

CORPORATE SUPPLY ARRANGEMENT #CS000XXX



THIS CORPORATE SUPPLY ARRANGEMENT is made the 19th day of

October, 2011

(the "Offeror")

HEREBY OFFERS TO SUPPLY, AS, IF AND WHEN REQUESTED, THE GOODS DESCRIBED IN SCHEDULE "A", TO HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AND THE PUBLIC SECTOR ENTITIES, ON THE TERMS AND CONDITIONS DESCRIBED BELOW.

THE OFFER IS AS FOLLOWS:

DEFINITIONS

1.1 In this Corporate Supply Arrangement:

- a) "**Administrative Fee**" means the administration fee described in Schedule "D", Section 6;
- b) "**Administration Requirements**" means those requirements set out in Schedule "D";
- c) "**Contract**" means the contract that is formed on receipt by the Offeror of a Draw Down for the Goods described in the Draw Down, and if applicable, any addendum entered into between Public Sector Entities and the Offeror pursuant to section 3.2 (c);
- d) "**Contractor**" means the Offeror who is in receipt of a Draw Down requesting the Goods under this CSA;
- e) "**Corporate Supply Arrangement**" or "**CSA**" means this CSA;
- f) "**Draw Down**" means a written draw down form issued by a Purchaser to an Offeror against this CSA for the provision of a specified quantity of Goods at the prices set out in this CSA;
- g) "**Goods**" means those goods described in Schedule "A";
- h) "**Offeror**" means Spectrum Pacific Products Inc.;
- i) "**Offeror's Representative**" means the representative and designated back-up assigned by the Offeror to administer the CSA;
- j) "**Prices**" means the prices for the Goods set out in Schedule "B";
- k) "**Province**" means Her Majesty the Queen in Right of the Province of British Columbia and includes Purchasing Services and any ministries of the Province;
- l) "**Province Representative**" means Len Trapler, Purchasing Agent, or such other individual designated from time to time by the Province to administer this CSA on behalf of the Province;
- m) "**Public Sector Entity**" or "**Entities**" means an eligible broader public sector organization listed at the Purchasing Services' website that is eligible to issue a Draw Down against a CSA;

- n) “**Purchaser**” means the Province or a Public Sector Entity that has issued a Draw Down; and
- o) “**Purchasing Services**” means the Purchasing Services Branch, Ministry of Citizens’ Services.

1.2 All references to dollars, currency, and money must mean Canadian dollars (\$CAD).

EXPIRY

2.1 This CSA will expire on March 31, 2015 unless withdrawn in accordance with section 3.1 (G) or Section 8, or renewed by the Province for up to 2 additional one-year periods.

CORPORATE SUPPLY ARRANGEMENT - GENERAL

3.1 The Offeror makes the offer set out in this CSA on the following understandings:

- a) the establishment of this CSA does not oblige the Province or any Public Sector Entity to authorize or order all or any of the Goods from the Offeror;
- b) a Contract is formed only on receipt of a Draw Down by the Offeror;
- c) a Draw Down will form a Contract only for those Goods in respect of which a Draw Down has been issued by a Purchaser, provided always that such Draw Down is made in accordance with the provisions of this CSA;
- d) the Contract will be on the terms and conditions set out in Schedules A, B, C, D, E and if applicable, any addendum entered into between Public Sector Entities and the Offeror pursuant to section 3.2;
- e) the Province and any Public Sector Entity each reserves the right to procure the specified Goods by any other means, including the use of other agreements, or by other procurement or contracting methods;
- f) the liability of a Purchaser will be limited to that which arises from a Contract made prior to the expiry date described in Section 2.1;
- g) the Province reserves the right to set aside this CSA, for whatever reason, and not make it available for any Draw Downs. The Province will promptly notify the Offeror of such action;
- h) any changes to this CSA are to be documented by way of a written addendum between the Offeror and the Province;
- i) the Offeror’s Representative, and a designated back-up individual, will be available during the Province’s normal business hours, and will have the authority to represent the Offeror with respect to all issues arising under this CSA;

- j) the Offeror will reimburse the Administration Fee in accordance with Schedule “D”;
- k) if the Offeror offers a lower price to others in the British Columbia public sector for substantially the same goods and terms and conditions of a Contract during the term of this CSA, that lower price will also apply to this CSA. For the purposes of this section, a lower price is a price that is lower than the unit price in Schedule “B”, exclusive of the Administration Fee;
- l) the Offeror will provide the Province’s Representative with 60 days written notice of any changes to the list of Goods included in Schedule “A”, and the Province will determine, in its sole discretion, whether to accept such changes; and
- m) individual Draw Downs must not exceed \$75,000.

CORPORATE SUPPLY ARRANGEMENT - PUBLIC SECTOR ENTITIES

3.2 With respect to Draw Downs by Public Sector Entities, the Offeror acknowledges that:

- (a) Public Sector Entities are solely responsible for all payments and other obligations to the Offeror incurred through making a Draw Down against the CSA;
- (b) nothing in this CSA or any resulting Contract will impose any liability whatsoever on the Province in respect of any obligation of a Public Sector Entity to the Offeror, and the Province disclaims any and all liability in respect of any Draw Down made by a Public Sector Entity against this CSA;
- (c) neither a Public Sector Entity utilizing the CSA nor the Offeror will be required to agree to any terms and conditions other than those set out in this CSA. However, Public Sector Entities will have the option of renegotiating the terms and conditions set out in Schedule E, to the extent necessary to address the Public Sector Entity’s specific payment, insurance, indemnification, limitation of liability requirements, privacy, confidentiality and security requirements. All changes to the terms and conditions of Schedule E are to be set out in an addendum entered into with the Offeror; and
- (d) the Offeror reserves the right to refuse to enter into an addendum as contemplated in subsection (c) that would vary the terms and conditions of the Contract from that set out in this CSA.

DRAW DOWN MECHANISM

- 4. The Goods may be ordered by various methods, including: in person, telephone, facsimile, or email, so long as a written Draw Down is presented that includes at a minimum:
 - (a) the reference number for this CSA;
 - (b) the name of the Purchaser;
 - (c) the description and specified quantity of the Goods that are being ordered; and
 - (d) the maximum amount payable for the Draw Down.
- 5. Draw Downs against a CSA paid for with the Province’s corporate purchasing card must be accorded the same Prices and be subject to the same terms and conditions as any other Draw Down.
- 6. If the Purchaser issues a Draw Down to the Offeror prior to the expiry of this CSA and receives the Goods, then the Purchaser will pay to the Offeror the amounts payable as described in Schedule “B”.
- 7. If there is any conflict or inconsistency among any of the provisions of the following documents:

- a) this CSA; and
- b) a Draw Down,

then the order of precedence will be (a) and then (b), unless the Offeror and a Public Sector Entity have entered into an addendum revising the terms of the in accordance with section 3.2(c) of this CSA, in which case, any terms in such addendum stated to apply notwithstanding the terms of Schedule E will take precedence.

NOTIFICATION OF WITHDRAWAL

- 8. In the event that the Offeror wishes to withdraw this CSA, the Offeror will provide no less than thirty (30) days’ prior written notice to the Province Representative, and such withdrawal of this CSA will not be effective until receipt of such notification by the Province Representative and the expiry of such notice period.
- 9. The Offeror will fulfil any Draw Downs made before the expiry of such notice period.

SIGNED by the Offeror

(Authorized Signatory)

Title

Print Name

SCHEDULE "A"
DESCRIPTION OF GOODS & PRICING

The Prices will be firm for the first year of the CSA. If initiated by the Offeror, prices may be re-negotiated for the second year of the CSA. Negotiated prices will remain firm for the second year of the CSA. If initiated by the Offeror, prices may be re-negotiated for the third year of the CSA. Negotiated prices will remain firm for the third year of the CSA.

Purchasing Services Branch reserves the right to negotiate additions and/or deletions during the term of the CSA.

All items are to be delivered FOB – Destination(s), ship prepay freight & charge back to invoice. Note: copy of waybill(s) must accompany invoice.

End users will be required to confirm with the successful supplier(s) as to what the freight charges will be and determine what shipping methods will be used, at time of order.

NOTE: Some end users may request a specific delivery date in order to coordinate with planting contractors. End users will identify any specific delivery requirements, at time of order. The successful supplier(s) should ensure that all efforts are made to accommodate such requests.

In addition to the fees and expenses described in this Schedule, the Contractor will collect from the Purchaser and remit to the Province the Administration Fee, as described in Schedule D.

FERTILIZER (Teabag Type):

Formulation to include but not limited to the following:

- 10 gram biodegradable planting packet containing a blend of 20% Total Nitrogen (N), 11% available Phosphoric Acid (P₂O₅), 9% Soluble Potash (K₂O). Also containing (micro-nutrients) combined Sulphur (S), Magnesium (Mg), Copper (Cu) and Boron (B).
- Waterproof 100 count packaging;
- Formulation composition and product grams to be discretionary.

NOTE:

Some end users may request a specific delivery time in order to coordinate with planting contractors. Successful supplier(s) should ensure that all efforts are made to accommodate such requests.

Any goods ordered that are considered as controlled products must be labelled according to the Workplace Hazardous Materials Information System (WHMIS) and must be accompanied by a Material Safety Data Sheet (MSDS). Orders that do not conform to these conditions will be subject to refusal.

Note: All fertilizer and supplement products imported or sold within Canada must be in accordance with the Canadian Food Inspection Agency (CFIA), Fertilizer Act. The Act

and Regulations require that all fertilizer and supplement products be safe (according to label directions); efficacious (efficacy for intended use and application); and properly labelled. Contact the Canadian Food Inspection Agency, Fertilizer Section, Ottawa, Ontario, phone 1-613-221-7519

SCHEDULE "B"
ORDERING AND CONTACT INFORMATION

See Page 1

SCHEDULE "D"
ADMINISTRATIVE REQUIREMENTS

Suppliers holding CSAs will comply with the following administrative requirements and procedures:

PURCHASING SERVICES CSA CONTACTS

1. For further information or clarification:

Name, Len Trapler, Purchasing Agent
Email: Len.Trapler@gov.bc.ca
Phone: 250 475 1752

REPORTING PROCEDURES

Monthly Draw Down Reports

2. Offeror is required to submit Draw Down reports to Purchasing Services on a monthly basis.
3. Monthly Draw Down information must be sent either by mail, courier, fax or email by the Offeror to:

Purchasing Services Branch
Shared Services BC
Attn: Len Trapler, Purchasing Agent
PO Box 9476 Stn Prov Govt
3rd Floor, 563 Superior Street V8W 9W6
Fax: 250-387-7309
Email: Len.Trapler@gov.bc.ca

4. The report must contain at a minimum:
CSA #;
Purchaser
Draw Down Form number;
Good(s) ordered
Quantity ordered
Total price for individual Draw Downs

The information should be provided in columns in the following order:

CSA #	Purchaser	Draw Down #	Goods	Quantity	Price
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5. The Offeror shall provide a monthly report regardless of whether or not any Draw Downs are received in that month, and in each monthly report will provide an explanation for any missing data.

Quarterly Fee Remission

6. **Administration Fee.** Each quarter, the Contractor must submit to Purchasing Services Branch a cheque for one percent of all sales (exclusive of taxes and transportation charges) that were reported to Purchasing Services on the monthly Draw Down report, including sales to any Public Sector Entity. The cheque must be payable to the Minister of Finance, and sent to Purchasing Agent at the above noted address. The cheque must clearly identify each CSA and the months represented in the payment. The cheque must be submitted no more than 1 month after the end of the quarter:

The fee for:	Is due:
January, February, March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

7. Draw Down reports may be checked against provincial financial records to verify accuracy. Purchasing Services shall promptly notify Offeror of any discrepancy, who will be given one month to respond to or rectify the report.
8. More than two occurrences of inaccuracies may result in the CSA being suspended, until such time as the supplier can demonstrate to Purchasing Services that they are capable of managing the terms of their CSA agreement.
9. Failure to submit a reimbursement cheque for the Administration Fee within two months of the end of a quarter in which sales were reported may result in the CSA being suspended until such time as reimbursement is received.

SCHEDULE "E"
TERMS AND CONDITIONS FOR DRAW DOWNS ON A CSA FOR GOODS

- 1) In this Schedule E,
 - (a) "CSA" means **CSA#000XXX**;
 - (b) "Draw Down" means a written draw down form issued by a Purchaser to the Offeror against the CSA for the provision of a specified quantity of Goods at the Prices set out in the CSA;
 - (c) "Entity" means a broader public sector organization listed at the Purchasing Services website that is eligible to issue a Draw Down against the CSA;
 - (d) "Goods" means the goods described in Schedule "A" to the CSA;
 - (e) "Prices" means the prices as set out in Schedule "A" of the CSA;
 - (f) "Purchasing Services" means the Purchasing Services Branch of the Ministry of Citizens' Services;
 - (g) "Purchaser" means the Province or an Entity that has issued a Draw Down; and
 - (h) "Supplier" means the Offeror under the CSA who is in receipt of a Draw Down requesting the Goods under the CSA.
- 2) In the event that a Draw Down is issued for Goods, the terms and conditions contained in this Schedule E will constitute the full and complete agreement between the parties (the "Agreement").
- 3) The Supplier must promptly notify the Purchaser if the order cannot be filled.
- 4) The Purchaser reserves the right to cancel this Agreement, if promised or specified delivery is not met or if Goods fail to meet specification requirements. Over shipments against this order may be returned with all freight charges to the Supplier's account. Order numbers must be shown on all invoices, packing slips and packages. Shipments must be accompanied by a properly completed delivery slip.
- 5) The Purchaser has the right of inspection and approval of all Goods. Inspection by the Purchaser of advance samples will not constitute final acceptance and the Supplier will remain bound by any warranties set out in the specification requirements. No substitutions are permitted unless previously agreed to by the Purchaser and confirmed in writing.
- 6) The Supplier must indemnify the Purchaser against any claim of any person, firm, or corporation alleging that the sale by the Supplier to the Purchaser hereunder constitutes an infringement of patent rights, copyright or any other intellectual property rights.
- 7) The Supplier is an independent contractor and must indemnify, protect, and save harmless the Purchaser, its agents, employees, successors and assigns from any and all damage, liabilities and claims of whatsoever nature arising out of the furnishing by the Supplier, its agents or employees, of the materials and/or performing of the services covered by this order or incidental or ancillary thereto.

- 8) The Supplier must not change the Prices, terms or conditions of this Agreement without the prior written permission of Purchasing Services, unless section 3.2(c) of the CSA applies.
- 9) The Agreement is governed by the laws of the Province of British Columbia.
- 10) Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Supplier, for Draw Downs made by the Province under this Agreement is subject to:
 - a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c.138, as amended from time to time (the "Act"), to enable the Purchaser, in any fiscal year or part thereof when any payment of money by the Purchaser to the Supplier falls due under this Agreement, to make that payment; and
 - b) Treasury Board, as defined in the Act, not having controlled or limited expenditure under any appropriation referred to in subparagraph (a) of this paragraph.
- 11) Time will be of the essence in this Agreement.
- 12) The Supplier must comply with all applicable laws in providing the Goods specified.
- 13) Payment terms are subject to the Province of British Columbia's interest on overdue accounts payable regulations.
- 14) In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
 - (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
 - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
 - (c) if the dispute is not resolved through mediation within 30 business days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Commercial Arbitration Act*.

Unless the parties otherwise agree in writing, an arbitration or mediation will be held in Victoria, British Columbia.

Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a mediation or arbitration other than those costs relating to the production of expert evidence or representation by counsel.