



REQUEST FOR QUOTATION ("RFQ") No. PS20120560
SUPPLY AND DELIVERY OF PROJECTOR LAMPS FOR THE 'FLOW' ARTWORK

Quotations are to be addressed to the Purchasing Services Office, City of Vancouver, 453 West 12th Avenue, Vancouver, British Columbia, Canada, V5Y 1V4, (Courier Delivery and Drop off is at the Information Desk, Main Floor Rotunda of the same address), prior to the Closing Time: 3:00 pm Vancouver Time (as defined in Note 2 below), Tuesday, June 26, 2012.

The quotations submitted will not be opened publicly.

NOTES:

1. Quotations are to be submitted in sealed envelopes or packages marked with the Vendor's Name, the RFQ Title and Number.
2. Closing Time and Vancouver Time will be conclusively deemed to be the time shown on the Main Floor Rotunda Information Desk computer clock.
3. The City of Vancouver City Hall is open on Business Days 8:30 am to 4:30 pm Vancouver time and closed Saturdays, Sundays and holidays.
4. DO NOT SUBMIT BY FAX.

All queries related to this RFQ shall be submitted in writing to the attention of:

Gamaliel Martinez, SCMP
Contracting Specialist
Fax: 604.871.6048
E-mail: purchasing@vancouver.ca

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1.0 INTRODUCTION AND SUBMISSION INSTRUCTIONS

- 1.1 The City is seeking quotations to determine if it will issue one or more purchase orders for the supply and delivery of projector lamps and replacement filters for the City's "FLOW" Artwork located at Mount Pleasant Community Centre (MPCC) in Vancouver, British Columbia.
- 1.2 Vendors should carefully review Appendix 1 - Requirements for a detailed description of the City's requirements.
- 1.3 Vendors should carefully review the City's terms and conditions attached as Appendix 2. The City hereby reserves the right to amend its standard purchase order terms and conditions at any time without providing notice to the vendors. If the City issues a purchase order pursuant to this RFQ, it is the sole responsibility of the Vendor to review and familiarize itself with the terms and conditions of the purchase order before supplying any goods and services.
- 1.4 Vendors should submit quotations on the form provided. Failure to do so may result in the quotation being put aside and given no further consideration. Failure to complete all fields in the quotation form and schedule of prices may result in the Vendor's quotation being disqualified.

2.0 SUSTAINABILITY

- 2.1 The City's Procurement Policy and related Supplier Code of Conduct found at <http://vancouver.ca/fs/bid/epp/index.htm> aligns the City's overall approach to procurement with its corporate social, environmental and economic sustainability values and goals. It establishes a commitment to maximize benefits to the environment through product and service selection, to ensure safe and healthy workplaces, where human and civil rights are respected, and to support an environmentally sustainable local economy, whenever possible. In doing so, the Policy ensures incorporation of sustainability and ethical considerations as integral evaluation components in best-value supply selection.
- 2.2 Vendors are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that the Vendor supplies materials, and where such materials may cause adverse effects, the Vendor is to indicate the nature of the hazard in its Quotation. The Vendor is to advise the City of any known alternatives or substitutes for such materials that would mitigate the effects of any adverse conditions on the environment.

3.0 INQUIRIES

- 3.1 It is the responsibility of the vendor to satisfy itself as to the requirements set out in this RFQ. Inquiries are to be addressed only to the contact person named on the cover page of this RFQ no later than five (5) business days prior to Closing Time. If required, an addendum will be issued to all vendors.

4.0 PRICING

- 4.1 Prices quoted are to be exclusive of HST, except where expressly requested.
- 4.2 Pricing shall be held firm for 30 days.
- 4.3 Prices are to be quoted DDP (Incoterms 2000) and include all taxes (excluding HST and any successor tax that may replace the HST, except where expressly requested), fees, charges, storage, transportation, overhead, profit and other expenses or costs of any kind whatsoever necessary for or incidental to the supply and delivery of the specified item.
- 4.4 Prices are to be quoted in Canadian currency.

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5.0 DELIVERY ADDRESS

- 5.1 The Vendor shall deliver goods to the following address: Suite 501 - 111 West Hastings Street, Vancouver, BC, V6B 1H4, unless otherwise specified in a purchase order.

6.0 DELIVERY TIME

- 6.1 Vendors are asked to state in their submissions the delivery time from placement of a purchase order. The City requires that the projector lamps be delivered to the delivery address stated in Section 5, above, within four (4) weeks of the placement of the order resulting from this RFQ. Deliveries must be made between 8:30 am and 4:00 pm (PST), Monday to Friday, excluding statutory holidays, unless other arrangements have been agreed to in writing.

7.0 QUANTITIES

- 7.1 The quantity stated herein is the City's best estimate of its requirements. Actual quantities may vary.

8.0 TERMS OF PAYMENT

- 8.1 The City's standard payment terms are net thirty (30) days after receipt and approval of invoice; however, any discounts or more favourable terms which may be offered by the Vendor will be taken into consideration in the financial evaluation. The Vendor must indicate in its quotation if it requires alternate payment terms.
- 8.2 The Vendor may be asked if it will be willing to accept payment by EFT (Electronic Funds Transfer) or by credit card.

9.0 PLACEMENT OF A PURCHASE ORDER

- 9.1 The City may elect to place an order resulting from this RFQ with more than one Vendor and is not obligated to enter into an exclusive arrangement with any Vendor or purchase any minimum quantity of equipment or material.
- 9.2 Acceptance of a quotation and placement of a purchase order shall be valid only if made by an authorized representative of the City.
- 9.3 Where the head office of the successful Vendor is located within the City of Vancouver and/or where the successful Vendor is required to perform the services at a site located within the City of Vancouver, the successful Vendor is required to have a valid City of Vancouver business license.

10.0 DISQUALIFICATION

- 10.1 The City may elect to disqualify any bid that fails to meet any of the requirements of this RFQ. Any deviations from the requirements or conditions specified herein must be clearly stated in the vendor's response. The City will determine what constitutes an acceptable deviation. If no deviations are indicated in the Vendor's response, the City will be entitled to interpret that the Vendor offers to perform in full compliance with the requirements and conditions stated herein.

11.0 EVALUATION CRITERIA

- 11.1 Quotations will be evaluated on the basis of the overall best value to the City based on quality, service, cost, social, economic and environmental sustainability and any criteria set out herein including, but not limited to:

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- (a) ability to meet specifications stated herein, including and required delivery date and installation date stated herein;
 - (b) Vendor's past performance;
 - (c) overall best value to the City including design performance, component availability, component standardization and product support;
 - (d) lowest overall cost including as appropriate: purchase price, installation costs, delivery cost, maintenance cost including availability of parts and service, warranty, and compatibility with existing equipment;
 - (e) Vendor's compliance with the Supplier Code of Conduct;
 - (f) environmental impact of products; and
 - (g) any other criteria the City deems, at its sole and absolute discretion, necessary to evaluate the Vendor's offer.
- 11.2 The City may elect to not accept the lowest or any quotation, and may terminate or amend this RFQ at anytime.
- 11.3 If the City identifies an ambiguity in the quotation submitted by the Vendor the City, in its sole and absolute discretion, may seek clarification from the Vendor or put the quotation aside and give it no further consideration.
- 11.4 The City may request any additional information from the Vendor that the City requires to satisfy itself that the Vendor will be able to supply and deliver the goods and services set out in this RFQ including, without limitation, requiring the Vendor to provide additional product specifications or to furnish evidence of adequate insurance.
- 12.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**
- 12.1 The City is subject to the Province of British Columbia's *Freedom of Information and Protection of Privacy Act*.
- 13.0 NO PROMOTION OF RELATIONSHIP**
- 13.1 The Vendor must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Vendor to perform the vendor's obligations under the terms of the Contract). Furthermore, the Vendor undertakes not to disclose or promote its relationship with the City in any communication or matter whatsoever as a basis to create an association, express or implied.

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QUOTATION FORM AND SCHEDULE OF PRICES

Please mail, courier or deliver your submission in person to:

Mail/Courier/deliver in person to:

City of Vancouver
Purchasing Services Office
453 West 12th Avenue
Vancouver, British Columbia V5Y 1V4

Please drop off at the Information Desk, Main Floor Rotunda and reference the RFQ number and title on the envelope and ensure that it will be received before the Closing Time.

ATTENTION: GAMALIEL MARTINEZ

FROM: _____ (Company Name)

_____ (Contact Name)

SUBJECT: REQUEST FOR QUOTATION No. PS20120560
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The undersigned vendor, having carefully read and examined the RFQ and having full knowledge of the requirements described herein, does offer to provide the goods and/or services in accordance with the specifications and terms and set out in the RFQ (except as noted below) and the pricing shown below.

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1.0 SCHEDULE OF PRICES

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	UNIT OF MEASURE	TOTAL PRICE
1.	Projector lamps in accordance with the specifications set out in Appendix 1 of RFQ PS20120560.		\$		\$
2.	Projector air filters in accordance with the specifications set out in Appendix 1 of RFQ PS20120560.		\$		\$
3.	Provincial Environmental Levy (if any)		\$		\$

2.0 SUSTAINABILITY

Please indicate with your quotation, as applicable, the following:

- (a) Offering of products that are non-toxic and non-hazardous;
- (b) Environmentally friendly disposal instructions for obsolete or expired products and equipment; and
- (c) Identify carbon emissions reduction objectives resulting from the delivery of products;

3.0 TERMS OF PAYMENT (if other than Net 30)

Are there any discount terms available for payment by EFT (Electronic Funds Transfer) or by purchasing card (MasterCard) within ten (10) days?

Yes _____ No _____

If yes, state terms:

4.0 CASH DISCOUNTS

(15th of the month following, or later, is preferred by the City).

A cash discount allowance of _____% will be allowed if accounts are:

- (a) paid within _____ days; or
- (b) paid by the _____ of the month following.

(a) or (b) shall be clear days from date of acceptance by the City, or receipt of the invoices by the City, whichever is later.

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5.0 ALTERNATE PRODUCTS

Are there alternate products by the vendor? If yes, list the components and their price:

ITEM	DESCRIPTION	QTY	UNIT PRICE	UNIT OF MEASURE	TOTAL PRICE
1.					
2.					
3.					

6.0 TERMS AND CONDITIONS

By initialling below, the vendor acknowledges it has read and understands the terms, conditions and requirements set out herein and has identified any deviations or alternatives thereto; and if applicable, has provided an explanation of why it will not or cannot comply with any of the terms and conditions set out herein.

Will Comply: _____ Cannot Comply (explain): _____

Pursuant to and in compliance with this Request for Quotation and any addenda, the undersigned, being familiar with the documents, the site, conditions on site, contract service areas, the character of the equipment and materials needed to carry out and provide the equipment, goods, or services, and all relevant laws, rules, notices, directives, standards, orders and regulations, licensing and permit requirements, labour market, parking and other circumstances which may affect its quotation, hereby offers to supply the equipment, goods or services in accordance with the terms and conditions for the prices as set out herein.

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Company Name: _____

Signature of Authorized Signing Officer: _____ Date: _____

Name of Authorized Signing Officer: _____

Title of Authorized Signing Officer: _____

Mailing Address: _____

Cheque Payable/Remit to Address: _____

Telephone No.: _____ Fax No.: _____

Key Contact Person: _____ E-mail: _____

GST Registration No.: _____ Incorporation Date: _____

City of Vancouver Business License Number: _____

(If your office is located in Vancouver or N/A if not applicable)

WorkSafeBC Account Number: _____

Provide the WorkSafeBC registration number and a letter from WorkSafeBC confirming that the Tenderer is registered in good standing with WorkSafeBC and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies for the services provided.

Dunn and Bradstreet Number: _____

(or N/A if not applicable)

APPENDIX 1 REQUIREMENTS

1. THE ARTWORK

- 1.1 The "Flow" is a video-based artwork that projects images onto specialized glass panels in the front windows of MPCC, utilizes 2 projectors and a computer interface (the "Artwork"). The Artwork was installed in 2009 and has an intended life span of 15 years.
- 1.2 Routine maintenance is required approximately every eight (8) months and involves replacement of the projector lamps and air filters as well as recalibration of the projectors.

2. THE PROJECTOR

- 2.1 The Artwork uses two (2) projectors.
- 2.2 The projector model used in the Artwork is a Sanyo PLC-XL46N.

3. THE PROJECTOR LAMPS

- 3.1 Each maintenance event of the Artwork requires replacement of up to eight (8) projector lamps which must be 100% new and factory sealed as recommended by its creator, the Artist. Alternative and/or aftermarket alternative products could hinder the quality and performance of the Artwork as it is intended to function.
- 3.2 The City requires up to 144 replacement lamps to service the remainder of the Artwork shelf life.
- 3.3 The lamps are to be complete with modular housing.
- 3.4 Lamp specifications number is POA-LMP100 (the "Lamp" or "Lamps"), with Sanyo service part number: 610 327 4928.
- 3.5 The City requires up to 18 replacement air filters to service the remainder of the Artwork shelf life.
- 3.6 Air filter Sanyo service part number: 610 301 4814
- 3.7 Vendors can propose an alternate product that meets the specifications of the Lamp sought out in this RFQ, but must specify the manufacturer, part number and confirm it is able to meet the supply for the Term of the contract, should one be issued.

4. SUPPLY AND STORAGE

- 4.1 The Vendor is to maintain the necessary level of supply of Lamps and filters for the Term of the contract as set out in this RFQ.
- 4.2 Lamps and filters are to be stored at the Vendor's facilities until an order is placed by the City.
- 4.3 The Lamps and filters need to be delivered in accordance to the terms and conditions of the contract and four (4) weeks or earlier after the order has been placed by the City to the Vendor.

5. TERM OF AGREEMENT

- 5.1 Should a contract be issued for the supply and delivery of the the Lamps and filters, the term of the contract would be for two (2) consecutive years, subject for review and renewal every 12 months thereafter up to five (5) years.

APPENDIX 2

TERMS AND CONDITIONS

CITY OF VANCOUVER
PRODUCT SUPPLY AND DELIVERY AGREEMENT
SUPPLY AND DELIVERY OF PROJECTOR LAMPS FOR THE 'FLOW' ARTWORK
CONTRACT No. PS20120560

THIS AGREEMENT made as of _____, 2012 (the "Effective Date"),

BETWEEN:

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

AND:

[INSERT LEGAL NAME OF COMPANY], a company having an office
at [INSERT ADDRESS]
(the "Supplier")

WHEREAS:

- A. The City requires the supply and delivery services described herein and wishes to engage the Supplier to perform said services.
- B. The Supplier has agreed to perform the said supply and delivery services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration for the mutual covenants and promises made by the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement, the following words and terms, unless the context otherwise requires, will have the meanings set out below:

- (a) "Additional Compensation" has the meaning set out in Section 5.1;
- (b) "Agreement" means this Product Supply and Delivery Agreement inclusive of all schedules, appendices or exhibits attached hereto, as may be amended from time to time;
- (c) "Applicable Laws" means all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Supplier, any Subcontractor and the Services, all as may be in force from time to time;
- (d) "Business Day" means a day other than a Saturday, Sunday or statutory holiday observed in British Columbia;
- (e) "Completion Date" has the meaning set out in Section 8.1;
- (f) "Contract Documents" means this Agreement, the Quotation, the RFQ and such other documents as listed in this Agreement, including all amendments or addenda agreed to between the parties;
- (g) "Delivery Services" has the meaning set out in Section 1 of Schedule A;
- (h) "Delivery Date" has the meaning set out in Section 8.1;
- (i) "Effective Date" has the meaning set out above, and means the first day of the Term;

- (j) "Event of Default" has the meaning set out in Section 23.2 of this Agreement;
- (k) "General Contractor" means the contractor retained by the City to undertake the renovation of the Premises;
- (l) "HST" means the tax payable and imposed pursuant to part IX of the Excise Tax Act (Canada) as amended, including any provincial component collected by Canada on behalf of British Columbia, and any successor legislation thereto;
- (m) "Losses" means in respect of any matter all:
 - (i) direct or indirect, as well as
 - (ii) 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);
- (n) "Manufacturer" in respect of a particular good means the manufacturer of that good;
- (o) "Premises" means Suite 501 - 111 West Hastings Street, Vancouver, BC, V6B 1H4;
- (p) "Products" means the projector lamps to be supplied to the City by the Supplier, as more particularly set out in the Schedules to this Agreement;
- (q) "Product Specifications" has the meaning set out in Section 6.1;
- (r) "Project" means the supply and deliver of projector lamps for the "FLOW" artwork;
- (s) "Project Manager" is the person designated by each of the parties to administer this Agreement on their behalf and is named in Section 25 of this Agreement, and is subject to change in accordance with Section 25.5 of this Agreement;
- (t) "Quotation" means the response to the RFQ submitted by the Supplier on [INSERT DATE] together with all correspondence between the City and the Supplier related thereto;
- (u) "Purchase Order" has the meaning set out in Section 9.1;
- (v) "RFQ" means Request for Quotation PS20120560 issued on May 28, 2012;
- (w) "Services" has the meaning set out in Section 4.1;
- (x) "Standard of Work" means the highest of:
 - (i) the standard imposed by law;
 - (ii) the standard prescribed by the professional and regulatory bodies in the applicable profession, field or discipline;
 - (iii) the standard set forth in the Quotation;
 - (iv) the standard set forth in the RFQ; and
 - (v) the standard otherwise prescribed in this Agreement;
- (y) "Supplier's Personnel" means the Supplier's staff who are assigned to this Agreement to undertake the Services;
- (z) "Supplier's Facility" means the Supplier's business premises;
- (aa) "Subcontractors" means the independent consultants, agents, associates, subcontractors and other third parties retained by the Supplier to assist in the performance of the Services;
- (bb) "Term" has the meaning set out in Section 1.1; and
- (cc) "WorkSafeBC Legislation" means the *Workers Compensation Act* (British Columbia) and all regulations enacted pursuant to the *Workers Compensation Act* (British Columbia).

1.2 **Interpretation.** In this Agreement, including the recitals, Schedules and appendices to this Agreement, except as expressly stated to the contrary or the context otherwise requires:

- (a) the recitals and headings to Sections and Schedules are for convenience and reference only and will not affect the interpretation of this Agreement;
- (b) each reference in this Agreement to "Section" or "Schedule" is to a Section of and a Schedule to, this Agreement;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- (d) each reference to a rule, guideline, policy, regulation or directive is deemed to be a reference to any successor or replacement of such rule, guideline, policy, regulation or directive;
- (e) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (f) references to time of day or date mean the local date or time in Vancouver, British Columbia;
- (g) all references to money mean lawful currency of Canada;
- (h) the word "written" includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and "in writing" has a corresponding meaning; and
- (i) the words "include" and "including" are to be construed as meaning "including, without limitation".

1.3 **Contract Documents.** The terms and conditions of the Contract Documents, whether or not attached to this Agreement, will be deemed to be incorporated into this Agreement. The Contract Documents are complementary, and what is called for by any one will be as binding as if called for by all. In the event of any inconsistency or conflict between or among any of the Contract Documents, the Contract Documents will be interpreted in the following order from highest to lowest:

- (a) this Agreement including any amendments to this Agreement;
- (b) Schedule A - Services;
- (c) Schedule B - Requirements;
- (d) Schedule C - Pricing and Payment Plan;
- (e) Schedule D - Project Schedule;
- (f) Schedule E - Insurance Certificate;
- (g) Schedule F - WorkSafeBC Certificate; and
- (h) Schedule G - Quotation

2. SUPPLIER'S REPRESENTATIONS AND WARRANTIES

2.1 **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 Services;
- (b) the Supplier is a corporation duly incorporated, organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed 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 and/or performance of this Agreement does or will constitute or result in a violation or breach;

- (d) the Supplier has a valid City of Vancouver business licence and will maintain such business licence in good standing for the Term;
 - (e) all statements made by the Supplier in its Quotation are true and accurate;
 - (f) the Supplier is an authorized distributor of the Products;
 - (g) the Supplier and the Supplier's Personnel and Subcontractors have the skills, training, experience and expertise which are necessary to complete the Services in accordance with the terms of this Agreement;
 - (h) the Products meet or exceed the Product Specifications and the Supplier will install the Products in accordance with the Manufacturer's recommendations and requirements; and
 - (i) all Products will be new and the model approved by the City and free from defects and/or imperfections in material, workmanship or design.
- 2.2 **Survival.** The representation and warranties in Section 2.1 will survive the expiry or earlier termination of this Agreement.
3. **PURCHASE OF THE PRODUCTS**
- 3.1 Subject to the terms and conditions of this Agreement, the City agrees to purchase and the Supplier agrees to sell the Products listed in Schedule C of this Agreement to the City at and for the unit prices stated in Schedule C.
4. **SERVICES**
- 4.1 **Description of Services.** In addition to selling the Products to the City, the Supplier will provide and be fully responsible for the following services (collectively, the "Services"), as may be modified or amended pursuant to the terms of this Agreement:
- (a) the Delivery Services described in Schedule A of this Agreement;
 - (b) the services described elsewhere in this Agreement;
 - (c) the services described in the Quotation;
 - (d) any services not specifically covered in (a), (b), or (c) above, but reasonably inferable therefrom, or reasonably necessary for the safe and efficient completion of the Services.
- 4.2 **Provision of Service Inputs and Personnel.** The Supplier will provide all labour, supervision, management, facilities, equipment, tools, supplies, fuel and materials necessary, appropriate or incidental to the proper and complete execution of the Services. Schedule A describes in general terms how the Supplier is to perform the Services. However, if there is any discrepancy in the description of the requirements or any omission of criteria, whether or not identified by the City, which would be detrimental to the benefits intended to be provided to the City by this Agreement then the Supplier will rectify such discrepancy or omission to the satisfaction of the City without further compensation.
- 1.1 **Term.** This Agreement will commence on the Effective Date and will terminate on the second anniversary of the Effective Date (the "Term"). The City may renew this Agreement for another one year period by written notice to the Supplier. The City is entitled to renew this Agreement up to three times for a total of three one-year periods. If the City renews this Agreement, the Term of the Agreement will be extended to cover such renewal period and the terms and conditions of this Agreement will continue to apply in the same manner and to the same extent to any such extension.
- 4.3 **Standard of Care.** The Supplier will exercise such degree of care, skill, diligence and efficiency in the performance of the Services as is required by the Standard of Work. The Supplier represents and warrants that it has all the skills, qualifications, certifications and experience necessary to perform the Services to the Standard of Work as contemplated by this

Agreement and acknowledges that its skills, qualifications, certifications and experience were a major factor in the selection of the Supplier for the work set out in this Agreement. The parties will act with utmost good faith towards each other in connection with this Agreement.

- 4.4 **Remedy for Deficient Services.** Without limiting any other remedy which the City may have under this Agreement or at law, the Supplier at its sole cost upon written request of the City will rectify any of the Services which have not been performed in accordance with the care, skill, diligence and efficiency set out in Section 4.3 or which have not otherwise been performed in accordance with the terms of this Agreement, and will do all such things that may be reasonably required by the City to satisfy the City that the Services have been duly performed or rectified in accordance with the terms of this Agreement.
- 4.5 **Cooperation and Coordination Regarding Performance of Services.** The Supplier will cooperate, and coordinate the performance of the Services with the City's personnel and the City's contractors, subcontractors, consultants and suppliers including the General Contractor and all other tradespersons at the Premises, with a view to optimizing efficiency, achieving cost reductions, ensuring safety, and minimizing delays. Notwithstanding the foregoing, the Supplier will have no liability for the acts or omissions of any persons for whom it is not responsible under the terms of this Agreement or at law.

5. CHANGES TO SERVICES

- 5.1 **Right to Make Changes.** The City may request that the Supplier perform additional work beyond the scope contemplated by the Contract Documents in which case the City and the Supplier will agree, in writing, upon a reasonable estimate of the time the additional services will require and the cost of such services ("**Additional Compensation**"). Actual charges for the additional services will not exceed the amount of the Additional Compensation agreed upon between the City and the Supplier.
- 5.2 **Personnel.** The City may from time to time request reasonable changes to the Supplier's Personnel, and the Supplier will comply with any such request. The Supplier will not change any of the Supplier's Personnel without the prior written approval of the City, which approval will not be unreasonably withheld.

6. PRODUCT SPECIFICATIONS AND DRAWINGS

- 6.1 **Requirements.** All Products supplied to the City by the Supplier pursuant to this Agreement must comply with the specifications, requirements and drawings set out in the Contract Documents, including Schedules B and C, or as otherwise agreed in writing between the City and the Supplier (the "**Product Specifications**").

7. COMPENSATION

- 7.1 **Fees for Services.** Subject to the terms and conditions of this Agreement, and in consideration for the satisfactory performance of the Services, the City will pay the Supplier for the Delivery Services in accordance with Schedule C of this Agreement. Without limiting the Supplier's obligation to perform all Services, the Supplier acknowledges that it will not invoice the City separately for any Services including the Delivery Services and all other Services are deemed to be included in the fees for the Delivery Services.
- 7.2 **Product Prices.** The prices for the Products are set out in Schedule C and will remain fixed for the duration of the Term of the Agreement.
- 7.3 **Supplier's Costs.** The fees for the Delivery Services and the prices for the Products set out in Schedule C include all of the Supplier's profit and all of the Suppliers costs whatsoever, including storage, labour, supervision, management, facilities, overhead, office expenses, equipment, transportation, fuel, delivery, brokerage costs, import duties, taxes (except HST, as applicable) tools, supplies and materials.

- 7.4 **Manner of Payment.** The Supplier will be paid on the basis and at the times set out in Schedule C and Section 17 of this Agreement.
- 7.5 **No Additional Compensation unless Pre-Approved.** No Additional Compensation whatsoever will be payable by the City for work performed by the Supplier which has not been approved in accordance with Section 5.1 hereof.
8. **SCHEDULE**
- 8.1 **Delivery Date and Completion Date.** The Supplier will commence the Delivery Services on the date the request is made by the City (the “**Delivery Date**”) and complete the Delivery Services to the satisfaction of the City no later than four(4) weeks from the Delivery Date (the “**Completion Date**”).
- 8.2 **Changes to Schedule.** The City may change the Delivery Date to account for changes in the Project schedule generally. If the City changes the Delivery Date then the Completion Date will also change by a corresponding number of days and the City will give the Supplier written notice of such change. Notwithstanding the foregoing, the Delivery Date will not occur before July 3, 2012.
9. **ORDERING PRODUCTS**
- 9.1 **Purchase Order.** The City will issue a purchase order (the “**Purchase Order**”) for the Products that it wishes to purchase from the Supplier.
- 9.2 **Effect of Purchase Order.** In the event of any conflict between the terms of an individual Purchase Order and the terms of this Agreement, the terms of this Agreement shall have priority.
10. **TITLE AND RISK**
- 10.1 **Risk.** The Products will be at the Supplier’s sole risk for any loss or damage until the Supplier has completed the Delivery Services.
- 10.2 **Title.** Title to the Products will automatically pass to the City upon completion of the Delivery Services. The Supplier will 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 the Products to the City, free and clear of all liens, charges and encumbrances.
11. **PRODUCT WARRANTY**
- 11.1 **Warranty.** The Supplier will deliver to the City all such documentation as the City may reasonably require to evidence that the Products are subject to a Manufacturer’s warranty and if applicable, a Supplier’s extended warranty, on terms which are acceptable to the City. If any warranties are issued to the Supplier and not the City, the Supplier will take all such further steps and actions as may be required to assign the benefit of such warranties to the City.
- 11.2 **Warranty Period.** The Products shall be free from all defects arising from faulty construction, manufacture, installation, materials or workmanship which appear within the longer of 12 months from the date the Delivery Services are completed to the satisfaction of the City or such other period specified in this Agreement (the “**Warranty Period**”). The Supplier shall immediately remedy any defect in the Products and any damage arising from that defect during the Warranty Period.
12. **EXCLUSIVITY**
- 12.1 **Not an Exclusive Supply Contract.** If the Supplier is not able to:

- (a) supply a particular Product to the City;
 - (b) supply the quantities of a Product required by the City;
 - (c) deliver and install a particular Product in accordance with the deadlines set out in Section 8;
 - (d) supply a Product to the City which meets the Product Specifications for such Product; or
 - (e) perform any of the Services when and where required by the City,
- then in each such case, the City will be entitled, in its sole discretion, to purchase the particular Product or services from any other supplier.

13. SUBCONTRACTORS

13.1 **Use of Subcontractors.** The Supplier may retain Subcontractors to assist in the performance of the Services, provided that:

- (a) the Supplier will not subcontract all or substantially all of the Services to a Subcontractor;
- (b) the Supplier will require that the terms of this Agreement apply to the Subcontractors; and
- (c) the Supplier will be wholly responsible for the professional standards, performance, acts, defaults and neglects of such Subcontractors.

13.2 **Standard of Care of Subcontractors.** The Supplier represents to the City that all Subcontractors are competent and have the qualifications, designations, experience and capabilities necessary to carry out the Services to the Standard of Work. The Supplier will cause all Subcontractors to exercise the degree of care, skill, diligence and efficiency in the performance of the Services as is required by the Standard of Work.

13.3 **Subcontractor Approvals.** The Supplier will only retain Subcontractors approved by the City in writing.

13.4 **Subcontractor Changes.** The Supplier will not change any Subcontractor without the prior written approval of the City. The City may, from time to time, where it reasonably believes performance to the Standard of Work is not being met by any Subcontractor(s), request changes to the Supplier's Subcontractors, and the Supplier will comply with any such request.

14. COMPLIANCE WITH LAWS AND TAXES

14.1 **Compliance with Laws.** In carrying out its obligations hereunder, the Supplier will comply with, and will cause all Subcontractors to comply with, all Applicable Laws.

14.2 **Regulatory Compliance.** The Supplier will upon request by the City provide certificates of compliance from regulatory bodies or other evidence of compliance, including as pertaining to any of the Subcontractors. The Supplier accepts full and exclusive responsibility and liability, and will cause all Subcontractors to accept full and exclusive responsibility and liability, for payment of federal and provincial payroll taxes and for contributions for employment insurance, old age pensions, retirement annuities, workers' compensation, health and hospitalization plans and other benefits expressed under any provision of any law or any agreement to which the Supplier and the Subcontractors are subject.

14.3 **Permits and Licenses.** The Supplier represents and warrants that it has obtained and is in compliance with all requisite permits, professional designations, authorizations and licenses necessary for the Supplier to supply the Products and provide the Services.

15. POLICIES, RULES AND REGULATIONS

- 15.1 Rules and Procedures.** The City may prescribe, and the Supplier will comply with (and cause any person for whom it is responsible at law or pursuant to the provisions of this Agreement to comply with) all rules, regulations, policies and procedures from time to time for:
- (a) matters pertaining to safety and security, including data and network security and issuance of passes, vehicle operating permits, keys, badges, and like devices;
 - (b) environmental matters;
 - (c) accessibility matters;
 - (d) sustainability matters;
 - (e) the use of specific materials, goods or services;
 - (f) public information and communications; and
 - (g) such other matters as the City may from time to time deem necessary or desirable in its reasonable determination.
- 15.2 Changes to Rules and Procedures.** The City may at any time upon notice to the Supplier amend the rules, regulations, policies and procedures relating to the Services, and may at any time prescribe specific stipulations regarding the Services applicable to the Supplier and its Subcontractors.
- 15.3 Safety.** The Supplier acknowledges the City's commitment to a superior standard of workplace safety. In addition to complying with all of the Supplier's health and safety obligations specified in this Agreement or otherwise prescribed by Applicable Law, the Supplier agrees to provide support for the City's safety objectives by making efforts to elevate the priority it places on the creation of a safe work environment and embedding health and safety principles into its work.

16. RELATIONSHIP OF THE PARTIES

- 16.1 Status.** The Supplier is engaged as an independent contractor to the City for the sole purpose of supplying the Products and providing the Services. Neither the Supplier nor any of the Supplier's personnel is engaged as an official, officer, employee, servant or agent of the City, and neither the Supplier nor any of the Supplier's personnel will enter into or purport to enter into any contract or subcontract on behalf of the City. All Subcontractors will be consultants, agents, associates or subcontractors, as the case may be, of the Supplier and will not be consultants, agents, associates or subcontractors of the City. It is understood and agreed that the Supplier will act as an independent contractor to the City and that no joint venture, partnership or principal-and-agent relationship exists between them in connection with this Agreement or otherwise, and the parties covenant that they will not assert otherwise. It is further understood and agreed that the Supplier is entitled to no other benefits or payments whatsoever other than those specified in this Agreement.
- 16.2 No Acceptance of Advantages or Benefits.** Neither the Supplier, nor any of its agents or employees (including any Subcontractors) will 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 or the Services. Contravention of this provision will be deemed an Event of Default (as defined in Section 23.2) and will permit the City to terminate this Agreement pursuant to Section 23.1(b).
- 16.3 No Conflicts of Interest.** The Supplier declares that to the best of its knowledge the Supplier and its Subcontractors, and their respective directors, officers, employees and agents, have no pecuniary interest or any other current or past interest or dealings, including with any officials, officers or employees of the City, that would cause a conflict of interest or be seen to cause a conflict of interest in carrying out the Services. Should such a conflict or potential conflict

arise during the term of this Agreement, the Supplier will declare it immediately in writing to the City. The City may direct the Supplier to resolve any conflict or potential 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 qualify the provision of the Services

- 16.4 **No Third Party Rights.** Except as expressly set forth herein, nothing in this Agreement will be construed to give any rights or benefits to anyone other than the City and the Supplier.

17. PAYMENT

- 17.1 **Invoicing.** The City will not be required to make any payment to the Supplier under this Agreement until the Supplier delivers the Products to the Premises and completes the Delivery Services to the satisfaction of the City. Upon the City confirming that a particular Product has been delivered to the Premises and that the Installation and Delivery Services for that Product have been completed to the satisfaction of the City, the Supplier will invoice the City in full for such Products.

- 17.2 **Submission of Invoices.** Subject to Section 17.1, the Supplier will, no later than the 25th of the month, provide to the City's Project Manager a draft invoice with an attached detailed account of all charges to be claimed by the Supplier for the Project in respect of the Services and Products in accordance with the prices and payment plan set forth in Schedule C. Each invoice will be clearly itemized to show the City's Purchase Order number, name of the City's Project Manager, the Delivery and Installation Services performed, amount of Products delivered, the amount of HST, if applicable, and the Supplier's HST registration number. The City's Project Manager shall review, raise any concerns with the Supplier within ten (10) working days and, after settlement, if necessary, approve the draft invoice. The Supplier, if so requested, will meet with the City's Project Manager to expedite and settle the draft invoice. Once the draft invoice has been reviewed and approved by the City's Project Manager, the Supplier will submit the approved invoices to the City as set out in Section 17.3 of Products delivered, the HST, if applicable, and the Supplier's HST registration number.

- 17.3 **Address for Invoices.** All invoices will be directed to the following address:

CITY OF VANCOUVER
PO Box 7757
Vancouver, British Columbia V6B 0L5
Attention: Accounts Payable

or via email at apcentral@vancouver.ca

or such other address as the City may communicate to the Supplier from time to time.

- 17.4 **Time for Payment.** Except for any amounts which the City is in good faith disputing, any set off which the City may claim, any amounts in respect of which the City has requested and not received supporting evidence under Section 17.5, and any holdback required to be made under Applicable Law, the City will pay invoices submitted by the Supplier within 30 days of receipt thereof.

- 17.5 **Maintenance of Records.** The Supplier will keep, and will cause any Subcontractors to keep, books, records, documents, invoices, receipts and other evidence relevant to the purchase of the Products by the City and the provision of the Services in accordance with generally accepted accounting principles and practices consistently applied. The City and any of its duly authorized representatives will, for the purpose of audit and examination, have access to and be permitted, upon reasonable notice to the Supplier, to inspect such books, records, documents and other evidence for review, copying and audit at any time and from time to time while this Agreement is in effect and for a period of three years after the expiry or termination of this Agreement for any reason.

18. WORKSAFEBC COMPLIANCE

18.1 Prior to commencing the Services, the Supplier must provide evidence that it is in good standing with WorkSafeBC.

18.2 **Payment of WorkSafeBC Assessments** - The Supplier agrees that it will at its own expense procure and carry or cause to be procured and carried and paid for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon the Services. The Supplier agrees that the City has the unfettered right to set off the amount of any unpaid premiums and assessments for such WorkSafeBC coverage against any monies owing by the City to the Supplier. The City will have the right to withhold payment under this Agreement until the WorkSafeBC premiums, assessments or penalties in respect of the Services have been paid in full.

- (a) ***Initial Proof of WorkSafeBC Registration/Good Standing*** - Within five (5) Business Days of the Effective Date, the Supplier will provide the City with the Supplier's and all Subcontractors WorkSafeBC registration numbers and with written confirmation from WorkSafeBC that the Supplier and all Subcontractors are registered and in good standing with WorkSafeBC and that all premiums, assessments and penalties have been paid to date.
- (b) ***Subsequent Proof of WorkSafeBC Registration/Good Standing*** - Within five (5) Business Days of a request by the City the Supplier will provide the City with written confirmation from WorkSafeBC that the Supplier and all Subcontractors are registered and in good standing with WorkSafeBC and that all premiums, assessments and penalties have been paid to date.
- (c) ***Special Indemnity Against WorkSafeBC Non-Compliance*** - The Supplier will indemnify and hold harmless the City from and against all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to:
 - (i) unpaid WorkSafeBC assessments of the Supplier or any other employer for whom the Supplier is responsible under this Agreement;
 - (ii) the acts or omissions of any person engaged directly or indirectly by the Supplier in the performance of the Services, or for whom the Supplier is responsible at law and which acts or omissions are or are alleged by WorkSafeBC to constitute a breach of WorkSafeBC Legislation or any other failure to observe the safety rules, regulations and practices of WorkSafeBC, including any and all fines and penalties levied by WorkSafeBC, or
 - (iii) any breach of this Section 18.

This indemnity will survive the expiry or earlier termination of this Agreement.

19. INSURANCE AND INDEMNITY

19.1 **Supplier's Insurance.** Without limiting any of its obligations or liabilities under this Agreement, the Supplier will obtain and continuously carry and will cause its Subcontractors to obtain and continuously carry during the term of the Agreement at its own expense and cost, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below:

- (a) Commercial General Liability insurance in sufficient amounts and description to protect the Supplier, its Subcontractors, the City and their respective officers, officials, employees, and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement.

The limit of commercial general liability insurance will be not less than \$5,000,000 per occurrence, or such higher amount as the City may require from time to time, inclusive for personal injury, death, bodily injury or property damage and in the aggregate with

respect to products and complete operations. The deductible will not exceed \$5,000 per occurrence.

The policy of insurance will:

- (i) be on an occurrence form;
 - (ii) add the City of Vancouver and its officials, officers, employees and agents as additional insureds;
 - (iii) contain a cross-liability or severability of interest clause;
 - (iv) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.
- (b) Automobile insurance covering all vehicles owned, leased or operated by the Supplier in connection with this Agreement including Third Party Legal Liability Insurance in an amount not less than \$5,000,000 per occurrence, or such higher amount as the City may require from time to time.
 - (c) All-Risks property insurance covering the Supplier's property of every description containing a provision in which the insurer waives all rights which it may acquire by payment of a claim to recover the paid amount from the City or its officials, officers, employees or agents (a "Waiver of Subrogation").
- 19.2 All insurance policies required by this Agreement will be in a form, in amounts and with insurers acceptable to the City's Director of Risk Management. All policies will provide that the insurer will provide the Project Manager with sixty (60) days prior written notice of any material change, lapse or cancellation of the policy. Notice must identify the contract title, number, policy holder, and scope of work.
- 19.3 The Supplier and each of its Subcontractors will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.
- 19.4 Neither the providing of insurance by the Supplier in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Supplier from any other provisions of the Contract Documents with respect to liability of the Supplier or otherwise.
- 19.5 The insurance coverage will be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City or its officers, officials, employees, or agents will be excess of the Supplier's insurance and will not contribute with it.
- 19.6 Prior to the Effective Date, the Supplier will provide the City with evidence of all required insurance to be taken out in the form of a "Certificate of Insurance" (on the City's form) and supported by a certified copy(s) of the policy(s). The Certificate of Insurance will identify the contract title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. The Supplier will provide proof of insurance, in the form of a Certificate of Insurance or certified copies of all insurance policies to the Project Manager at any time during the Term immediately upon request.
- 19.7 The Supplier will provide in its agreements with its Subcontractors clauses in the same form as in this Section 19. Upon request, the Supplier will deposit with the Project Manager detailed certificates of insurance for the policies it has obtained from its Subcontractors and a copy of the applicable insurance clauses from its sub-contract agreements.
- 19.8 The Supplier will ensure that the required insurance is provided only by a company duly registered and authorized to conduct insurance business in the Province of British Columbia.

- 19.9 **Responsibility and Liability.** The Supplier hereby assumes the entire responsibility and liability for all damage and injury of any kind and nature whatsoever, caused by, resulting from, arising out of, incidental to, or accruing in connection with any wilful misconduct or negligent act, error or omission of the Supplier or any person for whom the Supplier is responsible at law or pursuant to the terms of this Agreement.
- 19.10 **Indemnity.** The Supplier will defend, indemnify and hold harmless the City and all of its past and present directors, officers, officials, employees, agents and representatives from and against all Losses, of any nature or kind whatsoever, either before or after the expiration or termination of this Agreement, arising out of or in connection with:
- (a) the performance of the Services by the Supplier or the failure by the Supplier to perform the Services;
 - (b) any wilful misconduct or any negligent act, error or omission of the Supplier or any person for whom the Supplier is responsible at law or pursuant to the provisions of this Agreement, including without limitation, injury or death to anyone, loss or damage to property of any person, any claim or matter in dispute between the Supplier and any Subcontractor, and any failure or deficiency by the Supplier or any Subcontractor in providing the Services;
 - (c) any infringement or alleged infringement of any copyright, patent, trademark, industrial design, trade secret or other intellectual property rights of any person, or of any obligation of confidentiality, in connection with the Services and or the sale of the Products to the City; and
 - (d) any claim which may be made for a lien or charge at law or in equity or to any claim or liability under the *Builders Lien Act*, or to any attachment for debt, garnishee process or otherwise.

This indemnity will survive the expiry or earlier termination of this Agreement.

- 19.11 **Discharge of Liens.** The Contractor will make all payments and take all other steps which may be necessary to insure that all monies payable under this Agreement, the Products and any land owned by the City, will be and remain at all times free from and not liable to any lien or charge at law or in equity, or to any claim of liability under the *Builders Lien Act*, or to any attachment for debt, garnishee process or otherwise, and the Supplier will fully defend, indemnify and hold harmless the City and all of its past and present directors, officers, officials, employees, agents and representatives from and against all Losses relating to such matters, and will, on demand, immediately cause any such lien, charge, claim or attachment to be removed or released from the records of the Land Title Office or court in which the same may appear.
- 19.12 **Rectification of Damage.** The Supplier will rectify any loss or damage caused by the Supplier in the performance of the Services at no charge to the City and to the satisfaction of the City. Alternatively, the City may repair the loss or damage and the Supplier will then pay to the City the costs of repairing the loss or damage promptly upon demand by the City. Where, in the opinion of the City it is not practical or desirable to repair the loss or damage, the City may estimate the cost of repairing the loss or damage and deduct such estimated amount from any amount owing to the Supplier.

20. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- 20.1 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.

21. NO PROMOTION

- 21.1 **No Promotion of Relationship.** The Supplier will not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or

other literature, letters, client lists, press releases, brochures or other written materials (the "Communications") without the express prior written consent of the City (except as may be necessary for the Supplier to perform the Supplier's obligations under the terms of this Agreement).

22. SUSTAINABILITY

- 22.1 The Supplier acknowledges the City's commitment to sustainability. The Supplier agrees that it will not use any products, supplies or chemicals in the course of performing the Services which have not been approved in writing by the City.

23. TERMINATION

- 23.1 **Rights of Termination.** This Agreement may be terminated before completion of the Services and before the expiry of the Term, anything to the contrary herein notwithstanding, as follows:

- (a) by the City, at its option and for any reason in its sole discretion, upon 15 Business Days' notice to the Supplier; or
- (b) by the City at its option, at any time after the happening of an Event of Default.

- 23.2 **Events of Default.** For the purposes hereof, an "Event of Default" will be deemed to occur if:

- (a) the Supplier is in breach of any covenant, obligation or representation hereunder and such breach persists unremedied for a period of ten (10) Business Days after the City has provided the Supplier with written notice of and particulars of the breach or alleged breach, provided that the City may terminate without providing a cure period with respect to actions of the Supplier that are part of a continuing course of conduct in respect of which prior written notice has been given;
- (b) any Product which the Supplier has agreed to supply to the City does not meet the Product Specifications for that Product as determined by the City;
- (c) the Supplier is not able to supply any Product by the Delivery Date or complete the Delivery Services by the Completion Date;
- (d) there occurs or, in the reasonable opinion of the City, there exists a threat of, a strike, lockout, work slowdown, labour disturbance, or refusal to work by the employees or Subcontractors of the Supplier;
- (e) the Supplier is adjudged bankrupt, becomes insolvent or unable to discharge its liabilities as they become due, makes an assignment for the benefit of its creditors, is subject to the appointment of a receiver, or a petition of bankruptcy is made against it; or
- (f) any Subcontractor becomes insolvent or unable to discharge its liabilities as they become due or makes an assignment for the benefit of its creditors or a petition of bankruptcy is made against it, and such situation will, in the City's reasonable determination, have an adverse impact on the delivery of the Services.

- 23.3 **Termination Payment.** Where this Agreement is terminated under Section 23.1, the City will pay to the Supplier such part of the compensation as the City, acting reasonably, determines has been earned by the Supplier to the date of termination less any amounts held by the City on account of damages, losses or costs resulting from an Event of Default. Payment pursuant to this Section will not include any amounts for lost revenue or lost profit of the Supplier. Upon the termination of this Agreement and payment as required hereunder, the City will have no further obligation or liability to the Supplier with respect to compensation payable to the Supplier hereunder and may as a condition of final payment under this Agreement require the Supplier to execute and deliver a release and discharge in favour of the City in relation to the compensation payable to the Supplier hereunder.

- 23.4 **Remedy for Default.** In the case of an Event of Default or if the Supplier fails to supply and provide the Services or any part thereof in accordance with this Agreement, the City may,

without limiting any other rights it may have, remedy any deficiency and may engage others to do so, and may charge against the Supplier all extra costs and expenses in doing so. The City will be under no obligation to remedy any failure or deficiency on the part of the Supplier and will not incur any liability to the Supplier for any action or omission in the course of its remedying or attempting to remedy any such failure or deficiency.

23.5 **Effect of Termination.** Termination of this Agreement for any reason will not prejudice, limit or affect any claim or matter outstanding prior to termination or obligations consequent upon termination or which by their nature survive termination as provided for herein.

23.6 **Suspension of Services.** The City may, at any time and from time to time by delivery of notice in writing to the Supplier, suspend the performance of the Services for the period of time specified in such notice. In that event the City will pay to the Supplier such part of the compensation as can reasonably be considered to have been earned by the Supplier to the date of the suspension, and any costs or expenses directly incurred and not reasonably avoidable as a result of such suspension. The Supplier will have no claim against the City for any costs, expenses, damages or other liabilities suffered or incurred by the Supplier as a result of any suspension hereunder unless otherwise agreed by the City in writing.

24. ASSIGNMENT

24.1 **No Assignment by Supplier without Consent.** The Supplier will not assign this Agreement, in whole or in part, or any payments due or to become due under this Agreement, either voluntarily, involuntarily or by operation of law, without the express prior written consent of the City, which consent may be unreasonably or arbitrarily withheld.

24.2 **Change of Control.** If the Supplier is a company, then any change in the control of the company will be deemed to constitute an assignment for the purposes of Section 24.1.

24.3 **Effect of Assignment.** No assignment permitted by the City will relieve the Supplier from any obligation under this Agreement or impose any liability upon the City.

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

25. CONTRACT ADMINISTRATION

25.1 **City Project Manager.** For the purposes of this Agreement, the City designates [INSERT NAME] or their delegate as its Project Manager.

25.2 **Supplier Project Manager.** For the purposes of this Agreement, the Supplier designates [INSERT NAME] as its Project Manager.

25.3 The Project Manager will be the primary point of contact for each party in the administration of this Agreement.

25.4 The Supplier's Project Manager will meet with the City's Project Manager(s) on a regular basis and at the time and place requested by the City to address any issues which may arise under this Agreement.

25.5 **Changes in Project Manager.** Either party may change its Project Manager and/or its Project Manager's address, telephone and/or fax number by written notice to the other party given in accordance with Section 26.1 of this Agreement.

26. NOTICES

26.1 **Addresses for Notice.** Any notice required or permitted to be given by one party to another pursuant to this Agreement must be in writing and will be validly given if delivered,

transmitted by facsimile or mailed in British Columbia by pre-paid registered post to the parties as follows:

TO THE CITY:

CITY OF VANCOUVER
[INSERT DEPARTMENT NAME]
[INSERT ADDRESS]

Attention: [INSERT NAME]
Fax: [INSERT FAX]

TO THE SUPPLIER:

[INSERT NAME]
[INSERT ADDRESS]

Attention: [INSERT NAME]
Fax: [INSERT FAX]

or to such other person or address as one party may advise the other in writing from time to time. Any notice given in accordance with this or any other provision of this Agreement is deemed to be received on the day of delivery or transmission by facsimile if a Business Day and if not a Business Day then on the next Business Day or if mailed, on the third Business Day following the posting thereof, provided that if there is a postal strike, dispute or slowdown, notices will only be effective if delivered or transmitted by facsimile.

- 26.2 **Notice of Actions against Supplier.** The Supplier will provide written notice to both the City's Project Manager at the address set out in Section 26.1 and the City of Vancouver's Director of Legal Services at:

CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, British Columbia V5Y 1V4
Attention: Director of Legal Services
Fax: (604) 873-7445

immediately upon the written threat or commencement of any actions brought against the Supplier or any of its Subcontractors or their respective affiliates, the outcome of which may affect the rights of the City or the ability of the Supplier to comply with its obligations under this Agreement.

27. TIME FOR PERFORMANCE

- 27.1 **Time of the Essence.** Time will be of the essence of this Agreement.

- 27.2 **Unavoidable Delay.** Notwithstanding Section 27.1, except for the performance of obligations to pay money, the time periods for the City and the Supplier's performance under this Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this Section, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, acts of God, war or other strife or governmental action) but in the case of the Supplier, expressly excludes any and all delays caused by the Supplier's lack of financial resources or insolvency, strikes, lockouts or other withdrawals of services arising out of a labour dispute (including a strike, lockout, or other labour dispute involving the Vancouver Board of Parks and Recreation and/or the City of Vancouver and their respective employees) or labour affiliations of the Supplier's employees or Subcontractors' employees, or governmental

action taken in the enforcement of law specifically against the Supplier or its Subcontractors. If an Unavoidable Delay occurs, the non-performing party will, as soon as possible after the occurrence of the Unavoidable Delay, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of its obligations under this Agreement.

28. DISPUTE RESOLUTION

- 28.1 All claims, disputes or issues in dispute between the City and the Supplier in relation to this Agreement will be decided by mediation or arbitration, if the parties agree, or failing agreement, by the courts pursuant to Section 28.5.
- 28.2 Subject to Section 28.7, in the event that (i) the parties agree to arbitration pursuant to Section 28.1, the arbitration will be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and will be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators will be agreed upon by the parties, and failing agreement by the parties, will be appointed by a court of competent jurisdiction within the Province of British Columbia. The parties will share equally the costs of the arbitration but will be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements.
- 28.3 If the parties agree to arbitration, the arbitration will take place in Vancouver, British Columbia and will be governed by the laws of British Columbia.
- 28.4 The procedure set out in this section is not meant to preclude or discourage informal resolution of disagreements between the City and the Supplier.
- 28.5 The laws of British Columbia will govern all disputes under this Agreement and the courts of British Columbia will have exclusive jurisdiction to determine all disputes arising under this Agreement unless and until the parties agree in writing to mediate or arbitrate any specific dispute.
- 28.6 All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.
- 28.7 No arbitration pursuant to Section 28.2 will be binding on the City (but will, at the City's option be binding on the Supplier) until the Supplier has permitted the City to conduct an audit of the Supplier's records pursuant to generally accepted auditing standards.

29. GENERAL

- 29.1 **City Information/Approval.** No reviews, approvals or inspections carried out or information supplied by the City will derogate from the duties and obligations of the Supplier (with respect to designs, reviews, inspections, approvals or otherwise), and all responsibility related to the Services will be and remain with the Supplier. For greater certainty, any information provided by the City to the Supplier, whether under the RFQ or under this Agreement, including any studies, reports, plans, drawings, or specifications, is provided to the Supplier for information purposes only and must be independently verified by the Supplier unless the City otherwise agrees in writing.
- 29.2 **No Waiver.** No action or failure to act by the City will constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing by the City.
- 29.3 **Severability.** The invalidity, illegality or unenforceability of any portion or provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void will in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision will be deemed severed from this Agreement and the balance of this Agreement will be construed and enforced as if this Agreement did not contain

the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken position.

- 29.4 **Governing Law.** This Agreement will be construed under and according to the laws of the Province of British Columbia.
- 29.5 **Remedies Cumulative.** The remedies of the parties provided for in this Agreement are cumulative and are in addition to any remedies available to the parties at law or in equity. No remedy will be deemed to exclude or restrict the right of a party to any other remedies against the other party and a party may from time to time have recourse to one or more of the remedies specified in this Agreement or at law notwithstanding the termination of this Agreement.
- 29.6 **Further Assurances.** Each party will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 29.7 **Entire Agreement.** The Contract Documents constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof.
- 29.8 **Amendment.** This Agreement will not be amended except as specifically agreed in writing by both the City and the Supplier.
- 29.9 **Joint and Several Liability of Joint Venture Participants.** If the Supplier is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, claims, rights, powers, privileges and liabilities of the Supplier will be joint and several.
- 29.10 **Enurement.** This Agreement will enure to the benefit of and be binding upon the City and the Supplier and their respective heirs, executors, legal representatives, administrators, successors and permitted assigns.
- 29.11 **Schedules and Appendices.** The Schedules and appendices attached hereto are hereby incorporated by reference in and form an integral part of this Agreement.
- 29.12 **Representation.** By executing this Agreement, the Supplier represents that it has carefully examined this Agreement, acquainted itself with all conditions relevant to the Services including the site conditions at the Premises, made all evaluations and investigations necessary for a full understanding of any difficulties which may be encountered in performing the Services, and been given the opportunity to receive independent legal advice. The Supplier further acknowledges that this Agreement is sufficient for the proper and complete execution of the Services.
- 29.13 **Set-Off.** The City may at its option, withhold and set-off against any amount owing to the Supplier (whether under this Agreement or otherwise) any amounts payable by the Supplier to the City (whether under this Agreement or otherwise) and the amount of any damages suffered or claims made or to be made by the City as a result of any other claim it may have against the Supplier, whether such claim is at law or in equity or tort or on any other basis.

29.14 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will constitute an original and together will constitute one and the same Agreement.

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 officers.

CITY OF VANCOUVER,
by its Authorized Signatory(ies)

Director of Legal Services

Director of Facilities and Design Management

[INSERT FULL LEGAL NAME OF CONTRACTOR]
By its Authorized Signatory(ies)

Authorized Signatory

Authorized Signatory

SCHEDULE A SERVICES

Without limiting the Supplier's obligations under the Agreement, the Supplier will provide the Services set out in this Schedule A during the Term:

1. Delivery Services

The Supplier will perform the following Services (the "Delivery Services"):

(a) Delivery

The Supplier will deliver the Products to the Premises commencing on the Delivery Date. The Supplier will unload and temporarily store the Products as directed by the City.

(b) Acceptance by City

If the City determines that any Product does not meet the Product Specifications, does not operate in accordance with the Manufacturer's specifications or is damaged in any way then the Supplier will take whatever steps are required to rectify the situation including, if necessary, replacing the Products.

(c) Manuals and Warranty Documentation

The Supplier will deliver all manuals, brochures and warranty documentation to the City's Project Manager on or before the date that the Supplier provides the Products pursuant to subsection (a) above.

(d) Warranty Services

The Supplier will provide warranty service to the City on each Product supplied by the Supplier in accordance with the warranty terms and conditions specified by the City.