



REQUEST FOR PROPOSALS

Bird Control Services

ISSUED: August 31, 2018

CLOSING DATE AND TIME:

**Proposals are requested to be received at the Closing Location prior to:
2:00 PM (14:00 hrs) Pacific Time on September 13, 2018**

Regional District of Nanaimo (RDN) Contact for Questions:

Jane Hamilton

Superintendent Landfill Operations

Regional District of Nanaimo

(250)722-2044 (tel.)

jhamilton@rdn.bc.ca

Deadline for questions is three (3) business days before the closing date.



Instructions to Proponents

Closing Date/Time/Location

Proponents are requested to submit their Proposal prior to the closing time of 2:00 PM (14:00 hrs), Pacific Time, September 13, 2018. Select one (1) of the Submission Methods below:

1. By Email: A PDF document with **"Bird Control Services"** as the subject line at this 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 along with one (1) electronic copy of the Proposal on a USB stick should be enclosed and sealed in an envelope clearly marked: **"Bird Control Services"** delivered to the:

Regional District of Nanaimo Landfill
1105 Cedar Road
Nanaimo, B.C., V9X 1K9
Attention: Jane Hamilton

Should there be any differences between the hard copy and the electronic copy, the hard copy will prevail.

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

Proposals will not be opened in public.

Amendment to Proposals

Proposals may be amended in writing and sent via email at swf@rdn.bc.ca Amendments should be a PDF document with **"Bird Control Services"** as the subject line signed by the authorized signatory of the Proponent.

Addenda

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.

Withdrawal of Proposals

A Proponent may withdraw their Proposal at any time prior to the closing date and time in writing by email to swf@rdn.bc.ca with **"Bird Control Services"** in the subject line or facsimile at 250- 722- 9437.



1. INTRODUCTION

The purpose of this Request for Proposal is to solicit submissions from experienced and qualified firms for **Bird Control Services** to assist minimizing the damage and risk from nuisance birds and providing vector control at the Regional Landfill located at 1105 Cedar Road in Nanaimo, British Columbia.

2. BACKGROUND

The Regional Landfill attracts large numbers of nuisance birds, primarily a variety of seagulls, due to the presence of residual food waste and/or disposed carrion. The number of birds fluctuates seasonally depending on the availability of natural food sources. The birds create potential risks to human and ecological health since they obstruct the view of heavy equipment operators, ingest waste materials that are poor for ecosystem health, spread litter to adjoining properties and are a potential hazard to aircraft using the nearby Nanaimo Airport. Operational procedures such as minimizing the size of the open working face, diverting food waste from the landfill, covering waste on a daily basis and a progressive closure helps reduce the numbers of birds populating the site; however, these measures are inadequate to significantly reduce the number of birds returning to the site to eliminate these risks.

The use of trained raptors (hawks and falcons) has been used successfully since 1991 at the Regional Landfill to discourage large numbers of nuisance birds. To achieve the goal of making the landfill less attractive for birds and to habituate the gulls back to relying on the nearby Nanaimo River Estuary as a food source, bird control needs to be integrated in the landfill operation and must also include a variety of deterrents.

The RDN has invested in the use of an Unmanned Aerial Vehicle (UAV) or “drone” in the spring of 2018 and through the use of an experienced UAV pilot has observed preliminary success in moving the birds off-site. The RDN wishes to continue the trial use of the UAV in controlling birds; however, appreciates the need to have a variety of deterrents and that the UAV may not be practical to use over the winter due to weather conditions and/or the persistent behaviour and number of gulls over the winter months. The RDN seeks an experienced Bird Control Contractor to work in partnership with the site staff in further developing the UAV program and to provide additional support in managing bird populations through the seasonal timeframes with high bird populations and aggressive behaviour.

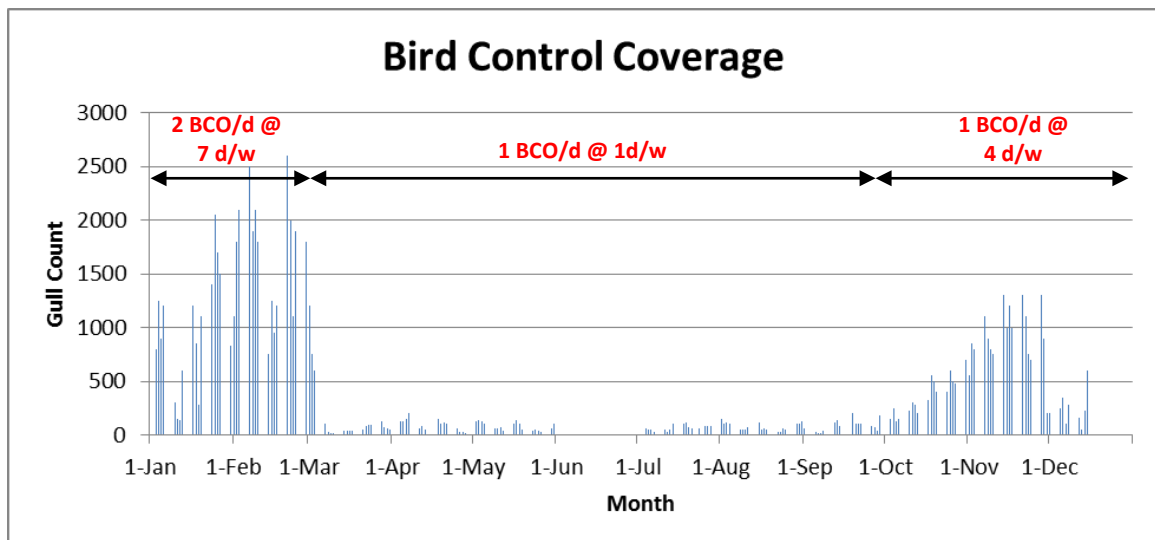
The RDN has constructed a three-building aviary and storage shed for use by the Bird Control Contractor to overnight and care for birds, please refer to the attached photographs. While it is not a contractual requirement to use the on-site facilities, an opportunity to adjust the cost is included in the Cost Proposal Form, should the Proponent intend to use them. Please note it is the Contractor’s responsibility to clean the aviaries as required. The RDN provides a fuelled site-vehicle for bird control personnel on site transportation, currently a 2001 Chevrolet Venture Van, which is restricted to site use only. Additionally, the RDN permits the use of site washrooms and lunch room. Please note site personal protective equipment requirements include the use of hat-hats, steel-toed/shank boots and hi-visibility vest when outside buildings and parking areas.

3. SCOPE OF WORK

It is anticipated the bird control contract will be awarded for a one-year period, starting **October 5, 2018**.

The scope of work is as follows:

- a. Provide suitable bird(s) of prey to harass and deter seagulls and other birds from using the site as a food source and settling ground with a primary mandate of keeping the active-face clear of birds. A secondary objective will be to prevent loafing on surfaces away from the active-face through the use of second Bird Control Officer (BCO) and hawk, at times in coordination with the UAV pilot during permitted conditions. All work is to be completed in accordance with applicable federal and provincial guidelines;
- b. Use a variety of deterrents to prevent the birds from becoming accustomed to any one method of harassment such as whips, pyrotechnics, flags and balloons. Please note that the Regional Landfill is situated with neighbours in close proximity; therefore, the use of auditory deterrents will be limited and is not to be a primary means of deterrence;
- c. Interact with landfill operations to settle bird control activities on a regular basis and adjust the level of coverage as required;
- d. Support RDN with Damage Permit application with Environment and Climate Change Canada;
- e. Provide monthly reports about bird control activities and results;
- f. Provide an annual report about bird control activities and results ;
- g. Provide annual Damage Report;
- h. Maintain all required licensing permits and certificates in order to operate a business using birds;
- i. Provide a detailed Health and Safety Plan for BCOs on site, including contact names and telephone numbers in the event of injuries; and
- j. Provide bird control services as outlined in the schedule below; however an adjustment to site hours and days per week may be increased or decreased over the life of the contract.



Bird Control Coverage 2018/19 Summary					
Timeframe	Requirements	Coverage Requested	Hours/Week	Number of weeks	Hourly Total
Oct - Dec	1 BCO 4 days/week	8 hours/day	32	13	416
Jan - Feb	2 BCOs 7 days/week	8 hours/BCO 7am-5pm	112	9	1008
Mar - Oct	1 BCO 1 day/week	8 hours/day	8	30	240

4. PROPOSAL FORMAT & EVALUATION

4.1. PROPOSAL SUBMISSION INSTRUCTIONS

Contractor are to complete and return the attached template cover page (Appendix A) and Cost Proposal Form (Appendix B) with their submission. Additional information should be included on separate pages.

4.2. PROPOSAL PREPARATION GUIDELINES & FORMAT

These instructions are the guidelines governing the formation and content of the proposal.

Proposals should be stapled or bound, sealed, typed and prepared on both sides of standard 8 1/2" by 11" recycled content paper. Oversized documents should be folded to size and secured in the proposal. All pages of the proposal should be numbered and sections clearly identified.

The proposal should follow the format outlined below and should include a price for each of the options listed below in sequential format.

4.2.1. Project Organization & Qualifications of Proponent

a. Introduction

- Understanding of Project

b. Regulatory Framework

- Please demonstrate an understanding of the applicable Federal and Provincial guidelines

c. Corporate Bird Control Experience

- Proponent's experience in deterring birds in a landfill or similar environment
- Licencing, Permits and Certificates
- References – Please include three (3) complete with contact names, telephone and email.

d. Proposed Team

- Experience of key personnel on site and replacement strategy



- Applicable Certifications

e. *Proposed Methodology*

- Number and Species of birds of prey available, substitute and replacement procedures;
- Proposed concept and methodologies for efficient bird control including back up plans, proposed schedules, etc.
- Interaction with landfill operations
- Stated commitment to work in collaboration in the testing or use of a variety of deterrents by the Contractor or in cooperation with RDN landfill staff

4.2.2. Financial Proposal

- Hourly rates for bird control services including all labour, material, and equipment necessary to provide the bird control service and to support the birds and maintain equipment. A site vehicle, overnighting aviaries and radios will be provided by the RDN;
- Hourly rate for second person on site;
- Total cost based on proposed schedule;
- Hourly rates for additional coverage, if needed; and
- The cost to include additional means of bird control not listed or included in this RFP. Inclusive with this option must be a detailed description of what the additional forms of bird control will be.

4.2.3. Permits, Licences & Certificates

Permits, Licenses, Certificates – The Contractor will be required to provide all required licensing permits and certificates to operate a business using birds of prey and to handle birds of prey.

4.3. 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.

An evaluation team will evaluate all Proposals received according to the criteria identified below. Those Proposals passing the mandatory requirements will be further evaluated against the point-rated criteria. During the evaluation process, Proponents may be required to provide clarifications to statements made in their Proposals.

Mandatory Criteria
Proposal Form Appendix A – Cover Letter completed and signed by a person authorized to bind the Proponent to statements made in the submission and Cost Proposal Form Appendix B.
Proposal must be received at the closing location by the specified Closing date and time.

Desirable Criteria	Points Assigned

Project Team Experience	
<ul style="list-style-type: none"> • Experience of the Bird Control Officers within specialization in landfill bird control strategies • Ability of the Proponent to substitute or replace an unsatisfactory Bird Control Officers and/or bird of prey 	15
Past Performance, Experience & References	
<ul style="list-style-type: none"> • Years of experience of the Contractor with planning, administering and supporting landfill operations and associated reporting and permitting • Years of experience and demonstrated success in managing nuisance birds • Satisfactory references from other clients using the Proponent’s services 	25
Approach & Methodology	
<ul style="list-style-type: none"> • Understanding and application of applicable Federal and Provincial guidelines with respect to wildlife management • Organization of Bird Control Services including back-up plans for staff • Communication strategy for interaction with landfill operations • Collaboration in the testing or use of a variety of deterrents by the contractor or in cooperation with RDN Operations staff • Innovative deterrent strategies 	25
Fee Structure	
<ul style="list-style-type: none"> • Price to supply the proposed service through the completion of Cost Proposal Forms in Appendix B 	35
Total Points	100

Proposals submitted should be in enough detail to allow the RDN to determine the Proponent’s qualifications and capabilities from the documents received. Every effort should be made to include complete details of the proposed work. The selection committee, formed at the RDN’s sole discretion, will score the Proposals in accordance with the criteria provided.

The selection committee may proceed with an award recommendation or 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.

Throughout the evaluation process, the evaluation committee may seek additional clarification on any aspect of the Proposal to verify or clarify the information provided.



5. GENERAL TERMS OF RFP PROCESS

All expenses for making proposals to the RDN will be borne by the Proponent, with the express understanding that no claims against the RDN for reimbursement will be accepted. All proposals will become property of the RDN and will not be returned to the Proponent. The RDN shall not be responsible for any costs involved in or associated with the preparation and submission of this proposal, the Proponent's site visit costs, or contract negotiations.

- a. The RDN reserves the right to issue addenda to this RFP;
- b. Decline to award a contract or contracts for services;
- c. Contact references provided by the Proponent;
- d. Request further information from the Proponent;
- e. Retain independent consultants for assistance in evaluating proposals;
- f. Request points of clarification to assist the RDN in evaluating proposals;
- g. Withdraw the RFP; or
- h. Not award to any Proponent and issue a subsequent RFP based on refinements of concepts proposed in response to this RFP.

The Regional District of Nanaimo is subject to the provision of the *Freedom of Information and Protection of Privacy Act*. As a result, while Section 20 of the Act does offer some protection for third party business interests, the Regional District cannot guarantee that any information provided to the Regional District can or will be held in confidence.

Further information regarding the specifications in the solicitation may be obtained from the contact below. Additionally, if the proponent would like to schedule a site visit, please contact:

Jane Hamilton
Superintendent Landfill Disposal Operations
Regional District of Nanaimo
Telephone 250-722 2044 ext. 3222
jhamilton@rdn.bc.ca

6. PROPOSED CONTRACTOR AGREEMENT

Proponents should identify any specific provisions contained in this RFP and Draft Contractor Agreement and General Conditions, attached, with which it is unwilling or unable to comply with and suggest replacement language. If nothing is identified in your proposal, by submitting your proposal, it is deemed you accept all of the RDN's terms and conditions.



APPENDIX A – COVER LETTER

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

The undersigned Contractor, 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 duties, taxes, handling and transportation charges, and all other charges incidental to and forming part of this Proposal.

The undersigned Supplier agrees to supply the services on **October 5, 2018** upon receipt of written Notification to Proceed.

Name of Contractor:

Contractor Address:

Telephone No. of Signing Officer:

Signing Officer E-mail:

Date:

Name of Proponent Signing Officer:

Signature of Proponent Signing Officer:



APPENDIX B – COST PROPOSAL FORM – Pricing is firm for the duration of the contract

Bird Control Coverage 2018/19 Summary					
Timeframe	Requirements	Coverage Requested	Hours/Week	Number of weeks	Hourly Total
Oct - Dec	1 BCO 4 days/week	8 hours/day	32	13	416
Jan - Feb	2 BCOs 7 days/week	8 hours/BCO 7am-5pm	112	9	1008
Mar - Oct	1 BCO 1 day/week	8 hours/day	8	30	240
Annual Hourly Total					1664

COST PROPOSAL FORM		
Item	Description	Price excl. Taxes
1.	Rate for bird control services as per above Summary Table (Total of 1664 Hours)	\$ per hour
Total for One Year Contract (1664 Hours x Hourly rate)		\$

	Additional Hours*	Price excl. Taxes
2.	Hourly rates for additional days coverage (upon request)	\$ per hour

***Additional hours will be authorized in writing by the Superintendent or appointed alternate.**

APPENDIX C – SITE PHOTOGRRRAPHS

1.



Active Face Area – Primary area requiring bird control

Total Landfill Area: 37.8 ha



Storage Shed for Bird Control use.



Site aviaries, constructed of metal with transparent panels and screened windows on two sides.



Inside site aviaries, the crushed rock flooring allows for easy clean-up.



GENERAL TERMS & CONDITIONS

SECTION 1

1.0 General Information

- a) Pricing is to be in Canadian Dollars and is to include costs to supply and deliver the Services(s) offered. Unit prices quoted are to be excluding PST & GST.
- b) Proposal shall be irrevocable and shall remain open for acceptance by the RDN for a period of 60 calendar days from the closing date. The lowest or any offer may not necessarily be accepted.

SECTION 2

2.0 Payment

- a) Payment by the RDN will be made on a net thirty (30) days basis after acceptance of the Equipment by the RDN. The RDN will not pay any deposits or make scheduled payments.

SECTION 3

3.1 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.

3.2 Acceptance, Rejection and Cancellation

The RDN reserves the right to reject any and all Proposals for any reason or to accept any Proposal that the RDN, in its sole unrestricted discretion, deems most advantageous to itself. The lowest or any Proposal may not necessarily be accepted. The Proponent acknowledges the rights of the RDN under this clause and absolutely waives any right of action against the RDN for failure of the RDN to accept its proposal whether such right of action arises in contract, negligence, bad faith or any other cause of action. The acceptance of any proposal is subject to funds being legally available to complete this transaction and/or approval by the Board of the RDN or the officer or employee of the RDN having authority to accept the Proposal.

This RFP does not commit the RDN, in any way to select a preferred Proponent, or to proceed to negotiate a contract, or to award any contract. The RDN reserves the right in its sole discretion cancel this RFP, up until award, for any reason whatsoever with no compensation.

3.3 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.



3.4 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.

3.5 Solicitation of Board Members and RDN Staff

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

3.6 Litigation Clause

The RDN may, in its absolute discretion, reject a Proposal submitted by Proponent, if the Proponent, or any officer or director of the Proponent is or has been engaged either directly or indirectly through another corporation in legal action against the RDN, its elected or appointed officers and employees in relation to:

- (a) any other contract for works or services; or
- (b) any matter arising from the RDN's exercise of its powers, duties, or functions under the Local Government Act, Community Charter or another enactment within five years of the date of this Call for Proposals.

In determining whether to reject a Proposal under this clause, the RDN will consider whether the litigation is likely to affect the Proponent's ability to work with the RDN, its consultants and representatives and whether the RDN's experience with the Proponent indicates that the RDN is likely to incur increased staff and legal costs in the administration of this Contract if it is awarded to the Proponent.

3.7 No Claim for Compensation

Proponents are solely responsible for their own expenses in preparing and submitting a Proposal and for any meetings, negotiations, or discussions with the RDN. The RDN will not be liable to any Proponent for any claims, whether for costs, expense, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this RFP. Proponents agree that by participating in the RFP process they have no claim for compensation.



APPEXDIX D – EXAMPLE CONTRACTOR SERVICES AGREEMENT

AGREEMENT FOR SERVICES

THIS AGREEMENT dated for reference this _____ day of _____, 20__.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

(the "**Regional District**")

OF THE FIRST PART

AND:

[NAME OF CONTRACTOR]

[address]
[address]

(the "**Contractor**")

OF THE SECOND PART

WHEREAS:

- A. The RDN called for proposals for the provision of consulting services for [NAME OF PROJECT] (the "**Project**"), and the Contractor in reply submitted a proposal dated [DATE]. A copy of the call for proposals is attached as Schedule "C" to this Agreement, and a copy of the Contractor's proposal is attached as Schedules "D" to this Agreement.
- B. The RDN has agreed to engage the Contractor and the Contractor has agreed to provide the services described in Schedule "A" to this Agreement (the "**Services**") to the Regional District in respect of the Project on the terms and conditions set out in this Agreement.

NOW THEREFORE the Regional District and the Contractor, in consideration of their mutual duties and responsibilities and in consideration of the payment to be made by



the Regional District to the Contractor agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

- (a) "**Services**" means the services to be provided by the Contractor, as described in Schedule "A" to this Agreement.

2.0 TERM

2.1 The term of this Agreement is for the period commencing * and terminating on * (the "**Term**"), subject to earlier termination as provided in section 7 of this Agreement.

3.0 CONTRACTOR'S DUTIES AND RESPONSIBILITIES

3.1 The Contractor must:

- (a) provide the Regional District with the Services throughout the Term, in accordance with the specifications and requirements set out in Schedule "A" to this Agreement, and to the satisfaction of the Regional District;
- (b) supply all labour, equipment and material, and do all things necessary for the provision of the Services;
- (c) perform the Services for the Regional District with that degree of care, skill and diligence normally utilized by contractors having similar qualifications and performing duties similar to the Services;
- (d) charge only the fees which the Contractor is entitled to under this Agreement for the provision of the Services;
- (e) provide and maintain at the Contractor's expense any insurance that the Contractor is required to provide by law, or that is reasonably necessary to insure against any risks you may assume as a result of entering into this Agreement. Without limiting the foregoing, the Contractor must provide and maintain at the Contractor's expense any insurance specifically required in Schedule "B" to this Agreement. The Contractor must provide satisfactory proof of insurance coverage to the Regional District upon request;
- (f) be registered as an employer with WorkSafe BC, and maintain workers compensation coverage with WorkSafe BC for the Contractor and its employees.



- (g) Proprietors and partners in a partnership who operate an independent business must be registered with WorkSafe BC and have Personal Optional Protection coverage;
- (h) provide satisfactory proof of the Contractor's WorkSafe BC coverage to the RDN upon request;
- (i) not subcontract any of its obligations under this Agreement without the Regional District's prior written consent;
- (j) not commit or purport to commit the Regional District to the payment of any money to any person, firm or corporation, without the Regional District's prior written consent;
- (k) keep proper and accurate books of account and records of any and all monies received and disbursed in the provision of the Services and make the books of account and records available for inspection and audit by the Regional District or its authorized representatives upon request;
- (l) comply with all laws applicable to the provision of the Services including all applicable health and safety standards, rules, regulations, requirements and codes of practice prescribed under any federal, provincial or local government statute, regulation, bylaw or permit relating in any respect to the Contractor's provision of the Services; and
- (m) during the Term, not perform a service for or provide advice to any person, firm or corporation which gives rise to a conflict of interest with the duties and obligations of the Contractor to the Regional District under this Agreement.

4.0 CONTRACTOR REPRESENTATIONS AND WARRANTIES

4.1 The Contractor represents and warrants to the Regional District that:

- (a) if the Contractor is a corporation, it is duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia; and
- (b) the Contractor has sufficient trained staff, facilities, materials, and appropriate equipment in place and available to enable it to fully perform the Services.



5.0 FEES AND EXPENSES

- 5.1 In consideration for the provision of the Services, the Regional District shall pay to the Contractor the fee for all Services rendered under this Agreement according to the amounts and times of payment set out in Schedule "A" to this Agreement, plus any Goods and Services Tax applicable.
- 5.2 The Regional District shall pay the disbursements listed in Schedule "A" if incurred by the Contractor in providing the Services, provided the total disbursements payable shall not exceed the estimate set out in Schedule "A".
- 5.3 Unless stated otherwise in this Agreement, all sums of money are in Canadian dollars.

6.0 INDEMNIFICATION

- 6.1 The Contractor shall release, indemnify and save harmless the Regional District, its elected officials, officers, and employees of and from all claims, costs, losses, damages, actions, causes of action, expenses and costs arising from any error, omission or negligent act of the Contractor, or its officers, employees, agents or contractors, in the performance of the Services, or from the Contractor's breach of this Agreement.

7.0 TERMINATION

- 7.1 If the Contractor is in default in the performance of any of its obligations under this Agreement, or if the Contractor becomes insolvent or is assigned into bankruptcy, then the Regional District may terminate this Agreement by written notice to the Contractor.
- 7.2 The Regional District may terminate this Agreement, without cause, at any time by giving not less than forty-five (45) days written notice to the Contractor.
- 7.3 In the event that this Agreement is terminated, the Contractor shall be paid by the Regional District for Services performed to the date of termination and remaining unpaid, less any amounts necessary to compensate the Regional District for damages or costs incurred by the Regional District or any person employed by or on behalf of the Regional District arising from the Contractor's default.

8.0 CONFIDENTIALITY

- 8.1 The Contractor shall not disclose any information, data or confidential information of the Regional District to any person, other than representatives of the Regional



District duly designated for that purpose in writing by the Regional District, and shall not use for its own purposes or for any purpose other than for the purpose of providing the Services any such information, data or confidential information it may acquire as a result of its engagement under this Agreement.

9.0 NOTICE

9.1 Any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) if hand/courier delivered, at the time of delivery;
- (b) if sent by email to the email addresses set out below, once it has been electronically transmitted; and
- (c) if mailed and accepted by any government post office and addressed as follows:

if to the RDN: 6300 Hammond Bay Road
Nanaimo, BC V9T 6N2
Attention:
Email:
Fax:

if to the Contractor: **[Insert the Contractor's address for delivery here as well as email and fax contact information]**

10.0 TIME

10.1 Time is of the essence of this Agreement.

11.0 BINDING EFFECT

11.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

12.0 SURVIVAL OF CERTAIN COVENANTS

12.1 The covenants and agreements contained in sections 3.1(I), 6.1, and 8.1 shall survive the expiry or earlier termination of this Agreement and those sections are severable for that purpose.



13.0 RELATIONSHIP

- 13.1 The legal relationship between the Contractor and the Regional District is that of an independent contractor and purchaser of services, and, in particular and without limiting the generality of the foregoing, nothing in this Agreement shall be construed so as to render the relationship between the Contractor and the Regional District to be that of employee and employer.
- 13.2 The Contractor is not, and must not claim to be the Regional District's agent for any purpose unless the Regional District gives the Contractor authorization in writing to act as the Regional District's agent for specific purposes that are reasonably necessary to the Contractor's rendering of the Services pursuant to this Agreement.

14.0 NO ASSIGNMENT

- 14.1 The Contractor shall not assign its interest in this Agreement or any right, benefit or obligation conferred or imposed hereunder, in whole or in part, whether by operation of law or otherwise, except with the prior written consent of the RDN, which may be withheld for any reason.

15.0 WAIVER

- 15.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

16.0 ENTIRE AGREEMENT

- 16.1 This Agreement constitutes the entire agreement between the parties with respect to the matters herein and may not be modified except by subsequent agreement in writing.

17.0 LAW APPLICABLE

- 17.1 This Agreement is to be construed in accordance with and governed by the laws applicable in the Regional District of Nanaimo of British Columbia.

18.0 AMENDMENT

- 18.1 This Agreement may not be modified or amended except by the written agreement of the parties.



19.0 CONFLICT

19.1 In the event of a conflict between a provision in this Agreement and a provision in a schedule attached to this Agreement, the provision in this Agreement shall prevail.

20.0 HEADINGS

20.1 The captions or headings appearing in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of it.

21.0 INTERPRETATION

21.1 Whenever the singular or masculine is used in this Agreement, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.

22.0 ENUREMENT

22.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns. Neither party may assign, subcontract or transfer an interest in the Agreement without the prior written consent of the other.

23.0 DISPUTE RESOLUTION

23.1 All matters in dispute under this Agreement which are not first resolved between the parties acting reasonably may, with the concurrence of both the Regional District and the Contractor be submitted to mediation.

23.2 In the event of a dispute, the parties agree to resolve the dispute by:

Frank and open negotiations whereby both parties use their best efforts to resolve the dispute by mutual agreement including the most Senior Management of both parties.

23.3 If, after 30 business days, the dispute is not resolved, both parties agree to appoint a mediator to resolve the dispute and the Mediator's decision will be final. The mediation shall take place in Nanaimo, British Columbia, unless agreed otherwise. Parties will be responsible for their own costs.



24.0 COUNTERPART

24.1 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

25.0 DOCUMENTATION, PATENT AND COPYRIGHT

25.1 **Title.** The title, property rights, moral rights and ownership in and to all present and future materials and information produced or prepared by the Service Provider pursuant to this Agreement including but not limited to plans, drawings, specifications, computer discs, listings, computer software and any other material or physical item on which information is stored shall vest in the RDN without any payment by the RDN therefor.

25.2 **Patent and Copyright.** The title, property rights, moral rights and ownership in and to all copyright in all present and future literary or artistic works including, but not limited to, computer programs and software, plans, drawings and specifications and the title, property rights and ownership in and to all patent rights in any invention developed during the course of or out of providing the Services shall vest in the RDN without any payment by the RDN therefor.

25.3 **Further Assurances.** The Service Provider shall upon request by the RDN, do all such things and execute and deliver to the RDN all such documents and instruments as the RDN shall reasonably require in order to vest title, property rights and ownership in the RDN and the Service Provider shall execute and deliver all such assignments, documents and instruments as may, in the RDN's opinion, be necessary or desirable for the application or the issuance of any patents, designs or the registration of any copyright.

26.0 DELAY IN PERFORMANCE

26.1 Neither the RDN nor the Service Provider shall be deemed to be in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to abnormal weather conditions, flood, earthquake, fire, epidemic, war, riot and other civil disturbance, strike, lockout, work slowdown and other labour disturbances, sabotage, judicial restraint and inability to procure permits, licenses or authorizations from any local, provincial or federal agency for any of the supplies, materials, accesses or services required to be provided by either the RDN or the Service Provider under



this Agreement. If any such circumstances occur, the non-performing party shall, as soon as possible after being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

27.0 SEVERABILITY

27.1 The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

28.0 PAYMENT

28.1 The Service Provider shall submit invoices to the RDN for Services performed monthly (the "billing period") during which the Services are performed under this Agreement; such invoices to be submitted as soon as practicable after each billing period.

28.2 The invoice submitted for each billing period shall be clearly itemized to show the amount of work performed, the billing rates, the reimbursable expenses and the costs incurred to employ any Subcontractors. The Service Provider shall also provide to the RDN upon written request such receipts, bills, invoices or other evidence in support of each invoice for a billing period as the RDN shall request.

28.3 Except for the amounts which the RDN in good faith is disputing and except for any set off which the RDN may claim and except for invoices (or portions of invoices) in respect of which the RDN has requested and not received supporting evidence, the RDN shall pay invoices submitted to it for the Services within 30 days' receipt thereof.

28.4 The Service Provider shall keep and shall cause any Subcontractors to keep books, records, documents and other evidence relevant to the provision of the Services in accordance with generally accepted accounting principles and practices consistently applied. The RDN or any of its duly authorized representatives shall for the purpose of audit and examination have access to and be permitted to inspect such books, records, documents and any other



evidence for inspection, copying and audit for a period of three years after the termination, for any reason, of this Agreement.

29.0 SUBCONTRACTORS

29.1 The Service Provider may retain Sub contractors to assist in the performance of the Services provided that the terms of this Agreement shall apply to the Sub contractors and provided that the Service Provider shall be wholly responsible for the professional standards, performance and all actions of the Sub contractors. The Service Provider shall only employ Sub contractors having the appropriate standards, qualifications and experience in their respective areas of expertise.

30.0 WORK AND SERVICES OMITTED

30.1 Upon receipt of written direction from the RDN, the Service Provider shall omit Services to be performed under the Agreement. The Service Provider shall have no claim against the RDN for loss associated with any omitted Services.

31.0 THIRD PARTY RIGHTS

31.1 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the RDN and the Service Provider.



SCHEDULE "A"

A.1 SERVICES

- [List all services to be provided by the Contractor, and include all necessary details as to where, when and how the services are to be performed]

A.2 FEES

- [Insert details of fees and payment schedule]

A.3 REIMBURSABLE EXPENSES

- [List all reimbursable expenses, if any.]



SCHEDULE "B"

INSURANCE

The Contractor shall, at its own expense, provide and maintain throughout the Term the following minimum insurance in a form acceptable to the Regional District, with an insurer licensed in British Columbia:

a. **Comprehensive General Liability** in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence against bodily injury and property damage. The RDN is to be added as an additional insured under this policy. Such insurance shall include, but not be limited to:

- .01 Products or Completed Operations Liability;
- .02 RDN's and Contractor's Protective Liability;
- .03 Blanket Written Contractual Liability;
- .04 Contingent employer's Liability;
- .05 Personal Injury Liability;
- .06 Non-Owned Automobile Liability;
- .07 Cross Liability;
- .08 Employees as additional Insureds;
- .09 Broad Form Property Damage;
- .10 Broad Form Completed Operations;

and where such further risk exists:

- .11 Shoring Blasting, Excavating, Underpinning, Demolition, Piledriving and Caisson Work, Work Below Ground Surface, Tunneling and Grading, as applicable;
- .12 Elevator and Hoist Liability; and
- .13 Operation of Attached Machinery.

b. **Automobile Liability** on all owned or leased vehicles in an amount not less than Two Million Dollars (\$2,000,000.00)

c. **Aircraft and/or Watercraft Liability**, where applicable, for all owned or non-owned craft operating or used in the performance of the Work by the Contractor, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and including aircraft passenger hazard liability, where applicable.

d. **Professional Liability Insurance** \$250,000 per occurrence, \$1,000,000.00 aggregate. **[Delete if not required]**

e. **Property** insurance which shall cover all property, of every description, to be used in the construction of the Work, against "All Risks" of physical loss or damage, while such property is being transported to the site, and thereafter throughout erection, installation and testing and such insurance shall be maintained until Substantial



Performance of the Work. Such policy of insurance shall extend to protect the interest of the RDN, and shall contain a waiver of subrogation against the RDN.

2. All the foregoing insurance shall be primary and not require the sharing of any loss by any insurer of the RDN.
3. The Contractor shall provide the RDN with evidence of all required insurance prior to the commencement of the Work or services. Such evidence shall be in a form acceptable to the RDN. When requested by the RDN, the Contractor shall provide certified copies of required insurance policies.
4. All required insurance shall be endorsed to provide the RDN with thirty days (30) advance written notice of cancellation or material change.
5. The Contractor hereby waives all rights of recourse against the RDN with regard to damage to the Contractor's property.
6. The Contractor shall require and ensure that each subcontractor maintain liability insurance comparable to that required above.
7. Unless specified otherwise, the duration of each insurance policy shall be from the date of commencement of the Work until the date of the final certificate for payment.

Any deductible amounts in the foregoing insurance which are payable by the policyholder shall be in an amount acceptable to the Regional District.



SCHEDULE "C"
CALL FOR PROPOSALS

SAMPLE

SCHEDULE "D"
PROPONENT'S PROPOSAL

Schedule “E”

Privacy Protection Schedule

Definitions

1. In this Schedule,
 - (a) “**access**” means disclosure by the provision of access;
 - (b) “**Act**” means the *Freedom of Information and Protection of Privacy Act*;
 - (c) “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (d) “**personal information**” means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the Regional District of Nanaimo and the Contractor dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the “control of a public body” within the meaning of the Act; and

Purpose

2. The purpose of this Schedule is to:
 - (a) enable the Regional District of Nanaimo to comply with the Regional District of Nanaimo's statutory obligations under the Act with respect to personal information; and
 - (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor's statutory obligations under the Act with respect to personal information.

Collection of personal information

3. Unless the Agreement otherwise specifies or the Regional District of Nanaimo otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or the Regional District of Nanaimo otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about.

5. Unless the Agreement otherwise specifies or the Regional District of Nanaimo otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by the Regional District of Nanaimo to answer questions about the Contractor's collection of personal information.

Accuracy of personal information

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Regional District of Nanaimo to make a decision that directly affects the individual the information is about.

Requests for access to personal information

7. If the Contractor receives a request for access to personal information from a person other than the Regional District of Nanaimo, the Contractor must promptly advise the person to make the request to the Regional District of Nanaimo unless the Agreement expressly requires the Contractor to provide such access and, if the Regional District of Nanaimo has advised the Contractor of the name or title and contact information of an official of the Regional District of Nanaimo to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

8. Within 5 Business Days of receiving a written direction from the Regional District of Nanaimo to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
9. Within 5 Business Days of correcting or annotating any personal information, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Regional District of Nanaimo, the Contractor disclosed the information being corrected or annotated.
10. If the Contractor receives a request for correction of personal information from a person other than the Regional District of Nanaimo, the Contractor must promptly advise the person to make the request to the Regional District of Nanaimo and, if the Regional District of Nanaimo has advised the Contractor of the name or title and contact information of an official of the Regional District of Nanaimo to whom such requests are

to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

11. The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

12. Unless the Regional District of Nanaimo otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

13. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the Regional District of Nanaimo in writing to dispose of it or deliver it as specified in the direction.

Use of personal information

14. Unless the Regional District of Nanaimo otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

Disclosure of personal information

15. Unless the Regional District of Nanaimo otherwise directs in writing, the Contractor may only disclose personal information inside Canada to any person other than the Regional District of Nanaimo if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
16. Unless the Agreement otherwise specifies or the Regional District of Nanaimo otherwise directs in writing, the Contractor must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

17. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in the custody or under the control of the Contractor, the Contractor:
 - (a) receives a foreign demand for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or

- (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Contractor must immediately notify the Regional District of Nanaimo and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases “foreign demand for disclosure” and “unauthorized disclosure of personal information” will bear the same meanings as in section 30.2 of the Act.

Notice of unauthorized disclosure

- 18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify the Regional District of Nanaimo. In this section, the phrase “unauthorized disclosure of personal information” will bear the same meaning as in section 30.5 of the Act.

Inspection of personal information

- 19. In addition to any other rights of inspection the Regional District of Nanaimo may have under the Agreement or under statute, the Regional District of Nanaimo may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor’s premises to inspect any personal information in the possession of the Contractor or any of the Contractor’s information management policies or practices relevant to the Contractor’s management of personal information or the Contractor’s compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

Compliance with the Act and directions

- 20. The Contractor must in relation to personal information comply with:
 - (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
 - (b) any direction given by the Regional District of Nanaimo under this Schedule.
- 21. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

Notice of non-compliance

- 22. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the Regional District of Nanaimo of the particulars of the non-compliance or

anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

23. In addition to any other rights of termination which the Regional District of Nanaimo may have under the Agreement or otherwise at law, the Regional District of Nanaimo may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

Interpretation

24. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
25. Any reference to the “Contractor” in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
26. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
27. If a provision of the Agreement (including any direction given by the Regional District of Nanaimo under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
28. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 32, the law of any jurisdiction outside Canada.
29. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.