



Request for Qualifications

French Creek Pollution Control Centre Stage 4 Expansion Project Detailed Design Engineering Services

Issue date:

February 8, 2018

Closing Time:

Proposals must be received before 4:00 PM PST on March 15, 2018,

Closing Location:

Regional District of Nanaimo
Main Reception – 2nd Floor
6300 Hammond Bay Road
Nanaimo, B.C. V9T 6N2
Attention: Regional and Community Utilities

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1. PURPOSE AND BACKGROUND

1.1 Purpose

The Regional District of Nanaimo (RDN) is seeking Responses to this Request for Qualifications (RFQ) for qualified firms to carry out the detailed design, tendering, construction services, and oversee commissioning for the French Creek Pollution Control Centre (FCPCC) Stage 4 Expansion Project.

The purpose of the RFQ is to allow firms to demonstrate their ability to provide the required services. Respondents are urged to forward concise submittals as outlined in Section 6. The RDN intends to issue a Request for Proposals (RFP) to up to three (3) Prequalified Respondents and the highest ranked Respondent may then be invited to enter into a Contract for provision of the services described in Section 4. The RDN reserves the right to shortlist a greater number of Respondents.

1.2 Background

The FCPCC is a secondary wastewater treatment plant using trickling filter / solids contact process, it is owned and operated by the Regional District of Nanaimo (RDN). The plant was originally constructed in 1978 it is reaching its current capacity and must be expanded to accommodate growth in the service area. The Project is referred to as the FCPCC Stage 4 Expansion.

The Stage 4 Expansion will be designed to provide adequate treatment capacity for the service population to the year 2035, it is anticipated that the expansion will be fully commissioned by 2021.

The RDN commissioned a Preliminary Design of the Stage 4 Expansion in 2017 in order to establish the scope and design basis and advance the design to the 30% completion level. The Preliminary Design of the Stage 4 Expansion Project is currently in progress with an anticipated completion by the end of March 2018.

The Preliminary design includes expansion of the secondary treatment process using a conventional activated sludge process for BOD and TSS removal. The process includes installation of suspended growth aeration tanks and secondary clarifiers in a combined treatment units (CTU) configuration. The preliminary design also includes the implementation of a Flow Equalization tank, a new final effluent pump station, and a number of other upgrades to the existing process and plant facilities. These upgrades include measures to optimize operations and address maintenance and equipment replacements, address odor control issues, and provide enhancements to the administrative building spaces, and maintenance facilities.

Appendix C provides a summary of information available to Respondents.

2. REQUEST FOR QUALIFICATIONS DEFINITIONS

Throughout this Request for Qualifications, the following definitions will be used:

“**Contract**” means a written contract executed by the RDN and the Contractor as a result of an RFP;

“**Contractor**” means a Qualified Respondent who is the successful Proponent to an RFP who enters into a Contract with the RDN;

“**must**” or “**mandatory**” means a requirement that must be met in order for a Response to receive consideration;

“**Qualified Respondent**” means a Respondent possessing the qualifications described in this RFQ;

“**Respondent**” means an individual or a company that submits, or intends to submit, a Response;

“**Response**” means a statement of qualifications submitted in reply to this RFQ;

“**RFP**” means a Request for Proposals for provision of the services described in Section 4 that may be issued to up to three Qualified Respondents;

“**RFQ**” means the process described in this Request for Qualifications; and

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

3. REQUEST FOR QUALIFICATIONS

3.1 Enquiries

All enquiries related to this RFQ are to be directed, in writing by email, to **Mike Squire** at **msquire@rdn.bc.ca**. Information obtained from any other source is not official and should not be relied upon. Enquiries and answers will be recorded and distributed to all Respondents that return the “Receipt confirmation Form” and will be posted on the RDN website and BC Bid Website.

3.2 Closing Date

Four (4) complete hard copies, including (1) unbound clearly marked “Original” of each Response plus one electronic copy (CD/DVD/USB) must be received before **4:00 PM, Pacific Time, on March 15, 2018** at the address on the front cover of this RFQ. Responses are not to be sent by facsimile or e-mail. Responses and their envelopes should be clearly marked with

the name and address of the Respondent and the RFQ project title. Should there be any difference between the “Original” hard copy and the electronic copy, the hard copy will prevail.

3.3 Late Responses

Responses will be marked with their receipt time at the closing location. Only complete Responses received and marked before closing time will be considered to have been received on time. Hard-copies of late Responses will not be considered or evaluated and will be returned to the Respondent. In the event of a dispute, the Response receipt time will be as recorded at the closing location for hard copy. Responses will prevail whether accurate or not.

3.4 Qualifications Review Committee

Review of Responses will be by a committee formed by the RDN and may include employees and contractors to the RDN.

3.5 Review and Selection

The qualifications review committee will check Responses against the mandatory criteria noted in Section 6.1. Responses not meeting all mandatory criteria will be rejected without further consideration. Responses that do meet all the mandatory criteria will then be assessed and scored against the selection criteria noted in Section 6.2. Responses not achieving a pass in every category will not be considered further. Prequalified Respondents will be provided with a copy of the RFP if one is issued.

3.6 Conflict of Interest

The Respondent declares that it 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 contemplated Agreement, the Respondent shall declare it immediately in writing to the RDN. If the Respondent does declare a conflict of interest the RDN may direct the Respondent to resolve the conflict of interest to the RDN’s satisfaction.

Responses will not be evaluated if the Respondent's current or past corporate or other interests may, in the RDN's opinion, give rise to a conflict of interest in connection with this RFQ.

3.7 Solicitation

The Respondent may not make any representations or solicitations to any director, officer or employee of the RDN with respect to the RFQ either before or after submission of the Response except as provided herein. If any director, officer, employee, agent sub-contractor, supplier or other representative of the Respondent communicates with any director, officer or employee of the RDN or any consultant engaged by the RDN in connection with this Request for Qualifications about this Request for Qualifications, other than the contact person named, the

RDN shall have the unfettered right, regardless of the nature of the communication, to reject the Response submitted by the Respondent.

3.8 Estimated Time-Frames

The following timetable outlines the anticipated schedule for the RFQ, RFP and Contract process. The timing and the sequence of events resulting from this Request for Qualifications may vary and shall ultimately be determined by the RDN.

Event	Anticipated Date
Request for Qualifications closing date	March 15, 2018
Completion of Preliminary Design	March 2018
Request for Proposal anticipated issue date	April 12, 2018
Request for Proposal anticipated close date	May 24, 2018
Anticipated date of award	June 27, 2018

3.9 Signed Responses

The Response must include a cover letter substantially similar to the cover letter set out in **Appendix A** and the cover letter must be signed, by a person authorized to sign on behalf of the Respondent and to bind the Respondent to statements made in the Response to this RFQ.

3.10 Changes to Response Wording

The Respondent will not change the wording of its Response after the closing date and time specified on the front cover of this RFQ and no words or comments will be added to the Response unless requested by the RDN for purposes of clarification.

3.11 Respondent Expenses

Respondents are solely responsible for their own expenses in preparing a Response and for subsequent negotiations with the RDN, if any. The RDN will not be liable to any Respondent for any claims, whether for costs or damages incurred by the Respondent in preparing the Response, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

3.12 Acceptance of Responses

This RFQ is not an agreement to purchase goods or services. The RDN is not bound to enter into a Contract with any Prequalified Respondent. Responses will be assessed in light of the qualification review criteria. The RDN will be under no obligation to receive further information, whether written or oral, from any Respondent.

3.13 Request for Proposals

It is anticipated that an RFP will be issued to all Prequalified Respondents as noted in Section 3.5.

3.14 Definition of Contract

Notice in writing to a Respondent that it has been identified as a Prequalified Respondent will not constitute a Contract nor give the Respondent any legal or equitable rights or privileges relative to the service requirements set out in this RFQ or in any subsequent RFP. Only if a Prequalified Respondent and the RDN enter into a subsequent full written Contract, as a result of an RFP, will a Respondent acquire any legal or equitable rights or privileges.

3.15 Modification of Terms

The RDN reserves the right to modify the terms of this RFQ at any time in its sole discretion. This includes the right to cancel this RFQ at any time without issuing an RFP.

3.16 Ownership of Responses

All documents, including Responses, submitted to the RDN become the property of the RDN. They will be received and held in confidence by the RDN, subject to the provisions of the Freedom of Information and Protection of Privacy Act.

3.17 Confidentiality of Information

Information pertaining to the RDN obtained by the Respondent as a result of participation in this RFQ and any subsequent RFP is confidential and must not be disclosed without written authorization from the RDN.

3.18 Collection and Use of Personal Information

Respondents are solely responsible for familiarizing themselves, and ensuring that they comply, with the laws applicable to the collection and dissemination of information, including resumes and other personal information concerning employees and employees of any subcontractors. If this RFQ requires Respondents to provide the RDN with personal information of employees who have been included as resources in response to this RFQ, Respondents will ensure that they have obtained written consent from each of those employees before forwarding such personal information to the RDN. Such written consents are to specify that the personal information may be forwarded to the RDN for the purposes of responding to this RFQ and use by the RDN for the purposes set out in the RFQ. The RDN may, at any time, request the original consents or copies of the original consents from Respondents, and upon such request being made; Respondents will immediately supply such originals or copies to the RDN.

3.19 Receipt Confirmation Form

Respondents are advised to fill out and return the Receipt Confirmation Form provided in **Appendix B**. All subsequent information regarding this RFQ, including changes made to this document, will be directed to Respondents who return the Receipt Confirmation Form and will be posted on the RDN website and BC Bid Website.

3.20 Form of Contract

A draft Contract for Professional Services that the RDN will execute with the successful Respondent of the RFP is provided in **Appendix D**.

4. SERVICES

The Prequalified Respondents who become the selected design consultant may perform and be responsible for providing engineering and other related services for the FCPCC Stage 4 Expansion Project. In general, the scope of work will include:

- 1) Project management for the detailed design and construction services including inspections, contract administration and commissioning.
- 2) Development of project planning for all phases of the detailed design engineering services.
- 3) Review of the Preliminary Design Report and Drawings including confirmation of design criteria.
- 4) Conduct Value Engineering / Optimization Studies focused on identifying opportunities for enhanced performance and reliability, and capital/lifecycle cost reduction,.
- 5) Geotechnical site investigations
- 6) Design and specification reviews with RDN staff at 30%, 60%, 90% completion milestones.
- 7) Prepare construction cost estimates for each design completion milestone.
- 8) Preparation of contract documents and tender package, including construction drawings and specifications.
- 9) Overall management of the Construction Tender Process, review, and evaluation of tenders and the preparation of a recommendation for award.
- 10) Construction oversight, engineering inspection services and contract administration.

- 11) Completion of post construction inspection, commissioning support and submission of record drawings.
- 12) Obtaining approvals and permits from, British Columbia (BC) Ministry Of Environment, Department of Fisheries and Oceans Canada, Environment Canada and other regulators as required.
- 13) Assist with Development Permit and Building Permit applications from the Regional District of Nanaimo.

5. EVALUATION

5.1 District's Privilege

The RDN reserves the right to independently contact individuals/firms submitted as references.

5.2 Clarification

The RDN reserves the right to request candidate clarification of vague or ambiguous items contained in the Statement of Qualifications provided by Proponents. Requests for clarification will be made in writing. A clarification will not be requested if a submission has clearly failed to respond to a specified requirement.

5.3 Proposal Organization

Each respondent shall organize their submissions to the following outline:

- Firm profile: Name, address, telephone number, email address, number of years in business, experience in similar projects, and geographic location of lead firm.
- Capability: Size of workforce, equipment and facilities available where the design will be completed and where the consultant's Project Manager, Design Manager and Discipline Leads will be located.
- Personnel: Identify the Project Manager, Design Manager, Construction Manager, Discipline Leads including Treatment Process Specialist, Process Mechanical, Electrical, Architect, SCADA Control and Instrumentation, Odour Control Specialist and Other Key Personnel. Provide an organization chart and resumes and for each team member indicate their professional qualifications/designations, role and responsibility for project, summary of education/qualifications and relevant experience in relation to the project. Describe the availability and capacity of the Project Manager, Design Manager, Construction Manager and each Discipline Lead to undertake the Project in relation to current and anticipated commitments to

other projects. Provide resumes for sub consultants indicating their knowledge, qualifications and experience if the proponent will be using specialty sub consultants.

Local Knowledge: Demonstrate knowledge of local BC wastewater regulations, experience in designing wastewater treatments plants in BC, experience designing wastewater treatment plants with marine discharge and high wet weather flows, and experience with sustainability and environmental stewardship.

Experience: Provide a description of completed projects and past work history in the last ten years and demonstrate relevance to the FCPCC Stage 4 Expansion Project. Describe how the Project Manager, Design Manager, Construction Manager and Discipline Leads have been involved with these projects.

References: Provide references from at least three different projects of a similar type including a description of the project, its location, its size/scope, timeframe and date completed and approximate cost.

6. SUBMISSION REQUIREMENT

6.1 Mandatory Criteria

The following are mandatory requirements. Responses not clearly demonstrating that they meet them will receive no further consideration during the qualifications review process.

Criteria
The Response must be received at the closing location by the specified closing date and time.
The Response must be in English and must not be sent by facsimile or email.
Four (4) copies of the Response must be submitted. The main body of the Technical Submission should not exceed twenty (20) pages, single sided, single spaced and minimum 10pt font size. Appendices are requested to be bound separately and can be included for supplementary materials. Provide one electronic (CD/DVD/USB) copy prepared in Adobe PDF.
The Response must include a cover letter substantially similar to the cover letter set out in Appendix A and the cover letter must be signed, by a person authorized to sign on behalf of the Respondent and to bind the Respondent to the statements made in the Response to this RFQ.
The respondent must respond to the Proposal Organization format set out in Section 5.3.

6.2 Selection Criteria

Respondents will be evaluated in accordance with the following selection criteria:

Criterion	Points Available
Firm Profile, Capability and References	20
Project Manager	10
Design Manager, Construction Manager, Discipline Leads and Other Key Personnel	25
Local Knowledge	10
Experience Upgrading Operating Wastewater Treatment Plants	35
TOTAL POINTS AVAILABLE	100

Appendix A – Response Covering Letter

Letterhead or Respondent's name and address

Date:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

Attention: Mike Squire, Project Engineer, Engineering Services

Subject: Request for Qualifications – FCPCC Stage 4 Expansion Project – Detailed Design Engineering Services, including any amendments or additions

We have carefully read and examined the Request for Qualifications and have conducted such other investigations as were prudent and reasonable in preparing the Response. We are authorized to submit this Response on behalf of the Respondent.

Yours truly,

Signature

Name: _____

Title: _____

Telephone Number: _____

e-mail address: _____

Legal name of Respondent: _____

Date: _____

Appendix B – Receipt Confirmation Form

**FCPCC – Stage 4 Expansion Project
Request for Qualifications
Regional District of Nanaimo
Closing Date: March 15, 2018**

For any further distributed information about this Request for Qualifications, please return this form by email as soon as possible to:

Mike Squire, Project Engineer
Engineering Services
E-mail: msquire@rdn.bc.ca
T. 250-390-6560

COMPANY: _____

STREET ADDRESS: _____

CITY: _____ **POSTAL/ZIP CODE:** _____

PROVINCE/STATE: _____ **COUNTRY:** _____

MAILING ADDRESS, IF DIFFERENT: _____

PHONE NUMBER: (____) _____

CONTACT PERSON: _____

TITLE: _____

E-MAIL ADDRESS: _____

Please send us any further correspondence about this Request for Qualifications by:

Courier Collect: Courier Name and Account No. _____

E-Mail _____

Appendix C – Summary of Available Information

The following information will be made available to Respondents.

- 1) FCPCC Stage 4 Expansion Preliminary Design – Technical Memoranda Packages, AECOM Canada Ltd. 2017
- 2) FCPCC Stage 4 Expansion Preliminary Design – 60% Draft Design Submission, AECOM Canada Ltd. January 2017
- 3) FCPCC Stage 4 Expansion Project Geotechnical Assessment Report - Preliminary Design Phase, exp Services Inc. July 2017

Appendix D
Professional Services Agreement

**Contract for Professional Services
Detailed Design Services**

FCPCC – Stage 4 Expansion Project

THIS AGREEMENT dated for reference and made as of the [] day of [], 201[]

BETWEEN:

REGIONAL DISTRICT OF NANAIMO
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

("RDN", "we", "us" or "our" as applicable)

OF THE FIRST PART

AND:

[CONSULTANT NAME]

[ADDRESS]

xxxxxxx, BC, X#X #X#

("Consultant", "you" or "your" as applicable)

OF THE SECOND PART

WHEREAS:

- A. The RDN called for proposals for the provision of consulting services for [CONTRACT NUMBER] [NAME OF PROJECT] (the "Project"), and the Consultant 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 Consultant's proposal is attached as Schedules "D" and "E" to this Agreement.
- B. The RDN has agreed to engage the Consultant and the Consultant has agreed to provide the services described in Schedule "A" to this Agreement (the "Services") to the RDN in respect of the Project on the terms and conditions set out in this Agreement.

NOW THEREFORE the RDN and the Consultant, in consideration of their mutual duties and responsibilities to one another under this agreement (the "Agreement"), agree as follows:

CONSULTANT'S OBLIGATIONS:

- 1. **Standard of Care** You must provide the Services with the degree of care, skill and diligence normally provided by consultants having similar qualifications in the performance of duties of a nature similar to the Services, and you must provide the Services within the time limits specified in Schedule "A" or, if no time limit is specified in Schedule "A", you must provide the Services promptly.
- 2. **Billable Charges** You must charge only those fees and disbursements specifically authorized for the Services in Schedule "A" to this Agreement. All other costs and expenses incurred by you to provide the Services, including labour, materials, permits, and licenses, must be paid by you.

3. **Confidentiality** You must not disclose any information, data or secret of the RDN to any person other than representatives of the RDN duly designated for that purpose in writing by us and you must not use for your own purposes or for any purpose other than those of the RDN any information, data or secret you may acquire as a result of being engaged pursuant to this Agreement.
4. **Conflict of Interest** You must not, during the term of this Agreement, perform a service for, or provide advice to any person, firm or corporation, which in our reasonable opinion gives rise to a conflict of interest between your obligations under this Agreement and your obligations to such other person, firm or corporation.
5. **Ownership of Materials** All plans, specifications, manuals, preliminary drafts, sketches, copies, designs, computer modules, software programs, technology, data and information and all other materials produced by you under this Agreement (collectively, the “**Intellectual Property**”) are and will remain our property even though you or another party has physical possession of them. You hereby waive in our favour any moral rights you, your employees, sub-consultants or sub-contractors may have in the Intellectual Property. Until the expiry or earlier termination of this Agreement, you may retain copies, including reproducible copies of the Intellectual Property. You must not use the Intellectual Property on other projects or for other clients except with written consent from us. You must obtain our consent before you publish or make public any of the Intellectual Property in book, periodical, electronic or any other form.
6. **Retention of Intellectual Property on Termination** Upon expiry or earlier termination of this Agreement, you must turn over to us all Intellectual Property, keeping a single copy for your own archival purposes.
7. **Severability** It is understood and agreed that the covenants and agreements contained in paragraphs 3, 4, 5, 6 and 8 shall survive the expiry or earlier termination of this Agreement and that those paragraphs are severable for such purpose.
8. **Indemnification** You must indemnify and save harmless us and our elected officials, appointed officers, employees, agents and contractors from and against any claims, costs, losses, damages, actions, causes of action and expenses arising, from an error, omission or negligent or wilful act of you or your agents, employees, sub-consultants or sub-contractors, or from your breach of this Agreement.
9. **Insurance**
 - 9.1 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 \$5,000,000 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.

9.2 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.

a. 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.

10. **Compliance with Laws** You must comply with all laws applicable to the provision of the Services.

11. **Assignment** You must not assign, subcontract, or transfer any interest in your rights under this Agreement without our prior written consent.

12. **Legal Relationship** The legal relationship between you and the RDN arising pursuant to this Agreement is that of an independent contractor and a purchaser of services. Nothing in this Agreement shall be interpreted so as to render us your employer or partner, or the employer of anyone working for you, and you must not do anything that would result in anyone working for you being considered our employees.

13. **Agent** You are not, and must not claim to be our agent for any purpose unless we give you authorization in writing to act as our agent for specific purposes that are reasonably necessary to your rendering of the Services pursuant to this Agreement.

PAYMENT

14. **Payment for Services** We must pay you the fees for your Services at the times set out in Schedule "A". Where you are specifically authorized in Schedule "A" to charge us for disbursements, we must pay such disbursements to you in accordance with Schedule "A" as long as they are reasonably necessary for the performance of the Services and supported by conclusive documentation, including receipts. Payment will be issued no more than 30 days after receipt of your invoice, in accordance with our accounts payable policies.

15. **Currency** Unless stated otherwise in this Agreement, all sums of money are in Canadian dollars.

TERMINATION AND SUSPENSION

16. **For Default** If you are in default of your obligations under this Agreement, and you have not corrected the default within thirty (30) days following written notice from us, or if the default reasonably requires more time to correct, and you are not taking active steps to correct the default within thirty (30) days following written notice from us, or if you become insolvent or are assigned

into bankruptcy, we may immediately terminate this Agreement. Termination will be without prejudice to any other rights or remedies we may have.

17. **For Absence** If for any reason you are unable to provide the Services using the individuals or subcontractors named in your proposal and set forth in this Agreement for reasons other than reasonable annual vacation time or short term temporary absence because of illness, we may, following written notice and without limiting any other right we may have, immediately terminate this Agreement and shall pay you for the Services performed and disbursements incurred by you to the date of termination, less any amounts necessary to compensate us for damages or costs incurred by us arising from your default.
18. **Suspension** If your Services are suspended by the RDN at any time for more than thirty (30) days through no fault of yours, then you shall have the right at any time until such suspension is lifted by the RDN to terminate this Agreement upon giving written notice thereof to the RDN. In such an event, you shall be paid by the RDN for all Services performed and disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such suspension unless the parties otherwise agree in writing.
19. **With Notice** If we are unwilling or unable to proceed with the Project we may terminate this Agreement by giving you fifteen (15) days written notice. If you receive such notice, you must perform no further Services other than those reasonably necessary to close out the Services, and we will pay you the fees and authorized disbursements properly owing as of the effective date of termination.

GENERAL

20. **Client to Provide Information** We will make available to you all information in our possession which we consider pertinent to your performance of the Services. You may rely upon the accuracy and completeness of such information except where it is unreasonable to do so. However, you acknowledge that the RDN, in the preparation of the call for proposals and this Agreement, the supply of oral or written information to you, the review of proposals or the carrying out of the RDN's responsibilities under this Agreement, does not owe a duty of care to you and you hereby waive for yourself, your successors and assigns, the right to sue the RDN in tort for any loss, including economic loss, damage, cost or expense, arising from or connected with any error, omission or misrepresentation occurring in the preparation of this Agreement, the call for proposals, the supply of oral or written information to proponents, the review of proposals, or carrying out of the RDN's responsibilities under this Agreement.
21. **Client to Respond** We will give prompt consideration to all draft reports, drawings, proposals and other documents relating to the Project provided to us by you, and, whenever prompt action is necessary, where possible inform you of a decision in such reasonable time so as not to delay your Services.
22. **Site Access** We will arrange and make provision for your entry and ready access to property (public and private) as well as to the Project site, as necessary, to enable you to perform the Services. We will arrange a safety orientation for you and your employees, to identify the hazards of the site. Once we have provided such a safety orientation, you will be responsible for arranging any additional safety orientations necessary as a result of a change in your personnel or otherwise.
23. **Jurisdiction** This Agreement is governed by and shall be construed in accordance with the laws in force from time to time in the Province of British Columbia.
24. **Waiver** Except as may be specifically agreed in writing, no action or failure to act by the RDN or the Consultant shall constitute a waiver of any right or duty afforded either of them under this Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.

25. **Entire Agreement** This Agreement, including the schedules attached to it, constitutes the entire Agreement between the RDN and the Consultant and supersedes all previous expectations, understanding, communications, representations and agreements whether verbal or written between the RDN and the Consultant with respect to the subject matters hereof and may not be modified except by subsequent agreement in writing executed by the RDN and the Consultant.
26. **Conflict** 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.
27. **Invalidity** If any part of this Agreement is or is declared invalid by a court of competent jurisdiction, the remainder shall continue in full force and effect and be construed as if the Agreement had been executed without the invalid portion.
28. **Designation of Parties** In this Agreement, “we”, “us” and “our” refer to the RDN alone and never refer to the combination of the Consultant and RDN. The combination of the RDN and the Consultant is referred to as “the parties”.
29. **Headings** The captions or headings appearing in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of it.
30. **Interpretation** 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.
31. **Time** Time is of the essence in this Agreement.
32. **Enurement** 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.

DISPUTE RESOLUTION

33. All claims, disputes or issues in dispute between the Corporation and the Contractor shall be decided by mediation 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.
34. In the event of a dispute, the parties agree to resolve the dispute by:
 - a. 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.
 - b. If, after 30 calendar days, the dispute is not resolved, both parties agree to appoint a mediator to resolve the dispute and their decision will be final. Parties will be responsible for their own costs.
34. In the event that the parties agree to mediation, the mediation shall take place in Nanaimo, British Columbia and be governed by the laws of British Columbia.

DESIGNATED REPRESENTATIVES

35. **RDN Representative** We shall by notice in writing to you designate a representative to act on our behalf with respect to the performance of this Agreement (the “RDN Representative”) and we may at any time or from time to time thereafter, by notice in writing to you, designate another person to act as the RDN Representative in the place and stead of any person previously designated.

