



**City of Courtenay**

**Request for Quotation  
Q21-15 Road Crack Sealing Services**

**December 20, 2021**

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## SUMMARY OF KEY INFORMATION

<b>RFQ Reference</b>	RFQ Q21-15 Road Crack Sealing Services
<b>Overview of the Opportunity</b>	The purpose of this RFQ is to acquire quotations from qualified contractors to provide roadway crack sealing services within the City of Courtenay.
<b>Questions?</b>	Questions are to be submitted in writing quoting the RFQ number and name, send to email <a href="mailto:purchasing@courtenay.ca">purchasing@courtenay.ca</a>
<b>Addenda</b>	Proponents are to check the BC Bid and City websites for any updated information and addenda issued, before the Closing Date at the following websites <a href="http://www.bcbid.gov.bc.ca">www.bcbid.gov.bc.ca</a> and/or <a href="http://www.courtenay.ca/bids">www.courtenay.ca/bids</a>
<b>Closing Date and Time</b>	<b>2:00 pm Pacific Time</b> <b>Friday, January 14, 2022</b>
<b>Instructions for Submission</b>	<p>Submissions are to be consolidated into one PDF file and sent electronically to <a href="mailto:purchasing@courtenay.ca">purchasing@courtenay.ca</a></p> <ol style="list-style-type: none"> <li>1. In the subject field enter: <b>Q21-15 Road Crack Sealing Services</b></li> <li>2. Phone 250-338-1766 Ext. 7646 should assistance be required. Proponents are encouraged to confirm receipt of their submissions before the closing time.</li> <li>3. Please note maximum email file size is 20 Mb or less. The City of Courtenay will not be liable for any technological delays in transmission.</li> </ol>
<b>Obtaining RFQ Documents</b>	RFQ documents are available for download from the following websites <a href="http://www.bcbid.gov.bc.ca">www.bcbid.gov.bc.ca</a> and/or <a href="http://www.courtenay.ca/bids">www.courtenay.ca/bids</a>

## 1.0 INTENT

The City of Courtenay (the “City”) invites quotations from qualified contractors to provide roadway crack sealing services within the City of Courtenay.

## 2.0 DOCUMENT AVAILABILITY AND RESPONSIBILITY

This RFQ is being issued electronically through the BC Bid website and the City of Courtenay website where interested firms may download the RFQ documents directly. No registration, tracking or other recording of RFQ documents will be performed by the City. All addenda, amendments or further information will be published on [www.bcbid.gov.bc.ca](http://www.bcbid.gov.bc.ca) and [www.courtenay.ca](http://www.courtenay.ca). It is the sole responsibility of the Proponent to monitor the websites regularly to check for updates.

## 3.0 DEFINITIONS

“City” or “Owner” means the City of Courtenay;

“Contract” means the written agreement or purchase order resulting from this RFQ awarded to and/or executed by the City and the successful Proponent;

“Contract Documents” means the Request for Quotation documents, that part of the quotation which is accepted by the City, the purchase order and executed agreement, if any, an all applicable specifications and drawings including those issued by the City to the Proponent and those submitted by the Proponent during the performance of the work and accepted by the City, whether produced before or after the date of award of the Contract as the same may be modified, amended, substituted or replaced in accordance with the provisions of the Contract from time to time;

“Contractor” means a person or company that undertakes a contract to provide materials or labor to perform a service or do a job, can also be referred to as a vendor or supplier.

“Council” means the City of Courtenay Council;

“must”, “mandatory”, “required”, “shall”, means a requirement that must be met in order for a quotation to receive consideration;

“Proponent” means a party, a company or an individual that has obtained a copy of this Request for Quotation and submits, or intends to submit, a quotation in response to this “Request for Quotation”;

“Quotation” means the documents of the Proponent delivered to the City offering to perform the work as required under this RFQ;

“RFQ” means Request for Quotation;

“should” or “desirable” means a requirement having a significant degree of importance to the objectives of the RFQ;

#### 4.0 TERM OF CONTRACT

The intent is to award a contract for a term of three (3) years, 2022, 2023 and 2024. Each year the work is to be completed in full by June 30<sup>th</sup>. Each year is subject to a satisfactory annual performance evaluation by the City.

The contract term may be extended for a two (2) year term, contingent upon a satisfactory annual performance evaluation, at the sole discretion of the City. The work in each extension year must be completed in full by June 30<sup>th</sup>.

#### 5.0 SCOPE OF WORK

- As a minimum, the supply and delivery of roadway crack sealing services shall be provided utilizing Master Municipal Construction Documents Association (MMCD) 2009 Platinum specifications as follows, unless otherwise specified:
  - Traffic Control, Vehicle Access, and Parking #01 55 00
  - Sealing Pavement Cracks for Maintenance Purposes #32 01 17.6
  - Any other relevant sections included in MMCD.
- MMCD Supplementary Specifications
  - The following supplementary specifications are applicable in the delivery of the scope of services and shall take precedent over the terms and conditions included in the MMCD contract document and specifications:

MMCD Supplementary Specifications	Division 1 General Requirements Traffic Control, Vehicle Access, and Parking	MMCD Section 01 55 00S
1.0 General	Add 1.06	Add: “The Contractor is responsible for all temporary traffic control required to complete the Work. The Contractor will be responsible to provide a Traffic Management Plan (TMP) for review and acceptance by the City (10) ten working days prior to any travel lane closures taking place. TMP is to be prepared by a qualified professional.  The TMP shall outline the approach to traffic management, show recognition and minimization of risks indicates signing locations, identify Traffic Control Persons (TCP) stations, show lane shifting and proposed closures.  The TMP is to be revised and resubmitted as required

		during the progress of the work”
1.5 Payment	.1	Replace with: “Payment for all work performed will be included in the per LM unit pricing as defined for Sealing Pavement Cracks for Maintenance Purposes”

MMCD Supplementary Specifications	Division 32 Sealing Pavement Cracks for Maintenance Purposes	MMCD Section 32 01 17.6S
1.3 Samples	.1	Remove section in its entirety
3.1 Application Equipment	.2	Remove section in its entirety
3.2 Performance Standard	.1.3	Replace with: “Apply rubberized and elasticized asphalt sealants to cracks that have been cleaned of debris via hot air lancing. Ensure sealant overband uniform in width and not so thick that it will suffer snow plow damage or produce a noticeable bump when driven across.”
3.3 Methods	.1.1	Remove section in its entirety
	.1.2	Remove section in its entirety

- Tidol Corporation Water Based Asphalt Hot Melt Release Agent must be used unless prior approval is received from City designate.
- The roads that are to be crack sealed will be determined for each year of the contract by the City.
  - The Contractor will be required to crack seal the roads in order of priority as outlined by the City’s designated project manager.
  - The Contractor will be required to inspect the proposed work areas prior to commencing the work.
- The Contractor shall include all traffic control services for the supply and application of the crack sealing services and include traffic control services in the unit prices submitted on the Form of Submission.
- Traffic control services must comply with MMCD Specification #01 55 00 Traffic Control, Vehicle Access and Parking, and the Supplementary Specifications.
- The City normally averages between 70 to 80 thousand Lineal Meters each year. These numbers are provided as referential information only and does not guarantee a minimum volume of work for road crack sealing services.
- The Contractor shall submit to the City designate a daily email report outlining which prioritized streets and roads the Contractor has completed, the amount of lineal meters that have been crack sealed, and the cumulative estimated value of that work. Subject to

budget availability, the City reserves the right to add or withdraw streets and roads accordingly.

- The City will inspect the streets and roads and notify the Contractor, in writing via email, whether any deficiencies were noted. Noted deficiencies are to be repaired within 48 hours of notification from the City designate.

## **6.0 HOURS OF WORK**

Work authorized by the City shall be performed between the hours of 7:00am and 7:00pm, Monday to Friday, unless the Contractor obtains written authorization from the City to do work at any other hour.

## **7.0 WARRANTY**

The Contractor shall warrant all work for a minimum of one (1) year. Where failure of a seal becomes evident within one (1) year from completion of the program, starting on the date of the final invoice, and if the failure is determined to be a result of defective workmanship by the Contractor, the Contractor shall remove and reseal the crack at the Contractor's sole expense.

## **8.0 HEALTH & SAFETY**

The successful Contractor will be designated the Prime Contractor in the immediate work area and will be required to sign and submit the attached Prime Contractor Designation form.

The Proponent should submit a copy of the company Safety Manual that is directly related to the work outlined in this RFQ with their submission.

## **9.0 SUBMISSION FORMAT**

### **9.1 Title Page**

Showing RFQ title and number, closing date, company name of the Proponent, address, contact name, email address and phone number.

### **9.2 Qualifications & Experience**

Include a detailed description of the experience of the Proponent, demonstrating their experience to undertake the work outlined in this RFQ.

Include a list of at least 3 relevant completed projects with client references and telephone number/email contact information for each project. By submitting a quotation the Proponent consents to the City contacting these references at its discretion, and consents to the City also contacting any other organizations for the purposes of evaluating the quotation.

### **9.3 Schedule A – Form of Submission**

The Schedule A – Form of Submission should be submitted with the Proponent’s quotation. The Form of Submission should be signed by an authorized representative of the company.



## 10.0 INSTRUCTIONS TO PROPONENTS

- 10.1 An electronic submission of the quotation in .pdf format should be submitted to: **"purchasing@courtenay.ca"** no later than 2:00pm PST, Friday, January 14, 2022, the RFQ closing date. The email subject line should read **"Q21-15 Road Crack Sealing Services"**.

It is the sole responsibility of the Proponent to ensure that their quotation is received by the City within the proper time allocation. Late responses may be rejected by the City of Courtenay. All quotations, including Form of Submission, should be signed by an authorized Proponent representative.

Submission of a quotation indicates acceptance by the Proponent of the conditions contained in this RFQ, unless clearly and specifically noted in the quotation submitted.

- 10.2 Questions are to be submitted in writing up to 5 business days prior to the RFQ Closing Date quoting the RFQ name, number and contact person below, and sent to email purchasing@courtenay.ca.

Graham Peterson  
Procurement Specialist, City of Courtenay  
purchasing@courtenay.ca

Any verbal communications will be considered unofficial and non-binding to the City. Proponents should rely only on written statements issued by the contact person listed above.

- 10.3 Notwithstanding any custom or trade practice to the contrary, the City reserves the right to, at its sole discretion and according to its own judgement of its best interest to waive any technical or formal defect in a quotation and accept that quotation.

## 11.0 EVALUATION CRITERIA

### 11.1 General

An evaluation committee made up of City staff will be reviewing quotation submissions. The City reserves the right to accept any or none of the quotations submitted and will evaluate quotations based on best value and not necessarily the lowest cost.

### 11.2 Evaluation Criteria & Weighting

The City reserves the right to accept any or none of the quotations submitted and will evaluate quotation submissions based on "best value" using the following criteria:

Quotation Evaluation Criteria Description	Criteria Weight
Financial Cost to the City	70 points
Qualifications, Experience & References	30 points

## **12.0 GENERAL TERMS & CONDITIONS**

### **12.1 Not a Tender Call**

This RFQ is not a tender call, and the submission of any response to this RFQ does not create a tender process. This RFQ is not an invitation for an offer to contract, and it is not an offer to contract made by the City. Quotations will not be opened in public.

### **12.2 No Obligation to Proceed**

- a) Though the City fully intends at this time to proceed through the RFQ process in order to select the goods or services, the City is under no obligation to proceed to the purchase, or any other stage. The receipt by the City of any information (including any submissions, ideas, plans, drawings, models or other materials communicated or exhibited by any intended Proponent, or on its behalf) shall not impose any obligations on the City. There is no guarantee by the City, its officers, employees or agents, that the process initiated by the issuance of this RFQ will continue, or that this RFQ process or any RFQ process will result in a contract with the City for the purchase of the product, service or project.
- b) The City reserves the right to accept or reject any and all quotations and to waive irregularities and informalities at its discretion.
- c) The City reserves the right to negotiate with any Proponent, or more than one Proponent. If the parties after having negotiated in good faith are unable to conclude a formal agreement, the City and the Proponent will be released without further obligations other than any surviving obligations regarding confidentiality. The City may, at its discretion, contact the Proponent of the next best rated quotation and attempt to conclude an agreement with it, and so on until an agreement is reached.

The City may at its discretion:

- 1) Negotiate with a Proponent to award a contract for all or the majority portion of the Work;
  - 2) Cancel this RFQ and issue a new RFQ with a new scope of work, or;
  - 3) Cancel this RFQ in its entirety.
- d) A quotation may be rejected on the basis of the Proponents past performance, financial capabilities, completion schedule and non-compliance with federal, provincial and municipal legislation.
  - e) The City reserves the right to accept or reject a quotation where only one quotation is received.
  - f) The City reserves the right to award the contract to other than the lowest cost Proponent.
  - g) Award of any contract resulting from this RFQ may be subject to City of Courtenay Council approval, and budget considerations.
  - h) The City reserves the right to cancel this RFQ at any time.

### **12.3 Cost of Preparation**

Any cost incurred by the Proponent in the preparation of the quotation will be solely at the expense of the Proponent.

#### **12.4 Confidentiality and Freedom of Information and Protection of Privacy Act**

The quotation should clearly identify any information that is considered to be confidential or proprietary information (the “Confidential Information”). However, the City is subject to the Freedom of Information and Protection of Privacy Act. As a result, while the Act offers some protection for third party business interests, the City can’t guarantee that any Confidential Information provided to the City can be held in confidence if a request for access is made under the Freedom of Information and Protection of Privacy Act.

#### **12.5 Quotation Validity**

By submission of a written request, the Proponent may amend or withdraw its quotation. Upon closing time, all pricing should be held for a period of **60** days.

#### **12.6 Pricing**

Prices are to be quoted in Canadian funds with the Goods and Services Tax (GST) shown as a separate line item, if requested. Prices must be quoted inclusive of all shipping, duty and other applicable costs F.O.B. the location indicated in the RFQ.

#### **12.7 Sub-Contracting**

Under no circumstances may the provision of goods or services, or any part thereof be sub-contracted, transferred, or assigned to another company, person, or other without the prior written approval of the City.

#### **12.8 Accuracy of Information**

The City makes no representation or warranty, either express or implied, with respect to the accuracy or completeness of any information contained or referred to in this RFQ.

#### **12.9 Misrepresentation or Solicitation**

If any director, officer or employee or agent of a Proponent makes any representation or solicitation to any elected official, officer, employee or agent of the City of Courtenay with respect to the RFQ, whether before or after the submission of the quotation, the City shall be entitled to reject or not accept the quotation.

#### **12.10 Applicable Laws and Agreements**

- a) The laws of the Province of B.C. shall govern this request for quotation and any subsequent Contract resulting.
- b) This RFQ is subject to the terms and conditions of the Canadian Free Trade Agreement and the New West Partnership Agreement.

#### **12.11 Agreement**

The successful Proponent will be required to enter into a formal agreement with the City prior to the Contract commencement, refer to Schedule B for the City's standard contractor agreement. The City expects that the final agreement between the City and the Contractor will be substantially in the form as outlined in Schedule B.

#### **13.0 ATTACHMENTS**

- a) Schedule A – Form of Submission
- b) Schedule B – Standard Contractor Agreement
- c) Schedule C – Prime Contractor Designation Form

**SCHEDULE A  
FORM OF SUBMISSION**

The Proponent offers to supply to the City of Courtenay the goods and services for the prices not including GST as follows:

1. Unit Pricing for Road Crack Sealing Services:

	<b>Price Per Lineal Metre</b>		
<b>Annual Crack Sealing Quantities</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
<b>Less Than 40,000 LM</b>			
<b>More Than 40,000 LM</b>			

2. Qualifications, Experience & References Included Yes or No
3. Safety Manual Included Yes or No

**The above prices include and cover all taxes (other than GST), duties, handling and transportation charges, and all other charges incidental to and forming part of this quotation.**

Acknowledgement is hereby made of receipt and inclusion of the following addenda to the documents:

Addendum(s) No. \_\_\_\_\_

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

I/We the undersigned duly authorized representatives of the Proponent, having received and carefully reviewed the RFQ, submit this quotation in response to the RFQ. This quotation is offered by the Proponent this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Print Name and Position of Signatory



## **DESCRIPTION OF AGREEMENT**

**THIS AGREEMENT** made the **1st** day of **April, 2021**.

**BETWEEN**

**THE CORPORATION OF THE CITY OF COURTENAY**

830 Cliffe Avenue

Courtenay, B.C.

V9N 2J7

(hereinafter the "City")

OF THE FIRST PART

**AND**

**CONTRACTOR**

(hereinafter the "Contractor")

OF THE SECOND PART

WHEREAS:

The City wishes to hire the Contractor for the Work as described herein, and desires to engage the Contractor to perform said Work.

The Contractor has agreed to perform the said Work in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the terms, covenants and conditions herein contained, the parties hereto, hereby covenant and agree as follows:

## 1. CONTRACTOR'S SERVICES TO THE CITY

- 1.1 The Contractor shall provide and be fully responsible for DESCRIPTION OF THE WORK OR SERVICES, (hereinafter called the "Work"):
- 1.2 The Contractor must provide and is responsible for the Work outlined in proposal dated Month/Day/Year, (attached hereto as *Schedule A*) submitted to the City by the Contractor in response to the City's bid opportunity name and addendums (attached hereto as *Schedule B*), forming an integral part of this Agreement.
- 1.3 The Contractor shall perform the Work:
  - a) With the degree of care, skill and diligence normally applied in the performance of Work of a similar nature;
  - b) In accordance with current professional practices;
  - c) In conformance with the latest industry standards and regulations applicable at the time of the Work to be undertaken.
- 1.4 The Contractor must furnish all personnel required to perform the Work and personnel must be competent and qualified to perform the Work.
- 1.5 Where specific personnel have been proposed by the Contractor for the performance of the Work, and have been accepted by the City, the personnel may not be replaced without the prior written consent of the City.
- 1.6 The Contractor must commence the Work in a timely manner and carry out the Work in accordance with the completion dates set out in the work plan and stated on the Bid Form.

## 2. TERM OF CONTRACT & PERFORMANCE EVALUATION

- 2.1 The term of the contract shall be for one year, April 1, 2021 to March 31, 2022.
- 2.2 All contracts and any applicable extensions, are subject to a performance evaluation to be conducted by the City either at the end of the project or annually, whichever is earliest.

## 3. PAYMENT

- 3.1 In consideration of the Work performed by the Contractor to the satisfaction of the City, the City shall pay to the Contractor the unit prices as prescribed in *Schedule A* attached hereto and forming an integral part of this Agreement. Any addition to *Schedule A* or price increase requested by the Contractor must be approved in writing by the City.
- 3.2 The Contractor shall submit detailed invoices. Each invoice will show the purchase order number XX, City work order number, job description and the amount of the GST applicable. The City shall pay the invoice net 30 days of receipt. Invoices are to be submitted (email preferred) to:

City of Courtenay  
Accounts Payable  
830 Cliffe Avenue,

Courtenay, B.C. V9J 2N7  
finance@courtenay.ca

- 3.3 No prepayment of goods or services shall occur unless agreed to in writing by the City.
- 3.4 The contract price or schedule of rates included in *Schedule A* shall be the entire compensation owing to the Contractor for the Work and this compensation shall cover all profit and all costs of supervision, labour, material, equipment, overhead, financing, warranty work, and all other costs and expenses whatsoever incurred in completing the Work.
- 3.5 The Contractor shall keep proper accounts and records of all costs and expenditures forming the basis of the billing to the City, including but not limited to hours worked, details of disbursements and percentage amounts of work completed. The City shall be entitled to verify the accuracy and validity of all billings and payments as shall be reasonably necessary or advisable.
- 3.6 The Contractor must submit all invoices within 60 days of the performance of the applicable Work. In no event will the City be liable for payment of any invoice submitted more than 90 days after the performance of the Work.

#### **4. CHANGES TO SCOPE OF WORK**

- 4.1 The City may at any time vary the scope of work to be provided by the Contractor as part of the Work. In that case and where this Agreement contains a limit or limits in Section 3 as to the maximum fees and disbursements to be paid to the Contractor for all or any part of the Work, such limit or limits shall be adjusted as agreed to by both parties in writing and failing agreement, as reasonably determined by the City. Should the Contractor consider that any request or instruction from the City constitutes a change in the scope of the Work, the Contractor shall so advise the City within five (5) days in writing. Without said written advice within the time period specified, the City shall not be obligated to make any payments of additional fees to the Contractor.

#### **5. UNDERTAKING OF RELEASE AND INDEMNIFICATION**

- 5.1 The Contractor hereby indemnifies and releases the City, its officers, employees and agents from all costs, losses, damages and disbursements including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Contractor, its officers, servants and agents, and sub-contractors in connection with their performance of the Work under this Agreement except where such loss arises solely out of negligence on the part of the City, its officers, servants and agents.
- 5.2 This release and covenant of indemnification above set forth shall survive termination of the term of this Agreement.

#### **6. INSURANCE**

- 6.1 The Contractor agrees to obtain at its own expense and submit to the City prior to commencing the Work under this Agreement:
- a) Comprehensive General Liability Insurance (CGL) policy with coverage of not less than



\$2,000,000 per claim and aggregate per year (hereinafter the CGL policy). The CGL policy shall include liability for Bodily Injury, Property Damage, and Non-Owned Vehicles, including Broad Form products and completed operations, shall name the City as an additional insured and contain a Cross Liability clause. The CGL policy shall remain in full force and effect at all times during the term of this Agreement;

- b) Motor Vehicle Insurance, including bodily injury and property damage in an amount not less than \$2,000,000 per occurrence covering all owned, non-owned, leased, rented or temporary vehicles;
  - c) The Contractor is responsible for any deductible amounts under the policies. The cost of all insurance required by this Agreement shall be included in the Contractor's fees.
  - d) The insurance policies shall be on terms satisfactory to the City. Insurance policies must be signed by an authorized representative of the insurance brokerage firm. Proof of the insurance policies, to the satisfaction of the City, and shall be delivered to the City prior to commencement of the Work. Such proof shall confirm that coverage is in effect, identify the City as an additional insured under the CGL policy, describe the type and amount of insurance, list major exclusions and agree to provide the City 30 days' prior written notice of cancellation of any insurance policy.
- 6.2 Should the Contractor hire a sub-contractor (pre-approved by the City) to perform any work related to the Work, the Contractor shall in turn, ensure the sub-contractor has obtained insurance on the same terms as outlined in 6.1 above. Such insurance shall include the City as an additional insured and shall include coverage for all operations required for the sub-contractor's work under this Agreement.
- 6.3 The foregoing insurance requirements shall not in any way reduce the Contractor's obligations to release and indemnify the City as outlined in Section 5 "Undertaking Release and Indemnification".

## **7. LICENSES AND PERMITS**

- 7.1 a) A City of Courtenay Business License or Mid-Island Inter-municipal Business License valid for the term of the work to carry out and complete the Works; and
- b) All other permits and licenses necessary to carry out and complete the Works.

## **8. HEALTH & SAFETY**

- 8.1 During the term of this Agreement the Contractor shall ensure that all work performed is in compliance with all applicable health & safety regulations and guidelines, including without limitation the Workers Compensation Act and Regulation of B.C.
- 8.2 The Contractor shall provide a copy of the Contractor's Health & Safety Program and/or Safe Work procedure to the City prior to the commencement of the Work.
- 8.3 The Contractor shall be responsible for WorkSafe BC assessments relating to its work under this Agreement and the work of its sub-contractors. It shall remain in good standing with WorkSafe BC for the term of the Agreement.
- 8.4 If the Contractor fails to comply with any clause 8.1, 8.2 and 8.3 of this Agreement, the City may terminate this Agreement for cause.

8.5 The Contractor may be designated the Prime Contractor by the City for the immediate and/or designated Work area. The Contractor shall complete, authorize and forward a Prime Contractor Designation form to the City prior to the commencement of the Work.

8.6 If designated Prime Contractor, the Contractor shall coordinate a work site risk assessment with the City's project representative prior to commencement of any Work.

## **9. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

9.1 The City is subject to the Province of British Columbia's "Freedom of Information and Protection of Privacy Act". All documents will be received and held, to the extent reasonable, in confidence by the City and the information will not be disclosed except to the degree necessary for carrying out the City's purposes or as required by law.

## **10. CITY APPROVALS**

10.1 No reviews, approvals or inspections carried out or information supplied by the City derogate from the duties and obligations of the Contractor, with respect to the Work and all responsibility for the Work is the Contractor's.

## **11. DEFAULT AND TERMINATION**

11.1 The City reserves the right, at its sole discretion, to terminate the Agreement for any reason, including in the event the Contractor is in default due to an insolvency event or the Contractor fails to perform any of the Contractor's obligations under this Agreement or any representation or warranty made by the Contractor in this Agreement is untrue or incorrect, upon providing ten (10) days written notice to the Contractor.

11.2 At the time of a default event, or at any time thereafter, the City may at its option elect to do any one or more of the following:

- a) By written notice to the Contractor, require that the event of default be remedied within a time period specified in the notice;
- b) Pursue any remedy or take any other action available to it at law or in equity; or
- c) By written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under Section 11.2.a.

11.3 No failure or delay on the part of the City to exercise its rights in relation to an event of default will constitute a waiver by the City of such rights.

11.4 If the City terminates this Agreement the City must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule A which corresponds with the portion of the Services that was completed to the City's satisfaction before termination of the Agreement. The Contractor must, within 30 days of such termination, repay to the City any paid portion of the fees and expenses described in Schedule A which corresponds with the portion of the Services that the City has notified the Contractor in writing was not completed to the City's satisfaction before termination of this Agreement.

11.5 The payment by the City of the amount described in Section 11.4 discharges the City from all liability to make payments to the Contractor under this Agreement.

## **12. NON-DISCLOSURE**

12.1 The Contractor acknowledges that in performing the Work required under this Agreement, it will acquire information about certain matters which is confidential to the City, and the information is the exclusive property of the City.

12.2 The Contractor undertakes to treat as confidential all information received by reason of its position as Contractor and agrees not to disclose it to any third party either during performance of the Work or after the Work have been rendered under this Agreement.

## **13. CONFLICT OF INTEREST**

13.1 The Contractor agrees it will not provide any Work or Services to any person in circumstances that, in the City's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the City under this Agreement.

13.2 The Contractor declares and confirms that it has no pecuniary or other interest in the business of any third party that would cause a conflict of interest or be seen to cause a conflict of interest in performing the Work.

13.3 If any such conflict of interest occurs during the term of this Agreement, then the Contractor shall immediately declare it in writing to the City and, at the direction of the City, the Contractor shall promptly and diligently take steps to the satisfaction of the City to resolve the conflict.

## **14. WARRANTIES**

14.1 The Contractor shall supply a minimum warranty for the Work which shall survive the date of completion of the Work as agreed to by the Contractor and the City.

14.2 The minimum warranty for labour shall be one (1) year and the materials warranty shall be as per the manufacturer's or Contractor's warranty, whichever is greater.

## **15. COMPLIANCE WITH LAWS AND RESOLUTION OF DISPUTES**

15.1 This Agreement shall be governed, interpreted and construed according to the laws of British Columbia.

15.2 This Agreement and all disputes arising out of or in connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it shall be governed by the laws of the Province of British Columbia.

## **16. ENVIRONMENTAL IMPACT REDUCTION REQUIREMENTS**

16.1 The City requires the management of its assets in an environmentally sound manner and

integrates environmental factors into planning and decision making. The intent is to conserve natural resources and to minimize negative impacts on the environment, while retaining optimal product or service performance. The City encourages the Contractor and sub-contractors to minimize impacts on the environment including recycling, re-use of materials where applicable and reduction of landfill waste.

## 16.2 Non-idling of Vehicles

In the interest of reducing negative impacts on human health, all Contractors working directly or indirectly for the City or on City owned property must ensure that when vehicles or equipment are not required to be running for operational purposes every effort is made to reduce engine idling.

Idling time shall be permitted to provide safe and efficient engine warm up time, 3 to 5 minutes for heavy duty vehicles and equipment, and up to 1 minute for light duty vehicles and equipment. During field operation, the same criteria shall apply.

These time periods have been calculated by Natural Resources Canada to account for all incremental weather wear on batteries and starters as well as the incremental usage associated with re-starting the engine. The anti-idling criteria do not apply to any situation where the safety of the operator, passengers or other person shall be compromised by turning off the engine.

## 17. FORCE MAJEURE

### 17.1 Definitions relating to force majeure;

a) "Event of Force Majeure" means one of the following events:

- i) a natural disaster, fire, flood, storm, epidemic or power failure;
- ii) a war (declared and undeclared), insurrection or act of terrorism or piracy;
- iii) a strike (including illegal) work stoppage or slowdown) or lockout, or
- iv) a freight embargo.

If the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and

b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

### 17.2 Consequences of Force Majeure

An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of Section 17.3.

### 17.3 Duties of Affected Party

An Affected Party must promptly notify the other party in writing upon the occurrence of

the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

IN WITNESS WHEREOF, the parties shall execute this Agreement with effect as of the date first forth above.

**THE CORPORATION OF THE CITY OF COURTENAY**

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

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

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

Date: \_\_\_\_\_

**CONTRACTOR**

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

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

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

Date: \_\_\_\_\_

## SCHEDULE C

### “PRIME CONTRACTOR DESIGNATION”

**PROJECT TITLE:** Q21-15 Road Crack Sealing Services  
**WORK DESCRIPTION:** Road Crack Sealing  
**LOCATION:** Throughout Courtenay, B.C.  
**OWNER:** City of Courtenay

This declaration is a WorkSafe BC requirement for work on City-owned properties, projects, and developments.

As per the requirements of the *Workers' Compensation Act* Part 3, Division 3, Section 118 (1-3) which states:

Coordination of multiple-employer workplaces

118 (1) In this section:

“**multiple-employer Workplace**” means a Workplace where workers of 2 or more employers are working at the same time;

“**prime contractor**” means, in relation to a multiple-employer workplace,

(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that Workplace to be the prime contractor for the purposes of this Part, or; (b) if there is no agreement referred to in paragraph (a), the owner of the Workplace.

(2) The prime contractor of a multiple-employer Workplace must:

(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and;

(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulation in respect to the workplace.

(3) Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that Workplace.

By signing this Agreement, the Contractor accepts all responsibilities of a prime contractor as outlined in the *Workers Compensation Act* and *WorksafeBC OH&S Regulation*.

As a Contractor signing this Prime Contractor Designation form with the City of Courtenay (the “Owner”), you are agreeing that your company, management staff, supervisory staff and workers will comply with the *Workers Compensation Board Occupational Health and Safety Regulation* and the *Workers' Compensation Act*.

Any *WorksafeBC OH&S* violation by the prime contractor may be considered a breach of contract resulting in possible termination or suspension of the agreement and/or any other actions deemed appropriate at the discretion of the City.

Any penalties, sanctions or additional costs levied against the City, as a result of the actions of the prime contractor are the responsibility of the prime contractor.

The Contractor acknowledges having read and understood the information above.

By signing this Prime Contractor designation form, the Contractor agrees as a representative of the firm noted below, to accept all responsibilities of the prime contractor for this project.

I fully understand and accept the responsibilities of the Prime Contractor designation in accordance with the *Workers' Compensation Act* for all work on City-owned property; as described above, and will abide by all *WorkSafe BC Regulation* requirements.

WorkSafe BC *Notice of Project*No. (if applicable): \_\_\_\_\_

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

(Authorized Signatory)

Date: \_\_\_\_\_