



Request for Proposals

Regional District of Nanaimo

One (1) Used Articulated Truck

RFP No. 19-012

Issue Date: February 11, 2019

SUBMISSION DATE AND TIME:

**Proposals must be received at the Closing Location on or before:
3:00 PM (15:00 hrs) Local Time on March 1, 2019**

Regional District of Nanaimo (RDN) Contact for Questions:

**Jane Hamilton
Superintendent Landfill Operations
Regional District of Nanaimo
jhamilton@rdn.bc.ca**

To allow the RDN sufficient time to respond, questions should be submitted well in advance of the Submission Date and Time, and preferably at least five (5) Business Days before the Submission Date and Time



1. Instructions to Proponents

a) Closing Date/Time/Location

Proposals must be received at the Closing Location on or before 3:00 PM (15:00 hrs) Local Time on March 1, 2019.

Select one (1) of the Submission Methods below:

1. By Email: A PDF document with **"RFP No.19-012 Used Articulated Truck"** as the subject line at the only acceptable electronic address: **swf@rdn.bc.ca**

Please note: Maximum email file size limit is 15MB, or less.

2. By hand/courier delivery: One (1) copy of the Proposal should be enclosed and sealed in an envelope clearly marked: **"RFP No.19-012 Used Articulated Truck"** delivered to the:

Regional District of Nanaimo
Main Reception – 2nd Floor
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2
Attention: Jane Hamilton, Solid Waste

3. Proposals by facsimile will be accepted at 250 – 722 - 9437 attention: Jane Hamilton.

Proponents are solely responsible for ensuring that the complete electronic Proposal, whether sent via email or facsimile, including all attachments, is received on or before the Closing Date and Time.

Proposals will not be opened in public.

b) Contact Person

The contact person for this RFP is (the "Contact Person"):

Jane Hamilton
Superintendent Landfill Operations
Regional District of Nanaimo
jhamilton@rdn.bc.ca

c) Enquiries

All enquiries regarding any aspect of this RFP should be directed to the Contact Person by e-mail to the Contact Person listed above in 1 b).

The following applies to any Enquiry:

- all Enquiries, and all responses to Enquiries from the Contact Person, will be recorded by the RDN;

- to allow the RDN sufficient time to respond, Enquiries should be submitted well in advance of the Closing Date and Time, and preferably at least five (5) Business Days before the Closing Date and Time;
- the RDN will make reasonable efforts to respond to all Enquiries but reserves the right to not respond to any Enquiry made by a Proponent, including Enquiries not received within the time described in item (b) above;
- if RDN determines there is any matter which should be brought to the attention of all Proponents for whatever reason, including to ensure the fairness of the procurement process, whether or not such matter was the subject of an Enquiry, the RDN may, in its discretion, post the Enquiry, response or information with respect to such matter; and
- if a Proponent identifies a conflict or error in the RFP documents, including the Contract, the RDN may correct the conflict or error by Addendum.

This RFP should not be discussed with any RDN employee or representative other than the Contact Person. Information received from sources other than the Contact Person cannot be relied upon. Furthermore, any information offered from sources other than the Contact Person via an Addendum with regard to the content, intent or interpretation of this RFP is not official, may be inaccurate, and should not be relied on in any way, by any Proponent for any purpose.

d) Revisions Prior to Closing Date and Time

A Proponent may withdraw, revise or amend its Proposal at any time prior to the Closing Date and Time by submitting a clear and detailed written notice of the withdrawal, revision or amendment via email to swf@rdn.bc.ca prior to the Closing Date and Time. The Proponent will not be entitled to change its Proposal after the Closing Date and Time, and no words or comments should be added to the Proposal after the Submission Time unless requested by the Contact Person for purposes of clarification. Revisions should be a PDF document with “**RFP No.19-012 Used Articulated Truck**” as the subject line signed by the authorized signatory of the Proponent.

e) Addenda

The RDN may, in its discretion, through the Contact Person amend or clarify the terms or contents of this RFP at any time before the Closing Date and Time by issuing a formal Addendum. Written Addenda are the only means of amending or clarifying this RFP and no other form of communication whether written or oral, will, in any way, amend this RFP. If a Proponent wishes to rely on a written response to a question, then they should request the Contact Person to issue an Addendum. If the RDN determines that an amendment is required to this RFP, the RDN will post the Addendum on the RDN website (www.rdn.bc.ca) and the BC Bid website (www.bcbid.gov.bc.ca). Each addendum will be incorporated into and become part of the RFP. No amendment of any kind to the RFP 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 any and all amendments are included prior to submitting their final Proposal submission.

f) Changes to the Contract

The RDN’s preferred form of Contract is attached as Appendix D [Draft Contract]. Proponents should carefully review this form of Contract. Proponents may (but are not required to) request that RDN consider making revisions to the form of Contract, including the scope of Services. Proponents should



submit such requests to the RDN well before the Closing Date and Time as an Enquiry. If making such a request, the Proponent should provide the following information for each requested change:

- the section reference in the Contract or attachment thereto;
- an explanation of the reason why the Proponent requests the change (for example, the provision does not represent good “value for money” for the RDN or because, in the Proponent’s view, the provision inappropriately allocates technical, legal or commercial risk); and
- the Proponent’s proposed alternative wording.

If the RDN agrees to a request received prior to the Submission Time, then RDN will issue an Addendum to modify the Contract. Proponents should prepare their Proposal based on the form of Contract attached as Appendix D [Draft Contract], as may be amended by Addenda, and are strongly discouraged from requesting changes to the draft Contract in a Proposal or submitting a Proposal that assumes the RDN will agree to modify the terms of the draft Contract.

The RDN reserves the right to reject a Proposal from a Proponent that does not follow this Section and, in particular, reserves the right to reject any Proposal that includes “deviations”, “clarifications” or similar items as part of its Proposal.

2. INTRODUCTION

The purpose of this Request for Proposal is to solicit submissions from experienced and qualified firms for One (1) **Used Articulated Truck** to assist in the management of solid waste at the Regional Landfill. The Articulated Truck will be used for hauling and dumping rock, soil or waste materials on the landfill site.

Proponents are encouraged to submit more than one machine for consideration. Each different machine should be submitted as a distinct and separate proposal. The Regional District of Nanaimo has an available budget of CDN **\$167,400.00** (excluding PST & GST) including delivery to the Regional District of Nanaimo Landfill, 1105 Cedar Road, Nanaimo, B.C.

Delivery terms are Delivered Duty Paid (DDP) as per INCOTERMS 2010 to the Regional District of Nanaimo Landfill, 1105 Cedar Road, Nanaimo, B.C., V9X 1K9. Clear title to the Equipment, free of all charges, liens and encumbrances shall pass to RDN when the Equipment is received, inspected, deficiencies rectified and accepted by the RDN at the RDN Landfill.

3. PROPOSAL SUBMISSION INSTRUCTIONS

Suppliers are to complete and return the attached template Cover Page (Appendix A), Specification Table (Appendix B) and Pricing Schedule (Appendix C) with each proposal submission. Additional information should be included on separate pages. Each different machine should be submitted as a distinct and separate proposal.



4. PROPOSAL EVALUATION

To assist in receiving similar and relevant information, and to ensure your Proposal receives fair evaluation, the RDN asks Proponents to provide the following information. Awards shall be made on Proposals that will, in the opinion of the RDN, give the greatest value based on quality, service and price. Evaluations will be based on “best value” for the RDN as solely determined by the selection committee.

The RDN seeks to purchase a heavy duty truck that meets the technical and functional requirements for use at the Regional Landfill. This Articulated Truck will be used primarily for conveying soil to cover side-slopes. We intend to use this Articulated Truck for a mix of waste and soils handling.

The selection committee will consider the following attributes and use their sole discretion in applying tradeoffs to determine best value and what best reflects the total cost of ownership. The Evaluation Committee will compare and evaluate Proponents based on their Proposals to identify a Proposal that the Evaluation Committee in its discretion judges to be the most advantageous to the RDN.

The Proposals passing the mandatory requirements will be further evaluated against the point-rated criteria. Proponents may be required to provide clarifications to statements made in their Proposals.

Mandatory Criteria	
i.	Proposal Form Appendix A – Cover Letter completed and signed by a person authorized to bind the Proponent to statements made in the submission.
ii.	Completed Technical Specifications Appendix B
iii.	Completed Pricing Schedule Appendix C.
iv.	Proposal must be received at the closing location on or before the specified Closing Date and Time.
Minimum Specifications 20%	
Appendix B – Technical Specifications table includes minimum specifications for features such as operating weight, drive-train, guarding and tire wear, which must be met in order to be considered a compliant proposal.	
Financial Proposal 80%	
a.	Financial - Proposed Cost for all equipment and materials for supply and delivery of equipment. Length of time pricing will be held firm.

The RDN may proceed to enter into negotiations with the highest evaluated proponent with the intent of developing an agreement. 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 Proposal and attempt to conclude a formal agreement with it, and so on until a contract is concluded.

5. GENERAL TERMS & CONDITIONS

5.1 Pre-Delivery and Inspection

(a) Prior to delivery, the Equipment shall be completely inspected and serviced by the Dealer and/or the manufacturer's Service Centre. The Dealer is responsible to ensure the Equipment is thoroughly tested inspected, and that all deviations are corrected prior to delivery. The Equipment should contain a delivery check sheet showing what operations have been performed on the Equipment by the selling Dealer. The Equipment is to be clean and all stickers are to be removed from glass prior to delivery with the exception of any sticker required by law.

(b) The Equipment(s) shall be inspected by the RDN to determine compliance with the specifications and/or to test its ability to perform its intended use. In the event deficiencies are detected, the Equipment may be rejected and it shall be the Dealer's responsibility to pick-up the Equipment, make the necessary corrections and re-deliver the Equipment for re-inspection and acceptance.

(c) The Dealer shall be responsible for securing any and all inspections required by law. Any fees charged for these inspections shall be the sole responsibility of the Dealer.

5.2 Delivery Requirements

(a) Deliveries are to be made between the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding statutory holidays, unless other arrangements have been agreed to in writing from the RDN.

(b) The Dealer shall notify Jane Hamilton, Superintendent at 250-722-2044 ext. 3222 not less than three (3) working days prior to expected delivery / arrival to permit inspection scheduling. The RDN will not assume any liability for Equipment delivered to an unauthorized location.

5.3 Documentation at Time of Delivery

The Dealer should provide the following documentation upon delivery:

(a) Copy of Purchase Order and Original Invoice(s).

(b) Delivery check sheet showing what operations have been performed on the Equipment by the selling Dealer.

5.4 Emblems/Logos

The Dealer shall not install on the Equipment any logos, nameplates or stickers denoting the name of the company or Dealer that may be considered as advertising. Failure to comply with this requirement shall result in the Dealer being given the option to remove same, or reimburse the RDN for removal and restoration, if needed.

5.5 No Contract

By submitting a Request for Proposal 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.

5.6 Reservation of Rights

Notwithstanding any other provision in this RFP, no term or condition will be implied based on any industry practice or custom, and the RDN reserves the right, in its discretion, to:

- (a) modify, suspend or terminate this RFP at any time for any reason (including if the prices in the Proposals exceed available funding) and to reissue a request for proposals, or to undertake another procurement process for the Services, or to obtain the Services in some other manner or decide not to proceed with the Services;
- (b) accept or reject any Proposal based on the Evaluation Committee's evaluation of the Proposals in accordance with the RFP, and in particular, the RDN is not obliged to select the Proposal with the lowest price;
- (c) waive a defect, irregularity, non-conformity or non-compliance (including material non-compliances but excluding any Mandatory Requirements) in or with respect to a Proposal or failure to comply with the requirements of this RFP, and accept that Proposal even if such a defect, irregularity, non-conformity or non-compliance or failure to comply with the requirements of this RFP would otherwise render the Proposal null and void;
- (d) reject, disqualify or not accept any or all Proposals without any obligation, compensation or reimbursement to any Proponent or any of its team members;
- (e) re-advertise for new proposals to this or a modified RFP, call for quotes, proposals or tenders, or enter into negotiations for the Services or for services of a similar nature;
- (f) make any changes to the terms of the business opportunity described in this RFP;
- (g) negotiate any aspects of a Preferred Proponent's Proposal; and
- (h) extend, from time to time, any date, time period or deadline provided in this RFP by Addendum.

This RFP does not commit the RDN in any way to select a Preferred Proponent or to enter into any agreement or to proceed with a procurement process for the Services.

5.7 Minor Irregularities

The RDN may accept or waive a minor and inconsequential irregularity, or where applicable to do so, the RDN may, as a condition of acceptance of the Submission, request a Proponent to correct a minor or inconsequential irregularity with no change in the Submission. Proposals which contain qualifying conditions or otherwise fail to conform to the requirements of the Documents may be disqualified or rejected.

5.8 Conflict of Interest

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

5.9 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 RFP, other than the RDN Contact named in this document.

5.10 Proponent's Expenses

Proponents are solely responsible for their own expenses in preparing, and submitting Proposals, and for any meetings, negotiations or discussions with the RDN or their representatives and consultants, relating to or arising from this RFP.

Limited Claim for Compensation

Each Proponent:

- (a) agrees that it will not bring any claim, action, demand, suit or cause of action, whether arising in contract, tort (including negligence) or otherwise (a “Claim”) against the RDN or any of the RDN’s respective employees, directors, officers, advisors or representatives for any costs, damages or other compensation in excess of the amount equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal for any Claim or matter relating directly or indirectly to this RFP (including, without limitation, in the event that the RDN rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant or materially non-compliant Proposal, fails to proceed with the Services or otherwise breaches the terms of this RFP or any duties arising from this RFP); and
- (b) except for Claims for amounts less than or equivalent to the reasonable costs incurred by the Proponent in preparing its Proposal, waives any Claim against the RDN or any of its respective employees, directors, officers, advisors or representatives for any compensation of whatsoever nature or kind including, without limitation, for loss of anticipated profits, indirect, incidental or consequential damages or losses if the Services do not proceed or no Contract is entered into between a Proponent and the RDN for any reason whatsoever, including, without limitation, in the event that the RDN rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches the terms of this RFP or any duties arising from this RFP.

5.11 Language

Proposals should be in English. RDN reserves the right to not review or evaluate any portion of a Proposal that is not in English.

5.12 Ownership of Proposals

All Proposals, including any intellectual property therein, submitted to the RDN will become the property of the RDN, unless otherwise specified in this RFP.

5.13 Risk Regarding Electronic Communications

The RDN does not assume any risk or responsibility or liability whatsoever to any Proponent for ensuring that any electronic communication system being operated by or for, or used by RDN is in good working order, able to receive transmissions, or not engaged in receiving other transmissions such that a Proponent’s transmission cannot be received and/or if a permitted email communication or delivery is not received by the RDN, or received in less than its entirety, within any time limit specified by this RFP.

All permitted email or electronic communications with, or delivery of documents to, the Contact Person will be deemed as having been received by the Contact Person on the dates and times indicated on the Contact Person’s electronic equipment.

5.14 Freedom of Information and Protection of Privacy Act

All documents and other records in the custody, or under the control of, the RDN are subject to the Freedom of Information and Protection of Privacy Act (“FOIPPA”) and other applicable legislation. By submitting a Proposal, the Proponent represents and warrants to RDN that the Proponent has complied with Applicable Laws, including by obtaining from each individual any required consents and authorizations to the collection of information relating to such individual and to the submission of such information to the RDN as part of the Proposal for the purposes of this RFP and the procurement process.

5.15 Confidentiality

Except as expressly stated in this RFP and subject to FOIPPA or other applicable legislation, all documents and other records submitted in response to this RFP will be considered confidential; however, such information or parts thereof may be released pursuant to requests under the FOIPPA, other applicable legislation or as necessary to perform the Services.

5.16 Governing Law

This RFP is governed by the law of British Columbia and the laws of Canada applicable therein.

5.17 Trade Agreements

The procurement process described in this RFP is subject to various trade agreements, including the Canadian Free Trade Agreement.

5.18 No Representation or Warranty

By submitting a Proposal, each Proponent acknowledges and represents that its Proposal is based on its own examination, knowledge, information, and judgment, and is not based upon any statement, representation, or information made or given by the RDN, the Contact Person or any other person, other than the information contained in this RFP. Submission of a Proposal is deemed to be conclusive evidence that the Proponent accepts the terms of this RFP. The RDN accepts no responsibility for any Proponent lacking any information.



APPENDIX A – COVER LETTER

**SUPPLIERS SHOULD COMPLETE THIS PAGE AND
ATTACH IT TO THE FRONT OF THEIR PROPOSAL**

The undersigned Supplier, having carefully read and examined the Request of Proposals and having full knowledge of the work required, does hereby offer to provide all necessary materials in strict accordance with the RFP and to do all therein called for on the terms and conditions and under the provisions therein set forth at the:

LUMP SUM TOTAL QUOTED PRICE OF: CDN \$ _____ (excluding PST & GST)

The above price includes and covers the equipment, duties, taxes, handling and transportation charges and all other charges incidental to and forming part of this Proposal. The Supplier shall be responsible for Customs clearance and payment of any duties and/or taxes owing at time of importation into Canada, as applicable and all other costs to deliver to the RDN Landfill, 1105 Cedar Road, Nanaimo, B.C., V9X 1K9

The undersigned Supplier agrees to supply the equipment on site no later than: _____, weeks upon receipt of order.

Name of Supplier: _____

Supplier Address: _____

Telephone No. of Signing Officer: _____

Signing Officer E-mail: _____

Date: _____

Name of Proponent Signing Officer: _____

Signature of Proponent Signing Officer: _____

APPENDIX B - TECHNICAL SPECIFICATIONS

Type of Vehicle: Used Articulated Truck

Required Specifications

The features listed below are required for offers to be further considered:

- 30 ton truck;
- 6 wheel drive with locking differentials;
- Guarded driveline and seals;
- Air conditioning and heat unit;
- Air ride seat; and
- Tires no less than 25% tread wear.

Additional Specifications

Proponents that meet the above required specifications please tell us more about the articulated truck by completing and submitting this schedule with their Proposal. Explanatory notes or comments can be included in the schedule or addressed by the submission of additional information as required on an attached sheet.

ITEM	SPECIFICATIONS	YES	NO	DEVIATION/DESCRIPTION (may be included on a separate page)
1.	General			
	Manufacturer			
	Model			
	Hours & Mileage			
	Geographic location most used?			
2.	Engine			
	Gross Power			
	Model/Manufacturer			
3.	Cab/Interior			
	Air ride ergonomic adjustable seat			
	Auto climate control Heater/ Air-conditioning unit			
	AM/FM Stereo			
4.	Lights/Exterior/Safety Equipment			
	LED lights?			
	Mirrors			
	Audible travel alarms			
	Cab mounted fire extinguisher			

ITEM	SPECIFICATIONS	YES	NO	DEVIATION/DESCRIPTION (may be included on a separate page)
5.	Historical Damage?			
	Has the truck been in a fire?			
	Has the truck been in a roll-over?			
6.	Service, Repairs & Upgrades			
	Who serviced the truck?			
	Any major parts replaced?			
	Any add-ons or upgrades?			

APPENDIX "C" - PRICING SCHEDULE

Pricing

Price of proposed Used Articulated-Truck, including all costs as per the terms and conditions of this RFP	\$
Other charges or levies (identify)	\$
GST at 5%	\$
PST at 7%	\$
Total Proposed Price	\$
Delivery time from time of order (in weeks):	

AUTHORIZED BY: _____

(Signature of Proponent Signing Officer)

(Date)

(Capacity of Signing Officer)

(Address of Proponent)

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 within the required time, as required by the Contract Documents.
2. The Corporation shall pay the Supply Contractor the Contract Price, as required by the Contract Documents.
3. The Contract Price shall be the sum in Canadian Dollars of the following:
 - (a) the Proposal Price, \$ _____, and
 - (b) any payments made on account of changes, as may be required by the Contract Documents.

The Contract Price shall be the entire compensation owing to the Supply Contractor by the Corporation for the Goods 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, 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 <XX weeks from receipt of order>.
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.

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 Standard Form 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 equipment set out in the Contract Documents;

"Contract Documents" means the following documents:

- (1) the executed Standard Form Supply Contract Form of Agreement
- (2) the General Conditions
- (3) any Addenda
- (4) the Original Proposal Documents
- (5) vendor's completed Appendices A, B & C
- (6) other relevant documents such as but not limited to letters of clarification and any reports, standards or the like included by reference;

"Contract Price" has the meaning set out in the supply form of agreement;

"Corporation" means the Regional District of Nanaimo;

"Day" means calendar day;

"Delivery Date" has the meaning set out in the supply form of agreement;

"Delivery Point" means the Regional District of Nanaimo Landfill, 1105 Cedar Road, Nanaimo, B.C., V9X 1K9;

"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" means the person who or which execute 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 Goods;

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 Goods. 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 Goods or with the use of the Goods 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 Goods

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

2.1.2 Appointment and Authority of Inspector

2.1.2.1 The Corporation may appoint an Inspector for the Goods 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 Goods;
- (b) to make decisions regarding the manner of performance of the Goods;
- (c) to make determinations regarding deficiencies;

2.2 RESPONSIBILITIES OF THE SUPPLY CONTRACTOR

2.2.1 Attention to the Goods

The Supply Contractor shall diligently attend to the supply of the Goods 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 Goods

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

2.2.4 Shipment

The Supply Contractor shall properly package all Goods 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 goods, 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 RDN Landfill, 1105 Cedar Road, Nanaimo, BC V9X 1K9.

Until such time as title of Equipment(s) is accepted by the RDN, the Dealer 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 Dealer'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.

2.3 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 may, with the concurrence of both the Regional District 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 Goods 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 Goods to be specially inspected, tested or approved, the Supply Contractor agrees that the Goods shall comply.

The Goods 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 Goods which are not in accordance with the Contract Documents, and the Goods 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 Goods 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 Goods, 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 GOODS

3.3.1 Correction of Defective Goods

If upon inspection, testing or otherwise the Goods 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.

3.3.2 If upon inspection, testing or otherwise the Goods 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 Goods 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 Goods, shall be repaid to the Corporation by the Supply Contractor. The Supply Contractor shall advise the Corporation in writing, where to return the Goods, and failing such advice from the Supply Contractor, the Supply Contractor agrees to accept the returned Goods at the

Supply Contractor's registered office. Neither the inspection nor failure to make inspection, nor acceptance of Goods shall release the Supply Contractor from any warranties or other provisions of this Contract nor impair the Corporation's right to reject non-conforming Goods. The Corporation reserves the right even after it has paid for and accepted Goods to make a claim against the Supply Contractor on account of any Goods 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 Goods or revocation of acceptance thereof, or to specify with particularity any defect in non-conforming Goods after rejection or acceptance thereof.

3.3.3 Retention of Defective Goods

If in the opinion of the RDN any portion of the Goods 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 Goods dangerous or undesirable, or if the removal of such Goods is impracticable, or will create conditions which are dangerous or undesirable, the Corporation shall have the right and authority to retain such Goods instead of requiring the defective or imperfect Goods 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.

3.3.4 No Implied Approval

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

3.4 WARRANTY AND GUARANTEE

3.4.1 The Supply Contractor agrees that the Goods manufacturer's standard warranty as outlined in the Supply Contractor's Proposal and is to the benefit of the Corporation and that the Goods are free from all defects arising from faulty construction, manufacturing, materials, equipment or workmanship for the period of the Goods 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 Goods and any applicable services for the Corporation's particular use. The Supply Contractor warrants to the Corporation and its successors in interest that the Goods 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 Goods 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 Goods are free from all defects arising at any time from faulty design in any part of the Goods.
- 3.4.5 The Supply Contractor represents that it has read the contract terms and the Specifications and has satisfied itself that the Goods 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, RDN Landfill, 1105 Cedar Road, Nanaimo, BC V9X 1K9.

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 Goods or the supply, off-loading or delivery of the Goods 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 Goods, and/or used or to be used by the Corporation before or after supply of the Goods 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 Goods or the supply, off-loading or delivery of the Goods 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 Goods and based on such investigation and its past experience and superior knowledge with respect to such Goods has determined that the production and supply thereof will not infringe any patent, trademark or copyright.

PART 5 SHIPMENT OF GOODS/DAMAGE TO GOODS

5.1 SHIPMENT OF GOODS

5.1.1 Delivery of Goods

The Supply Contractor must deliver the Goods to the Delivery Point. Delivery of the Goods to a carrier for transmission to the Delivery Site does not constitute delivery of the Goods 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 Goods 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 Goods, including, without limitation, any loss or damage to the Goods from any cause whatsoever, up to and including the delivery and off-loading of the Goods at the Delivery Point.

5.1.4 Loss or Damage

If loss or damage to the Goods 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 Goods as a result of loss or damage to the Goods 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 Goods by Corporation

Notwithstanding any other provision in the Contract Documents, the Corporation is not deemed to have accepted the Goods until the Goods 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 Goods shall not prejudice any rights or remedies the Corporation may have hereunder relating to Goods 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 Goods**

Time shall be strictly of the essence. The Supply Contractor shall supply the Goods in accordance with the Contract Documents. The Supply Contractor acknowledges that the schedule for supply of the Goods 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 Goods 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 Goods 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 Goods, 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 Goods 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 goods 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 Goods;

- (2) A deductive change order;
- (3) Failure of the Supply Contractor to supply the Goods in accordance with the Contract Documents, including failure to maintain the supply of the Goods 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 Goods. 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 builders 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.