to the particular Supply to which the invoice relates;
  - (ii) an itemized list of the amounts owing;
  - (iii) the invoice date and the time period to which the invoice relates;
  - (iv) a description of the portion of the Supply to which the invoice relates;
  - (v) the total amounts payable under the invoice and details of any applicable taxes;
  - (vi) all supporting documentation relating to disbursements; and
  - (vii) such other information as the City may require from time to time.
- (c) Any terms or conditions proposed by the Supplier to govern any Supply that are contained in any invoice (or in any shipping document, packing list or similar document) are void and of no effect, notwithstanding any statement in such



document concerning the means by which the City may accept or be deemed to accept such terms or conditions.

### 9.3 Procedure for Invoices

- (a) The Supplier shall address each of its invoices to the City, Attention: Accounts Payable, and email it to [APIInvoice@vancouver.ca](mailto:APIInvoice@vancouver.ca), or to such other address as is specified in an applicable purchase order. The City shall thereafter pay the invoice within 30 days, provided the other requirements of this Agreement have been satisfied and subject to the other provisions hereof.
- (b) The City shall not be liable for any interest on any invoice amount in respect of any period for any reason.
- (c) The City expects to make payments by electronic funds transfer and the Supplier shall provide banking information to the City to enable it to do so.

### 9.4 Currency of Payment

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

### 9.5 Contested Claims for Payment

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

### 9.6 Audits

- (a) The Supplier shall maintain up-to-date records and accounts which clearly document the provision of the Supply and shall make the same available to the City upon request. The City may request copies of all such records and accounts which shall be provided to the City by the Supplier (subject to reimbursement of the Supplier's reasonable copying costs and any other direct costs and expenses, if any) at any time prior to the expiry of 365 days after completion of the relevant Supply or the earlier termination of this Agreement. For avoidance of doubt, any records and accounts provided by the Supplier in accordance with this Section 9.6(a) shall be deemed to be Confidential Information;
- (b) Not later than three years after the completion of the relevant Supply or the earlier termination of this Agreement, the City can itself, on notice of not less than 14 days, require that a firm of accountants, surveyors or other auditors nominated by it audit any such records and accounts of the Supplier by attending during normal working hours at the office where the records are maintained. For avoidance of doubt, any records and accounts or other documents provided by the Supplier in accordance with this Section 9.6(b) shall be provided only subject to the accountants, surveyors or other auditors, and each of them, being subject to and agreeing to meet such of the Supplier's reasonable requirements as to confidentiality as the Supplier deems (at its sole discretion) to be appropriate in the circumstances; and
- (c) Any overpayments by the City discovered during the course of any such audit pursuant to Section 9.6(b) shall be payable by the Supplier to the City within 30 days of such discovery, and if the overpayments have been caused by an act or omission of the Supplier and the amount of those overpayments is no less than one quarter of the total amount paid by the City to the Supplier in respect of the relevant Supply, then the costs of the relevant audit shall be for the account of the Supplier.

## 9.7 Set Off

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

## ARTICLE 10 CERTAIN ADDITIONAL OBLIGATIONS OF THE CITY

### 10.1 Scheduled Items

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

### 10.2 Other Information

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

### 10.3 Decisions in Writing

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

### 10.4 Access to the Site

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

## ARTICLE 11 LIABILITY AND INSURANCE

### 11.1 Covenants of Indemnification by the Supplier

- (a) The Supplier shall indemnify and keep indemnified and hold the City, the Other City Entities and their respective officials, officers, employees and agents harmless against all losses, liabilities, claims, demands, costs and expenses (including legal fees), fines, penalties and charges (including those imposed by statute or otherwise imposed), arising out of or in connection with, or consisting of:
  - (i) any:
    - (A) damage to the Site or any part thereof, or any property whether located at the Site or otherwise, which occurs during the provision of the Supply;

- (B) any claim by a Subcontractor under the *Builders Lien Act* (British Columbia);
  - (C) damage to the natural environment, including any remediation cost recovery claims;
  - (D) loss or damage arising from a claim by any third party concerning or arising out of the Supply, or by any employee or Subcontractor of the Supplier for any reason;
  - (E) occupational illness, injury or death of any person, whether at a Site or otherwise, which occurs during, or as a result of, the provision of the Supply;
  - (F) failure by the Supplier to fully comply with the provisions of this Agreement;
  - (G) breach by the Supplier or any Subcontractor of any Law in the course of, or as a result of, the provision of the Supply;
  - (H) actual or alleged infringement of any Intellectual Property Rights caused by the provision of the Supply or the use of any process, work, material, matter, thing or method used or supplied by the Supplier or any Subcontractor in the provision of the Supply; or
  - (I) breach of the warranties of the Supplier contained herein,  
in each case to the extent that it is due to any act, omission or default, or any breach of Law or this Agreement, of the Supplier, a Subcontractor or any Representative of the Supplier or any employee, agent or contractor of any of them; or
  - (ii) any defect in a good, work or material provided as part of the Supply or any failure of any such good, work or material to function safely or to satisfy any applicable safety standard.
- (b) Nothing in this Section 11.1 nor otherwise in this Agreement shall limit or exclude any direct liability (whether in contract, tort, for breach of statutory duty or any other legal basis) of the Supplier to any person, including without limitation any liability for:
- (i) the Supplier's default hereunder or fraud, fraudulent misrepresentation or reckless misconduct in the provision of the Supply; or
  - (ii) any loss or damage flowing from the termination of this Agreement.
- (c) The Supplier appoints the City as the trustee of the Other City Entities and of their and the City's officials, officers, employees and agents in relation to the covenants of indemnification of the Supplier contained in this Section 11.1 and the City accepts such appointment.

## 11.2 Contamination of Lands [Deleted]

## 11.3 Conduct of Claims

In the event of any claims, statutory fees, costs, charges, penalties (including without limitation any legal costs), contributions, compensations, cost recoveries, expenses or fines being levied or claimed from a person in respect of which an indemnity is provided by the Supplier pursuant to ARTICLE 11, the following provisions shall apply:

- (a) subject to Sections 11.3(b), 11.3(c) and 11.3(d) below, where it appears that a person is or may be entitled to indemnification from the Supplier in respect of all (but not part only) of the liability arising out of a claim, such person entitled to indemnification may at its sole election and subject to:
- (i) approval by any relevant insurers (without prejudice to Section 11.3(f)); and
  - (ii) the Supplier providing the party entitled to indemnification with a secured indemnity to its reasonable satisfaction against all costs and expenses (including legal expenses) that it may incur by reason of such action,
- permit or require the Supplier to dispute the claim on behalf of the person entitled to indemnification at the Supplier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations; provided that the person entitled to indemnification shall give the Supplier (provided at the Supplier's cost) all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;
- (b) with respect to any claim conducted by the Supplier pursuant to Section 11.3(a) above:
- (i) the Supplier shall keep the person entitled to indemnification fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Supplier shall not bring the name of the person entitled to indemnification (or any Group Member thereof) into disrepute; and
  - (iii) the Supplier shall not pay or settle such claims without the prior consent of the person entitled to indemnification, such consent not to be unreasonably withheld or delayed;
- (c) a person entitled to indemnification shall be free to pay or settle any claim on such terms as it thinks fit (and without prejudice to its rights and remedies under this Agreement) if:
- (i) the Supplier is not entitled to, or is not permitted or instructed, take conduct of the claim in accordance with Section 11.3(a) above; or
  - (ii) the Supplier fails to comply in any material respect with the provisions of Sections 11.3(a) and 11.3(b) above;
- (d) the person entitled to indemnification pursuant to ARTICLE 11 shall be free at any time to give notice to the Supplier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Section 11.3(a) above applies. On receipt of such notice the Supplier shall promptly take all steps necessary to transfer the conduct of such claim to the person entitled to indemnification, and shall provide to the person entitled to indemnification all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (e) if the Supplier pays to the person entitled to indemnification an amount in respect of an indemnity and the person entitled to indemnification subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the person entitled to indemnification shall forthwith repay to the Supplier whichever is the lesser of:

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

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

- (f) the Supplier shall inform the person entitled to indemnification of the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement and in relation to such the person entitled to indemnification shall issue instructions accordingly; and
- (g) any person entitled to an indemnity from the Supplier must take all reasonable measures to mitigate any loss, damage or liability that it may suffer in respect of any such matter.

#### 11.4 Insurance

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

- (a) In addition to those mandatory insurance policies that the Supplier is required to carry by any applicable Laws, the Supplier shall take out and maintain in force, with a reputable insurance company legally authorized to conduct business in British Columbia, during the term of this Agreement and for a period of five years afterwards, commercial general liability insurance with coverage of not less than \$<☒> million per occurrence and at least \$<☒> million of annual aggregate coverage endorsing the City as an additional insured on a primary and non-contributory basis and providing a waiver of subrogation in favour of the City.
- (b) The Supplier shall ensure that any Subcontractors also maintain the same insurance as the Supplier, having regard to the obligations under this Agreement which they are contracted to fulfil.
- (c) The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Section 11.4(a).
- (d) The cost of the insurances arising under this Section 11.4 shall be deemed to be incorporated into the prices specified in Schedule B and the prices specified in any Terms Agreement.
- (e) As a condition precedent to any payment from the City to the Supplier under this Agreement, and as and when reasonably requested by the City, the Supplier shall provide documentary evidence (to the reasonable satisfaction of the City, including by completing the City's standard reporting documents used for this purpose) that the insurances required by this Section 11.4 have been taken out and are being maintained.

**ARTICLE 12**  
**FORCE MAJEURE; TERMINATION**

**12.1 Force Majeure**

- (a) Neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement reasonably due to Force Majeure.
- (b) If either Party's performance of its obligations under this Agreement is affected by an event of Force Majeure, then:
  - (i) it shall give written notice to the other Party, specifying the nature and extent of the event of Force Majeure, within ten days after becoming aware of the event of Force Majeure;
  - (ii) performance of such obligation(s) shall be deemed suspended but only for a period equal to the delay reasonably caused by such event;
  - (iii) it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the event of Force Majeure;
  - (iv) the Time(s) for Completion shall be extended to take into account such delay; and
  - (v) within five days of the cessation of any Force Majeure event, the Party affected thereby shall submit a written notice to the other Party, specifying the actual duration of the delay of its obligations caused by the event of Force Majeure and the consequences resulting from such delay, and submit a specific plan to minimize and mitigate those consequences.
- (c) The affected Party shall use all reasonable diligence in accordance with Good Industry Practice to mitigate the cause and the result of an event of Force Majeure and to remedy the situation and resume its obligations under this Agreement, including complying with any instructions from the City, as to how to do so.
- (d) Notwithstanding the obligations of a Party affected by an event of Force Majeure pursuant to Sections 12.1(b) and 12.1(c), if the event of Force Majeure renders it impossible or impractical for the Supplier to provide the Supply in accordance with this Agreement for a period of at least <del>45</del> days, the City may terminate this Agreement upon notice delivered to the Supplier at any time following the expiration of such period of <del>45</del> days.

**12.2 City Suspension and Termination Rights**

The City shall have the following rights:

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

- (c) If the City reasonably considers that the Supplier is not discharging any of its material obligations under this Agreement, the City may inform the Supplier by notice stating the grounds for the notice. If evidence of remediation satisfactory to the City, is not received as soon as practicable or in any case within <del>14</del> 14 days or such longer period as agreed by the Parties, the City may by a further notice to the Supplier of at least <del>14</del> 14 days terminate this Agreement.
- (d) The City may terminate this Agreement with immediate effect if:
  - (i) the Supplier becomes bankrupt or insolvent, goes into liquidation, has a receiver or administrator appointed over it or any of its assets or undertakes, enters into any arrangement for the benefit of its creditors, becomes the subject of any moratorium or carries on business under a receiver, trustee, manager or arrangement for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
  - (ii) a Change in Control of the Supplier occurs and the City reasonably considers that the Change in Control shall substantively affect the Supplier's ability to perform its obligations under this Agreement.

### 12.3 Supplier Termination Rights

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

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

### 12.4 Consequences of Termination

The following consequences shall apply upon a termination:

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

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

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

## 12.5 Other Surviving Rights and Liabilities of Parties

- (a) Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- (b) After termination of this Agreement, the provisions of Sections 3.6 and 9.6 and ARTICLE 11, ARTICLE 14, ARTICLE 15 and ARTICLE 17 shall remain in force.

## ARTICLE 13 ASSIGNMENT AND SUBCONTRACTING

### 13.1 Assignment

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

### 13.2 Subcontracting

- (a) The Supplier shall not subcontract the whole or substantially all of the Supply.
- (b) Without prejudice to the foregoing Section 13.2(a), save in the case of Subcontractor(s) whose role in the provision of the Supply is expressly provided for in the schedules hereto (and only to the extent so provided for), the Supplier may not subcontract any part of the Supply without the City's prior written consent.
- (c) The Supplier shall include in each contract by which it engages a Subcontractor a provision allowing the benefit of such contract to be assigned by the Supplier to the City upon request.
- (d) The Supplier shall not without the written consent of the City (which shall not be unreasonably withheld or delayed) initiate or terminate any contract with a Subcontractor.
- (e) If the Supplier is unable to enter into a contract with a Subcontractor whose role in the provision of the Supply is expressly provided for in the schedules hereto, it shall as soon as reasonably practicable inform the City of the reason for such inability



and procure the services of a replacement subcontractor that is acceptable to the City, acting reasonably.

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

#### ARTICLE 14 INTELLECTUAL PROPERTY

<🗑️NOTE: Delete or reduce this ARTICLE 14 (and update numbering if required) if the goods and services provided under the contract do not have significant IP aspects.>

##### 14.1 Assignment

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

##### 14.2 Further Assistance

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

##### 14.3 Supplier Undertakings and Representations and Warranties

- (a) The Supplier undertakes:
- (i) to notify the City in writing of the full details of Documentation promptly upon its creation;
  - (ii) whenever requested to do so by the City and in any event on the termination of this Agreement (as provided for in ARTICLE 12), promptly to deliver to the City all correspondence, documents, papers and records on

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

#### 14.4 Background Intellectual Property

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

#### 14.5 Supplier Employees' and Subcontractors' Rights

The Supplier:

- (a) warrants that the Supplier's employees, Subcontractors and agents have waived or shall have waived in whole all moral rights (including, without limitation, any similar rights allowing the rights holder to restrain or claim damages for any distortion, mutilation, or other modification of works or any part thereof, and to restrain use or reproduction of works in any manner) they may have in the Documentation;
- (b) indemnifies the City, its officers, agents, contractors and employees against any liability, cost, loss or damage (including legal costs on a solicitor-client basis) suffered or incurred that arises under any breach of the warranty contained in Section 14.5(a) above; and
- (c) must do all things requested by the City, including signing or procuring the signature of particular forms, to give full effect to Section 14.5(a) above.

#### 14.6 No Additional Remuneration

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

### ARTICLE 15 PRIVACY; CONFIDENTIALITY

#### 15.1 *Freedom of Information and Protection of Privacy Act*

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

#### 15.2 No Promotion

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

#### 15.3 Confidentiality Obligations

Each Party shall keep the Confidential Information of the other Party confidential and each Party shall not use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement or where, in the case of the City, otherwise necessary to pursue the public business of the City (a "**Permitted Purpose**"), or disclose the Confidential Information in whole or in part to any third party, except as expressly permitted by this Article 15.

#### 15.4 Disclosure to Representatives

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

### 15.5 Disclosures Required by Law

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

### 15.6 Other Disclosures by the City

The City's obligations under this ARTICLE 15 are wholly subject to and qualified by, the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and, notwithstanding any other provision of this ARTICLE 15, the City may disclose Confidential Information in any manner compliant with such statute or otherwise in furtherance of its public role or duties, including in the course of publicly reporting to the Vancouver City Council.

### 15.7 Interpretation; Enforcement and Survival

- (a) Notwithstanding anything in this ARTICLE 15 to the contrary, nothing in this ARTICLE 15 shall affect the Parties' rights and obligations under ARTICLE 14.
- (b) The Parties acknowledge that a breach of any of the obligations or provisions contained in this ARTICLE 15 could cause the other Party to suffer loss which may not be adequately compensated for by damages and that the other Party may, in addition to any other remedy or relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily quantifiable, and such breaching Party must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief.

## ARTICLE 16 TAXES

### 16.1 Taxes for Own Accounts

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

### 16.2 Withholding Taxes

- (a) Notwithstanding any other provision to the contrary, if the City determines that it is necessary to satisfy its obligations under any Law relating to Taxes, the City may:
  - (i) withhold an amount from a payment made to the Supplier; and
  - (ii) pay the withheld amount directly to the relevant Competent Authority.
- (b) If an amount withheld in accordance with Section 16.2(a) is paid by the City to the relevant Competent Authority, it is deemed to have been paid to the Supplier on

the date on which the remainder of the payment to which it relates was paid to the Supplier.

- (c) The Supplier agrees and acknowledges that it has no claim against the City for any amounts withheld and paid to the relevant Competent Authority in accordance with Section 16.2(a).
- (d) If the City does not withhold an amount under Section 16.2(a) which it is required to withhold pursuant to any laws relating to Taxes, the Supplier agrees to pay that amount to the City, upon request by the City.
- (e) The Supplier agrees that the City shall not be required to increase any payment to the Supplier by the amount withheld by the City under Section 16.2(a).

## ARTICLE 17 DISPUTE RESOLUTION

### 17.1 Optional Procedure

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

### 17.2 Arbitration

- (a) In the event that Parties agree to arbitration pursuant to Section 17.1:
  - (i) the arbitration shall be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the Parties, and failing agreement by the Parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia;
  - (ii) the parties shall share equally the costs of the arbitration but shall be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements; and
  - (iii) the arbitration shall take place in Vancouver, British Columbia and shall be governed by the laws of British Columbia.

## ARTICLE 18 MISCELLANEOUS

### 18.1 Time of the Essence

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

### 18.2 Costs

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

### 18.3 Benefit of this Agreement

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

- (b) Except as expressly set forth in the foregoing Section 18.3(a) or ARTICLE 11, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Supplier.

#### 18.4 Entire Agreement

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

#### 18.5 Amendments and Waiver

Subject to Section 3.8, no modification of or amendment to this Agreement is valid or binding unless set forth in writing and fully executed by both of the Parties hereto and no waiver of any breach of any term or provision of this Agreement is effective or binding unless made in writing and signed by the Party purporting to give such waiver and, unless otherwise provided, is limited to the specific breach waiver.

#### 18.6 Notices

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

- (i) If to the Supplier:

<☐ Supplier Name>  
<☐ address>

Attention: <☐>

Fax: <☐>

Email: <☐>

- (ii) If to the City:

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

Attention: <☐>

Facsimile: <☐>

<☐ Change to Parks Board where required.>

or such other address or facsimile number as may be designated by notice given by either Party to the other, provided that, notwithstanding the foregoing, the Supplier's invoices shall be addressed as specified in Section 9.3 or as otherwise specified in the relevant City purchase order.

- (b) Any order, demand, notice or other communication given (and, in the case of electronic transmission, confirmed or acknowledged) in accordance with Section 18.6(a) shall be conclusively deemed to have been given:
- (i) if given by personal delivery, on the day of actual delivery thereof;
  - (ii) if given by registered mail or courier, on the Business Day following confirmation by the postal service or the courier that the notice has been delivered; and
  - (iii) if given by electronic transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

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

#### 18.7 Governing Law and Jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the laws of the Province of British Columbia.
- (b) All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.
- (c) This Agreement is subject to the exclusive jurisdiction of the courts in the Province of British Columbia except:
  - (i) as otherwise agreed by the Parties pursuant to ARTICLE 17; and
  - (ii) to the extent necessary to enforce, in another jurisdiction, any decision or award made pursuant to ARTICLE 17 or any judgment of any court in the Province of British Columbia.

#### 18.8 Further Assurances

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

#### 18.9 Severance

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

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

18.10 Counterparts

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

18.11 Electronic Execution

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

18.12 Voluntary Agreement

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

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

<☒ SUPPLIER NAME>

By: \_\_\_\_\_  
 Signature \_\_\_\_\_ Print Name and Title \_\_\_\_\_

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

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

By: \_\_\_\_\_  
 Signature \_\_\_\_\_ Print Name and Title \_\_\_\_\_

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

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



SCHEDULE A  
SCOPE OF GOODS AND SERVICES

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

SAMPLE

SCHEDULE B  
PRICES FOR SUPPLY

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

SAMPLE

SCHEDULE C  
RULES OF ENGAGEMENT

Subject to the City's rights under this Agreement, the selection of a supplier for the issuance of a Schedule D - Request for Goods and the allocation of goods, if any, will be at the absolute discretion of the City.

SAMPLE

SCHEDULE D REQUEST FOR GOODS

TERMS AGREEMENT

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

BETWEEN:

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

(hereinafter referred to as the "Supplier")

AND:

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

(hereinafter referred to as the "City")

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

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

SPECIFIC WORK AND DELIVERABLES:

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

ITEMS TO BE PROVIDED BY THE CITY:

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

SCHEDULE AND TIME(S) FOR COMPLETION:

[NOTE: Describe above the time for the completion of the supply and any applicable milestones to be achieved by particular dates prior to the completion of the supply.]

PREFERRED SUPPLIERS:

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

KEY PROJECT PERSONNEL:

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

PRICE:

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

**3. Supplier's Offer**

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

Signature on behalf of the Supplier:

\_\_\_\_\_ Date: \_\_\_\_\_

**4. City's Acceptance**

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

Signature of the City's Project Manager:

\_\_\_\_\_ Date: \_\_\_\_\_

SAMPLE

**SCHEDULE E  
CITY POLICIES**

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

<☐>NOTE: List other internal policies or standards, which are applicable, and any other standards or other requirements with which the Supplier must comply.

These policies may include any design review procedures or other consultation or administrative procedure(s) required to be followed by the Supplier, the text of which may be set forth here.>

SAMPLE