



**REQUEST FOR QUALIFICATIONS No. 20-050**

**Firefighting Apparatus – Preferred Supplier**

**ISSUED:** August 28, 2020

**CLOSING DATE AND TIME:**

Submissions should be received on or before:  
**3:00 PM (15:00 hrs) Local Time on September 25, 2020**

**Regional District of Nanaimo (RDN) Contact for Questions:**

Doug Gardiner, Fire Services Coordinator

Tel: 250-802-6670

Email: [dgardiner@rdn.bc.ca](mailto:dgardiner@rdn.bc.ca)

Questions are requested at least five (5) business days before the closing date.



## **Instructions to Proponents**

### **Closing Date/Time/Submission Method**

Submissions should be received on or before 3:00 PM (15:00 hrs), Local Time, on September 25, 2020.

Submission Method:

By Email: With "20-050 Apparatus RFQ" as the subject line at this electronic address:

[dgardiner@rdn.bc.ca](mailto:dgardiner@rdn.bc.ca)

**Please note: Maximum email file size limit is 20MB, or less. The RDN will not be liable for any technological delays of submissions.**

### **Amendment**

Submissions may be amended in writing and sent via email to the RDN contact person identified on the cover page on or before the closing. Such amendments should be signed by the authorized signatory of the Proponent.

### **Addenda**

If the RDN determines that an amendment is required to this RFQ, the RDN will post the Addendum on the RDN ([www.rdn.bc.ca](http://www.rdn.bc.ca)) and BC Bid ([www.bcbid.gov.bc.ca](http://www.bcbid.gov.bc.ca)) websites. Each addendum will be incorporated into and become part of the RFQ. No amendment of any kind to the RFQ is effective unless it is contained in a written addendum issued by the RDN. It is the sole responsibility of the Proponent to check and ensure all amendments are included prior to submitting their final submission.

### **Withdrawal**

The Proponent may withdraw their submission at any time by submitting a written withdrawal email to the RDN contact person identified on the cover page on or before the closing.

### **Unsuccessful Vendors**

The District will offer debriefings to unsuccessful Proponents, on request, at a mutually agreeable time.



### **1. INTRODUCTION**

The purpose of this Request for Qualifications (RFQ) is to identify qualified Respondents with the necessary expertise, capacity and resources to design, build, deliver, service and support various firefighting apparatus, through a multiyear preferred single supplier agreement for up to 5 years.

The RDN will evaluate all submissions to identify a highest ranked proponent and will attempt to negotiate a multiyear supply and services agreement for the mutual benefit of both.

### **2. BACKGROUND**

The Regional District of Nanaimo provides regional governance and services throughout Vancouver Island's beautiful central east coast. Communities within the regional federation include the municipalities of Nanaimo, Lantzville, Parksville, and Qualicum Beach, as well as seven unincorporated Electoral Areas. Established in 1967, the RDN is British Columbia's fifth most populous Regional District, of 28 throughout the province, and home to more than 155,000 people. <https://www.rdn.bc.ca/about-the-rdn>

Fifteen fire departments operate 23 fire halls throughout the RDN, providing fire protection for all four municipalities and most unincorporated areas. Nine of these fire departments are administered and financed by municipalities and improvement districts and operate independently from the RDN. The remaining six fire departments are volunteer fire department societies. These societies provide fire protection and emergency response services in Electoral Areas C, E, F, portions of Electoral Area G and portions of Electoral Area H. The RDN collects property taxes for these fire departments and provides financing for their operations and capital expenses. The volunteer fire department societies are responsible for the day-to-day management of their fire departments, and operational guidance to their volunteers. They also advise the RDN of their capital improvement requirements. <https://www.rdn.bc.ca/fire-departments>

### **3. PROJECT SUMMARY**

Subject to change on an annual basis, the RDN has planned the following apparatus acquisitions over the next 5 years:

<b>Apparatus Description</b>	<b>Quantity</b>	<b>Budget Estimate (CDN\$)</b>	<b>Year</b>
<b>Fire Engine</b>	<b>1</b>	<b>\$800,000</b>	<b>2021-2024</b>
<b>Fire Engine</b>	<b>1</b>	<b>\$800,000</b>	<b>2021</b>
<b>Fire Engine</b>	<b>1</b>	<b>\$700,000</b>	<b>2021</b>
<b>Fire Engine</b>	<b>1</b>	<b>\$750,000</b>	<b>2024</b>



Tanker	1	\$500,000	2021
Tanker	1	\$400,000	2022
Tanker	1	\$350,000	2024
Tanker	1	\$400,000	2024
Tanker	1	\$400,000	2025
Fire Rescue Truck	1	\$250,000	2022

- Engines to be Custom Cab & Chassis
- All Tenders to have 1050 IMG Pumps
- 2021 Tender to be a Tandem Axle with a 25-3,000 IMG Tank
- One of the 2024 Tenders to be a Tandem Axle with a 25-3,000 IMG Tank
- The other two Tenders to be Single Axle with a 15-1,800 IMG Tank

Anticipated purchases are estimates only with no guarantees of any future purchases.

**4. RFQ METHODOLOGY**

The RDN is committed to the principles of fairness, equal access, and transparency, and at the same time wishes to retain the greatest degree of flexibility to achieve the best opportunities for receipt of the Works with the highest level of service and efficiency, including cost efficiency.

The RDN has adopted a less restrictive methodology for this procurement process to allow greater flexibility in its decision making. Respondents can withdraw from this procurement process at any time prior to execution of an Agreement without penalty.

This RFQ is a non-binding process, with no contractual or other rights or obligations arising out of it for the benefit of the RDN, any Respondent, or any other person or entity.

**5. ANTICIPATED SERVICES**

The RDN is seeking a strategic partner to assist it with driving best value for its future apparatus acquisitions. Assistance may be required with planning future purchases including budgeting as well as to design, build, deliver, service and support various firefighting apparatus.

**6. SUBMISSION AND EVALUATION**

To assist in receiving similar and relevant information, and to ensure your submission receives fair evaluation, the RDN asks Proponents to provide the following information.

Please include with your submission:



- a) Corporate background, business model, organizational structure, history, and areas of expertise;
- b) A statement on why the RDN should partner with your firm;
- c) Types of apparatus your firm can supply;
- d) Types of frames and chassis your firm can supply;
- e) Corporate Certifications to meet or exceed all relevant regulations for fire service apparatus for British Columbia Canada;
- f) Design and Engineering capabilities;
- g) Manufacturing capacity at any one time;
- h) Available warranty programs both standard and extended for apparatus;
- i) Warranty Service and Scheduled Maintenance location(s);
- j) Parts location(s) and network;
- k) Quality management program;
- l) Green, environmental and climate change initiatives;
- m) Available Pre-Sales and Post-Sales support;
- n) Value Added items;
- o) Available payment options;
- p) References from your 3 most recent Canadian customers excluding the RDN. British Columbia customers preferred;
- q) Proposed pricing model, in Canadian Dollars, for apparatus, scheduled servicing and parts.

Submissions should be in enough detail to allow the RDN to determine the Proponent's qualifications and capabilities from the documents received. The selection committee, formed at the RDN's sole discretion, will score the submissions in accordance with the criteria provided.

The RDN may evaluate submissions on a comparative basis by comparing one proponent's submission to another proponent's submission or evaluate on a standalone basis. The RDN reserves the right to not complete a detailed evaluation if the RDN concludes a submission is materially incomplete or, irregular or contains any financial or commercial terms that are unacceptable to the RDN.

To assist in the evaluation of the Qualifications, the RDN may, in its discretion:

- (a) conduct any background investigations and/or seek any additional information that it considers necessary;
- (b) conduct any other reference checks that it considers necessary;
- (c) seek clarification from any or all Proponents;
- (d) request interviews with any, some, or all Proponents to clarify any questions or considerations based on the information included in their submission.

#### **7. PROPOSED PURCHASE AGREEMENT AND NEGOTIATIONS**

The RDN's preferred form of agreement is attached herein. The highest ranked proponent will be invited to enter negotiations with the RDN based initially on this form of agreement and as further negotiated by the parties. The parties reserve the right to negotiate and enter into any other form of agreement mutually agreed by the parties.



If the parties after having bargained in good faith are unable to conclude a formal agreement, the RDN and the Proponent will be released without penalty or further obligations other than any surviving obligations regarding confidentiality and the RDN may, at its discretion, contact the Proponent of the next best rated submission and attempt to conclude a formal agreement with it, and so on until a contract is concluded or the process is cancelled.

The RDN reserves the right to award the assignment in whole or in part or to add or delete any portion of the work.

## **8. GENERAL CONDITIONS**

### **8.1 No Contract**

By submitting a Request for Qualifications and participating in the process as outlined in this RFP, proponents expressly agree that no contract of any kind is formed until a fully executed contract is in place.

### **8.2 Privilege Clause**

The lowest or any submission may not necessarily be accepted.

### **8.3 Acceptance and Rejection of Submissions**

This RFQ does not commit the RDN, in any way to select a preferred Proponent, or to proceed to negotiate a contract, or to award any contract. The RDN reserves the right in its sole discretion cancel this RFQ, up until award, for any reason whatsoever.

### **8.4 Conflict of Interest**

Proponents shall disclose in their submission any actual or potential Conflict of Interest and existing business relationships it may have with the RDN, its elected officials, appointed officials or employees.

### **8.5 Solicitation of Board Members and RDN Staff**

Proponents and their agents will not contact any member of the RDN Board or RDN Staff with respect to this RFQ, other than the RDN Contact named in this document.

### **8.6 Exclusion of Liability**

Proponents are solely responsible for their own expenses in preparing their submission and for any meetings, negotiations, or discussions with the RDN. The RDN will not be liable to any Proponent for any claims, whether for costs, expense, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing their submission, or participating in negotiations for a Contract, or other activity related to or arising out of this RFQ. Except as expressly and specifically permitted in these Instructions to Proponents, no Proponent shall have any claim for compensation of any kind whatsoever, as a result of participating in this RFQ, and by submitting a RFQ each Proponent shall be deemed to have agreed that it has no claim.

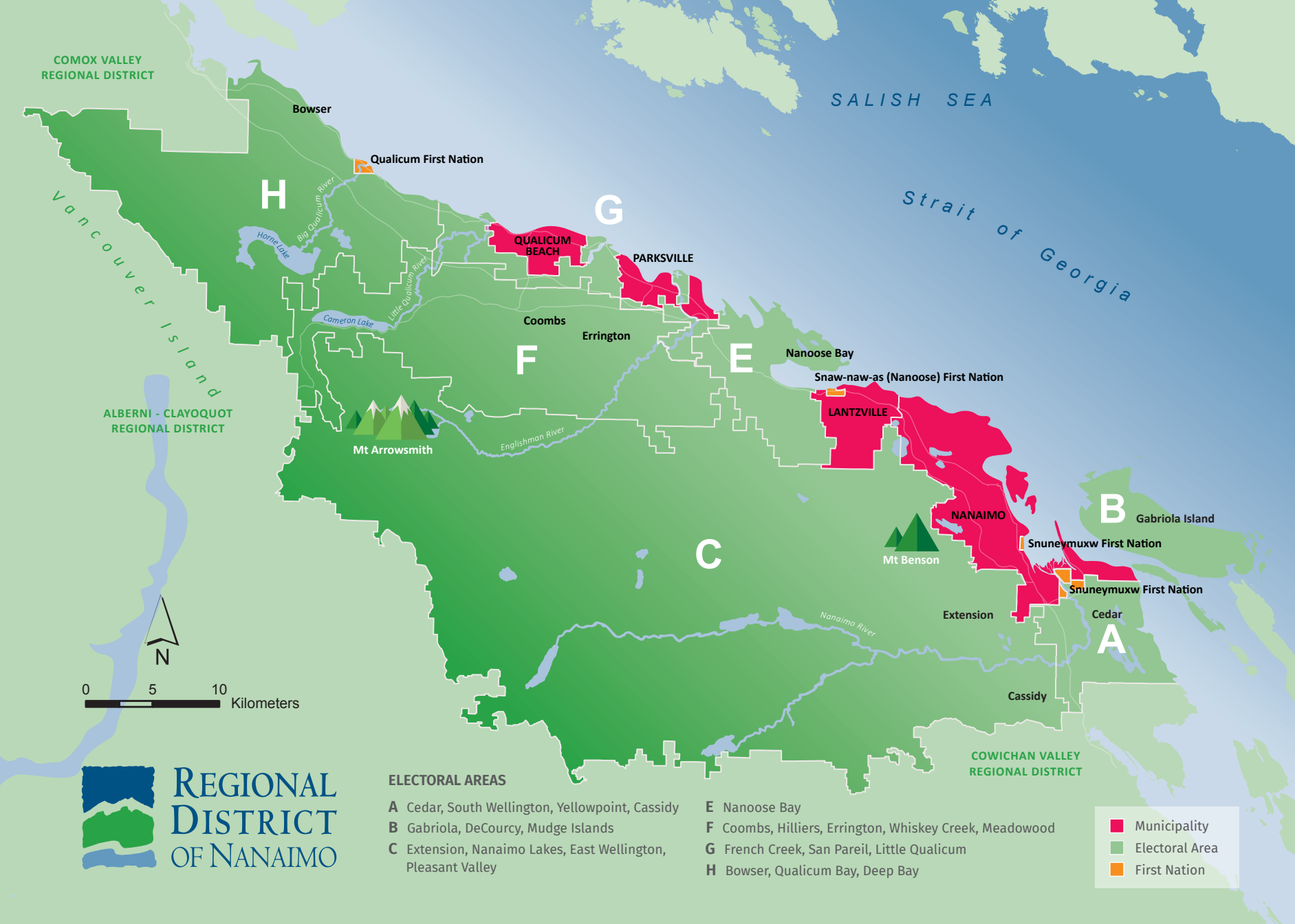


***8.7 Ownership of Submissions***

All submissions, including attachments and any documentation, submitted to and accepted by the RDN in response to this RFQ become the property of the RDN.

***8.8 Freedom of Information***

All submissions will be held in confidence by the RDN. The RDN is bound by the Freedom of Information and Protection of Privacy Act (British Columbia) and all documents submitted to the RDN will be subject to provisions of this legislation. The successful vendor is routinely released.



COMOX VALLEY REGIONAL DISTRICT

Bowser

Qualicum First Nation

SALISH SEA

Strait of Georgia

Vancouver Island

ALBERNI - CLAYOQUOT REGIONAL DISTRICT

Mt Arrowsmith

H

G

F

E

C

B

A

QUALICUM BEACH

PARKSVILLE

Coombs

Errington

Nanoose Bay

Snaw-naw-as (Nanoose) First Nation

LANTZVILLE

NANAIMO

Gabriola Island

Snuneymuxw First Nation

Snuneymuxw First Nation

Mt Benson

Extension

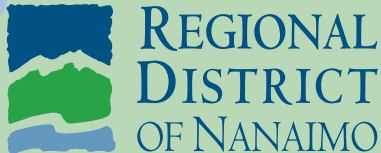
Cedar

Cassidy

COWICHAN VALLEY REGIONAL DISTRICT



0 5 10 Kilometers



**ELECTORAL AREAS**

- A** Cedar, South Wellington, Yellowpoint, Cassidy
- B** Gabriola, DeCourcy, Mudge Islands
- C** Extension, Nanaimo Lakes, East Wellington, Pleasant Valley

- E** Nanoose Bay
- F** Coombs, Hilliers, Errington, Whiskey Creek, Meadowood
- G** French Creek, San Pareil, Little Qualicum
- H** Bowser, Qualicum Bay, Deep Bay

- Municipality
- Electoral Area
- First Nation



BETWEEN: \_\_\_\_\_ (the "Supply Contractor")

AND: Regional District of Nanaimo (the "Corporation")

THIS AGREEMENT WITNESSES that the Supply Contractor and the Corporation agree as follows:

1. The Supply Contractor shall provide all labour, Supply Contractor's Plant and Equipment and materials required to supply the Goods and Services for Five (5) years from the date of execution by the Regional District of Nanaimo.
2. The Corporation shall pay the Supply Contractor the Contract Price, as required by the Contract Documents on a net 30 days basis from receipt of invoice.
3. The Price Structure shall be in Canadian Dollars outlined as follows:
  - a) The apparatus cost structure will always be as per the [to be filled in as arranged by the parties and inserted here]. Each time an invoice is created for an apparatus, the pricing breakdown will follow this structure.
  - b) Onsite Labour rate [to be filled in as arranged].
  - c) Service Centre Labour rate [to be filled in as arranged].
  - d) Parts pricing will be [to be filled in as arranged].
  - e) Accessories pricing [to be filled in as arranged].

The Supply Contractor agrees and understands that no commitment is formed to supply apparatus until a Purchase Order is received for a specific unit(s).

Price adjustments for parts, accessories and labour maybe requested 90 days prior to, but no later than 30 days prior to, the anniversary date of the signed agreement ("Anniversary Date") and are subject to mutual written acceptance between the parties.

Any payments made on account of written RDN approved change orders, as may be required by the Contract Documents.

The Price shall be the entire compensation owing to the Supply Contractor by the Corporation for the Goods and Services and shall cover and include necessary costs including but not limited to all supervision, labour, materials, Supply Contractor's Plant and Equipment, overhead, profit, financing costs, duty, shipping charges, fabrication and finishing, conveyance and delivery, packing, crating, freight, cartage, off-loading,

drafting charges, tariffs, duties, customs broker, warranty and all other costs and expenses whatsoever incurred in performing the Contract.

4. The Supply Contractor shall supply all Goods to the Delivery Point no later than [to be filled in as arranged] from the date of RDN written approval of the final design.
5. The Contract Documents shall form a part of this Agreement as though recited in full.
6. The Contract supersedes all prior negotiations, representations or agreements, whether written or oral and is the entire agreement between the Corporation and the Supply Contractor with respect to the subject matter of this Agreement.
7. The Supply Contractor shall not assign the Contract, or any portion of the Contract, or any payments due or to become due under the Contract, without the express written consent of the Corporation.
8. No action or failure to act by the Corporation or an authorized representative of the Corporation shall constitute a waiver of any right or duty afforded any of them under the Contract or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
9. This Agreement shall enure to the benefit of and be binding upon the Corporation and the Supply Contractor and their respective heirs, executors, legal representatives, successors and permitted assigns. In the event of more than one person being the Supply Contractor, the grants, covenants, provisos and claims, rights, powers, privileges and liabilities shall be construed and held to be several as well as joint.
10. Time shall be of the essence of this Agreement.
11. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.
12. The RDN may elect to procure any required apparatus from another dealer if the Supply Contractor cannot supply the apparatus within the required timelines or does not have the ability to supply the required apparatus, at the sole and unfettered discretion of the RDN.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as follows:

REGIONAL DISTRICT OF NANAIMO

by its authorized signatory on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the date of Agreement):

SIGNED on behalf of the Corporation by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SUPPLY CONTRACTOR'S NAME]

by its authorized signatory on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ :

SIGNED on behalf of the Supply Contractor by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**END OF SECTION**

**GENERAL**

## 1.1 DEFINITIONS

The following words and terms, unless the context otherwise requires, in all Contract Documents, shall have the meanings set out below. Words importing the male gender include the female gender and either includes the neuter and vice versa and words importing the singular number includes the plural number and vice versa.

"Addenda" means the supplemental written conditions issued prior to execution of the Agreement which modify or interpret the Contract Documents by addition, deletion, clarification, or corrections;

"Agreement" means the Master Supply Contract Form of Agreement;

"Contract" means the agreement formed by the Corporation's acceptance of the Proposal for the supply and delivery of the goods and services set out in the Contract Documents;

"Contract Documents" means the following documents:

- (1) the executed Master Supply Contract Form of Agreement;
- (2) the General Conditions;
- (3) other relevant documents such as but not limited to letters of clarification and any reports, standards or the like;

"Contract Price" has the meaning outlined in the master supply agreement as updated from time to time;

"Corporation", "RDN", "Regional District" means the Regional District of Nanaimo;

"Day" means calendar day;

"Delivery Date" has the meaning outlined in the master supply agreement;

"Delivery Point" means the final delivery location specified on the Purchase Order;

"Person" includes an individual, corporation, partnership and joint venture;

"Specifications" means that part of the Contract Documents consisting of general requirements and written descriptions of the technical features of materials, equipment, construction systems, standards and workmanship;

"Supply Contractor" or "Contractor" means the Company which executes the Agreement;

"Supply Contractor's Plant and Equipment" means the equipment, material, supplies and all other items (except labour) brought onto the Delivery Point by the Supply Contractor, but not to be incorporated in the Equipment;

### **CONTRACT REQUIREMENTS**

#### **1.1.1 Successors' Obligations**

The Contract shall enure to the benefit of and is binding upon not only the parties hereto but also their respective successors and permitted assigns.

#### **1.1.2 Assignment of Contract**

The Supply Contractor shall not assign the Contract in whole or in part, nor any payments due or to become due under the Contract without the prior written consent of the Corporation. No assignment of the Contract shall relieve the Supply Contractor from any obligation under the Contract or impose any liability on the Corporation. Involuntary assignment of the Contract as a result of, inter alia, bankruptcy, assignment of the Contract for the benefit of creditors or appointment of a receiver, or insolvency shall be deemed default under the Contract entitling the Corporation to terminate the Contract as hereinafter provided.

#### **1.1.3 Waiver of Rights**

Except as herein provided, no act or failure to act by the Supply Contractor or the Corporation at any time with respect to the exercise of any right or remedies conferred upon them under this Contract shall be deemed to be a waiver on the part of the Supply Contractor or the Corporation, as the case may be, of any of their rights or remedies. No waiver shall be effective except in writing. No waiver of one right or remedy shall act as a waiver of any other right or remedy or as a subsequent waiver of the same right or remedy.

#### **1.1.4 Amendment of Contract Documents**

The Contract Documents shall not be amended except as specifically agreed in writing signed by both the Corporation and the Supply Contractor.

### **1.2 LAWS, REGULATIONS AND PERMITS**

- 1.2.1 The Contract shall be construed under and according to the laws of the Province of British Columbia and subject to an agreement to refer a dispute to mediation as per clause 2.3 Dispute Resolution. The parties agree to irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.
- 1.2.2 The Supply Contractor shall give all notices required by law and shall comply with all laws, acts, ordinances, rules and regulations relating to or affecting the Equipment. If any permits, authorizations, approvals or licences from any government or governmental agencies are necessary or desirable for the prosecution of the work they shall be obtained by the Supply Contractor at its expense, provided that the Supply Contractor shall not make application for any such permit, authorization, approval or licence without first obtaining the written consent of the Corporation.
- 1.2.3 **Patents, Royalties and Copyright**  
The Supply Contractor shall pay all fees, royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the Equipment or with the use of the Equipment by the Corporation. Before final payment is made on the account of this Contract, the Supply Contractor shall, if requested by the Corporation, furnish acceptable proof of a proper release from all such fees or claims.
- 1.2.4 All references to money in the Contract Documents shall be interpreted as meaning lawful currency of Canada.

## **PART 2 CORPORATION-SUPPLY CONTRACTOR RELATIONS**

### **2.1 AUTHORITY OF CORPORATION**

#### **2.1.1 Acceptability of Equipment**

The Corporation shall make the final determination of the acceptability of the Equipment.

#### **2.1.2 Appointment and Authority of Inspector**

2.1.2.1 The Corporation may appoint an Inspector for the Equipment at any time before or after award of the Contract. If the Corporation appoints an Inspector, the Inspector shall represent the Corporation at the Delivery Point. The Inspector shall have the authority set out in the Contract Documents and such other authority as may be delegated in writing by the Corporation including but not limited to the following:

- (a) to make decisions regarding the Equipment;
- (b) to make decisions regarding the manner of performance of the Equipment;
- (c) to make determinations regarding deficiencies;

## 2.2 RESPONSIBILITIES OF THE SUPPLY CONTRACTOR

### 2.2.1 Attention to the Equipment

The Supply Contractor shall diligently attend to the supply of the Equipment so that they are delivered faithfully, expeditiously and in accordance with the Contract Documents.

### 2.2.2 Authorized Representative

The Supply Contractor shall advise the Corporation in writing of the name of the Supply Contractor's authorized representative.

### 2.2.3 Off-loading of Equipment

The Supply Contractor shall provide all necessary instructions to ensure satisfactory off-loading of the Equipment.

### 2.2.4 Shipment

The Supply Contractor shall properly package all Equipment for safe shipment to the Delivery Point and a Notice of Shipment shall be sent by the Supply Contractor to the Corporation in advance of final delivery. The Notice of Shipment shall state the delivery date, the Purchase Order number, description of the Equipment, the Supply Contractor's name and the carrier by which the shipment is being made. Clear title to the Equipment, free of all charges, liens and encumbrances shall pass to RDN when the Equipment(s) is received, inspected, deficiencies rectified, and accepted by the RDN at the delivery point. Prior to the final delivery, the vehicle will be professionally cleaned and polished.

Until such time as title of Equipment(s) is accepted by the RDN, the Supply Contractor shall be responsible for insurance claims related to the Equipment(s) and the RDN shall not be considered to have breached any Contract if there is a fire, damage or other cause which entitles an insurance company to seize or take possession of the Equipment or part thereof.

The passing of title to the RDN shall not affect any of the Supply Contractor's obligations.

#### 2.2.5 Errors and Omissions

If the Supply Contractor discovers that there are any errors or omissions in the Contract Documents, it shall immediately notify the Corporation in writing. The Corporation will review the matter and if it concludes that there is an error or omission, it shall determine the corrective actions to be taken and will advise the Supply Contractor accordingly. If the corrective work associated with an error or omission increases or decreases the amount of work called for in the Contract, the Corporation shall issue an appropriate change order. After discovery by the Supply Contractor of an error or omission in the Contract Documents any work thereafter performed by the Supply Contractor shall be done at its risk unless otherwise agreed by the Corporation.

#### 2.2.6 Training

As a minimum, a qualified person shall provide one (1) full eight (8) hour day of instruction to the Corporation's staff in the operation and maintenance of the Equipment.

#### 2.2.7 Inspections

The Corporation will provide for its own inspection trips to the manufacturer's plant and will be responsible for their own costs for travel, lodging and meals.

Outside of the on-site inspection trips, the Corporation would like periodic updates, during manufacturing process via web/video conferences.

#### 2.2.8 Documentation at Time of Delivery

The Supply Contractor is to provide the following documentation upon delivery. In addition, the Supply Contractor will supply, on disc or thumb drive, an electronic copy of all manuals;

The Supply Contractor to provide keys, or fobs, two (2) sets;



The Supplier shall supply, **drawings** of the apparatus being proposed. The drawings shall show all four sides and top of the apparatus. The drawings are extremely important, as they can easily resolve any questions as to items that are unclear in the specifications. Drawings of similar apparatus are NOT acceptable;

One (1), set of **as- built electrical wiring schematics** to cover all wiring not installed by chassis manufacturer. This diagram to include part numbers and brand names of switches, lights, etc., of parts used;

Available for inspection one (1), quality **parts catalogue and service manual** covering the entire apparatus. This also will include a list of all belts, hoses, and filters; including part numbers, manufacturer and use and complete drive train available for inspection by the Corporation. This includes any equipment supplied with the apparatus;

Manufacturer's **certificate of origin**;

**Schedule of guarantees/warranties** document and certifications shall be provided;

One (1), complete **overhaul manuals** to cover, but not limited to, tires, engine, batteries, pumps, transmission, rear axle, electrical components to cover the completed apparatus. They will include as-built wiring schematics of chassis;

One (1), **pump manuals** covering repair and operation of pump;

**Calculations** showing grade ability and speed, i.e., calculations of the apparatus center of gravity;

Any **special tools** that will be required in the care and maintenance or overhaul of the Fire Truck and its components;

All **fluid capacities** in litres;

A **permanent plate** will be mounted in the driver's compartment, specifying the quantity and type of fluids required including engine oil, engine coolant, transmission, pump transmission lubrication, pump primer and drive axle.

One (1), complete **operation and maintenance manuals** of the completed apparatus as delivered, including but not limited to the chassis, pump, wiring and firefighting equipment, and;

Manufacturer shall state **angles of approach and departure** for the Fire Rescue Truck. The **break-over angle** shall be shown on the actual apparatus drawing.

## 2.3 DISPUTE RESOLUTION

### 2.3.1 Disputes

A dispute occurs between the Corporation and the Supply Contractor where there is a difference between the parties as to the interpretation, application or administration of the Contract.

### 2.3.2 Dispute/Claim Resolution

- (1) All matters in dispute under this Agreement which is not first resolved between the parties acting reasonably through negotiations may, with the concurrence of both the Corporation and the Supply Contractor be submitted to mediation to a single mediator appointed jointly by them.
- (2) No one shall be nominated to act as a mediator who is in any way financially interested in the business affairs of either the Regional District or the Supply Contractor.
- (3) If the parties cannot agree on the choice of a mediator, each party shall select a nominee and the nominees shall jointly appoint a mediator.
- (4) The mediation shall take place in Nanaimo, British Columbia, unless agreed otherwise. Parties will be responsible for their own costs.

## PART 3 MATERIAL, EQUIPMENT AND WORKMANSHIP

### 3.1 GENERAL

The Equipment shall be of the quality specified or better. All work related to the Contract Documents shall be done with equipment and workmanship of the best quality and description and by employment of properly skilled workers and in strict conformity with and as required by the Contract Documents. Materials and equipment shall be the product of suppliers or manufacturers of established good reputation, regularly engaged in the supply or manufacture of such materials or equipment.

### 3.2 DEMONSTRATION OF COMPLIANCE WITH CONTRACT REQUIREMENTS

#### 3.2.1 Inspection

Inspections and testing shall not in any way relieve the Supply Contractor from any of its obligations or responsibilities under the Contract Documents, and shall not in any way prejudice or constitute a waiver of any rights or remedies of the Corporation or any guarantees, warranties or covenants in favour of the Corporation, and the Corporation shall be entitled to rely on the expertise and obligations of the Supply Contractor and its subcontractors and their consultants and engineers to the same extent as if such inspections and testing by the Corporation or any inspector or agent had not taken place.

If the Contract Documents, laws, ordinances, or any public regulatory authority requires parts of the Equipment to be specially inspected, tested or approved, the Supply Contractor agrees that the Equipment shall comply.

The Equipment are subject to inspection and acceptance by the RDN within a reasonable time after receipt. The RDN will notify the Supply Contractor in writing of the rejection of any of the Equipment which are not in accordance with the Contract Documents, and the Equipment will be held subject to disposition by the Supply Contractor at the Supply Contractor's risk and subject to all charges accruing as a result of such rejection.

Notwithstanding any prior payment therefor, all Equipment are subject to inspection and testing by the Corporation at the Delivery Point.

#### 3.2.2 Certification

The equipment must be certified by the Supply Contractor in accordance with the local authorities with jurisdiction. Where compliance of Equipment, materials or equipment with the Contract Documents is not readily determinable through inspection and tests, the RDN may require that the Supply Contractor provide, at the Supply Contractor's expense, properly authenticated documents, certificates or other satisfactory proof of compliance. These documents, certificates or other proof shall include performance characteristics, materials of construction and the physical or chemical characteristics of materials.

### 3.3 DEFECTIVE OR IMPROPER EQUIPMENT

#### 3.3.1 Correction of Defective Equipment

If upon inspection, testing or otherwise the Equipment or any portion thereof are found to be non-conforming, unsatisfactory, defective, or inferior quality or workmanship, or fail to meet any guarantee of operating or other specifications contained herein, or any other requirements of the Contract Documents, then without prejudice to any other rights or remedies, the RDN may give notice of its dissatisfaction to the Supply Contractor in writing and the Supply Contractor shall immediately upon receipt of such notice do all things that are required to satisfy the RDN. If the Supply Contractor refuses or neglects to do all things that are required to satisfy the RDN within one week from the receipt of notice, the Corporation may employ some other person to do so and all expenses and costs consequent thereon or incidental thereto shall be charged to the Supply Contractor. The employment of such other person or the doing of the said work by the Corporation itself shall not affect the Supply Contractor's duties and liabilities hereunder or relieve the Supply Contractor from the performance and fulfilment of any or all of the Supply Contractor's warranties, covenants, undertakings, obligations and duties under the Contract.

If upon inspection, testing or otherwise the Equipment or any portion thereof are found to be non-conforming, unsatisfactory, defective, or inferior quality or workmanship, or fail to meet any guarantee of operating or other specifications contained herein, or any other requirements of the Contract Documents, then without prejudice to any other rights or remedies, the Corporation may return the Equipment or any part thereof to the Supply Contractor at the Supply Contractor's sole cost and all amounts theretofore paid by the Corporation to the Supply Contractor on account of the Contract Price of such returned Equipment, shall be repaid to the Corporation by the Supply Contractor. The Supply Contractor shall advise the Corporation in writing, where to return the Equipment, and failing such advice from the Supply Contractor, the Supply Contractor agrees to accept the returned Equipment at the Supply Contractor's registered office. Neither the inspection nor failure to make inspection, nor acceptance of Equipment shall release the Supply Contractor from any warranties or other provisions of this Contract nor impair the Corporation's right to reject non-conforming Equipment. The Corporation reserves the right even after it has paid for and accepted Equipment to make a claim against the Supply Contractor on account of any Equipment which do not prove to be satisfactory or are defective irrespective of the Corporation's failure to notify the Supply Contractor of a rejection of non-conforming Equipment or revocation of acceptance thereof, or to specify with particularity any defect in non-conforming Equipment after rejection or acceptance thereof.

### 3.3.2 Retention of Defective Equipment

If in the opinion of the RDN any portion of the Equipment supplied under the Contract is defective or not in accordance with the Contract Documents and if the defect or imperfection in the same is not of sufficient magnitude or importance to make the Equipment dangerous or undesirable, or if the removal of such Equipment is impracticable, or will create conditions which are dangerous or undesirable, the Corporation shall have the right and authority to retain such Equipment instead of requiring the defective or imperfect Equipment to be removed and reconstructed, but the Corporation shall be entitled to make such deductions from the payments due or to become due to the Supply Contractor as are just and reasonable.

### 3.3.3 No Implied Approval

The fact that the Corporation has not disapproved of or rejected any part of the Equipment shall not be deemed or be construed to be an acceptance of any such part of the Equipment or any such materials.

## 3.4 WARRANTY AND GUARANTEE

3.4.1 The Supply Contractor agrees that the Equipment manufacturer's standard warranty is to the benefit of the Corporation and that the Equipment are free from all defects arising from faulty construction, manufacturing, materials, equipment or workmanship for the period of the Equipment manufacturer's standard warranty period.

3.4.2 During the warranty period, the Supply Contractor, upon the receipt of notice in writing from the Corporation, shall promptly make all repairs arising out of the defects. The Corporation shall be entitled to make such repairs, if 10 Days after the giving of such notice to the Supply Contractor, the Supply Contractor has failed to make or undertake with due diligence the repairs. In case of an emergency, where, in the opinion of the Corporation, delay could cause serious loss or damage, or inconvenience to the public, repairs may be made without notice being sent to the Supply Contractor, only after all reasonable attempts have been made to contact the Supply Contractor. The costs of any repair made by the Corporation in connection with this clause shall be charged to the Supply Contractor and the Supply Contractor shall reimburse the Corporation for such costs. All covenants and agreements shall continue to be binding on the Supply Contractor until they have been fulfilled.

3.4.3 The Corporation is relying on Supply Contractor's skill and judgment in selecting and providing the proper Equipment and any applicable services for the Corporation's particular use. The Supply Contractor warrants to the

Corporation and its successors in interest that the Equipment and any services covered hereby will correspond with the description of the same in the Contract Documents, will conform to all applicable Specifications, will be of the best quality and, unless otherwise specified, will be fit for the purpose for which they are to be used and will conform in all aspects, both in the manufacture and use thereof, with all applicable safety orders or regulations of the Province of British Columbia. The Supply Contractor also warrants that the Equipment are free and clear of all liens and encumbrances whatsoever and that the Supply Contractor has a good and marketable title to the same.

- 3.4.4 The Supply Contractor warrants and guarantees that the Equipment are free from all defects arising at any time from faulty design in any part of the Equipment.
- 3.4.5 The Supply Contractor represents that it has read the contract terms and the Specifications and has satisfied itself that the Equipment can be supplied in accordance with the Specifications free of defects and fit for the purpose for which they are to be used.
- 3.4.6 The warranty period shall commence once the RDN accepts clear title of the Equipment.
- 3.4.7 The warranty should be made out to the Regional District of Nanaimo, 6300 Hammond Bay Road, Nanaimo, BC V9T 6N2.

#### **PART 4 INDEMNIFICATION AND INSURANCE**

##### **4.1 INDEMNIFICATION AND RELEASE**

- 4.1.1 The Supply Contractor shall save harmless and indemnify the Corporation and its directors, officers, servants, employees and agents (the "Indemnified Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising in any way out of or connected with the Equipment or the supply, off-loading or delivery of the Equipment by the Supply Contractor under this agreement, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Indemnified Parties or any of them.
- 4.1.2 Unless otherwise specified in the Contract, the Supply Contractor shall save harmless and indemnify the Indemnified Parties from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of

whatsoever kind or nature arising in any way from liability of any nature or kind for or on account of any copyrighted or uncopyrighted composition, secret or other process, patented or unpatented invention, articles or appliances manufactured, supplied or used in the Equipment, and/or used or to be used by the Corporation before or after supply of the Equipment as a result of work performed by the Supply Contractor, and if the Supply Contractor shall fail to save harmless and indemnify in manner aforesaid, any money collected from the Indemnified Parties shall be charged to the Supply Contractor.

4.1.3 The Supply Contractor shall release and discharge the Corporation and its directors, officers, servants, employees and agents (the "Released Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) which the Supply Contractor or its servants or employees might have in any manner arising in any way out of or connected with the Equipment or the supply, off-loading or delivery of the Equipment by the Supply Contractor under this agreement except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Released Parties or any of them.

4.1.4 The indemnity provided in this clause by the Supply Contractor to the Indemnified Parties shall not in any way be limited or restricted by any insurance or by limitations on the amount or type of damages, compensation or benefits payable under the Workers' Compensation Act or any other similar statute.

## 4.2 INSURANCE

### 4.2.1 General

The Supply Contractor and subcontractors shall provide at their own cost any insurance which they are required by law to provide or which they consider necessary to protect their own interests.

### 4.2.2 Indemnity Not Restricted By Insurance

The provisions for insurance shown above shall not in any way limit the indemnity granted by the Supply Contractor to the Indemnified Parties elsewhere in this section.

#### 4.3 PATENT, TRADEMARK OR COPYRIGHT

- 4.3.1 The Supply Contractor represents that it has fully investigated all Specifications, including any furnished by the Corporation, in connection with the Equipment and based on such investigation and its past experience and superior knowledge with respect to such Equipment has determined that the production and supply thereof will not infringe any patent, trademark or copyright.

### **PART 5 SHIPMENT OF EQUIPMENT/DAMAGE TO EQUIPMENT**

#### 5.1 SHIPMENT OF EQUIPMENT

##### 5.1.1 Delivery of Equipment

The Supply Contractor must deliver the Equipment to the Delivery Point. Delivery of the Equipment to a carrier for transmission to the Delivery Site does not constitute delivery of the Equipment to the Corporation. Any such carrier is deemed to be the Supply Contractor's agent and not the Corporation's agent.

##### 5.1.2 Delivery Costs

The Supply Contractor is responsible for all costs and expenses whatsoever in relation to the supply and delivery of the Equipment to the Delivery Point, including without limitations, all shipping, carrier, transportation, freight, insurance, storage, handling and off-loading costs, as well as any customs or excise charges or duties.

##### 5.1.3 Supply Contractor to Bear Risk

The Supply Contractor shall bear all risks and shall assume all responsibility for the Equipment, including, without limitation, any loss or damage to the Equipment from any cause whatsoever, up to and including the delivery and off-loading of the Equipment at the Delivery Point.

##### 5.1.4 Loss or Damage

If loss or damage to the Equipment occurs for which the Supply Contractor is responsible, the Supply Contractor shall immediately effect repairs or replace any property as necessary in order to make good any such loss or damage. If the Supply Contractor refuses or neglects to do so, the Corporation may make good any such loss or damage, either by itself or by employing some other



person, and the expense of doing so shall be charged to the Supply Contractor. If any repair or replacement of property is performed on the Equipment as a result of loss or damage to the Equipment for which the Supply Contractor is responsible the Supply Contractor represents and warrants that the warranty provided shall not be affected or changed to any manner or respect whatsoever.

#### 5.1.5 Acceptance of Delivery of Equipment by Corporation

Notwithstanding any other provision in the Contract Documents, the Corporation is not deemed to have accepted the Equipment until the Equipment have been delivered to and off-loaded at the Delivery Point and the Corporation has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the Contract. The Corporation's acceptance or deemed acceptance of the Equipment shall not prejudice any rights or remedies the Corporation may have hereunder relating to Equipment that are found to be non-conforming, unsatisfactory, defective, of inferior quality or workmanship, or which fail to meet any specifications or requirements of the Contract Documents.

## **PART 6 PROGRESS AND COMPLETION**

### 6.1 CONTRACT TIME

#### 6.1.1 Prosecution of the Equipment

Time shall be strictly of the essence. The Supply Contractor shall supply the Equipment in accordance with the Contract Documents. The Supply Contractor acknowledges that the schedule for supply of the Equipment as set out in the Contract Documents is reasonable.

#### 6.1.2 Schedule

The Supply Contractor shall provide a schedule and periodic updates co-ordinating the supply of Equipment within the prescribed time. Contract time extensions, if any, shall be incorporated into updated schedules. The failure of the Supply Contractor to comply with this requirement may entitle the Corporation to terminate the Supply Contractor's right to continue with the supply of Equipment or to delay progress payments.

### 6.2 TERMINATION

- 6.2.1 The Corporation may terminate the Contract if the Supply Contractor at any time becomes bankrupt, makes an assignment of his property for the benefit of his creditors, or if a receiver or liquidator should be appointed. Such termination shall be effective upon the Corporation giving notice thereof.
- 6.2.2 The Corporation may terminate the Contract if at any time the Corporation forms the opinion that the Supply Contractor is in default under this Contract because the Supply Contractor:
- (1) has breached a fundamental term of the Contract or is in substantial breach of the terms of the Contract;
  - (2) has failed to supply the Equipment, within the time specified in the Contract Documents or extensions mutually agreed between the parties in writing;
  - (3) has failed or is failing to furnish or to maintain a detailed schedule;
  - (4) has become in any way unable to supply the Equipment or any part thereof;
  - (5) has repeatedly failed to make prompt payments to subcontractors, suppliers or others for labour, materials or equipment; then the Corporation may give notice in writing to the Supply Contractor of such opinion and require that such default or defaults be remedied forthwith. If, within five Days of such notice, such default or defaults are not remedied to the satisfaction of the Corporation, the Corporation may terminate the Contract. Such termination shall be effective immediately.
- 6.2.3 The Corporation may terminate the Agreement, without any cost or penalty or consequence whatsoever, if it concludes, acting reasonably on the information available to it, that the Contractor is in material non-compliance with, or has been convicted of a material offence or violation of, health, safety, labour or environmental laws.

### 6.3 NO CLAIM

Except as herein before provided, the Supply Contractor shall have no claim against the Corporation for any reason whatsoever by reason of the termination of the Contract.

**PART 7 PAYMENT****7.1 PAYMENTS TO SUPPLY CONTRACTOR**

7.1.1 Payments to the Supply Contractor will be made as per the Supply Agreement

7.1.2 Notwithstanding Clause 7.1.1 the Corporation may withhold from payment:

- (2) Any deduction the Corporation may be entitled to under the Contract;
- (3) Such reasonable amount as the Corporation determines appropriate with respect to any part of the Equipment otherwise not in compliance with the Contract Documents.

7.1.3 Payments may be withheld until the relevant operating manuals and all operating and maintenance materials together with all warranties have been delivered to the Corporation.

7.1.4 In addition to any other remedy the Corporation may have in the Contract or law, the Corporation may refuse to make payment because of subsequently discovered evidence or test results, and shall be compensated for any payment previously made to the Supply Contractor to such extent as may be necessary to protect the Corporation from loss as a result of:

- (1) Defective or damaged Equipment;
- (2) A deductive change order;
- (3) Failure of the Supply Contractor to supply the Equipment in accordance with the Contract Documents, including failure to maintain the supply of the Equipment in accordance with the schedule;
- (4) Disregard by the Supply Contractor of the authority of the laws of any public body having jurisdiction.

The Corporation may refuse to make payment of the full amount because of claims made against the Corporation on account of the Supply Contractor's performance or supply of Equipment. In such case, the Corporation shall give the Supply Contractor prompt written notice stating the reasons for each action.

- 7.1.5 The Corporation may withhold from payment to the Supply Contractor:
- (1) Any set-off the Corporation may be entitled to under the Contract;
  - (2) The amount of any bona fide builder's lien claim asserted against the Corporation or which the Corporation acting reasonably anticipates will be made against the Corporation.
- 7.1.6 Prior to payment to the Supply Contractor, if requested by the Corporation, the Supply Contractor shall deliver to the Corporation a statutory declaration in form satisfactory to the Corporation declaring that all subcontractors, labour and accounts for material and equipment have been paid and that no persons, firms or corporations have any lien against the lands comprising the Delivery Point or the work together with such other documentation as the Corporation, acting reasonably, determines is necessary or desirable.

## **PART 8 RECORDS AND AUDIT**

- 8.1 The Supply Contractor shall keep reasonable and proper records, accounts, statements and other relevant documents for a period of not less than six (6) years after completion of the Agreement or for such extended period as may be required by law or as the RDN may request in writing.
- 8.2 The Supply Contractor shall permit the RDN to inspect, audit and copy all records, accounts, statements and other relevant documents of the Contractor relating to the Agreement.

## **PART 9 FORCE MAJEURE**

### **9.1 Force Majeure Event**

Neither party will be in breach of its obligations hereunder to the extent that performance is prevented or delayed by an event beyond a party's reasonable control (a "Force Majeure Event"). The parties agree that:

- (1) an event will not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those in this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event; and

- (2) a Force Majeure Event may include acts of God, industry-wide strikes, industrial action, war or civil disturbance, terrorism, storm, flood, earthquake, lightning, fire, terrorism, epidemics or pandemics, but does not include:
- (a) shortages or delays relating solely to the Contractor's or Subcontractor's supplies or services;
  - (b) delays in the Contractor obtaining the necessary approvals, licences or permits from a governmental authority;
  - (c) inability to perform because of the financial condition of the Contractor; or
  - (d) strikes of the Contractor's Personnel unrelated to an industry-wide strike.

#### 9.2 Process during Force Majeure Event

If a party seeks to excuse itself from its obligations due to a Force Majeure Event, the party will, with specific reference to this provision, promptly provide Notice to the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period thereof. Each party will take such action as may reasonably be available to it to endeavour to overcome the Force Majeure Event as soon as possible. If a Force Majeure Event continues for longer than 180 days, either party may terminate the Contract, in which case each party will be responsible for its own costs. For certainty, if the RDN terminates the Contract for a Force Majeure Event, then the RDN's sole obligation to compensate the Contractor will be for Services properly performed prior to the effective date of termination.

### **PART 10 ASSUMPTION OF RISK**

#### 10.1 Assumption of Risk

Except to the extent expressly allocated to the RDN or otherwise provided for under this Contract, all risks, costs and expenses in relation to the performance by the Contractor of its obligations under this Contract are allocated to, and accepted by, the Contractor as its entire and exclusive responsibility.

### **PART 11 CONFIDENTIALITY AND PRIVACY**

#### 11.1 Confidentiality

The Contractor will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of, relating to or arising out of the performance of this Contract (the "Confidential Information") and will not disclose such Confidential Information. Notwithstanding the preceding sentence, the Contractor may disclose the Confidential Information:

- (a) with the prior written consent of RDN;
- (b) in strict confidence to the Contractor's professional advisors;
- (c) to Subcontractors who, in each case, need to know the applicable Confidential Information for the purposes of performing the Services; and
- (d) as otherwise required by law or permitted by this Contract.

The Contractor will require all Personnel and Subcontractors to enter into an agreement with the Contractor containing provisions in the same form as those found in this section.

#### 11.2 Exceptions to Confidentiality Obligations

The obligations of confidentiality described in this section will not apply to:

- (a) information that is, or subsequently becomes, publicly available other than through a breach of this Contract or through a breach of a confidentiality agreement which another person has entered concerning the Confidential Information;
- (b) information that the Contractor already possessed independently before commencing the Services;
- (c) information that is rightfully received from a third party without breach of any obligation of confidentiality by such third party; or
- (d) information which is independently developed without the use of the Confidential Information.

#### 11.3 Collection or Use of Confidential Information

Except with the prior written consent of the RDN, the Contractor will not collect or use, and will ensure that its professional advisors and Subcontractors do not collect or use, the Confidential Information for any purpose other than complying with the terms of this Contract or performing the Services. Without limiting the generality of the foregoing, except with the prior written consent of RDN, the Contractor will not collect or use, and will ensure that its professional advisors and Subcontractors do not collect or use, the Confidential Information to advance the commercial or other interests of the Contractor or any Subcontractor or any entity affiliated with the Contractor or any Subcontractor.

#### 11.4 Privacy

The Contractor acknowledges that the RDN is subject to the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, as amended ("FOIPPA"), and accordingly, any documents, information and data submitted to RDN by the Contractor under this Contract, as well as any resultant studies, documents, information and data received by the RDN may be disclosed under FOIPPA. The Contractor will not do or omit to do anything that causes the RDN to be not in compliance with FOIPPA.

#### 11.5 Publicity

The Contractor will not issue any press release or speak to the media about this Contract or the subject matter of this Contract without the prior written consent of the RDN, which consent may be unreasonably withheld. The Contractor will refer all media inquiries relating to the Contract to the RDN.

### **PART 12 CONFLICT OF INTEREST, DELIVERABLES, STRIKES AND LOCKOUTS**

#### 12.1 Conflict of Interest

The Contractor will not, during the term of this Contract perform a service or provide goods for any person, firm or corporation, which gives rise to a conflict of interest between the obligations of the Contractor under this Contract and the obligations of the Contractor to such other person, firm or corporation.

#### 12.2 Deliverables

The Contractor hereby irrevocably grants to the RDN an unrestricted licence the RDN the right, title and interest required for the RDN to use and receive the benefit of all the reports, plans, drawings, designs, models, products or processes or other such work product produced by or resulting from the Services rendered by the Contractor.

#### 12.3 Strikes and Lockouts

If a strike or lockout of the Contractor's Personnel that interferes with the Contractor's performance of the Services continues for a period in excess of [30] continuous days, then such strike or lockout will be deemed to be a breach of a material requirement not a Force Majeure Event and The Region District reserves the right to terminate the agreement. The RDN will not be liable to pay to the Contractor any compensation or damages as may be incurred by the Contractor on account of the termination.

#### 12.4 Severability

In the event that any of the provisions or portions of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, the parties hereto will use their reasonable efforts to negotiate an adjustment in such provisions of this Contract with a view toward affecting the purpose of this Contract and the validity and enforceability of the remaining portions and/or provisions will not be affected thereby.

SAMPLE