



REQUEST FOR QUOTATIONS NO. PS20172272 (the "RFQ") IN RESPECT OF

SUPPLY AND DELIVERY OF HOT APPLIED CRACK SEALANT

Quotations are to be addressed to the Supply Chain Management office, 4th Floor, City of Vancouver, 453 West 12th Avenue, Vancouver, British Columbia, Canada, V5Y 1V4, and should be received prior to 3:00 p.m., Vancouver Time (as defined in Note 3 below), on Thursday, January 25, 2018 (the "Closing Time").

QUOTATIONS WILL NOT BE PUBLICLY OPENED.

NOTES:

1. Quotations may be sent to the address specified above by mail, or they may be delivered by couriers or otherwise in person at the Main Floor Rotunda Information Desk at the address specified above, in each case prior to the Closing Time.
2. Quotations may also be sent via email to the email address listed below.
3. Quotations must be marked with the vendor's name and the RFQ title and number.
4. "Vancouver Time" will be conclusively deemed to be the time shown on the clock above the Supply Chain Management drop box on the 4th Floor of Vancouver City Hall.
5. The City of Vancouver is open on business days from 8:30 a.m. to 4:30 p.m., Vancouver Time, and is closed Saturdays, Sundays, and holidays.
6. DO NOT SUBMIT QUOTATIONS BY FAX
7. All queries related to this RFQ should be submitted in writing to the attention of:

Megs Gatus
Buyer I
Email: magdalena.gatus@vancouver.ca

(the "Contact Person")

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INSTRUCTIONS TO VENDORS

1.0 INTRODUCTION AND SUBMISSION INSTRUCTIONS

- 1.1 The City of Vancouver (the “City”) is seeking quotations to determine if it will issue one or more contracts in respect of Supply and Delivery of Hot Applied Crack Sealant for Streets, Traffic and Electrical Operations – Engineering Services. The City would like to establish a three-year Supply Agreement with two successive one-year extension option, with a proponent (or proponents) that have the skills, knowledge, and experience to efficiently and cost-effectively supply hot applied crack sealants to the City.
- 1.2 Vendors should carefully review Appendix 1 – Requirements for a detailed description of the City’s requirements.
- 1.3 **THIS IS NOT AN INVITATION TO TENDER. VENDORS ARE NOT REQUIRED TO SUBMIT IRREVOCABLE OFFERS.**
- 1.4 Vendors should carefully review the City’s standard purchase order terms and conditions attached as Appendix 3. The City hereby reserves the right to amend its standard purchase order terms and conditions at any time without providing notice to 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 or services.
- 1.5 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 may result in the vendor’s quotation being set aside and given no further consideration.
- 1.6 If a vendor believes that the City may be unable to select it due to a conflict of interest, but is uncertain about this, the vendor is urged to contact the individual named on the cover page above as soon as possible with the relevant information so that the City may advise the vendor regarding the matter.

2.0 SUSTAINABILITY

- 2.1 The City’s Procurement Policy, Ethical Purchasing Policy and related Supplier Code of Conduct found at <http://vancouver.ca/doing-business/selling-to-and-buying-from-the-city.aspx> align the City’s approach to procurement with its corporate social, environmental and economic sustainability values and goals. They evidence the City’s commitment to maximize benefits to the environment through product and service selection, and to ensure safe and healthy workplaces, where human and civil rights are respected.
- 2.2 Each vendor is expected to: (a) complete the form attached as Appendix 2 and attach it to its quotation; and (b) adhere to the supplier performance standards set forth in the Supplier Code of Conduct. In addition, the Ethical Purchasing Policy shall be referred to in the evaluation of quotations, to the extent applicable.
- 2.3 Vendors are to provide environmentally sensitive products or services wherever possible. Where there is a requirement that a vendor supply materials, and where such materials may cause adverse environmental effects, the vendor should indicate the nature of the hazard(s) in its quotations. Furthermore, each vendor is asked to advise the City of any known alternatives or substitutes for such materials that would mitigate such adverse effects.

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3.0 INQUIRIES

3.1 It is the responsibility of each 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 All prices quoted are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.

4.2 Prices are DDP destination, including all freight, import duties, brokerage fees, royalties, handling, overhead, profit and all other costs

4.3 Prices are expected to be fixed during the initial three-year contract term. Each vendor should indicate any time limitation on its pricing. Prices are to be quoted in Canadian currency.

5.0 ADDRESS(ES) FOR DELIVERIES OR WORK

5.1 Any successful vendor of goods may be asked to deliver goods to the following address(es): 250 W70th, Avenue, Vancouver, B.C. or to such other addresses as are specified in a City contract or purchase order.

6.0 DELIVERY TIMES OR WORK SCHEDULES

6.1 Vendors are asked to state in their quotations the leadtime(s) required from the placement of an order to delivery of goods or completion of work. Deliveries must be made between 7:00 a.m. and 3:00 p.m., Monday to Friday, excluding statutory holidays, unless other arrangements have been agreed to in writing.

7.0 QUANTITIES

7.1 Each 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 an invoice; however, any discounts or more favourable (or less favourable) terms which may be offered by a vendor will be taken into consideration in evaluating quotations. Each vendor should indicate in its quotation if it offers or requires particular payment terms.

8.2 Vendors should indicate whether they can accept payment by EFT (electronic funds transfer) and/or by credit card.

9.0 PLACEMENT OF A PURCHASE ORDER

9.1 The City currently expects that the result of this RFQ will be that it will enter the Supply Agreement in the form of Appendix 3 to order goods and services from a successful vendor.

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9.2 The City may elect not to buy anything or enter into any contract as a result of this RFQ. The City may elect to enter into a contract or place an order resulting from this RFQ with one vendor or more than one vendor. The City is not obligated to enter into an exclusive arrangement with any vendor or to purchase any quantity of goods or services.

9.3 Where the head office of a successful vendor is located within the City of Vancouver and/or where a successful vendor is required to perform services at a site located within the City of Vancouver, the successful vendor is required to have a valid City of Vancouver business license (or, if available, a Metro West Inter-municipal Business License).

10.0 ALTERNATIVES / DEVIATIONS

10.1 If a vendor offers goods or services that do not meet all of the requirements of Appendix 1 instead of, or as an alternative to, goods or services meeting all of such requirements, the deviations or alternatives should be indicated in the vendor's quotation. The City may elect to consider and/or accept an offer of goods or services that deviate from those stated in Appendix 1, or the City may decide not to consider them, and may set aside the relevant vendor's quotation if it does not also offer goods or services meeting all of the requirements of Appendix 1.

11.0 EVALUATION CRITERIA

11.1 Quotations will be evaluated to determine which are likely to offer the overall best value to the City. The City expects to place the greatest emphasis on price; however, the City may take into account other factors affecting value, including those concerning quality, service or sustainability, or vendors' past work, reputations or experience. Therefore, the City may accept a quotation other than the lowest quotation.

11.2 The City may elect to not accept any quotation, and may terminate or amend this RFQ at anytime.

11.3 The City may discuss or negotiate variations from the scope of the RFQ or changes to the scope of supply to be offered by a vendor or the pricing therefor, with any one or more of the vendors responding to the RFQ without having any duty or obligation to advise other vendors or to allow other vendors to vary their quotations as a result of such discussions or negotiations.

12.0 NO CLAIMS AGAINST THE CITY

12.1 In submitting a quotation, the vendor acknowledges and agrees that:

- (a) this RFQ is in no way whatsoever an offer to enter into a supply agreement or an agreement imposing any duty of fairness on the City;
- (b) submission of a quotation does not in any way whatsoever create any obligation on the part of the City to treat the vendor's or any other vendor's quotation in any particular manner or undertake this RFQ process in any particular manner (except as expressly stated in Section 12.1(c));
- (c) subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act (British Columbia)* and the City's right to publicly disclose information about or from any quotation, including without limitation names and prices, in the course of publicly reporting to the Vancouver City Council about the RFQ, the City will treat each quotation (and the City's evaluation of it), in

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confidence in substantially the same manner as it treats its own confidential material and information; and

- (d) the City will not be responsible for any costs, expenses, losses, damages (including damages for loss of anticipated profit) or liabilities incurred or alleged to be incurred by the vendor in relation to its submission of a quotation, except under the preceding Section 12.1(c).

13.0 CONFLICTS/COLLUSION/LOBBYING

13.1 Each vendor must disclose whether any officer, director, shareholder, partner, employee or contractor of the vendor or of any of its proposed subcontractors, or any other person related to the vendor's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest is:

- (a) an elected official or employee of the City; or
- (b) related to or has any business or family relationship with an elected official or employee of the City,

in each case such that there could be any conflict of interest or an appearance of a conflict of interest in the evaluation or consideration of the vendor's quotation by the City. The City will evaluate each matter disclosed to determine whether and to what extent the vendor can be given consideration in the RFQ in light of the particular matter.

13.2 Each vendor must disclose whether any person having an interest (as defined above) is a former official, former employee or former contractor of the City who has non-public information relevant to the RFQ obtained during his or her employment or engagement by the City. The City will evaluate each matter disclosed to determine whether and to what extent the vendor can be given consideration in the RFQ in light of the particular matter.

13.3 Each vendor must disclose whether the vendor or any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that becoming a supplier to the City in response to this RFQ would create a conflict of interest or the appearance of a conflict of interest between the vendor's duties to the City and the vendor's or its subcontractors' duties to such third party. The City will evaluate each matter disclosed to determine whether and to what extent the vendor can be given consideration in the RFQ in light of the particular matter.

13.4 Each vendor is required to disclose whether the vendor is competing for purposes of the RFQ with any entity with which it is legally or financially associated or affiliated. Each vendor must also disclose whether it is cooperating in any manner in relation to the RFQ with any other vendor responding to the RFQ. The City will evaluate each matter disclosed to determine whether and to what extent the vendor can be given consideration in the RFQ in light of the particular matter.

13.5 Each vendor is required to disclose whether it or any officer, director, shareholder, partner, employee or agent of the vendor or any of its proposed subcontractors: (1) is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; or (2) has engaged in any form of political or other lobbying whatsoever with respect to the RFQ or sought, other than through the submission of its quotation, to influence the outcome of the RFQ process. The City will

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evaluate each matter disclosed to determine whether and to what extent the vendor can be given consideration in the RFQ in light of the particular matter.

14.0 INSURANCE AND WORKERS' COMPENSATION COVERAGE

- 14.1 Each vendor must complete, sign and attach to its quotation the insurance form(s) included as Appendix 4.
- 14.2 In addition, each vendor must include with its quotation a letter confirming its current WorkSafeBC registration.

15.0 PRODUCT WARRANTIES

- 15.1 All Products provided as part of the Supply shall be new and fully warranted from the time of delivery to the City, against defects in design, manufacturing, materials, workmanship and performance, and the Supplier affirms and covenants that such warranty is, and shall be, provided by the Supplier if and to the extent it is not fully and effectively provided to the City by a third-party manufacturer of any Product.
- 15.2 All Products provided shall be non-defective and fit for their respective intended purposes, shall function correctly, as intended, and shall be safe.
- 15.3 All costs associated with warranty replacements or repairs shall be the responsibility of the Supplier, including repair, adjustment, and shipping costs, and replacements of Products.
- 15.4 If requested by the City, the Supplier shall handle and manage any claim on a manufacturer warranty for any defect in any Product.
- 15.5 The Supplier shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 15.1 or to evidence the Supplier's compliance with this Section 15.1, 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

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QUOTATION FORM

Quotation may be sent either by email, mail or courier to:

City of Vancouver
Supply Chain Management
4/F, City of Vancouver
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Quotations must be marked with the vendor's name and the RFQ title and number and required appendices or supporting documents must be attached.

ATTENTION: MEGS GATUS

FROM: _____ (Company Name)
_____ (Contact Name)

**SUBJECT: REQUEST FOR QUOTATIONS NO. PS20172272 - SUPPLY AND DELIVERY
OF HOT APPLIED CRACK SEALANT ("RFQ")**

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SUPPLY AND DELIVERY OF HOT APPLIED CRACK SEALANT

QUOTATION FORM

The undersigned vendor, having carefully read and examined the RFQ and having full knowledge of the requirements described therein, does hereby offer to provide the goods and/or services in accordance with the specifications and terms and conditions set out in the RFQ (except as expressly noted below in this completed Quotation Form) and upon the pricing and other terms and conditions referred to below in this completed Quotation Form.

1.0 TABLE OF PRICES

(If the vendor is not offering goods or services that fully comply with the requirements set forth in Appendix 1 of the RFQ, do not complete this table of prices and instead complete only the table under Section 2.0 of this form below.)

Item	Description	Quantity	Unit Price	Unit of Measure	Total Price
1.	Hot Applied Crack Sealant in accordance with the specifications set out in the RFQ.	50,000 lbs.	\$	lb	\$
GST and PST, where applicable, should not be included in prices. Delivery costs should be included in prices.				TOTAL	\$

2.0 DEVIATIONS, ALTERNATIVES AND ADDITIONAL GOODS

Are there goods with deviations, or alternative or additional goods suggested by the vendor? If yes, list them and their price(s), and describe them below:

Item	Description	Quantity	Unit Price	Unit of Measure	Total Price
GST and PST, where applicable, should not be included in prices. Delivery costs should be included in prices.				TOTAL	\$

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DESCRIPTIONS OF GOODS AND SERVICES:

(Describe the deviations or describe the alternative goods or services or suggested additional goods or services. Attach documents and photos if necessary.)

3.0 TIME LIMITATIONS ON PRICING:

(Indicate any such limitations in the spaces provided or state that there are none. See Section 4.2 of the RFQ's Instructions to Vendors.)

4.0 LEAD TIMES AND SCHEDULING

(Provide the information requested by Section 6.0 of the RFQ's Instructions to Vendors.)

5.0 SUSTAINABILITY

Please indicate in this Section 5.0 information concerning the sustainability of the goods or services offered. Please also refer to Section 2.0 of the RFQ's Instructions to Vendors.

6.0 TERMS OF PAYMENT

(Provide the information requested by Section 8.0 of the RFQ's Instructions to Vendors.)

7.0 CONFLICTS/COLLUSION/LOBBYING

(Provide the information requested by Section 13.0 of the RFQ's Instructions to Vendors.)

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8.0 OTHER INFORMATION

(Please provide other details requested or required by the RFQ, or which the vendor wishes to include as part of its offer. Among other things, note here any proposed deviations from Appendix 3. Add additional pages as necessary.)

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QUOTATION FORM

9.0 TERMS AND CONDITIONS

By signing this form, the vendor acknowledges that: (a) it has read, understands and agrees to the terms and conditions set out in the RFQ's Instructions to Vendors (except as noted above); (b) it has read and understands the information in Appendix 1 and Appendix 3 of the RFQ; (c) it has noted herein any deviations from the requirements of Appendix 1 of the RFQ; and (d) it has completed, executed and attached hereto the forms set out in Appendix 2 and Appendix 4 of the RFQ, as well as having attached a letter from WorkSafeBC confirming the vendor's current registration.

Moreover, by signing this form, the vendor also acknowledges and agrees that it has determined that the terms and conditions stated in Appendix 3 would be acceptable to it, or it has noted required deviations above.

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.: _____ Date and Jurisdiction of Incorporation: _____

City of Vancouver Business License No. (or, if available, Metro West Inter-Municipal Business License No.): _____ WorkSafeBC Registration No.: _____

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APPENDIX 1 - REQUIREMENTS

1.0 Scope of Work and Product Specifications

- 1.1 The scope of work covers the supply and delivery of a hot applied, single component joint and crack sealant. The sealant will be comprised of a blend of asphalts, virgin polymers synthetic rubber with reinforcing fillers.
- 1.2 The City's requirements are approximately 1,000 - 50 pound boxes per year delivered usually in one shipment in early spring.
- 1.3 The specification covers joint and crack sealants of the hot applied type intended for use in large scale sealing of joints and cracks in Portland Cement Concrete and Asphaltic Concrete Pavements.

2.0 Referenced Documents

- 2.1 ASTM Standards:
 - 2.1.1 D 1190 Specification for Concrete Joint Sealer, Hot-Applied Elastic Type 1 (Formerly ASTM D - 1190)
 - 2.1.2 D 5167 Practice for Melting of Hot-Applied, for Concrete and Asphalt Pavements
 - 2.1.3 D 5329 Test Methods for Sealants and Fillers, Hot Applied for Joints and Cracks in Asphaltic and Portland Cement Concrete Pavements
- 2.2 British Columbia Department of Transportation specifications.
- 2.3 AASHTO M173; AASHTO M 324-04.

3.0 General Requirements

- 3.1 The sealant shall be composed of a mixture of materials that will form a resilient and adhesive compound capable of effectively sealing joints and cracks in concrete and asphaltic pavements against the infiltration of moisture and foreign material throughout repeated cycles of expansion and contraction with temperature changes, and that will not, at ambient temperatures, flow from the joint or be picked up by vehicle tires. The material shall be capable of being brought to a uniform pouring consistency suitable for completely filling the joints without inclusion of large air holes or discontinuities and without damage to the material. It shall remain relatively unchanged in application characteristics for at least 6 h at the recommended application temperature in the field.
- 3.2 Coverage - a joint ½ inch x ½ inch (12.7 mm x 12.7 mm) requires approximately 17.7 kilograms (12 pounds) per 100 lineal meters.
- 3.3 Packaging - the desired product shall come in 50 pound boxes (22.7 kilograms) consisting of four pucks per box.

4.0 Classification

- 4.1 *Type I*—A joint and crack sealant capable of maintaining an effective seal in moderate climates. The material is tested for low temperature performance at -18°C using 50 % extension (formerly Specification D 1190).

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APPENDIX 1 - REQUIREMENTS

5.0 Physical Requirements

5.1 **Maximum Heating Temperature**—the maximum heating temperature is the highest temperatures to which a sealant can be heated and still conform to all the requirements specified herein. For purposes of testing as specified herein after, the application temperature shall be the same as the maximum heating temperature. The maximum heating temperature shall be set forth by the manufacturer, shall be shown on all containers and shall be provided to the testing agency before any laboratory tests are begun.

5.2 The sealant shall conform to the requirements prescribed in Table 1.

6.0 Sampling and Heating

6.1 Sampling:

6.1.1 Samples may be taken at the plant or warehouse prior to delivery or at the time of delivery, at the option of the purchaser. If sampling is done prior to shipment, the inspector representing the purchaser shall have free access to the material to be sampled. The inspector shall be afforded all reasonable facilities for inspection and sampling which shall be conducted so as not to interfere unnecessarily with the operation of the works.

6.1.2 Samples shall consist of one of the manufacturer's original sealed containers selected at random from the lot or batch of finished material. A batch or lot shall be considered as all finished material that was manufactured simultaneously or continuously as a unit between the time of compounding and the time of packaging or placing in shipping containers.

6.1.3 Obtain the sealant portion for testing from the selected manufacturer's original sealed container in accordance with Practice D 5167. The sample portion added to and heated in the melter shall weigh 800 plus or minus 50 g for Types I.

6.2 Heating—Heat the material in accordance with Practice D 5167.

6.2.1 The oil bath in the melter shall be heated to a temperature between the sealant's maximum heating temperature and 42°C above the sealant's maximum heating temperature.

(Never allow the oil temperature to exceed 288°C). Add the sealant to the melter according to the instructions in Practice D 5167. After the sample has been added to the melter, regulate the oil temperature within the listed temperature limits while raising the sealant's temperature to manufacturer's recommended maximum heating temperature within the required 1 hour of time, as stated in Practice D 5167. Immediately upon reaching the maximum heating temperature, pour samples for testing.

7.0 Test Methods

7.1 **Specimen Conditioning**—Condition all specimens at standard laboratory conditions for 24 plus or minus 4 hour as specified in test Method D 5329 prior to beginning any testing.

7.2 **Cone Penetration**—Determine cone penetration according to Method D 5329 for Cone Penetration, non-immersed.

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APPENDIX 1 - REQUIREMENTS

- 7.3 Flow—Determine the flow according to Method D 5329 for Flow. Test the specimen for 5 hours.
- 7.4 Bond, *Non-Immersed*—Determine the bond according to Test Method D 5329 for Bond, non-immersed.
- 7.4.1 After final scrubbing and blotting specified in test Method D 5329, air dry the blocks on their 12.7 mm X 25.4 mm ends at standard laboratory conditions for 1 hour plus or minus 10 minutes prior to pouring bond specimens.
- 7.4.2 Immediately after conditioning the blocks as in 7.4.1, assemble the blocks with spacers as specified in test Method D 5329 so the opening between the blocks will form a cured sealant block that is 25.4 mm 6 0.1 mm wide for Type I.
- 7.4.3 After pouring material into the block opening, condition the specimen as in 7.1. After conditioning, remove spacers and trim off excess material with a hot knife being careful not to pull sealant from the block. Condition the test specimens not less than 4 hours at the temperature specified in Table 1 for the Specific Type of Sealant. Immediately extend the specimen to the prescribed percentage in Table 1 using the apparatus and rate described in D 5329.
- 7.4.4 Re-compress and re-extend according to test Method D 5329 for the total number of cycles prescribed in Table 1. The required cycles shall be completed within a 7 day period for Type I.
- 7.5 *Resilience*—Use test Method D 5329 for Resilience.
- 7.6 *Oven Aged Resilience*—Age specimen @ 70°C for 168 hours. Use test method D 5329.
- 7.7 *Asphalt Compatibility*—Test asphalt compatibility according to test Method D 5329.

TABLE 1

Cone Penetration at 25 Celsius	Type 1 90 maximum
Flow at 60 Celsius, mm	5.0 maximum
Bond, non-immersed	Two out of three 25.4 mm specimens pass* 5 cycles at 50% ext. at -18 Celsius
Asphalt Compatibility	Pass **

* The development at any time during the test procedure of a crack, separation, or other opening that at any point is over 6 mm deep, in the sealant or between the sealant and concrete block shall constitute failure of the test specimen. The depth of the crack, separation or other opening shall be measured perpendicular to the side of the sealant showing the defect.

** There shall be no failure in adhesion, formation of an oily exudate at the interface between the sealant and asphaltic concrete or other deleterious effects on the asphaltic concrete or sealant when tested at 60°C.

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APPENDIX 2 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

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

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

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

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

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

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

Signature: _____

Name and Title: _____

SUPPLY AGREEMENT

BETWEEN:

<  SUPPLIER NAME >

AND:

CITY OF VANCOUVER

RELATING TO

SUPPLY AND DELIVERY OF HOT APPLIED CRACK SEALANT

DATED <  >

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APPENDIX 3 - FORM OF AGREEMENT

SUPPLY 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 12th Avenue, Vancouver, British Columbia, V5Y 1V4 (hereinafter referred to as the "City")

WHEREAS the Supplier is in the business of HOT APPLIED CRACK SEALANT SUPPLY AND DELIVERY;

AND WHEREAS the City wishes to purchase HOT APPLIED CRACK SEALANT, 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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Bookmark not defined.	
ARTICLE 2 EFFECTIVENESS	Error!
Bookmark not defined.	
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Bookmark not defined.	
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**ARTICLE 1
INTERPRETATION**

1.1 Definitions

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

- (a) **"Agreement"** means this agreement, including the schedules hereto, and all amendments made hereto or thereto by written agreement between the Parties;
- (b) **"Business Day"** means a day that is not a Saturday, a Sunday or a public holiday in Vancouver, British Columbia;
- (c) **"Competent Authority"** means:
 - (i) any multinational, federal, provincial, state, regional, municipal, local or other government or governmental body and any ministry, department, division, bureau, agent, agency, commission, board or authority of any government or governmental body, domestic or foreign;
 - (ii) any domestic, foreign or international judicial, quasi-judicial or administrative court, tribunal, commission, board, panel, arbitrator or arbitral body acting under the authority of any of the foregoing; or
 - (iii) any quasi-governmental or private body exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing;
- (d) **"Confidential Information"** means all or any confidential information (however recorded or preserved) disclosed before, on or after the date of this Agreement by either Party or any of its Representatives to the other Party or its Representatives in connection with this Agreement, concerning:
 - (i) this Agreement; or
 - (ii) the affairs, operations, processes, know-how, suppliers, plans or intentions of the disclosing Party or of any member of the disclosing Party's Group, including, without limitation, any information which is not generally known to the public or which has been specifically identified as confidential or proprietary by the disclosing Party,but does not include:
 - (iii) any information that is or becomes generally available to the public or to industry professionals (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this Agreement);
 - (iv) any information that was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party;
 - (v) any information that was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement or other duty of confidentiality with or to the disclosing Party or a member of the disclosing Party's Group or otherwise prohibited from disclosing the information to the receiving Party;

- (vi) any information that was known to the receiving Party before the information was disclosed to it by the disclosing Party or its Representatives and was not subject to a confidentiality agreement or other duty of confidentiality (including any obligation under this Agreement) with or to the disclosing Party or a member of the disclosing Party's Group;
 - (vii) any information that the Parties agree in writing is not confidential or may be disclosed; and
 - (viii) any information unrelated to this Agreement that is developed by or for the receiving Party independently of and without reference to the information disclosed by the disclosing Party;
- (e) "Consent" means an approval, clearance, registration, franchise, right, privilege, certification, quota, consent, permit, licence, qualification, filing, exemption, certificate or permission and any such other matter or authorization whatsoever, including any condition thereof, that is lawfully and necessarily required from any Competent Authority in connection with the Supply;
- (f) "Delivery" means the completion of delivery of the Products ordered in a particular Order, as amended, in accordance with Section 3.4;
- (g) "Delivery Date" has the meaning ascribed to such term in Section 3.2(b)(iv);
- (h) "Delivery Location" has the meaning ascribed to such term in Section 3.2(b)(iv);
- (i) "Effective Date" has the meaning ascribed to such term in Section 2.1;
- (j) "Encumbrance" means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien or claim of lien (statutory or otherwise), easement, deemed or statutory trust, restrictive covenant, adverse claim, exception, reservation, right of occupation, any matter capable of registration against title, right of pre-emption, privilege or other encumbrance or third party right of any nature or any other arrangement or condition that, in substance, secures payment or performance of an obligation;
- (k) "Force Majeure" means, exhaustively, any:
- (i) war, hostilities (whether war is declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, terrorism (or threat of terrorism), revolution, insurrection, military or usurped power or civil war;
 - (iii) riot, civil commotion or disorder, strike or lockout by persons other than the Supplier's personnel and other employees, Subcontractors or any other person for whom the Supplier is responsible;
 - (iv) natural catastrophe, such as an earthquake, forest fire, landslide or flood; or
 - (v) change in Law or action by a Competent Authority, which makes it illegal or impossible for a Party to perform its obligations under this Agreement;
- (l) "Group" means:

- (i) in respect of the Supplier, the group constituted from time to time by:
 - (A) the Supplier;
 - (B) all persons that directly or indirectly control or are controlled by the Supplier; and
 - (C) all persons that are directly or indirectly controlled by any person that directly or indirectly controls the Supplier; and
- (ii) in respect of the City, the group constituted from time to time by:
 - (A) the City; and
 - (B) all bodies corporate directly or indirectly controlled by the City.
- (m) **"Intellectual Property Rights"** means any and all current and future proprietary rights provided under patent law, copyright law, design patent or industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, computer software, database or design, or the expression or use thereof, whether registered or unregistered, together with any right to apply for or register any of the foregoing;
- (n) **"Laws"** means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings, determinations or awards of any Competent Authority whether or not having the force of law and any legal requirements or bases of liability under the common law or civil law, including all such Laws relating to Taxes, the environment, human health or safety, pollution and other environmental degradation, and hazardous materials;
- (o) **"Order"** means an order for Products submitted by the City in accordance with Section 3.2, which may be titled "Purchase Order";
- (p) **"Parties"** means the City and the Supplier and "Party" means one of them or any of them, as the context requires;
- (q) **"Permitted Purpose"** has the meaning ascribed thereto in Section 7.1;
- (r) **"Products"** means the products set out in Schedule A, and, where the context requires, Products ordered or supplied hereunder;
- (s) **"Proposal"** means the Supplier's proposal dated , submitted by the Supplier to the City in response to the RFQ;
- (t) **"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;
- (u) **"RFQ"** means the City's Request for Quotation number PS20172272;
- (v) **"Sales Tax"** has the meaning ascribed to such term in Section 8.1;

- (w) “Specifications” means, for each Product, the specifications therefor set forth in Schedule B;
- (x) “Subcontractor” means any person engaged by the Supplier to perform any part of the Supply;
- (y) “Supply” means the supply of Products by the Supplier to the City pursuant to Orders;
- (z) “Taxes” means all taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Competent Authority, including:
 - (i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, import, customs, profits, windfall profits, environmental, carbon, emissions, pollution, payroll, employment, employer health, pension plan, anti-dumping, countervailing, or excise tax, duty, import, levy, assessment, tariff or other charge;
 - (ii) all withholdings on amounts paid to or by the relevant person;
 - (iii) all statutory remittances, employment insurance premiums and social security or pension plan contributions or premiums and Canada pension plan contributions;
 - (iv) any fine, penalty, interest or addition to tax;
 - (v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee; and
 - (vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law.

1.2 Headings

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

1.3 Extended Meanings

In this Agreement:

- (a) words importing the singular include the plural and vice versa, words importing a gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, except where the context requires otherwise;
- (b) any provision calling for “agreement” requires the relevant agreement to be recorded in writing and signed by both Parties;

- (c) the words "include", "includes", "including" and "included" shall be construed without implying limitation by the words which follow those words and without prejudice to the generality of the provisions to which such words relate, unless inconsistent with the context;
- (d) the rule of interpretation known as ejusdem generis shall not apply;
- (e) each reference to a specific statute, regulation, law or any subordinate instrument or statutory or regulatory provision shall be construed as including any legal or regulatory provision which subsequently amends or replaces the same, and shall include any and all subordinate instruments, orders, rules, regulations and bylaws made thereunder or guidelines issued in respect thereof;
- (f) each reference to a writing means a writing that is hand-written, type-written, printed or electronically made, and which results in a permanent un-editable record; and
- (g) "control" when used to describe a relationship between one person and any other person, has the following meanings:
 - (i) a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
 - (ii) a person controls an unincorporated entity, other than a limited partnership, if more than 50% of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
 - (iii) the general partner of a limited partnership controls the limited partnership; and
 - (iv) a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

1.4 Schedules

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

Schedule A	Products and Prices
Schedule B	Product Specifications

ARTICLE 2 EFFECTIVENESS

2.1 Effective Date

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

2.2 Term

- (a) Unless earlier terminated pursuant to ARTICLE 6 this Agreement shall terminate on the third anniversary of the Effective Date or on such later date as the Parties may agree in writing.
- (b) Subject to termination pursuant to ARTICLE 6, but notwithstanding Section, the term of this Agreement may be extended for up two successive one-year periods following the anniversary of the Effective Date, at the option of the City, upon written notice from the City to the Supplier.
- (c) Notwithstanding the foregoing, if the City and the Supplier continue to deal with each other in respect of the subject matter of this Agreement following the expiry of this Agreement, without any additional or other written agreement in respect thereof, this Agreement shall be deemed to have been renewed on a month-to-month basis on the same terms and conditions as before the expiry of the Agreement and it may be cancelled without cause by either party on thirty (30) days' prior written notice to the other.

ARTICLE 3 SUPPLY; GENERAL TERMS

3.1 Supply

- (a) During the term of effectiveness of this Agreement, the Supplier shall supply, and the City shall purchase, such quantities of Products as the City may order under Section 3.2, in accordance with this Agreement.
- (b) The Supplier shall maintain at all times sufficient inventories of the Products to meet the business plans and requirements of the City.
- (c) Without limiting the foregoing Section 3.1(a) Schedule C hereto contains a current estimate of the City's Product requirements for each of the three successive 12 month periods beginning on the Effective Date. The Supplier acknowledges such estimates and affirms its capacity to supply Products to the City in accordance therewith; although the City can offer no assurances that it shall purchase Products in accordance with such estimates.

3.2 Orders

- (a) The City may deliver Orders to the Supplier from time to time during the term of effectiveness of this Agreement.
- (b) Each Order shall:
 - (i) be given in writing;
 - (ii) refer to this Agreement;
 - (iii) specify the Products ordered; and
 - (iv) specify the date by which the Products ordered pursuant to the Order are to be delivered (the "Delivery Date"), and the location or address to which they are to be delivered (the "Delivery Location")

3.3 Product and Supply Requirements

- (a) The Supplier shall manufacture, pack, transport and supply the Products (in each case to the extent applicable) in accordance with all:
 - (i) Product manufacturer recommendations and requirements;
 - (ii) generally accepted industry standards and practices; and
 - (iii) applicable Laws.
- (b) The Products supplied to the City by the Supplier under this agreement shall:
 - (i) be new;
 - (ii) conform to the Specifications;
 - (iii) be free from defects in design, material and workmanship and remain so for twelve months after Delivery; and
 - (iv) comply with all applicable Laws.
- (c) The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- (d) The Supplier shall obtain and maintain in force at all times all Consents needed to manufacture (if applicable) and supply the Products in accordance with the terms of this Agreement.
- (e) The Supplier shall ensure that title in Products supplied by the Supplier hereunder, when such title passes to the City hereunder, shall be free and clear of Encumbrances. The Supplier shall not enter any contract that reserves ownership of Products supplied by the Supplier hereunder in favour of any third party and, at the request of the City, the Supplier must provide evidence that no such contract has been entered into.
- (f) The Supplier shall adhere to, and shall ensure that the Products and Supply conform to, the City's Supplier Code of Conduct referred to as Appendix 2 of the RFQ.

3.4 Delivery Requirements

- (a) The Supplier shall deliver the Products ordered in each Order to the applicable Delivery Location by the applicable Delivery Date. Delivery of the Products specified in an Order shall be complete on their arrival at the Delivery Location.
- (b) The Supplier shall not deliver the Products specified in an Order by instalments except with the prior written consent of the City.
- (c) If the Products specified in an Order are not delivered in accordance herewith by the specified Delivery Date, then, without limiting any other right or remedy the City may have under this Agreement or otherwise, the City may:
 - (i) refuse to take any subsequent attempted delivery of such Products associated with such Order;

- (ii) obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the City in obtaining such substitute products; or
- (iii) claim damages against the Supplier for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Products specified in the Order by the Delivery Date,

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

- (d) Each shipment of Products shall be accompanied by a delivery document from the Supplier showing the Order number, the date of the Order, the type and quantity of Products included in the Order, and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- (e) If the Supplier requires the City to return any shipping containers, or other packaging or shipping materials, to the Supplier, that fact must be clearly stated on the delivery document accompanying the relevant Products, and any such returns shall be at the Supplier's expense.
- (f) In respect of any Products that originate outside Canada, the Supplier shall be responsible for all customs and import Taxes, costs, expenses, administrative duties and formalities.

3.5 Rejection of Defective Products

- (a) The City shall not be deemed to have accepted any particular Products until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Products, until a reasonable time after the latent defect has become apparent.
- (b) If any Products delivered to the City do not comply with the Specifications, or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that the City may have, the City may at any time reject those Products and:
 - (i) require the Supplier to remove the rejected Products from any City facility or work site at the Supplier's risk and expense within Five (5) Business Days of being requested to do so;
 - (ii) require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within five (5) Business Days of being requested to do so;
 - (iii) require the Supplier to repay the price of the rejected Products in full (whether or not the City has previously required the Supplier to repair or replace the rejected Products); and
 - (iv) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that are not in conformity with the terms of this Agreement.
- (c) The City's rights and remedies under this Section 3.5 are in addition to the rights and remedies available to it under ARTICLE 5, ARTICLE 6 and applicable Laws.

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

3.6 Risk and Title

- (a) The risk in Products delivered to the City hereunder shall pass to the City on Delivery.
- (b) Title to Products delivered to the City hereunder shall pass to the City on Delivery. The Supplier shall deliver to the City any documentation, including a bill of sale, which the City may reasonably require to evidence the transfer of title in and to Products to the City, free and clear of all Encumbrances.

3.7 Certain Supplier Representations and Warranties

The Supplier represents and warrants that:

- (a) the Supplier has the full right, power, and authority to enter into this Agreement and to perform the Supply;
- (b) Supplier is a ^[redacted] duly organized, validly existing and in good standing under the laws of ^[redacted] and is lawfully authorized to do business in the Province of British Columbia;
- (c) the Supplier is not a party to or bound by any agreement (written or oral), indenture, instrument, license, 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) all statements made by the Supplier in its Proposal are true and accurate;
- (e) the Supplier is an authorized distributor of the Products; and
- (f) the Supplier and the Supplier's personnel and Subcontractors have the skills, training, experience and expertise which are necessary to supply the Products in accordance with the terms of this Agreement.

3.8 Product Warranties

- (a) All Products provided under the Agreement as part of the Supply shall be new and fully warranted for a period of xx year from the time of delivery to the City, against defects in design, manufacturing, materials, workmanship and performance, and the Supplier affirms and covenants that such warranty is, and shall be, provided by the Supplier if and to the extent it is not fully and effectively provided to the City by a third-party manufacturer of any Product.
- (b) All Products provided under the Agreement shall be non-defective and fit for their respective intended purposes, shall function correctly, as intended, and shall be safe.

- (c) All costs associated with warranty replacements or repairs shall be the responsibility of the Supplier, including repair, adjustment, and shipping costs, and replacements of Products.
- (a) If requested by the City, the Supplier shall handle and manage any claim on a manufacturer warranty for any defect in any Product.
- (d) The Supplier shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 3.8 or to evidence the Supplier's compliance with this Section 3.8, and the Supplier shall assign all warranties, and do all other things necessary, to ensure that the City receives the full benefit of each warranty or other covenant set forth in this Section 3.8.

3.9 No Exclusivity

- (a) The City intends to use the Supplier as a preferred supplier of the Products; however the City is not bound to treat the Supplier as its exclusive supplier of any Products.
- (b) The City shall be entitled, in its sole discretion, to purchase products of the same type as, or similar to, the Products, from any supplier at any time.

3.10 Absence of Conflicts of Interest

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

ARTICLE 4 PAYMENT

4.1 Payment to the Supplier

- (a) The Supplier shall be entitled to invoice the City for each Order made by the City, on or at any time after Delivery.
- (b) Subject to ARTICLE 6, the City shall pay the Supplier in respect of each Order in accordance with Section 4.3, Schedule A and ARTICLE 8, following the receipt of an invoice relating to such Order prepared and delivered in accordance with Section 4.1(a), Section 4.2 and Section 4.3.

- (c) Notwithstanding any other provisions of this Agreement, the Supplier shall not be entitled to payment for any Supply that has not been performed in compliance with the provisions of this Agreement.

4.2 Content of Invoices

- (a) Each of the Supplier's invoices shall set out, at a minimum (and in such form or format as required by the City):
- (i) the relevant Order number;
 - (ii) the invoice date;
 - (iii) an itemized list of the amounts owing and details of any applicable taxes;
 - (iv) a description of the Products to which the invoice relates; and
 - (v) the total amount payable under the invoice; and
 - (vi) such other information as the City may require from time to time.
- (b) Any terms or conditions proposed by the Supplier to govern the Supply that are contained in any invoice (or in any shipping document, packing list or similar document) are void and of no effect, notwithstanding any statement in such document concerning the means by which the City may accept or be deemed to accept such terms or conditions.

4.3 Procedure for Invoices

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

4.4 Currency of Payment

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

4.5 Set Off

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

ARTICLE 5
LIABILITY AND INSURANCE

5.1 Indemnification by the Supplier

- (a) The Supplier shall indemnify and keep indemnified and hold the City, the Other City Entities and their respective officials, officers, employees and agents harmless against all losses, liabilities, claims, demands, costs and expenses (including legal fees), fines, penalties or charges (including those imposed by statute or otherwise imposed), arising out of, in connection with or consisting of:
- (i) any loss or damage arising from a claim by any third party concerning or arising out of the Supply or the use of the Products, to the extent that such claim arises out of any negligence, wilful misconduct or failure to adhere to this Agreement by the Supplier or any of its Representatives;
 - (ii) any occupational illness, injury or death of any person, which occurs during, or as a result of, the Supply or the use of the Products, to the extent that such illness, injury or death is attributable to the acts or omissions of the Supplier or any of its Representatives or is attributable to a Product attribute, feature, defect or failure;
 - (iii) any other failure by the Supplier to fully comply with the provisions of this Agreement;
 - (iv) any defect in any of the Products or any failure of any Product or any failure of any Product to meet reasonable safety standards or applicable safety requirements;
 - (v) a breach by the Supplier or any Subcontractor of any Law in the course of, or as a result of, the provision of the Supply;
 - (vi) any actual or alleged infringement of any Intellectual Property Rights caused by the Supply or the use of the Products, and
 - (vii) any breach of the warranties of the Supplier contained herein.
- (b) Nothing in this Section 5.1 or otherwise in this Agreement shall limit or exclude any direct liability (whether in contract, tort, for breach of statutory duty or any other legal basis) of the Supplier to any person.
- (c) The Supplier appoints the City as the trustee of the Other City Entities and of their and the City's officials, officers, employees and agents in relation to the covenants of indemnification of the Supplier contained in this Section 5.1 and the City accepts such appointment.

5.2 Insurance

- (a) In addition to those mandatory insurance policies that the Supplier is required to carry by any applicable Laws, the Supplier shall take out and maintain in force, with a reputable insurance company legally authorized to conduct business in British Columbia, during the term of this Agreement and for a period of five years afterwards, commercial general liability insurance with coverage of not less than \$5,000,000 million per occurrence and at least \$5,000,000 million of annual aggregate coverage

endorsing the City as an additional insured on a primary and non-contributory basis and providing a waiver of subrogation in favour of the City.

- (b) The Supplier shall ensure that any Subcontractors also maintain the same insurance as the Supplier, having regard to the obligations under this Agreement which they are contracted to fulfil.
- (c) The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Section 5.2(a).
- (d) The cost of the insurances arising under this Section 5.2 shall be deemed to be incorporated into the prices specified in Schedule A.
- (e) As a condition precedent to any payment from the City to the Supplier under this Agreement, and as and when reasonably requested by the City, the Supplier shall provide documentary evidence (to the reasonable satisfaction of the City, including by completing the City's standard reporting documents used for this purpose) that the insurances required by this Section 5.2 have been taken out and are being maintained.

ARTICLE 6 FORCE MAJEURE; TERMINATION

6.1 Force Majeure

- (a) No Party shall be deemed to be in breach of this Agreement or otherwise liable to another Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement reasonably due to Force Majeure.
- (b) If either Party's performance of its obligations under this Agreement is affected by an event of Force Majeure, then:
 - (i) it shall give written notice to the other Parties, specifying the nature and extent of the event of Force Majeure, as soon as reasonably practicable after becoming aware of the event of Force Majeure;
 - (ii) performance of such obligation(s) shall be deemed suspended but only for a period equal to the delay reasonably caused by such event;
 - (iii) it shall not be entitled to payment from any of the other Parties in respect of extra costs and expenses incurred as a result of the event of Force Majeure; and
 - (iv) it shall use all reasonable diligence to mitigate the cause and the result of the event of Force Majeure and to remedy the situation and resume its obligations under this Agreement.
- (c) Notwithstanding the obligations of a Party affected by an event of Force Majeure pursuant to Section (b), if the event of Force Majeure renders it impossible or impractical for the Supplier to provide the Supply in accordance with this Agreement for a period of at least fifteen days, the City may terminate this Agreement upon notice delivered to the Supplier at any time following the expiration of such period of fifteen (15) days.

6.2 Purchaser Termination Rights

The City shall have the following rights:

- (a) The City may terminate this Agreement at any time (and for its convenience) upon 30 days' written notice to the Supplier.
- (b) If the City reasonably considers that the Supplier is not discharging any of its material obligations under this Agreement, the City may inform the Supplier by notice stating the grounds for the notice. If evidence of remediation satisfactory to the City, is not received as soon as practicable or in any case within ten (10) days or such longer period as agreed by the Parties, the City may by a further notice to the Supplier of at least (15) days terminate this Agreement.
- (c) The City may terminate this Agreement with immediate effect if the Supplier becomes bankrupt or insolvent, goes into liquidation, has a receiver or administrator appointed over it or any of its assets of undertaking, enters into any arrangement for the benefit of its creditors, becomes the subject of any moratorium or carries on business under a receiver, trustee, manager or arrangement for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

6.3 Supplier Termination Rights

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

- (a) 90 days after the due date for payment of an invoice issued by the Supplier to the City hereunder, it has not received payment of that part which has not by that time been contested in writing by the City and provided always that:
 - (i) the Supplier has issued a notice of reminder to the City following the due date for payment in relation to such unpaid sum; and
 - (ii) the termination notice may not be issued until the expiry of 45 days following the issue of such reminder notice; or
- (b) the City commits any material persistent breaches of its obligations under this Agreement, which render performance by the Supplier of its obligations under this Agreement or a substantial part thereof impossible or significantly adversely affect such performance of this Agreement as a whole, and further which remain irremediable after 90 days.

6.4 Consequences of Termination

- (a) Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- (b) After termination of this Agreement, the provisions of Section 3.7, ARTICLE 5, ARTICLE 7 and ARTICLE 9 shall remain in force.

ARTICLE 7
RIGHTS AND OBLIGATIONS CONCERNING INFORMATION

7.1 Freedom of Information and Protection of Privacy Act

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

7.2 No Promotion

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

7.3 Confidentiality Obligation

Each Party shall keep the Confidential Information of the other Party confidential and each Party shall not use such Confidential Information, except for the purpose of exercising or performing its rights and obligations under this Agreement or making use of the Products (a "Permitted Purpose"), or disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this ARTICLE 7.

7.4 Disclosure to Representatives

A Party may disclose another Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure, and at all times it is responsible for such Representatives' compliance with the confidentiality obligations set out in this ARTICLE 7.

7.5 Disclosures Required by Law

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

7.6 Other Disclosures by the City

The City's obligations under this ARTICLE 7 are wholly subject to and qualified by, the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and, notwithstanding any other provision of this ARTICLE 7, the City may disclose Confidential Information in any manner compliant with such statute or otherwise in furtherance of its public role or duties, including in the course of publicly reporting to the Vancouver City Council.

ARTICLE 8 TAXES

8.1 Taxes for Own Accounts

Unless otherwise expressly stated in this ARTICLE 8, any Taxes becoming due and payable by either Party pursuant to any applicable Laws by either Party as a result of the entering into, the performance of obligations under or the taking of payment pursuant to this Agreement, shall be for the account of that Party, and for greater certainty the prices set forth in Schedule A include all such Taxes except for applicable Taxes arising under all sales, excise and value added tax legislation (including, without limitation, the *Excise Tax Act* (Canada) and similar Canadian provincial legislation) (collectively, "Sales Tax") as a result of the sale of the Supply within Canada hereunder, unless it is clearly stated that they are intended to be Sales Tax-inclusive.

8.2 Withholding Taxes

- (a) Notwithstanding any other provision to the contrary, if the City considers it necessary to satisfy its obligations under any Law relating to Taxes, the City may:
 - (i) withhold an amount from a payment made to the Supplier; and
 - (ii) pay the withheld amount directly to the relevant Competent Authority.
- (b) If an amount withheld in accordance with Section 8.2(a) is paid by the City to the relevant Competent Authority, it is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier.
- (c) The Supplier agrees and acknowledges that it has no claim against the City for any amounts withheld and paid to the relevant Competent Authority in accordance with Section 8.2(a).
- (d) If the City does not withhold an amount under Section 8.2(a) which it is required to withhold pursuant to any laws relating to Taxes, the Supplier agrees to pay that amount to the City, upon request by the City.
- (e) The Supplier agrees that the City shall not be required to increase any payment to the Supplier by the amount withheld by the City under Section 8.2(a).

ARTICLE 9 DISPUTE RESOLUTION

9.1 Optional Procedure

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

9.2 Arbitration

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

- (a) the arbitration shall be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be

agreed upon by the Parties, and failing agreement by the Parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia. The parties shall share equally the costs of the arbitration but shall be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements; and

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

ARTICLE 10 MISCELLANEOUS

10.1 Assignment

- (a) The Supplier shall not assign this Agreement (including by operation of law) without the express prior written consent of the City.
- (b) If the Supplier is a company, then any change in the control of the company shall be deemed to constitute an assignment for the purposes of Section 10.1(a).
- (c) No assignment permitted by the City shall relieve the Supplier from any obligation under this Agreement or impose any liability upon the City.
- (d) The City may at any time and from time to time assign this Agreement, in whole or in part, upon notice to (and without the consent of) the Supplier.

10.2 Subcontracting

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

- (a) the engagement of such Subcontractor has been previously specifically approved by the City in writing;
- (b) such Subcontractor has given a written deed to the City in which it has undertaken to abide by the terms of this Agreement; and
- (c) the Supplier shall remain wholly liable for the due performance of its obligations under this Agreement and shall be wholly responsible for the acts and omissions of such Subcontractor.

10.3 Time of the Essence

Time is of the essence of this Agreement.

10.4 Costs

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

10.5 Benefit of this Agreement

- (a) This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.
- (b) Except as expressly set forth in the foregoing Section 10.5(a) or Section 5.1, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Supplier.

10.6 Entire Agreement

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

10.7 Amendments and Waiver

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

10.8 Notices

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

- (ii) if to the City:

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

Attention: <☒>
 Facsimile: <☒>

or to such other address or facsimile number as may be designated by notice given by either Party to the other, provided that, notwithstanding the foregoing, the Supplier's invoices shall be addressed as specified in Section 4.3 or as otherwise specified in the relevant Order.

- (b) Any Order, demand, notice or other communication given (and, in the case of electronic transmission, confirmed or acknowledged) in accordance with Section 10.8(a) shall be conclusively deemed to have been given:
- (i) if given by personal delivery, on the day of actual delivery thereof;
 - (ii) if given by registered mail or courier, on the Business Day following confirmation by the postal service or the courier that the notice has been delivered; and
 - (iii) if given by electronic transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

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

10.9 Governing Law and Jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the laws of the Province of British Columbia.
- (b) All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.
- (c) This Agreement is subject to the exclusive jurisdiction of the courts in the Province of British Columbia except:
 - (i) as otherwise agreed by the Parties pursuant to ARTICLE 9; and
 - (ii) to the extent necessary to enforce, in another jurisdiction, any decision or award made pursuant to ARTICLE 9 or any judgment of any court in the Province of British Columbia.

10.10 Further Assurances

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

10.11 Severance

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

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

10.12 Counterparts

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

10.13 Electronic Execution

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

10.14 Voluntary Agreement

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

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

<☒ SUPPLIER NAME>

Signature

Print Name and Title

Signature

Print Name and Title

CITY OF VANCOUVER

Signature

Print Name and Title

Signature

Print Name and Title

**SCHEDULE A
PRODUCTS AND PRICES**

1.0 Prices

- 1.1 Prices are in Canadian currency.
- 1.2 The quantity stated in Table 1 below is the City’s best estimate of its requirements.
- 1.3 Actual quantities may vary.
- 1.3 Prices are fixed for the full term of the contract.
- 1.4 Prices are to be exclusive of all Sales Taxes, except where expressly requested.
- 1.5 Prices are DDP destination, including all freight, import duties, brokerage fees, royalties, handling, overhead, profit and all other costs.
- 1.6 Prices include off-loading or driver assistance for the off-loading of products

TABLE 1

Item	Description	Quantity	Unit Price	Unit of Measure	Total Price
1.	Hot Applied Crack Sealant in accordance with the specifications set out in the RFQ.	50,000 lbs.	\$	lb	\$

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

SCHEDULE B -
PRODUCT SPECIFICATIONS

Refer to Appendix 1- Requirements

Sample

REQUEST FOR QUOTATIONS NO. PS20172146
SUPPLY AND DELIVERY OF PATIO FURNITURE FOR EAST WING PLAZA

APPENDIX 4 - INSURANCE FORMS



CERTIFICATE OF EXISTING INSURANCE

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

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.
2. **NAMED INSURED** *(must be the same name as the respondent /bidder and is either an individual or a legally incorporated company)*

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

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

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

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**
 Including the following extensions:

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

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

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

6. **UMBRELLA OR** **EXCESS LIABILITY INSURANCE**

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

7. **PROFESSIONAL LIABILITY INSURANCE**

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

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

8. **OTHER INSURANCE**

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

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

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