REGIONAL DISTRICT OF NANAIMO

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT made the <Day> day of <Month>, 20<XX>.

BETWEEN:

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

(hereinafter called the "Regional District" or "Client")

AND:

<VENDOR NAME>
<Street Address>
<City, Province>
<Postal Code>

(hereinafter called the "Consultant")

NOW THIS AGREEMENT WITNESSETH:

THAT in consideration of the terms, conditions and covenants hereinafter set forth, the Regional District and the Consultant covenant and agree each with the other as follows:

1 Appointment

The Regional District retains the Consultant to provide the Services (herein called the "Services") described in Schedule 'B' which is attached hereto and forms part of this Agreement.

2 Term

The Consultant will provide the Services during the period (hereinafter called the "Term") commencing on <Enter Start Date> and ending on <Enter End Date>, unless sooner terminated as hereinafter provided.

3 Payment

The Regional District will pay to the Consultant, for the Services, the amount, in the manner and at the times set out in Schedule 'A' attached hereto. The Consultant agrees to accept the amount as full payment and reimbursement. No additional amounts may be charged by the Consultant unless pre-approved by the Regional District in writing.

SAMPLE

4 Independent Consultant

The Consultant will be an independent Consultant and not the servant, employee, or agent of the Regional District. The Consultant is not, and must not claim to be the Regional District's agent for any purpose unless the Regional District gives the Consultant authorization in writing to act as the Regional District's agent for specific purposes that are reasonably necessary to the Consultant's rendering of the Services pursuant to this Agreement.

5 Assignment and Sub-Consultants

The Consultant will not, without the prior written consent of the Regional District, assign or subcontract this Agreement or any portion thereof. The Consultant may retain subconsultants to assist in the performance of the Services provided that the terms of this Agreement shall apply to the subconsultants and provided that the Consultant shall be wholly responsible for the professional standards, performance and all actions of the subconsultants. The Consultant shall only employ subconsultants having the appropriate standards, qualifications, and experience in their respective areas of expertise. Notwithstanding the foregoing, Consultant may, where appropriate, subcontract any portion of the Services its affiliates without the Regional District's prior written consent and Consultant shall remain liable for the performance of such affiliates.

6 Intellectual Property

If any Intellectual Property is developed by the Consultant in the course of or in connection with the performance of the Services, ownership of such Intellectual Property and copyright shall vest exclusively with the Regional District, together with an unconditional waiver of moral rights. Provided the Regional District has paid the Consultant for the Services, the Regional District shall have the right to grant a perpetual, non-exclusive, royalty-free license in such Intellectual Property to the Federation of Canadian Municipalities (FCM) for public knowledge-sharing and grant compliance purposes.

7 Conflict

The Consultant shall not, during the term, perform a service for or provide advice to any person, firm or corporation where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Regional District, give rise to a conflict of interest between the obligations of the consultant to the Regional District under this Agreement, and the obligations of the Consultant to such other person, firm or corporation.

8 Limits of Liability and Consequential Damages Waiver

In consideration of the provision of the Services by the Consultant to the Client under this Agreement, the Client agrees that any and all claims which the Client may have against the Consultant, its employees, officers, agents, representatives and Sub-Consultants in respect of the Services, howsoever arising, whether in contract or in tort, save and except for claims arising out of or in connection with any malicious act or malicious omission under paragraph 9, shall be absolutely limited to $1,000,000 or the insurance limits as set out in Clause 10, whichever is lower.

No action or proceedings for any breach of this Agreement shall be commenced by either party after the expiry of 6 years after the completion of the Services.

The Consultant's liability to the Client is limited to that proportion of the Client's losses for which the Consultant is responsible under this contract and for which the Consultant has a legal liability. For the avoidance of doubt, the Consultant shall not be held liable for special, indirect, economic or consequential damages, including for loss of profit.

9 Indemnity

Notwithstanding the provision of any insurance coverage by the Client, and subject to paragraph 8, the Consultant shall indemnify and save harmless the Client, its officers, employees, agents, successors, assigns, representatives, Consultants and Other Consultants from and against any losses, claims, damages, actions and causes of action, costs, expenses, judgments and proceedings arising out of or in connection with any error, or negligent or malicious act or omission, by the Consultant or any of its officers, agents, representatives, employees or Sub-Consultants, except to the proportionate extent of any contributing negligent or wrongful act or omission of the Client, or any of its officers, agents, representatives, employees, Consultants or Other Consultants. The terms and conditions, of this indemnity provision shall survive the completion of all Services and the termination of this Agreement for any reason.

10 Insurance

At the Consultant's expense, provide and maintain any insurance that the Consultant is required to provide by law. The Consultant must provide satisfactory proof of insurance coverage to the Regional District upon request.

Comprehensive General Liability Insurance in an amount not less than two million dollars ($2,000,000.00) inclusive per occurrence against bodily injury and property damage. The Regional District is to be added as an additional insured under this policy, is to be endorsed to provide the Regional District with 30 days advance written notice of cancellation or material change and include a cross liability clause.

Professional liability (errors and omissions) insurance coverage shall be maintained to a limit of not less than $1,000,000 per claim, $2,000,000 aggregate within any policy year.

Automobile third party liability insurance in an amount not less than $2,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the Consultant.

The Consultant will responsible for paying any insurance deductibles.

11 Termination

Notwithstanding any other provision of this Agreement:

a) If the Consultant fails to comply with any provision of this Agreement, then, and in addition to any other remedy or remedies available to the Regional District, the Regional District may, at its

option, terminate this Agreement immediately by giving written notice of termination to the Consultant.

b) Either Party may terminate this Agreement at any time upon giving the other Party seven (7) days' notice of such termination.

If either such option is exercised by the Regional District, the Regional District will be under no further obligation to the Consultant except to pay the Consultant such amount as the Consultant may be entitled to receive, pursuant to Schedule 'A', for services provided and expenses incurred to the date the said notice is given or delivered to the Consultant. The Consultant will refund to the Regional District any payment already made to the Consultant not yet earned.

12 Prior Dealings

All prior negotiations and agreements between the parties relating to the subject matter of this Agreement are superseded by this Agreement. There are no representations, warranties, understandings, or agreements other than those expressly set forth in the Agreement or subsequently agreed to in writing, which writing shall be executed by a duly authorized officer of the party to be bound thereby prior to the commencement of the work.

13 Waiver

The failure of either party at any time to require the other party's performance of any obligation under this Agreement shall not affect the right to require performance of that obligation in the future. Any waiver by either party of any such breach or any such provision hereof shall not be construed as a waiver or modification of this provision itself, or a waiver or modification of any other right under this Agreement.

14 Counterparts

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

15 Dispute Resolution

If the parties to this Agreement are unable to agree on the interpretation or application of any provision in the Agreement, or are unable to resolve any other issue relating to this Agreement, the parties agree to the following process in the order it is set out:

a) the party initiating the process will send written notice to the other party (the "Dispute Notice"); and;
b) the parties will promptly, diligently and in good faith, including the senior management of both parties, take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute.

c) if the dispute is not resolved through collaborative negotiation within 30 Business Days of the dispute arising, the parties should then attempt to resolve the dispute through mediation under the rules of the Mediate BC Society and will be held in Nanaimo, BC. unless otherwise agreed.

16 Governing Law

This Agreement is governed by and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

17 Worksafe BC Coverage

Prior to the commencement of the work, all employers with employees must be registered with WorkSafe BC and remittance up to date. Self-employed proprietors or partners in a partnership, must have Personal Optional Protection coverage.

18 Delay in Performance

Neither the RDN nor the Consultant 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, pandemic, war, riot and other civil disturbance, strike, lockout, work slowdown and other labour disturbances, sabotage, judicial restraint and inability to procure permits, licenses or authorizations from any local, provincial or federal agency for any of the supplies, materials, accesses or services required to be provided by either the RDN or the Consultant 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.

19 Confidentiality and Privacy

Confidentiality

The Consultant will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Consultant as a result of, relating to or arising out of the performance of the Services and this Contract (the "Confidential Information") and will not disclose such Confidential Information.

Notwithstanding the preceding sentence, the Consultant may disclose the Confidential Information:

(a) with the prior written consent of RDN;

(b) in strict confidence to the Consultant's professional advisors;

(c) to Subconsultants who, in each case, need to know the applicable Confidential Information for the purposes of performing the Services; and

(d) as otherwise required by law or permitted by this Contract.

The Consultant will require all Personnel and SubConsultants to enter into an agreement with the Consultant containing provisions in the same form as those found herein.

Exceptions to Confidentiality Obligations

The obligations of confidentiality will not apply to:

(a) information that is, or subsequently becomes, publicly available other than through a breach of this Contract or through a breach of a confidentiality agreement which another person has entered into concerning the Confidential Information;

(b) information that the Consultant already possessed independently before commencing the Services;

(c) information that is rightfully received from a third party without breach of any obligation of confidentiality by such third party; or

(d) information which is independently developed without the use of the Confidential Information.

Collection or Use of Confidential Information

Except with the prior written consent of the RDN, the Consultant will not collect or use, and will ensure that its professional advisors and Subconsultants do not collect or use, the Confidential Information for any purpose other than complying with the terms of this Contract or performing the Services. Without limiting the generality of the foregoing, except with the prior written consent of RDN, the Consultant will not collect or use, and will ensure that its professional advisors and Subconsultants do not collect or use, the Confidential Information to advance the commercial or other interests of the Consultant or any Subconsultant or any entity affiliated with the Consultant or any Subconsultant.

Privacy

The Consultant acknowledges that the RDN is subject to the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, as amended ("FOIPPA"), and accordingly, any documents, information and data submitted to RDN by the Consultant under this Contract, as well as any resultant studies, documents, information, and date received by the RDN may be disclosed under FOIPPA. The Consultant will not do or omit to do anything that causes the RDN to be not in compliance with FOIPPA.

The Consultant furthermore acknowledges that as a service provider they have specific obligations under FOIPPA, including but not limited to Part 3, Protection of Privacy. The Consultant has reviewed and understood and will comply with these obligations.

The Consultant will ensure that all personnel with access to RDN Confidential Information, including those of any subconsultants, have completed FOIPPA privacy awareness training such as the Province of British Columbia's FOIPPA Foundations training course (https://mytrainingbc.ca/FOIPPA/) or equivalent, with certificates of completion being retained by the consultant.

Information Storage

The Consultant and any subconsultants must only store RDN Confidential Information disclosed to them within Canada, ensure that it is only accessible to personnel requiring access, and that it is secured with safeguards appropriate to the sensitivity of the information. Confidential Information stored on portable devices such as laptops or memory sticks, where necessary, must be protected with strong encryption (AES128 or stronger).

Publicity

The Consultant will not issue any press release or speak to the media about this Contract or the subject matter of this Contract without the prior written consent of the RDN, which consent may be unreasonably withheld. The Consultant will refer all media inquiries relating to the Services or the Contract to the RDN.

SIGNATORIES

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

For the Regional District of Nanaimo:

_____
Signature

_____
Printed Name, Title

For the Consultant, <Company Name or Consultant's Name>:

_____
Signature

_____
Printed Name, Title

SCHEDULE 'A'
FEES & EXPENSES

Total compensation to be paid to the Consultant by the Regional District of Nanaimo shall not exceed a maximum of **$<Enter Amount>** in Canadian Dollars. This compensation includes all fees and expenses including GST. If the services are completed by the consultant at less cost than maximum amount, the Regional District shall be billed only for actual hours worked and actual expenses incurred. If the Consultant receives the Maximum Fee, but has yet to complete the Services, it shall continue to provide the Services until it has provided all the Services.

The Consultant shall submit invoices to the Regional District 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. 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 subconsultants. Except for the amounts which the Regional District in good faith is disputing and except for invoices (or portions of invoices) in respect of which the Regional District has requested and not received supporting evidence, the Regional District shall pay invoices submitted to it for the Services within 30 days' receipt thereof.

SCHEDULE 'B'

REGIONAL DISTRICT OF NANAIMO

SCOPE OF WORK

Enter/Attach RFP Response, Scope of Work, Deliverables and Timeframe