



REQUEST FOR QUOTATION

CONSULTANT SERVICES TO REVIEW THE ABOVE
GROUND LIQUID ASPHALT CEMENT STORAGE TANKS

RFQ No. PS20191272

Issue Date: October 25, 2019

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

IN RESPECT OF
CONSULTANT SERVICES TOP REVIEW THE ABOVE
GROUND LIQUID ASPHALT CEMENT STORAGE TANKS

Quotations are to be submitted by email in accordance with the instructions below and should be received prior to **3:00 p.m., Vancouver Time (as defined in Note 2 below)**, on **Thursday, November 21, 2019** (the “Closing Time”).

QUOTATIONS WILL NOT BE PUBLICLY OPENED.

NOTES:

1. Quotations should be submitted by email prior to the Closing Time in accordance with the following:
 - Subject of the file to be: PS20191272 – Vendor name.
 - Document format for submissions:
 - PDF format – 1 combined PDF file.
 - Zip the files to reduce file size if needed.
 - Send your submissions to bids@vancouver.ca not deliver a physical copy to the City of Vancouver.
 - If you did not receive an automated email within few minutes, check your junk folder first, and then contact purchasing@vancouver.ca.
 - Submitting the files via Drop box, FTP, or any other method, is not acceptable.
2. “Vancouver Time” will be conclusively deemed to be time in the City of Vancouver, as indicated in the electronic timestamp the Quotation receives upon delivery to the email address specified herein, which is in turn synchronized to Network Time Protocol (NTP) provided by the National Research Council of Canada adjusted to local Pacific Time Zone.
3. All queries related to this RFQ should be submitted in writing to the attention of:

MEGS GATUS

Email: magdalena.gatus@vancouver.ca

(the “**Contact Person**”)

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

TABLE OF CONTENTS

INSTRUCTIONS TO VENDOR.....	1
1.0 INTRODUCTION AND SUBMISSION INSTRUCTIONS	1
2.0 COMPLIANCE WITH CITY POLICY	1
3.0 INQUIRIES.....	1
4.0 PRICING	2
5.0 ADDRESS(ES) FOR DELIVERIES OR WORK.....	2
6.0 DELIVERY TIMES OR WORK SCHEDULES	2
7.0 QUANTITIES	2
8.0 TERMS OF PAYMENT	2
9.0 CONTRACTING.....	2
10.0 ALTERNATIVES / DEVIATIONS.....	3
11.0 EVALUATION CRITERIA.....	3
12.0 NO CLAIMS AGAINST THE CITY.....	3
13.0 CONFLICTS/COLLUSION/LOBBYING.....	4
14.0 INSURANCE AND WORKERS' COMPENSATION COVERAGE	5
QUOTATION FORM.	QF 1-5
APPENDIX 1 – REQUIREMENTS.....	A1-1-4
APPENDIX 2 – DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE	A2 -1
APPENDIX 3 – INSURANCE FORMS	A3 -1
APPENDIX 4 – FORM OF AGREEMENT	A4-1-21
ATTACHMENT - DRAWING	

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

INSTRUCTIONS TO VENDOR

1.0 INTRODUCTION AND SUBMISSION INSTRUCTIONS

The City of Vancouver (the “City”) is seeking quotations to determine if it will issue one or more purchase orders in respect of Consultant Services Top Review Above Ground Liquid Asphalt Cement Storage Tanks located at the Kent Yard Facility.

- 1.1 Vendor should carefully review Appendix 1 – Requirements for a detailed description of the City’s requirements.
- 1.2 **THIS IS NOT AN INVITATION TO TENDER. VENDORS ARE NOT REQUIRED TO SUBMIT IRREVOCABLE OFFERS.**
- 1.3 Vendors should carefully review the City’s intended form of agreement attached as Appendix 4.
- 1.4 Vendors should submit quotations via email in accordance with the above submission instructions and in the format 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.
- 1.5 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 Contact Person as soon as possible with the relevant information so that the City may advise the vendor regarding the matter.

2.0 COMPLIANCE WITH CITY POLICY

- 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.

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

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

of this RFQ no later than three (3) 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 inclusive of provincial sales tax payable by the City under the *Provincial Sales Tax Act* (“**PST**”), but exclusive of any tax calculated upon such prices under the federal *Excise Tax Act* (“**GST**”), where applicable, except where expressly requested to the contrary.
- 4.2 Each vendor should indicate any time limitation on its pricing. The City expects that, if it purchases goods or services as a result of responses to this RFQ, it will do so between approximately December 1, 2019 and June 30, 2020; therefore, each vendor should indicate whether or not its pricing will remain in effect throughout that period.
- 4.3 Prices are to include the taxes required to be included under Section 4.1 above as well as all fees, charges, overhead, profit and other expenses or costs of any kind whatsoever necessary for or incidental to the supply and delivery of the specified item or the performance of the applicable services.
- 4.4 Prices are to be quoted in Canadian currency.

5.0 ADDRESS(ES) FOR DELIVERIES OR WORK

Any successful vendor of goods may be asked to deliver goods to or perform work at the following address: 900 Kent Avenue South East Facility, 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 (INTENTIONALLY OMITTED)

7.0 QUANTITIES (INTENTIONALLY OMITTED)

- 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.
- 8.2 Canadian-based vendors will be required to accept payment via Electronic Funds Transfer (except for one-time only payments). United States based vendors will be paid via cheque and international vendors will be paid via wire transfer.

9.0 CONTRACTING

- 9.1 The City currently expects that the result of this RFQ will be that it will propose the entry into a contract in the form of Appendix 4.
- 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

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

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 or recommended/guiding codes of practices. 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 goods/services 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 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

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

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 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.

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

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.

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

ATTENTION: MEGS GATUS

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

SUBJECT: REQUEST FOR QUOTATIONS NO. PS20191273 – CONSULTANT SERVICES TO REVIEW ABOVE GROUND LIQUID ASPHALT CEMENT STORAGE TANKS (THE “RFQ”)

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:

Table 1: Project Fees

Work Tasks/Deliverables			
Description	# Hours	Rate/hour	Total Fee
Task 1 - Conduct a comprehensive inspection review and assessment of the mechanical and structural integrity of the Above Ground Liquid Asphalt Cement Plant Storage Tank and associated peripherals as specified in Appendix 1 - Requirements		\$	\$
Task 2 - Develop a plan for preventive and routine maintenance and repair/replacement program as specified in Appendix 1 - Requirements		\$	\$
Task 3 - Provide concise written final report of the defined work scope including a summary of engagement activities and analysis for City staff use, as specified in Appendix 1 - Requirements. Report must be sealed by B.C. Professional Engineer.		\$	\$
Total Fees (excluding taxes)			\$

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

Table 2 – Schedule of Hourly Rates

Team Members	Activity/Role	Regular Rate

2.0 DEVIATIONS, ALTERNATIVES AND ADDITIONAL GOODS OR SERVICES

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

DESCRIPTIONS OF GOODS AND SERVICES:

(Describe the deviations or describe the alternative goods or services or suggested additional goods or services. Attach documents 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 TIMES AND SCHEDULING

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

5.0 ENVIRONMENTAL AND SOCIAL SUSTAINABILITY

(Please indicate information concerning the environmental sustainability of the goods or services offered with regards to Healthy Ecosystems (minimizing pollution/toxicity, conserving

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

natural resources, and regenerating ecological; local food; clean water / water consumption), Zero Waste (reducing and/or diverting), Zero Carbon (reducing/eliminating greenhouse gases), including an explanation of any on-going efforts or plans that the vendors has, or steps that it has taken in the past to improve energy efficiency and / or minimise production of “greenhouse gas” emissions.)

(Please indicate information concerning the social sustainability of the goods or services offered with regards to advancing inclusion, reconciliation, equity and diversity by increasing economic opportunities for equity seeking populations (including but not limited to non-profits/coops, women, Indigenous persons, people with disabilities, LGBTQ+), including an explanation of any on-going efforts or plans the vendor has, or steps that it has taken in the past, to contribute to City goals & strategies of advancing inclusion, reconciliation, equity and diversity and / or to your organization’s efforts to promote workforce diversity for equity seeking populations.)

6.0 SUPPLIER AND WORKPLACE DIVERSITY

Please note that the Supplier and Workplace Diversity questions in this Section 6.0 are optional and will not form part of the evaluation of this RFQ. Vendors’ answers to the following questions are for information gathering purposes only and will be kept confidential in accordance with the Legal Terms and Conditions of this RFQ.

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

<p>Majority owned/controlled/ by:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Women <input type="checkbox"/> Indigenous Peoples <input type="checkbox"/> Non-Profit/Charity (Social Enterprise) <input type="checkbox"/> Coop <input type="checkbox"/> Community Contribution Corporation (3C/CCC) <input type="checkbox"/> Ethno-cultural Persons <input type="checkbox"/> People with Disabilities <input type="checkbox"/> LGBTQ+ <input type="checkbox"/> Other: please indicate 	<p>Social / Environmental Certifications</p> <ul style="list-style-type: none"> <input type="checkbox"/> BCorp <input type="checkbox"/> BuySocial <input type="checkbox"/> Supplier Diversity Certification <input type="checkbox"/> Fairtrade <input type="checkbox"/> Green Business Certification (ie. LEED, ClimateSmart) <input type="checkbox"/> Other: please indicate
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REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

As best known, in the space below, indicate the vendor's company profile with regards to economic inclusion supporting employment equity, diversity, inclusion and reconciliation by an equity-seeking demographic (including but not limited to non-profit, cooperative, Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ+ people). *Confidential & for information only*

Workforce Diversity:

- % Women
- % Indigenous Peoples
- % Ethno-cultural People
- % People with Disabilities
- % LGBTQ+
- % Other: please indicate

7.0 TERMS OF PAYMENT

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

8.0 CONFLICTS/COLLUSION/LOBBYING

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

9.0 OTHER INFORMATION

(Please set forth in this Section all 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 4. Add additional pages as necessary.)

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

INSTRUCTIONS TO VENDORS

10.0 TERMS AND CONDITIONS

The vendor should print, sign and scan this form for submission to the city via email in accordance with the instructions for submission provided above. 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 4 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 3 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 4 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: _____

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

APPENDIX 1 - REQUIREMENTS

1.0 INTRODUCTION

2.0 The City of Vancouver is seeking Consultant Services with Professional expertise in mechanical, structural and asphalt handling. The requirement is to efficiently coordinate the assessment of the above ground Liquid Asphalt Cement Storage Tanks and Plant Tank Farm for structural and mechanical integrity, identify issues and deficiencies, evaluate, develop, and execute a plan for maintenance repair and replacement programs.

3.0 BACKGROUND

3.1 The City of Vancouver owns and operates the Asphalt Plant including Asphalt Cement Storage Tank Farm located at the Kent Yard facility. The tank farm, currently 20 years old requires a comprehensive inspection, assessment and review for structural and mechanical integrity and maintenance, repair and/ or replacement requirements.

2.2 It consists of four vertical tanks with a fixed roof and a simple vapour release vent enclosed within a 42" high by 6" wide concrete barrier:

- Two 20 000 U.S. gallon (approximately 75 tonnes) Asphalt Cement Tanks, capacity measured in feet per, each having a maximum capacity of 26 feet and measuring 29' high x 11' Ø.
- One 10 000 U.S. gallon Asphalt Tank.
- One 5 000 U.S. gallon Diesel Fuel Tank for fueling the facilities loaders and equipment.
- One small reservoir which contain heating oil which circulates through an onsite boiler to keep the three liquid asphalt storage tanks continually warm.

2.3 There are two level indicator systems, mechanical cable and electronic. The tanks are loaded by simple centrifugal pump, and asphalt cement is delivered to the plant by the same type of centrifugal pump (2 pumps in total). The piping system is: external to internal to fill the tanks, internal to external for use (to the plant) and external to internal for return (to complete the loop). There is an overflow pipe at approximately 27 feet from internal to external 1 foot off the floor of the containment field to divert possible spillage and prevent overfilling. Asphalt cement temperature is regulated by a transfer oil system. Heating coils fed through the Gencor Hy-Way Heater (HYCGO-200 small boiler) circulate thermal oil transferring heat to asphalt cement stored inside the tanks, maintaining the constant desired temperature. The average typical temperature for the two larger tanks is approximately 300° F

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

APPENDIX 1 - REQUIREMENTS



Asphalt Cement Tanks

4.0 SUMMARY SCOPE OF SERVICE

- 4.1 The Scope of Services for this project includes an updated detailed visual inspection and associated non-destructive testing. The results of each inspection are to be summarized in detailed reports, sealed by a B.C. Professional Engineer.
- 4.2 The detailed report for each structure is to include: testing; conditions identified; estimate of remaining service life; recommendations related to schedule of priority repairs, maintenance and replacement, and recommended re-inspection frequency based on codes and regulations.

5.0 DETAILED SCOPE OF WORK

The successful Proponent's work and report on this project shall include, but not be limited to the following:

1. Tank inspection Cost Estimate; Initial inspection versus more detailed inspection.

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

APPENDIX 1 - REQUIREMENTS

2. Work Plan, including a Safety Plan, Hazard Assessment, Confined Space Entry and Rescue Plan
3. Pre-job Confined Space Hazard Assessment conducted in accordance with WSBC part, confined spaces approved by a Canadian Registered Safety Professional (CRSP)
4. Conduct a comprehensive review of the mechanical and structural integrity of the Asphalt Cement and Plant Storage Tanks and associated peripherals at the Kent Yard Asphalt Plant. This may include a two phase review, with an initial visual assessment, followed by a second comprehensive inspection
5. Reporting and Engineering review. Detailed report with inspection results, analysis, recommendations, drawings, photos
6. Inspections of the tanks to include:
 - a. Visual inspection on internal components in accordance with a checklist.
 - b. Visual inspection on external tank components (including mechanical) in accordance with a checklist
 - c. Identify and assess any other structural elements
 - d. Leakage inspection of the floor plates, walls
 - e. Identification of any pitting, thicknesses
 - f. Thickness measurements on the shell/walls
 - g. Thickness measurements on floor plates at various areas, including at tank perimeter, intervals
 - h. Leak detection of the floor plate welds
 - i. Roof inspection info
 - j. Internal settlement measurements
 - k. Floor remaining life calculations
 - l. Shell minimum thickness calculations
7. Evaluate the need to repair or replace items of concern
8. Estimate of time and duration to conduct all required work
9. Estimate of labour resource requirements
10. Coordinate the development of a plan to efficiently execute all work required
11. Develop a plan for preventive and routine maintenance and repair/replacement programs.

6.0 DELIVERABLES

- (a) Detailed report for each structure including: testing; conditions identified; estimate of remaining service life; recommendations related to schedule of priority repairs, maintenance and replacement, and recommended re-inspection frequency based on codes and regulations.
- (b) Recommendations, strategies and cost estimates to implement updates and improvements.
- (c) Concise written final report of the defined work scope including a summary of engagement activities and analysis for City staff use.

7.0 CITY PROVIDED

- (a) All specific equipment manuals and manufacturer documentation of the tanks and associated equipment.

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

APPENDIX 1 - REQUIREMENTS

- (b) Related City documentation and research.
- (c) High level evaluation and considerations, including historical data, statistics, information, strategies, past practices and all available analysis acquired to date.

8.0 SUBMISSION REQUIREMENTS:

The content of your submission should have the following information:

- (a) A proposed approach, inclusive of the required deliverables, and fee to deliver
- (b) A summary of your firm and its experience relating to asphalt cement tanks and fuel storage and handling
- (c) Proposed work plan (based on a certified process)
- (d) Qualifications of key personnel and proposed partners/sub-consultant on the including the proposed role, brief description of related experience and expertise
- (e) Three (3) references the City may contact whom you have completed related projects with including their daytime contact information.

9.0 SCHEDULE

Call for Proposals Closes	November 21, 2019
Contract Award	December 9, 2019
Kick off meeting - Discuss project, content and style	One Week After the contract is signed
Detailed work plan and timeline submitted to COV	Two weeks After the Kick Off Meeting
Final approval on deliverables	First week of February 2020
Final Report Submission	Last Week of February, 2020

10.0 SITE VISIT

Site visit is scheduled on Wednesday, November 6, 2019 at 10:00am. Please call Jan Cronin at 604.673.8012 or email jan.cronin@vancouver.ca to confirm your attendance. Questions arises during the site meeting will not be posted publicly.

Address: 900 Kent Avenue South East Facility, Vancouver, B.C.

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

APPENDIX 2 - DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

APPENDIX 2 – 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: _____

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

APPENDIX 3 - INSURANCE FORM



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 proponent/bidder and is either an individual or a legally incorporated company*)

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

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

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

4. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)

Including the following extensions:

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



**PROFESSIONAL SERVICES AGREEMENT
CONSULTANT SERVICE TO REVIEW THE ABOVE GROUND LIQUID
ASPHALT CEMENT STORAGE TANKS**

THIS AGREEMENT is made as of the [day] day of [month/year] (the "Effective Date")

BETWEEN:

CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

(the "City")

OF THE FIRST PART

AND:

[CONSULTANT NAME]
[address]

(the "Consultant")

OF THE SECOND PART

(the City and the Consultant are hereinafter sometimes referred to individually as "Party" and collectively as "Parties")

BACKGROUND:

- A. The City requires the professional services described herein, and desires to engage the Consultant to perform said services.
- B. The Consultant has agreed to perform the said services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of 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 hereby agree as follows:

1.0 INTERPRETATION

1.1 In this Agreement, including the recitals, schedules and appendices to this Agreement, the following words and terms, unless the context otherwise requires, shall have the meanings set out below:

- (a) **"Agreement"** means this Professional Services Agreement inclusive of all schedules, appendices, exhibits or other documents attached hereto or incorporated herein by reference, as amended from time to time;
- (b) **"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 Consultant, any Sub-contractor and the Services, including the Vancouver Building By-law, the British Columbia Building Code, and the British Columbia Fire Code, all as may be in force from time to time;
- (c) **"City's Site"** means any land and/or premises owned by the City on which or in respect of which the Services are performed by the Consultant;
- (d) **"City's Project Manager"** means the City's employee, or his/her delegate, who is authorized in writing to deal with the Consultant on behalf of the City in connection with the Services, or to make decisions in connection with this Agreement;
- (e) **"Confidential Information"** has the meaning set out in Section 15.1
- (f) **"Contract Document"** refers to each of the individual documents composing the Agreement, including this Professional Services Agreement (exclusive of the documents attached hereto or incorporated herein by reference) and each schedule, appendix, exhibit or other document attached to this Professional Services Agreement or incorporated into the Agreement by reference;
- (g) **"Deliverables"** has the meaning set out in Section 17.1;
- (h) **"Fee Invoice"** has the meaning set out in Section 5.1;
- (i) **"GST"** means the tax payable and imposed pursuant to Part IX of the Excise Tax Act (Canada), as amended or replaced from time to time;
- (j) **"Project Team"** has the meaning set out in subsection 2.2(c);
- (k) **"Proposal"** means the proposal submitted by the Consultant in response to the RFQ, a copy of which is attached hereto, or incorporated by reference herein by operation of, Appendix B;
- (l) **"PST"** means the provincial sales tax payable and imposed pursuant to the *Provincial Sales Tax Act* (British Columbia), as amended or replaced from time to time;
- (m) **"RFQ"** means Request for Quotation: Request for Quotation PS20191272 – Consultant Services To Review The Above Ground Liquid Asphalt Cement Storage Tanks, together with all addenda and questions and answers attached hereto, or incorporated by reference herein by operation of, Appendix C;
- (n) **"Services"** has the meaning set out in Section 2.1;
- (o) **"Sub-contractor"** has the meaning set out in Section 4.1; and

(p) "Term" means the term of this Agreement as specified in Section 12.1.

1.2 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 conflict or inconsistency between or among any of the Contract Documents, the Contract Documents will be interpreted in the following order of priority, from highest to lowest:

- (a) this Agreement, excluding Appendices B and C;
- (b) the RFQ; and
- (c) the Proposal.

1.3 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, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement;
- (b) the terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer, unless otherwise specified or the context otherwise requires, to this Agreement taken as a whole (including any and all attached schedules and appendices) and not to any particular section, subsection or other subdivision;
- (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".

2.0 CONSULTANT'S SERVICES TO THE CITY

2.1 The Consultant will provide and be fully responsible for the following services (the "Services"):

- (a) the services described in the RFQ;
- (b) the services which the Consultant proposed to provide in the Proposal; and

- (c) all services not specifically included in subsections 2.1(a) and 2.1(b), but which are necessary or incidental to the completion of such other Services.
- 2.2 The Consultant will be fully responsible for:
- (a) coordinating the Services with the City's Project Manager, or his/her delegate, and ensuring that the performance of the Services does not adversely impact any design or construction schedule for any project or work and/or services provided by the City's other consultants, in each case to which the Services relate;
 - (b) taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Appendix A - Insurance Requirements; and
 - (c) maintaining and supervising its employees and Sub-contractors (the "Project Team") described in Section 3.1.
- 2.3 The Consultant represents and warrants to the City that the Consultant possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the reasonable satisfaction of the City.
- 2.4 The Consultant will perform the Services:
- (a) with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered;
 - (b) in accordance with sound current professional practices and design standards; and
 - (c) in conformity with any and all Applicable Laws.
- 2.5 The Consultant will commence the Services promptly and will use every reasonable effort to carry out the Services in accordance with:
- (a) the requirements and appendices of this Agreement, or
 - (b) where no date is specified for the provision of any component of the Services by this Agreement, such completion dates as are reasonably specified from time to time by the City.
- 2.6 The Consultant will not permit, do or cause anything to be done at any time which could allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the City's Site or any other City property.
- 3.0 PROJECT TEAM**
- 3.1 Subject to Section 3.2, the Consultant will utilize only the Project Team members noted in the Proposal.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Consultant may not make substitutions of Project Team members without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section 3, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations

where the Project Team member is called upon to perform services for another client of the Consultant, its Sub-contractor or their affiliates.

- 3.4 The City may, with stated reasons and acting reasonably, request that the Consultant replace a Project Team member. The Consultant will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.
- 3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Consultant for any replacement Project Team member.

4.0 SUB-CONTRACTORS

- 4.1 Unless expressly permitted pursuant to Section 3.0, the Consultant may not engage any contractor or consultant (in each case a "Sub-contractor") for the performance of any part of the Services, unless the Consultant has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.2 The Consultant will administer, coordinate, and manage all Services provided by any Sub-contractors, and will assume full responsibility to the City for all work performed by the Sub-contractors in relation to the Services and will pay all fees and disbursements of all Sub-contractors, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Consultant.
- 4.3 Where a Sub-contractor is used by the Consultant under this Agreement, the Consultant will legally bind the Sub-contractor to comply with this Agreement.
- 4.4 Nothing in this Agreement will create any contractual relationship between a Sub-contractor and the City.

5.0 BASIS OF PAYMENT TO THE CONSULTANT

- 5.1 In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms hereof, the City will pay the Consultant:
- (a) the fees set out in Appendix D; and
 - (b) subject to any "Fixed Disbursement Amount" defined herein, reimbursements for disbursements reasonably incurred by the Consultant in the performance of the Services, which shall be at actual cost without any addition for overhead or profit;

plus GST and PST as applicable to the sale made to the City hereunder.

- 5.2 Following the completion of each of the deliverables set out in Appendix D, the Consultant will submit to the City an invoice (each, a "Fee Invoice") in the form set out in Section 5.3 below setting out the fee payable by the City for the Deliverable in the amount set out in Appendix D, any disbursements related thereto and any GST and PST.
- 5.3 Following receipt of a Fee Invoice, the City's Project Manager shall review the invoice and raise any concerns with the Consultant within ten business days of receipt of the Fee Invoice. If the City's Project Manager raises any concerns with the invoice or requests additional information in respect of the invoice, the Consultant, if so requested, shall provide such information or will meet with the City's Project Manager to expedite and settle the disputed amount. Each invoice must contain:

- (a) the Consultant's name, address and telephone number;
 - (b) the City purchase order number;
 - (c) the name of the City's Project Manager;
 - (d) the invoice number and date;
 - (e) details of any applicable taxes (with each tax shown separately); and
 - (f) tax registration number(s).
- 5.4 Except for amounts of Fee Invoices which the City in good faith is disputing and except for Fee Invoices (or portions of invoices) in respect of which the City has requested and not received supporting evidence or a meeting pursuant to Section 5.3, the City shall pay all Fee Invoices submitted to it for the Services within thirty (30) days of receipt thereof.
- 5.5 [Notwithstanding anything to the contrary contained in this Agreement, save as otherwise mutually agreed in writing subsequent to the date hereof (or pursuant to Section 6.0), the total disbursements for which the City will reimburse the Consultant in respect of the Services will not exceed \$[insert amount] (the "Fixed Disbursement Amount")][Delete this section if inapplicable.].
- 5.6 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning any of the Consultant's invoices, for whatever reason, the City will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to have the review, audit or clarification resolved within a 60 day period. The City will, if it approves the amount of such invoice, cause the respective invoice to be paid within 30 days of approval by electronic funds transfer to the bank account indicated by the Consultant.
- 5.7 The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to details of all disbursements and percentage amounts of work completed. The City shall for the purpose of review and examination have access to and be permitted to inspect such books, records, documents and any other evidence for inspection, copying and review for a period of one year after the termination for any reason of this Agreement.
- 5.8 The Consultant shall provide bank account information to the City to enable the City to make payments by electronic funds transfer, as contemplated hereby.
- 6.0 CHANGES TO SCOPE OF SERVICES**
- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Consultant, vary the scope of Services to be provided by the Consultant. In that case, the fees payable pursuant to this Agreement and any specified delivery dates for Deliverables will be adjusted as agreed to by both Parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.
- 6.2 Should the Consultant consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Consultant will provide the City's Project Manager with notice in writing within ten days of such request or instruction. If the Consultant does not deliver written notice to the City within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Consultant.

6.3 The City's Project Manager will consider the Consultant's written notice (if any) within a further ten days of receipt of the Consultant's notice and determine and advise as to whether the request constitutes a change in the scope of the Services and, if necessary, the method by which the variation will be scoped and reimbursed. [If the City determines that the professional fees payable to the Consultant should be increased due to an increase in the scope of the Services then any such increases will be based on the hourly rates set out in Section [insert] of the Proposal.][Delete if inapplicable.]

7.0 RELEASE AND INDEMNIFICATION

7.1 The Consultant now releases the City, its officials, officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Consultant, its Sub-contractors, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.

7.2 In undertaking the Services, the Consultant acknowledges that the Consultant has inspected the City's Site, agrees to accept the City's Site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Consultant to perform the Services.

7.3 Despite any insurance coverage of the City, the Consultant hereby agrees to indemnify and save harmless the City of Vancouver and its successors, assigns, official, employees, agents and authorized representatives and each of them (in each case an "Indemnified Party") from and against all costs, losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that an Indemnified Party may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant, its Sub-contractors, or their respective officers, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of an Indemnified Party.

7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.

7.5 The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.

8.0 INSURANCE

8.1 The Consultant will comply with the insurance requirements set out in Appendix A - Insurance Requirements.

9.0 WORKSAFEBC

9.1 The Consultant agrees that it will procure and carry and pay for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafeBC coverage against any monies owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until the WorkSafeBC premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement have been paid in full.

9.2 The Consultant will provide the City with the Consultant's and each Sub-contractor's WorkSafeBC registration number and clearance letters from WorkSafeBC confirming that the

Consultant and each Sub-contractor are 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 under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged by the Consultant in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.

- 9.3 Whenever the Consultant is required or permitted to perform any Services on any City sites, the Consultant is now appointed and now accepts appointment as the “prime contractor” (as defined in the WorkSafeBC regulations) in connection with such Services.

10.0 CITY INFORMATION/APPROVALS

- 10.1 No reviews, approvals or inspections carried out or information supplied by the City will derogate from the duties and obligations of the Consultant (with respect to designs, reviews, inspections, approvals or otherwise), and all responsibility related to the Services will be and remain with the Consultant. For greater certainty, any information provided by the City to the Consultant, whether under the RFP or under this Agreement, including any studies, reports, plans, drawings, or specifications, is provided to the Consultant for information purposes only and may not be relied upon by the Consultant.

11.0 COMMUNICATION BETWEEN CONSULTANT AND CITY

- 11.1 The City appoints [insert name] [email address] as the City’s Project Manager for the purposes of this Agreement.

In the event of the revocation in writing of [insert name]’s appointment as the City’s Project Manager by the City, [insert name] will have no further authority under this Agreement, except as may be specifically designated in writing by the City and agreed to in writing by [insert name], and all references to the City’s Project Manager in this Agreement will thereafter be deemed to be a reference to the City or to such other person designated in writing by the City to the Consultant.

The City’s Project Manager may from time to time delegate to a representative the performance of or the authority to perform the duties, responsibilities, rights and obligations of the City in respect of which the City’s Project Manager has been designated and appointed its sole and exclusive agent.

- 11.2 The Consultant appoints [insert name] [email address] as its representative for the purposes of this Agreement (the “Consultant’s Project Manager”).
- 11.3 Unless otherwise agreed to in writing by the Parties, all material communication between the Consultant and the City regarding this Agreement, including performance of the Services, will be between the City’s Project Manager and the Consultant’s Project Manager.

12.0 TERM OF AGREEMENT

- 12.1 This Agreement will commence on the Effective Date and will expire on the completion of the Services, which Services must be completed by [insert date] (the “Term”).

13.0 TERMINATION

- 13.1 The City at any time, in its sole judgment, may, whether or not cause exists, terminate the services of the Consultant in whole or in part by giving ten days’ prior written notice to the

Consultant. If termination is not for cause, the Consultant will be paid for all Services properly performed to the date of the delivery of the said notice (subject to the terms of this Agreement) plus all necessary and reasonable wind-up costs incurred, if any, in closing out the Services or the part terminated.

- 13.2 Despite Section 13.1, in no event and under no circumstances will the Consultant's "necessary and reasonable wind-up costs incurred" pursuant to Section 13.1 exceed \$[insert dollar amount calculated at ten business days' pay] (including all taxes).

14.0 ASSIGNMENT

- 14.1 The Consultant will not assign this Agreement in whole or in part except with the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned. Any attempt to assign this Agreement without such consent will be void and of no effect. However, the Consultant will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Consultant have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Consultant, provided always that the Consultant first provides the City with:

- (a) reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and
- (b) a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

15.0 CONFIDENTIALITY

- 15.1 In the course of or for the purpose of performing the Services, the Consultant will obtain or have access to information, including but not limited to technical information, financial information and business information, which is confidential to the City, and is the exclusive, world-wide property of the City and/or its suppliers and customers (collectively "Confidential Information"). Excluded from the definition of Confidential Information is:

- (a) information which is in, or becomes part of, the public domain, not due to the Consultant's breach of this Agreement or the Consultant's actions;
- (b) information which was previously in the Consultant's possession and did not originate from the City; and
- (c) information which lawfully becomes available to the Consultant from a third party not under an obligation of confidence to the City regarding such information.

- 15.2 The Consultant will not use or reproduce the Confidential Information other than as reasonably required for the performance of the Services under this Agreement. The Consultant will not, without the prior written consent of the City given on such terms and conditions as it prescribes in its sole discretion, disclose or allow access to the Confidential Information to any person, except to only those of its own employees who have a need to know the Confidential Information solely for the provision of the Services, and who have been advised of its confidential nature and have agreed to be bound by the confidentiality and use-restriction provisions in this Section 15.0. The Consultant will take all reasonable precautions against the Confidential Information being used by or disclosed to any unauthorized person.

- 15.3 If the Consultant is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, the Consultant shall limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that prior to any disclosure the Consultant will promptly notify the City in writing of the existence and the

terms, and conditions of the required disclosure and, at the City's request and expense, cooperate in obtaining a protective order or other assurance that confidential treatment and restrictions on use will be accorded such Confidential Information.

- 15.4 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 services to the City. The Consultant confirms and acknowledges its obligations to comply with all obligations imposed on it pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia) with respect to all personal information received from the City whether as part of the Confidential Information or otherwise.
- 15.5 The Consultant acknowledges that in the event of a breach by the Consultant or any of its employees of their respective confidentiality obligations pursuant to this Section 15.0, damages alone would not be an adequate remedy. The Consultant therefore agrees with the City that, in addition to and without limiting any other right or remedy it may have, the City will have the right to an immediate injunction or other available equitable relief in any court of competent jurisdiction enjoining any threatened or actual breach of such obligations.
- 15.6 The Consultant shall return all copies of the Confidential Information to the City, in all tangible forms and media, and delete all Confidential Information resident in any databases or systems, upon the earliest of the following dates:
- (a) completion of the Services;
 - (b) expiration or earlier termination of this Agreement; and
 - (c) written request of the City for return of the Confidential Information;

provided that the Consultant shall have the right to retain one copy of the Confidential Information solely for archival purposes or as otherwise may be required by law, subject to its ongoing confidentiality and restricted use obligations.

- 15.7 This Section 15.0 shall survive the expiration or earlier termination of this Agreement.

16.0 NO PROMOTION OF RELATIONSHIP

- 16.1 The Consultant 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, websites, internet domain names, 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 Consultant to perform its obligations under this Agreement).
- 16.2 Furthermore, the Consultant undertakes and will cause all of its Sub-contractors to undertake not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between the Consultant and the City. Without limiting the generality of the foregoing, the Consultant will not refer to or use any website, domain name, official emblem, logo or mascot of the City of Vancouver in any Communications, without the express prior written consent of the City.

17.0 DELIVERABLES

- 17.1 As a result of or as part of providing the Services, the Consultant may receive, create, produce, acquire or collect one or more of the following:
- (a) products, goods, equipment, supplies, models, prototypes and other materials;

- (b) information and data;
 - (c) reports, drawings, plans, designs, depictions, specifications and other documentation; and
 - (d) any other items identified in this Agreement as deliverables;
- (collectively, the "Deliverables").

17.2 Deliverables are deemed not to include:

- (a) any item not required to be produced by the Consultant or supplied to the City as part of or together with the Services, provided that if the City has paid or is liable to pay for any portion of such item's creation, production, acquisition or collection then such item shall be deemed to be a Deliverable;
- (b) any item produced as a result of the Services, which is specified in this Agreement as being excluded from the Deliverables category; and
- (c) any item which pre-existed the effective date of this Agreement, that is owned by a third party or that is used by the Consultant as part of the services provided to any of its other customers (the "Pre-Existing Materials").

17.3 All Deliverables will be owned solely by the City unless otherwise expressly provided herein. The City shall have the complete and unfettered right to use and deal with the Deliverables for its own benefit in any way it sees fit without limitation, and without accounting in any way to the Consultant.

17.4 The Consultant will keep accurate records and provide regular reports to the City about the Deliverables as they are created or acquired, and grant to the City access to the Deliverables at all times on reasonable notice. The Consultant will treat each Deliverable as subject to the confidentiality provisions set out in Section 15.0 unless advised otherwise by the City.

17.5 Each Deliverable, as to the whole or that portion of the Deliverable then existing, will be delivered by the Consultant to the City on the earliest of each of the following events:

- (a) the date specified in this Agreement for the delivery of such Deliverable;
- (b) immediately on the date of expiration or sooner termination of this Agreement; or
- (c) the date specified by written notice of the City requesting delivery of all or any part of the Deliverable.

17.6 The Consultant transfers to the City, free of all liens and encumbrances, ownership of each Deliverable, and assigns all of its world-wide present and future rights, title and interest in and to each Deliverable, including copyright, effective as of the date of creation or acquisition of such Deliverable by the Consultant. The Consultant irrevocably waives, in favour of the City, all moral rights in the Deliverables. The Consultant will obtain from its employees and any independent contractors, all required assignments and releases of intellectual property, and waivers of moral rights, in the Deliverables. The Consultant will not assert any rights to or interests in, or apply for or register any copyright or other rights or interests in, the Deliverables, or assist any other person in doing so. The Consultant shall provide to the City, during and after the term of this Agreement, any reasonable assistance required for the City to obtain, perfect and enforce its ownership of and rights in the Deliverables, including without limitation execution of assignments and transfers of the Deliverables. This Section does not apply to Pre-Existing Materials.

- 17.7 The Consultant will not incorporate any Pre-Existing Materials in any Deliverable without first:
- (a) advising the City, in writing, of the nature of the Pre-Existing Materials and their proposed use and obtaining the City's written consent to do so;
 - (b) acquiring from each third-party owner of such Pre-Existing Materials, a fully paid-up, perpetual, non-exclusive license, in writing, for the City to use the Pre-Existing Materials as part of the Deliverable; and
 - (c) granting, in writing, to the City with respect to such Pre-Existing Materials that the Consultant owns, a fully paid-up, perpetual, non-exclusive license to use the Pre-Existing Materials as part of the Deliverable.

17.8 The Consultant represents and warrants that the Deliverables will not infringe, misappropriate or misuse any copyright, patent, trade-mark, trade secret, or confidential or proprietary information of a third party. The Consultant shall defend, indemnify and hold the City harmless from and against any and all damage, liability, cost and expense incurred by the City in connection with any claim by a third party that a Deliverable infringed, misappropriated or misused its copyright, patent, trade-mark, trade secret, or confidential or proprietary information.

18.0 NOTICES

18.1 Any notice required or permitted to be given to the Consultant will be sufficiently given if delivered in writing by the City's Project Manager to the Consultant's Project Manager personally or, if mailed, by registered mail to the last known address of the Consultant.

18.2 Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by the Consultant's Project Manager to the City's Project Manager personally or, if mailed, by registered mail to City of Vancouver at 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4 (addressed to the attention of the City's Project Manager).

19.0 NO CONFLICT OF INTEREST

19.1 The Consultant agrees that during the Term the Consultant will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person, whether or not a client of the Consultant's. Without limiting the general scope of this Section 19.1 and by way of example only, the Consultant is prohibited from and will not provide any services which assist or could be seen to be assisting any person in responding to a request for proposal or invitation to tender, or otherwise giving that person an unfair competitive advantage over other proponents or tenderers responding to a request for proposal or invitation to tender by the City. The Consultant now acknowledges that a breach of this Section 19.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act* (Canada) and *Criminal Code* of Canada, and accordingly, could be punishable as a crime (as well as a breach of contract).

19.2 The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who 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, such that there would be any conflict of interest or any

appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.

20.0 NON-RESIDENT WITHHOLDING TAX

- 20.1 If the Consultant is a non-resident of Canada as defined in Canadian income tax legislation, the City may withhold from all monies payable under this Agreement such amounts as set out in Canadian income tax legislation, unless a Canada Revenue Agency waiver has been provided to the City within the time limit required under the Canada Revenue Agency administrative guidelines as in effect from time to time and, in any event, prior to payment of an invoiced amount.
- 20.2 The City shall receive full credit under this Agreement for monies withheld as of and from the date of the withholding and no interest will be payable by the City on sums withheld and later paid directly to the Consultant.
- 20.3 The Consultant shall indemnify the City for any losses, damages or expenses incurred by the City as a result of the Consultant's failure to properly disclose to the City its non-resident status, as defined in Canadian income tax legislation.

21.0 COMPLIANCE WITH LAW

- 21.1 The Consultant will comply with the City of Vancouver License By-law and maintain a valid business license throughout the duration of this Agreement.
- 21.2 The Consultant agrees that it will during the Term comply with all Applicable Laws.

22.0 GOVERNING LAW AND RESOLUTION OF DISPUTES

- 22.1 This Agreement will be governed by the laws of the Province of British Columbia and the courts of British Columbia will have exclusive jurisdiction to determine all disputes arising under this Agreement and the Parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution.

23.0 INDEPENDENT CONSULTANT

- 23.1 This Agreement is a contract for services and the Consultant, its permitted Sub-contractors, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Consultant and its permitted Sub-contractors are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.
- 23.2 The Consultant will not represent to anyone that the Consultant has any authority to bind the City in any way or that the Consultant is an employee or agent of the City.

24.0 INDEPENDENT LEGAL ADVICE

- 24.1 The Consultant acknowledges that the Consultant has been given the opportunity to seek independent legal advice before executing this Agreement.

25.0 TIME FOR PERFORMANCE

- 25.1 **Time of the Essence.** Time shall be of the essence of this Agreement.
- 25.2 **Unavoidable Delay.** Notwithstanding Section 25.1, except for the performance of obligations to pay money, the time periods for the City and the Consultant to perform 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 expressly excludes any and all delays caused by the Consultant’s lack of financial resources; the Consultant’s insolvency ; strikes, lockouts or other withdrawals of services arising out of any labour dispute involving the City, the Consultant or a Sub-contractor; or governmental action taken in the enforcement of any law specifically against the Consultant or its Sub- Consultants. 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.

26.0 GENERAL

- 26.1 **No Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach hereunder, except as may be specifically agreed in writing by the City.
- 26.2 **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 shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall 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.
- 26.3 **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.
- 26.4 **Further Assurances.** Each Party shall 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.
- 26.5 **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.
- 26.6 **Amendment.** This Agreement shall not be amended except as specifically agreed in writing by both the City and the Consultant.
- 26.7 **Joint and Several Liability of Joint Venture Participants.** If the Consultant 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 entities who comprise the Consultant shall be joint and several.
- 26.8 **Schedules and Appendices.** The schedules and appendices attached hereto are incorporated by reference in and form an integral part of this Agreement.
- 26.9 **Set-Off.** The City may at its option, withhold and set-off against any amount owing to the Consultant (whether under this Agreement or otherwise) any amounts payable by the

Consultant 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 Consultant, whether such claim is at law or in equity or tort or on any other basis.

26.10 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the City and the Consultant and their respective successors and permitted assigns.

26.11 **Execution.** 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. This Agreement may be executed by the Parties electronically or by facsimile and if so executed and transmitted, this Agreement will be for all purposes as effective as if the Parties had delivered an executed original Agreement.

As evidence of their agreement to be bound by the above contract terms, the City and the Consultant each have executed this Agreement as of the day and year first above written.

CITY OF VANCOUVER

Authorized Signatory

Print Name and Title

[NAME OF CONSULTANT]

Authorized Signatory

Print Name and Title

APPENDIX A - INSURANCE REQUIREMENTS

A1.1 Required Types/Amounts Prior to commencing the Services, the Consultant will obtain at its own expense:

- (a) a professional (errors and omissions) liability insurance policy with limits of not less than \$1,000,000 per claim and not less than \$1,000,000 in aggregate and a deductible of not more than \$50,000, protecting the Consultant against all claims for loss or damage arising out of any error or omission of the Consultant or the Consultant's personnel in the performance of the Services; and
- (b) a commercial general liability insurance policy with a limit of not less than \$5,000,000 per occurrence, and a deductible of not more than \$5,000, protecting the Consultant and the Consultant's personnel against all claims for personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the Consultant or the actions of the Consultant or the Consultant's personnel. The policy must contain a cross-liability clause in favour of the City and will name the City and the City's officials, employees and agents as additional insureds.

A1.2 Required Policy Terms

All required insurance policies must remain in full force and effect at all times until completion of the Services or earlier cancellation of this Agreement, and for a period of not less than two years thereafter, and must:

- (a) be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City's Director of Risk Management, acting reasonably;
- (b) be primary insurance in respect to the City, and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute with such policies; and
- (c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least 30 calendar days' prior written notice.

and, for any property insurance carried by the Consultant, contain a clause that waives the insurer's right of subrogation against the City and the City's officials, employees and agents.

A1.3 Insurance Certificate

Prior to signing, and immediately following the signature of, this Agreement, the Consultant shall have provided, or shall provide, the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more certificate(s) of insurance. The certificate(s) of insurance will identify the Agreement title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. Proof of insurance, in the form of such certificate(s) of insurance (or copies of the policy(ies) themselves, if requested), will be made available to the City's Project Manager at any time during the performance of the Services immediately upon request.

A1.4 Sub-Contractors' Insurance

The Consultant will provide in its agreements with its Sub-contractors insurance clauses in the same form as in this Agreement. Upon request, the Consultant will deposit with the City's Project Manager detailed certificates of insurance for the policies of its Sub-contractors (or

copies of the policy(ies) themselves, if requested) and a copy of the applicable insurance clauses from its Sub-contractor agreements.

A1.5 Insurance Requirements Additional to any other Requirements

The Consultant and each of its Sub-contractors will provide, at its own cost, any additional insurance which it is required by law to provide or which it considers necessary.

A1.6 Insurance Requirements Independent of Agreement Obligations

Neither the providing of insurance by the Consultant or the Sub-contractors 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 Consultant from any other provisions of this Agreement with respect to liability of the Consultant or otherwise.

APPENDIX B - PROPOSAL

APPENDIX C - RFQ

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

APPENDIX 4 - FORM OF AGREEMENT

APPENDIX D - DELIVERABLES AND FEES

Deliverable	Fee
TOTAL FEE	

REQUEST FOR QUOTATIONS NO. PS20191272
CONSULTANT SERVICES TO REVIEW THE ABOVE GROUND
LIQUID ASPHALT CEMENT STORAGE TANKS

ATTACHMENT - DRAWING

