



## REQUEST FOR PROPOSALS

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### **Project Title:**

**Regional District of Nanaimo  
Sea Level Rise Adaptation Program: Coastal Floodplain Mapping**

**ISSUED: January 22, 2018**

### **CLOSING DATE AND TIME:**

Proposals are requested to be received at the Closing Location prior to:  
**4:00 PM (16:00 hrs) Pacific Time on Wednesday, February 14, 2018**

### **RDN CONTACT FOR QUESTIONS:**

**Jamai Schile  
Senior Planner, Long Range Planning  
Strategic and Community Development  
Telephone: 250-390-6510  
Email: jschile@rdn.bc.ca**

Deadline for questions is five (5) 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 4:00 PM (16:00 hrs), Pacific Time, **Wednesday, February 14, 2018**. Submission methods:

- By Email: With **RDN Sea Level Rise Adaptation Program: Coastal Floodplain Mapping** as the subject line at this electronic address: [planning@rdn.bc.ca](mailto:planning@rdn.bc.ca)

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

- Proposals received by hand delivery and facsimile are not encouraged.
- All costs to prepare the Proposal shall be borne solely by the Proponent.

### **Cover Letter & Signature**

The Proposal should include a cover letter summarizing your proposal and highlighting the reasons why the Regional District of Nanaimo (RDN) should select your firm for this assignment.

### **Amendment to Proposals**

Proposals may be amended in writing and delivered to the closing location by email before the closing date and time. Such amendments should be signed by the authorized signatory of the Proponent.

### **Addenda**

If the RDN determines that an amendment is required to this Request For Proposal (RFP), the RDN will distribute via addendum posted to BC Bid at ([www.bcbid.gov.bc.ca](http://www.bcbid.gov.bc.ca)). It is the responsibility of the Proponent to download and obtain any addenda posted prior to submitting their Proposal. Information obtained from any other source is not official and should not be relied upon.

### **Withdrawal of Proposals**

The Proponent may withdraw their Proposal at any time prior to the Proposal closing date and time by submitting a written withdrawal letter or email to the named RDN contact.

## **SCOPE OF SERVICES**

### **1. INTRODUCTION**

The purpose of this Request for Proposal is to solicit submissions from a qualified Professional Engineer, experience coastal engineering and in developing floodplain maps based on the specifications in the Provincial Coastal Floodplain Mapping - Guidelines and Specifications by Kerr Wood Leidal, 2011. The purpose of this work is for the Professional Engineer to provide the technical basis for developing floodplain maps, identify flood hazards for future land use and to establish a Flood Construction Level (FCL). The project is intended to be undertaken between March to December 2018.

Proponents must refer to the complete Request for Proposals documents for detailed information regarding proposal submission requirements.

## **2. PROJECT OBJECTIVES**

In accordance with the Provincial Coastal Floodplain Mapping Guidelines and Specifications, the RDN seeks to assess marine and select riverine areas that may be impacted by sea level rise to create floodplain maps that will be used to establish FCL. In addition, the coastal floodplain maps will be used to define sea level rise planning zones, which will facilitate future land use and development decisions.

In 2017, the RDN acquired LiDAR topography information (based on the provincial guideline specifications) for all marine coastal areas from low tide mark with the exceptions of the Town of Qualicum Beach and the City of Nanaimo, who have existing LiDAR. Using this information, the RDN is now requesting proposals to conduct the next steps required in the preparation of coastal floodplain maps, those being:

- coastal engineering analysis to estimate the water level components associated with the design condition, and the associated Flood Construction Levels,
- preparation of digital format floodplain maps (1:5,000) indicating areas subject to flood hazard(s) and the magnitude of the hazard(s), and
- preparation of Design Brief to document the analysis.

## **3. SCOPE OF SERVICES**

The RDN requests proposals from suitably qualified Professional Engineer, experienced in coastal engineering, to define the Flood Construction Level (FCLs) for the study area, considering shoreline specific conditions including exposure to storm related winds, waves, storm surge and shoreline type and a 0.5 metre and 1.0 metre scenario in accordance with the Provincial Coastal Floodplain Mapping - Guidelines and Specifications by Kerr Wood Leidal, 2011 – Appendix A: Scope of Work for Coastal Engineering. Further to the Guidelines, for communities such as the RDN that are subject to flood hazards due to both coastal processes and riverine processes, floodplain maps will also have to include the river-related hazards based on the Floodplain Mapping Guidelines and Specifications by Water Management Consultants, 2004.

Acknowledging that some coastal modelling will be needed, the intent is not to complete detailed modelling analysis for the entire study area. Instead, the RDN will work with the Proponent to identify priority areas for detailed modelling. It is anticipated that these areas will be selected based on higher population density and historically susceptible to flooding. Where modelling is proposed, the Proponent is asked to include information regarding the type of software and be able to demonstrate their experience in its application.

In addition, the procured services shall include:

- Data must be compatible with ESRI ArcGIS10.3.1.
- Vertical Datum: CGVD2013
- Horizontal datum: NAD 83
- Map projection: UTM Zone10N

#### 4. STUDY AREA

The regional district covers 2,070 square kilometres; it's a diverse geographical area characterised by the Mount Arrowsmith Watershed, adjacent marine areas and 188 kilometres of coastline. The focus of the floodplain mapping study will be all marine coastal areas and related riverine areas within the RDN, including Gabriola Island.

Considering the extent of the study area, one or more types of flood conditions may exist, which can be categorized as:

- riverine flooding in coastal lowland region;
- coastal flooding in developed areas; and
- coastal flooding in less developed areas.

Acknowledging that the different types of conditions may require different types or levels of analysis and associated cost implication, the RDN has portioned the RDN into three geographic sub-areas. For the purpose of this project, the study area is anticipated to be confined to Sub-Area 1 and Sub-Area 2, which includes the municipalities of the Town of Qualicum Beach and the City of Parksville. The RDN anticipates Sub-Area 3 will be completed at a future date as funding becomes available. See Attachment 1: Map of Study Area.

#### 5. GENERAL DELIVERABLES

- Design Brief to document the coastal engineering investigation required to create new coastal floodplain maps and to define the FCLs. The report should outline study specific factors leading to the choice of approach and models.
- Coastal floodplain maps will contain the following components
  - FCLs for 2010, 2100 and 2200
  - Floodplain limits for 2010, 2100 and 2200
  - Sea Level Rise planning areas for 2100 and 2200
- Digital format floodplain maps (1:5,000) with coastal floodplain map notations as per Section 2.4 Mapping Components, Provincial Coastal Floodplain Mapping Guidelines and Specifications, 2011.

*Note: any deliverables not identified in this RFP that the Contractor will also provide to the RDN should be listed in the proposal.*

#### 6. PROJECT SCHEDULE/ TIMELINES

Milestone / Task	Schedule
Post request for RFPs	January 22, 2018
RFP closing date	February 14, 2018
RDN Board Award Contract (anticipated)	February 27, 2018
Investigation, analysis and floodplain mapping	March to December 2018
Final deliverables to RDN	December 31, 2018

## **7. REFERENCE INFORMATION (not an exhaustive list)**

- I. Province of BC Climate Change Adaptation Guidelines for Sea Dikes and Coastal Flood Hazard Land Use: Draft Policy Discussion Paper by Kerr Wood Leidal, January 27, 2011  
[https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/integrated-flood-hazard-mgmt/draft\\_policy\\_rev.pdf](https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/integrated-flood-hazard-mgmt/draft_policy_rev.pdf)
- II. Province of BC Coastal Floodplain Mapping - Guidelines and Specifications by Kerr Wood Leidal, June 2011  
[https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/integrated-flood-hazard-mgmt/coastal\\_floodplain\\_mapping-2011.pdf](https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/integrated-flood-hazard-mgmt/coastal_floodplain_mapping-2011.pdf)
- III. Province of BC Flood Hazard Area Land Use Management Guidelines, May 2004  
[http://www.env.gov.bc.ca/wsd/public\\_safety/flood/pdfs\\_word/guidelines-2011.pdf](http://www.env.gov.bc.ca/wsd/public_safety/flood/pdfs_word/guidelines-2011.pdf)
- IV. APEGBC Flood Mapping in BC: Professional Practice guidelines  
<https://www.egbc.ca/getmedia/8748e1cf-3a80-458d-8f73-94d6460f310f/APEGBC-Guidelines-for-Flood-Mapping-in-BC.pdf.aspx>
- V. Provincial Floodplain Maps, Region 1 – Vancouver Island, specifically:
  - a. Englishman River (7 map sheets)  
[http://www.env.gov.bc.ca/wsd/data\\_searches/fpm/reports/keyplans-html/englishman-river.html](http://www.env.gov.bc.ca/wsd/data_searches/fpm/reports/keyplans-html/englishman-river.html)
  - b. Little Qualicum River (1 map sheet)  
[http://www.env.gov.bc.ca/wsd/data\\_searches/fpm/reports/keyplans-html/little-qualicum-river.html](http://www.env.gov.bc.ca/wsd/data_searches/fpm/reports/keyplans-html/little-qualicum-river.html)
- VI. RDN Hazard Risk and Vulnerability Assessment, June 2009  
<http://www.rdn.bc.ca/cms/wpattachments/wpID141atID1492.pdf>

## **8. PROPOSAL SUBMISSION AND 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:

### **8.1 Proposal Eligibility**

Proposals should:

- a) be received on or before the established closing date and time at the location specified,
- b) include a cover letter signed by an authorized officer of the Proponent, and
- c) be in English.

## 8.2 Evaluation Criteria

The following criteria identify the key components on which Proposals to this RFP will be evaluated.

Evaluation Criteria		Point Value	X Rating	Total Score
Corporate Qualifications and Experience		10		
Experience, Depth, and Breadth of Project Team		25		
Approach and Methodology		25		
Project Management and Quality Assurance		10		
Proposed Fees		30		
<b>Total</b>		<b>100</b>		
Rating	Description			
5	Exceeds Expectations, Proponent clearly understands the requirement, Excellent Probability of success			
4	Somewhat Exceeds Expectations			
3	Meets Expectations, Proponent demonstrates a good understanding of the requirement. Good probability of success			
2	Somewhat meets Expectations, Minor weakness and/or deficiencies. Fair probability of success			
1	Does not meet expectations, does not demonstrate a good understanding of the requirements, low probability of success			
0	Response indicates a complete misunderstanding of the requirements, very low probability of success.			

### Evaluation Criteria Notes:

1. A score of ZERO (0) on ANY of the Rated Criteria items MAY result in disqualification of a Submission.
2. These are the ONLY factors which will be used to evaluate the submission.
3. The highest scoring or any submission will not necessarily be accepted.
4. The lowest price proposal will receive a rating of 5. Other proposals will receive reduced ratings based on the proportion higher than the lowest price. i.e. Rating = (Min Cost x 5)/Cost

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 will proceed with an award recommendation and 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.

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

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

### **8.3 Proposal Content**

#### **Cover Letter & Signature**

The Proposal should include a cover letter summarizing the Proposal and indicate why the RDN should select your firm.

#### **8.3.1 Corporate Qualifications and Experience**

- a. Include a brief summary of the company's background, area(s) of expertise, organization chart, and number of employees.
- b. List any sub-consultants proposed, and provide a similar summary as above.
- c. Provide at least two (2) project abstracts that clearly outline previous experience with similar projects. The referenced projects shall be of similar or greater magnitude and have been successfully completed by the company within the past three (3) years. The project abstracts shall clearly note the project value, project constraints, location, Project Manager, key staff members, client names, client references and their current contact details. Project references may be contacted and their response may be used to form part of the evaluation score.

#### **8.3.2 Experience, Depth, and Breadth of Project Team**

- a. Provide the Resume of the Project Manager and all other project team members that would be directly involved in the project. Relevant experience, qualifications, credentials, and notable achievements in each area of the work should be detailed.
- b. Provide a table clearly indicating what role and responsibility each team member will play, the anticipated hours of each, and the total role and project hours.

#### **8.3.3 Approach and Methodology**

- a. Provide an overview of the project to confirm understanding of the scope of work and clearly define and describe how the proposed approach would meet those requirements. At a minimum, the Proponent should identify the project constraints and challenges, the sequence and timing of milestones, the respective expertise involved, and their time allocation for each.
- b. Submit a schedule of key tasks and milestones with dates and sufficient detail for the Evaluation Team to assess the reasonable ability of the Proponent achieving the results in the time stated.
- c. Indicate when work would commence and approximately how long it would take to complete the assignment. Proposed start dates, progress meeting dates, milestones, other key events, and major project deliverables shall be clearly identified on the project schedule. The schedule shall identify the critical path, delineate what resources will be required, and when they will be required.
- d. Indicate post-project completion, support and de-brief offered.

#### **8.3.4 Project Management and Quality Assurance**

- a. Demonstrate the approach to project management and highlight the procedures to be utilized to ensure submissions are completed and delivered on time and on budget.

- b. Provide a description of an internal quality assurance and control program in place, including the provision of a quality assurance and control plan that ensures senior technical review of relevant project activities.

### **8.3.5 Proposed Fee**

Provide pricing for the project tasks and milestones in a table showing a breakdown of fees using the same headings from the consultant's proposed methodology. The fee structure shall include hourly charge out rates and man-hour requirements for all personnel involved, sub-consultant fees, disbursements, meetings and all other costs to complete the work. Items listed as optional shall be shown separately. The total project cost is to be considered an upset limit, not to be exceeded unless approved in writing by the RDN, and shall be inclusive of all Consultant salary costs, general and overhead expenses, and disbursements. Disbursements shall include the costs of printing and reproducing, drawings, reports, travel/accommodation costs, out of pocket expenses, and all other anticipated expenses. Any applicable taxes should be shown as a separate line item.

### **8.3.6 Proposed Purchase Contract**

Proponents need to identify any specific provisions contained in this RFP with which it is unwilling or unable to comply from the attached Draft Client-Consultant Agreement and suggest replacement language.

## **9. GENERAL CONDITIONS**

### **9.1 No Contract**

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

### **9.2 Privilege Clause**

The lowest or any proposal may not necessarily be accepted.

### **9.3 Right of the RDN to Cancel the RFP Process**

The RDN is not bound to select a preferred Proponent or accept any Proposal and reserves the right in its sole discretion to cancel this RFP, up until award, for any reason whatsoever including budget and to proceed with the Services in some other manner separate from this RFP process.

### **9.4 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.

### **9.5 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.

### **9.6 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 within five years of the date of this Call for Proposals 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.

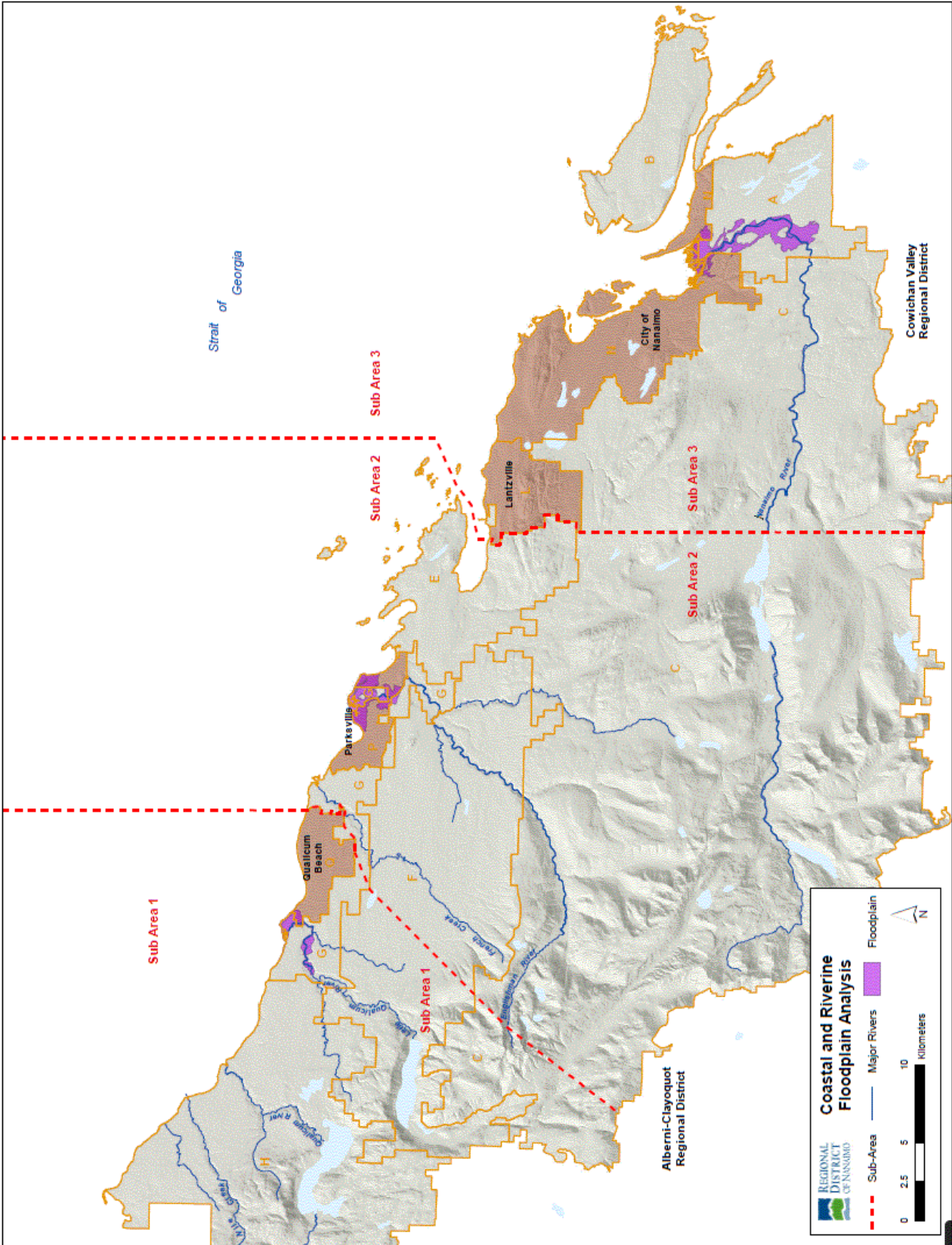
In determining whether to reject a Proposal under this clause, the RDN will consider whether the litigation is likely to affect the Proponent's ability to work with the RDN, its consultants and representatives and whether the RDN's experience with the Proponent indicates that the RDN is likely to incur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

**10. ADDITIONAL INFORMATION**

Attachment 1: Subject Area Map

Attachment 2: Draft Professional Services Agreement

Attachment 1: Subject Area Map with Sub- Areas



**ATTACHMENT 2**



**REGIONAL DISTRICT OF NANAIMO**

**CONSULTING AND PROFESSIONAL SERVICES AGREEMENT**

**Project Title:**

**Regional District of Nanaimo  
Sea Level Rise Adaptation Program: Coastal Floodplain Mapping**

**[Awarded Company Name]**

<b>FORM OF AGREEMENT:</b>	<b>SECTION 01000</b>
<b>SCOPE OF SERVICES:</b>	<b>SECTION 01100</b>
<b>FEES, RATES AND CHARGES:</b>	<b>SECTION 01200</b>
<b>GENERAL CONDITIONS:</b>	<b>SECTION 01300</b>

**BETWEEN:** [Awarded Company Name] *(the "Consultant")*

**AND:** The Regional District of Nanaimo *(the "Corporation")*  
6300 Hammond Bay Road  
Nanaimo, B.C., V9T 6N2

THIS AGREEMENT WITNESSES that the Corporation agrees to retain the Consultant to furnish certain consulting services and the Consultant agrees to furnish the consulting services under the terms and conditions as follows:

**1.0 "Contract Documents" means the following documents:**

- 1.1 (1) the Agreement: Section 01000
- (2) the letters of clarification, if any
- (3) the most recent Addendum
- (4) other Addenda, the more recent taking precedence over earlier Addenda
- (5) the Scope of Services: Section 01100 **(to be developed)**
- (6) the Schedule of Fees, Rates and Charges: Section 01200 **(to be developed)**
- (7) the General Conditions: Section 01300
- (8) the Notice of Intent to Award and/or Purchase Order
- (9) the Proposal Response
- (10) the Specifications, if any
- (11) the Drawings, if any
- (12) the Request for Proposal
- (13) other relevant documents such as but not limited to any reports, standards or the like included by reference.

1.2 The Contract Documents shall form part of this Agreement as though recited in full.

1.3 In the event of discrepancies, inconsistencies, ambiguities or conflict in provisions of the Contract Documents, the provisions of the document that appears earlier in the list in Clause 1.1 above shall take precedence and govern over the provisions of documents subsequently listed.

**2.0 Services to be Performed and Period of Service:**

2.1 The services to be provided by the Consultant are **consulting professional services** for the **Regional District of Nanaimo Sea Level Rise Adaptation Program: Coastal Floodplain Mapping**, including those services described in **Section 01100 Scope of Services (to be developed)**, and otherwise set out in the Contract Documents (the "Services").

2.2 The Consultant shall, **between March 2018 to December 2018**, perform and complete the Services with care, skill, due diligence and efficiency.

**3.0 Agreement Amount:**

3.1 Subject to the terms and conditions of this Agreement and in consideration for the satisfactory performance of the Services, the Corporation shall pay to the Consultant a fee not to exceed **\$220,000** including expenses and disbursements in accordance with the estimate and rates included in Section 01200 Schedule of Fees, Rates and Charges for the Services to be provided.

3.2 The Consultant shall be paid on the basis of monthly progress billings for services performed and invoices approved by the Corporation, all in accordance with Clause 18 of Section 01300.

3.3 The Agreement amount stated in Section 01000 Clause 3.1 does not include applicable Provincial Services tax ("PST") or Goods and Services Tax ("GST"). The appropriate PST and GST will be shown separately on all invoices submitted by the Consultant.

**4.0 Time of the Essence:**

4.1 Time shall be of the essence.

**5.0 Entire Agreement:**

5.1 When duly executed by authorized officers of both parties, this Agreement constitutes the entire Consulting and Professional Services Agreement between the parties with respect to the subject matter hereof, and any representations or statements heretofore made with respect to such subject matter whether oral or written, are merged herein.

**6.0 Amendment:**

6.1 The Contract Documents shall not be amended except as specifically agreed in writing by both the Corporation and the Consultant.

**7.0 Contract Administrator:**

7.1 For the purposes of this Agreement, the Corporation designates as its Contract Administrator: Jamai Schile, Senior Planner, Regional District of Nanaimo located at 6300 Hammond Bay Road, Nanaimo, BC Telephone: 250-390-6510 Email: [jschile@rdn.bc.ca](mailto:jschile@rdn.bc.ca)

7.2 For the purposes of this Agreement, the Consultant designates as its Contract Administrator [ ], address [ ], telephone [ ], email [ ].

**8.0 Joint Ventures**

8.1 If the Consultant is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, and claims, rights, powers, privileges and liabilities of the Consultant shall be joint and several.

**9.0 Enurement:**

9.1 This Agreement shall enure to the benefit of and be binding upon the Corporation and the Consultant and their respective heirs, executors, legal representatives, administrators, successors and permitted assigns.

**10. Schedule of Fees, Rates and Charges:**

(to be developed and included as Section 01200)

**11. Counterparts**

- 11.1 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

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

ENTITY1 by its authorized signatory on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the date of Agreement):

SIGNED on behalf of the Corporation by:

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

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

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

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

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

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

[CONTRACTOR'S NAME]

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

SIGNED on behalf of the Contractor by:

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

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

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

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

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

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

**1.0 DEFINITIONS:**

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

- 1.1 "Agreement" means the agreement set out in Section 01000.
- 1.2 "Contract Administrator" has the meaning in Section 01000 Clause 7.0.
- 1.3 "Contractor" and "Consultant" shall both mean the successful Proponent selected as a result of this RFP.
- 1.4 "Notice of Intent to Award" means the written notice sent by the Corporation to the successful Proponent advising that, subject to disclosed conditions, its Proposal has been accepted.
- 1.5 "Proponent" shall mean the firm responding to the RFP.
- 1.6 "Proposal" means a Proponent's formal response to the RFP.
- 1.7 "Request for Proposal" and "RFP" both mean this document consisting of the items listed in the Table of Contents (Section 00001) and any subsequent Addenda.
- 1.8 "Services" has the meaning set out in Section 01000 Clause 2.1.
- 1.9 "Subcontractors" means the independent contractors, associates and consultants retained by the Contractor to assist in the performance of the Services.

**2.0 ASSIGNMENT:**

- 2.1 The Contractor shall not assign the Agreement, in whole or in part, or any payments due or to become due under the Agreement, without the express written consent of the Corporation, such consent not to be unreasonably withheld.
- 2.2 No assignment of the Agreement shall relieve the Contractor from any obligation under the Agreement or impose any liability upon the Corporation.

**3.0 STANDARD OF CARE AND QUALIFICATIONS:**

- 3.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by Contractors experienced in providing such Services. The Contractor acknowledges that its qualifications and experience were a major factor in the selection of the Contractor for the work set out in this Agreement.
- 3.2 Without limiting any other remedy which the Corporation may have, the Contractor at its sole cost upon written request of the Corporation shall rectify any of the Services which have not been performed in accordance with the care, skill and diligence set out in Section 01300 Clause 3.1 or which have otherwise not been performed in accordance with the terms of this



Agreement and in addition the Contractor shall do all such things that may be reasonably required by the Corporation to satisfy the Corporation that the Services have been duly rectified or performed in accordance with the terms of this Agreement.

- 3.3 The Contractor shall be responsible for the degree of care, skill and diligence exercised by any Subcontractors and for selecting Subcontractors having the appropriate qualifications and experience to provide that portion of Services to be provided by such Subcontractors.

#### **4.0 CONFIDENTIALITY:**

- 4.1 **Definition of Confidential Information.** In this Agreement, "Confidential Information" means all information and data disclosed orally, in writing or electronically, by one party to the other party on a confidential basis including, without limitation, all such information and data relating to the structure, personnel, and operations of the disclosing party, including financial, planning, marketing, advertising and commercial information and strategies; employee, supplier and customer information and data; contractual agreements, records and correspondence; computer programs, computer-related data and databases; trade secrets, inventions, designs, methods, processes and know-how; and items provided or disclosed to a party by third parties under an obligation of confidentiality.

- 4.2 **Obligation of Confidentiality.** It is contemplated that in the course of the performance of this Agreement each party may, from time to time, disclose its Confidential Information to the other party. During the term of this Agreement and for a period of five (5) years thereafter, subject to Section 01300 Clause 4.3 and 4.4, each party agrees:

- (a) to keep and use in strict confidence all Confidential Information of the other party that it acquires, sees, or is informed of, as a direct or indirect consequence of this Agreement and to not, without the prior written consent of the other party, disclose any such Confidential Information; and
- (b) not to use, copy, duplicate or reproduce, either directly or indirectly, any of the Confidential Information of the other party or any recollections thereof for any purpose other than for the performance of its obligations under this Agreement, without the other party's prior written approval.

- 4.3 **Freedom of Information and Protection of Privacy Act.** The Contractor acknowledges and agrees that any Confidential Information disclosed by it to the Corporation under this Agreement may be subject to a request for public disclosure under *the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c.165*, as amended from time to time (in this Clause, the "Act").

- 4.4 **Designation of Confidential Information.** The Contractor acknowledges that the Act provides an exemption from disclosure for information as specified in Section 21 of the Act. Accordingly, if any information supplied to the Corporation fits within Section 21 of the Act, the Contractor must specifically advise the Corporation and request the Corporation not to disclose that information.

- 4.5 **Return of Confidential Information.** Upon expiration or earlier termination of this Agreement, each party shall promptly cease all use of the Confidential Information of the other party and upon written request will return all Confidential Information. This obligation shall not apply to

any Confidential Information of the Contractor required by the Corporation to make use of any work product under this Agreement.

## **5.0 CORPORATION'S RESPONSIBILITIES:**

5.1 The Corporation shall provide timely support, guidance, direction, instruction, acceptances, decisions and information as they deem necessary or appropriate under this Agreement.

## **6.0 INDEMNITY:**

6.1 The Contractor hereby agrees to indemnify and save harmless the Regional District of Nanaimo and their successor(s), assign(s) and authorized representative(s) (the "Indemnified Parties") and each of them from and against losses, claims, damages, actions, and causes of action, (collectively referred to as "Claims") that the Corporation may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Contractor or its Subcontractor(s), servant(s), agent(s) or employees(s) under this Agreement, excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or the negligent acts of the Corporation, its other Contractor(s), assign(s) and authorized representative(s) or any other persons.

6.2 The terms and conditions of Section 01300 Clause 6.1 shall survive notwithstanding the completion of all Services and the obligations and duties under this Agreement and the termination for any reason whatsoever of this Agreement.

6.3 The indemnity provided in Section 01300 Clause 6.1 by the Contractor to the Indemnified Parties shall not in any way be limited or restricted by the insurance set out in Section 01300 Clause 11 or by limitations on the amount or type of damages, compensation or benefits payable under the Workers' Compensation Act or any other similar statute.

## **7.0 NO WAIVER:**

7.1 No action or failure to act by the Corporation shall constitute a waiver of any right or duty under the Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing by the Corporation.

## **8.0 CONTRACTOR STATUS:**

8.1 This is an agreement for the performance of Services and the Contractor is engaged under the Agreement as an independent Contractor for the sole purpose of providing the Services. Neither the Contractor nor any of the Contractor's personnel is engaged by the Agreement as an employee, servant or agent of the Corporation.

8.2 It is understood and agreed that the Contractor will act as an independent Contractor and that it is entitled to no other benefits or payments whatsoever other than those specified in the Agreement and Section 01000 Clause 10 Schedule of Fees, Rates and Charges.

**9.0 DOCUMENTATION, PATENT AND COPYRIGHT:**

- 9.1 **Title.** The title, property rights and ownership in and to all present and future materials and information produced or prepared by the Contractor 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 Corporation without any payment by the Corporation therefor.
- 9.2 **Patent and Copyright.** The title, property 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 Corporation without any payment by the Corporation therefor.
- 9.3 **Further Assurances.** The Contractor shall upon request by the Corporation, do all such things and execute and deliver to the Corporation all such documents and instruments as the Corporation shall reasonably require in order to vest title, property rights and ownership in the Corporation as provided in Section 01300 Clause 9.1 and 9.2 and the Contractor shall execute and deliver all such assignments, documents and instruments as may, in the Corporation's opinion, be necessary or desirable for the application or the issuance of any patents, designs or the registration of any copyright.

**10.0 NOTICES:**

- 10.1 Where in the Agreement any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail, or by facsimile addressed to the party for whom it is intended at the address specified in Section 01000 Clause 7 of the Form of Agreement. Any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by facsimile when transmitted. The address of either party may be changed by notice in the manner set out in this provision.
- 10.2 If the Corporation is other than the Regional District of Nanaimo notices or written communications may be made on Regional District of Nanaimo letterhead, but if so made shall be deemed to have been made on behalf of the Corporation.

**11.0 INSURANCE:****11.1 Insurance to be Provided by the Contractor**

11.1.1 The Contractor shall provide, maintain and pay for the following insurance:

(a) Contractor Equipment Insurance

"All risks" equipment insurance covering owned and non-owned machinery and equipment used by the Contractor for the performance of the Services.

(b) Automobile Liability Insurance

Automobile liability insurance with respect to owned and leased automobiles used directly or indirectly in the performance of the Services covering liability for bodily injury, death and damage to property with a limit of not less than \$2,000,000 inclusive for each and every loss.

(c) Comprehensive General Liability Insurance

Comprehensive General Liability Insurance providing third party bodily injury and property damage coverage in an amount of not less than \$1,000,000 per occurrence, indicating that the Corporation is additional insured and containing a cross liability and/or severability of interest clause protecting each insured to the same extent as if they were separately insured.

The Policy shall contain a clause providing that the Corporation will receive 30 days notice of cancellation or of any material change in coverage which will reduce the extent of coverage provided to the Corporation. The certificate will also indicate that the policy contains non-owned automobile liability and contractual liability coverage. The insurance policy will be in a form and with a company which are, in all respects, acceptable to the Corporation.

(d) Professional Liability Insurance

Professional liability (errors and omissions) insurance coverage shall be obtained to a limit of not less than \$1,000,000 on a claims-made basis. Such coverage shall be maintained for a period of two years subsequent to conclusion of Services provided under this Agreement.

11.1.2 The Contractor shall, upon written request of the Corporation, provide to the Corporation certificates of insurance which shall include a provision that such insurance shall not be cancelled or modified without at least 30 days written notice to the Corporation.

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

## **12.0 WORKSAFE BC COVERAGE**

The Consultant will provide to the Regional District, prior to the commencement of the Term, evidence satisfactory to the Regional District that the Contract has paid and satisfied any and all assessments payable under the Workers Compensation Act or any regulation thereunder with respect to the Services to be provided under this Agreement.

## **13.0 DELAY IN PERFORMANCE:**

13.1 Neither the Corporation nor the Contractor 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 Corporation or the Contractor 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.

#### **14.0 SEVERABILITY:**

14.1 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.

#### **15.0 CONFLICT OF INTEREST:**

15.1 The Contractor declares that the Contractor has no pecuniary 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 carrying out the Services. Should such an interest be acquired during the term of the Agreement, the Contractor shall declare it immediately in writing to the Corporation. If the Contractor does declare a conflict of interest the Corporation may direct the Contractor to resolve the conflict of interest to the Corporation's satisfaction.

#### **16.0 GOVERNING LAW:**

16.1 The Agreement shall be construed under and according to the laws of the Province of British Columbia and subject to an agreement to refer a dispute to arbitration under Section 01300 Clause 16, the parties agree to irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.

#### **17.0 DISPUTE RESOLUTION:**

17.1 All claims, disputes or issues in dispute between the Corporation and the Contractor shall be decided by arbitration if the parties agree, or failing agreement, in a Court of competent jurisdiction within the Province of British Columbia and be governed by the laws of British Columbia.

17.2 In the event that the parties agree to arbitration, pursuant to Section 01300 Clause 16.1, the arbitration shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the parties, and failing agreement by the parties, shall be appointed by a Court of competent jurisdiction within the Province of British Columbia.

17.3 In the event that the parties agree to arbitration, the arbitration shall take place in Vancouver, British Columbia and be governed by the laws of British Columbia.

17.4 The procedure set out in Section 01300 Clause 16 is not meant to preclude or discourage informal resolution of disagreements between the Corporation and the Contractor.

## **18.0 TERMINATION:**

### Termination for Default

18.1 The Corporation may terminate the Agreement if the Contractor at any time becomes bankrupt, makes an assignment of his property for the benefit of his creditors, or if a receiver or liquidator should be appointed. Such termination shall be effective upon the Corporation giving written notice thereof.

18.2 The Corporation may terminate the Agreement in whole or in part in writing if the Contractor defaults in the fulfilment of any or all of its obligations under this Agreement provided that, except in the case where the Corporation acting reasonably deems it impractical, the Contractor shall be entitled to cure the default within 10 days of receipt of written notice from the Corporation. Failure to cure the default within the 10 day period or as mutually extended by agreement between the Corporation and the Contractor, shall entitle the Corporation to terminate this Agreement immediately.

18.3 The Corporation may terminate the Agreement, without any cost or penalty or consequence whatsoever, if it concludes, acting reasonably on the information available to it, that the Contractor is in material non-compliance with, or has been convicted of a material offence or violation of, health, safety, labour or environmental laws.

18.4 If the Corporation terminates the Agreement under Section 01300 Clause 17.1, 17.2 or 17.3, upon receipt of written notice of termination, the Contractor shall discontinue providing the Services in accordance with the notice and within the period of time set out in the notice deliver to the Corporation all drafts, reports, drawings, plans, specifications, computer discs, software and all other information and materials relating to the Services.

### Termination without Default

18.5 Notwithstanding the provision of Section 01300 Clause 17.1, 17.2 or 17.3, the Corporation shall be entitled at any time during the Agreement to terminate this Agreement upon written notice to the Contractor. Upon receipt of written notice of termination, the Contractor shall discontinue providing the Services in accordance with the notice and within the period of time set out in the notice deliver to the Corporation all drafts, reports, drawings, plans, specifications, computer discs, software and all other information and materials relating to the Services.

### Payment on Termination without Default

18.6 Upon termination under Section 01300 Clause 17.5, the Corporation shall pay the Contractor in accordance with Section 01000 Clause 10 for the Services provided to the date of termination together with the actual and reasonable out-of-pocket expenses directly and necessarily incurred by the Contractor as a result of the termination.

**19.0 PAYMENT:**

- 19.1 The Contractor shall submit invoices to the Corporation 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.
- 19.2 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 Contractor shall also provide to the Corporation upon written request such receipts, bills, invoices or other evidence in support of each invoice for a billing period as the Corporation shall request.
- 19.3 Except for the amounts which the Corporation in good faith is disputing and except for any set off which the Corporation may claim and except for invoices (or portions of invoices) in respect of which the Corporation has requested and not received supporting evidence under Section 01300 Clause 18.2, the Corporation shall pay invoices submitted to it for the Services within 30 days receipt thereof.
- 19.4 The Contractor 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 Corporation 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.

**20.0 SUBCONTRACTORS:**

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

**21.0 EXTRA WORK:**

- 21.1 Extra Work means the furnishing of services not directly or by implication called for in the Agreement. If the Corporation requires extra work it may do so by itself or by the employment of others or it may direct the Contractor to do the extra work by issuance of a written direction. The Contractor shall perform any extra work at the rates provided for in Section 01000 Clause 10.

**22.0 WORK AND SERVICES OMITTED:**

- 22.1 Upon receipt of written direction from the Corporation, the Contractor shall omit Services to be performed under the Agreement. The Contractor shall have no claim against the Corporation for loss associated with any omitted Services.

**23.0 THIRD PARTY RIGHTS:**

23.1 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Corporation and the Contractor.

**24.0 WITHHOLDING TAX**

24.1 [Regulation 105(1) of the Canadian Income Tax Act requires that payments to non-residents for any services performed in Canada, including work performed by Canadian and/or non-resident subcontractors, are subject to a Non-Resident Withholding Tax of 15%. Exemptions from this withholding tax are available in some circumstances, but you must apply directly with Canada Revenue Agency (CRA), at least 30 days before commencing work. Please call the CRA at 1-855-284-5946 if you have any questions or to receive a copy of the application form.]

**END OF SECTION**

DRAFT