



REGIONAL DISTRICT OF NANAIMO

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

[Project Title]

[Awarded Company Name]

| | |
|---------------------------------|----------------------|
| FORM OF AGREEMENT: | SECTION 01000 |
| SCOPE OF SERVICES: | SECTION 01100 |
| FEES, RATES AND CHARGES: | SECTION 01200 |
| GENERAL CONDITIONS: | SECTION 01300 |

BETWEEN: [] *(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 engineering services/professional services]** for the **[project title]**, 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 the []**, 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 \$_____ 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 [], address [], telephone [], email [].

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 DELAY IN PERFORMANCE:

12.1 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.

13.0 SEVERABILITY:

13.1 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.

14.0 CONFLICT OF INTEREST:

14.1 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.

15.0 GOVERNING LAW:

15.1 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.

16.0 DISPUTE RESOLUTION:

16.1 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.

16.2 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.

16.3 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.

16.4 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.

17.0 TERMINATION:

Termination for Default

17.1 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.

17.2 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.

17.3 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.

17.4 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

17.5 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

17.6 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.

18.0 PAYMENT:

18.1 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.

18.2 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.

18.3 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.

18.4 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.

19.0 SUBCONTRACTORS:

19.1 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.

20.0 EXTRA WORK:

20.1 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.

21.0 WORK AND SERVICES OMITTED:

21.1 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.

22.0 THIRD PARTY RIGHTS:

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

23.0 WITHHOLDING TAX

23.1 [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

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