



**REQUEST FOR PROPOSAL No. 2121**

**Capital Project Management Framework**

**DATE ISSUED: January 19, 2018**

**Closing Location:**

Purchasing Department  
2020 Labieux Road  
Nanaimo, BC  
V9T 6J9

**CLOSING DATE AND TIME:**

**Proposals must be received prior to:**

**February 8, 2018, 2017; 3:00 pm (15:00 hrs) Pacific Time**

**CITY CONTACT:**

Purchasing Manager  
Email: [purchasinginfo@nanaimo.ca](mailto:purchasinginfo@nanaimo.ca)  
Telephone: 250-756-5319

**Late Submissions will not be considered**

**Submissions will not be opened publicly**

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## **Section 1.0 Overview**

### **1.1. Purpose**

The City is seeking professional consulting services to assist the City of Nanaimo develop a Capital Project Management Framework.

For more detailed information regarding the scope, refer to **Section 5.0 Scope of Services**.

### **1.2. Fiscal Funding Out**

The Proponent acknowledges that the City cannot make financial commitments beyond the City's current fiscal year. In this regard, the City shall annually make bona fide requests of its approving authority for appropriations of sufficient funds to make payments covered by this Agreement.

Should the approving authority not appropriate such funds, the City will notify the Proponent, as set forth below, of its intention to terminate the goods or services. This notice will also state that unless further funds are appropriated prior to the expiry of the period of the notice, the services are to be terminated and that the City shall not replace the service with substitute or comparable service by another party. If further funding is appropriated within twelve (12) months from the date of termination, the City will either; renew the award to the Proponent or if the City and Proponent are unable to reach agreement on the terms of a renewed award the City will issue a new RFP. If further funds are appropriated more than twelve months after the date of termination, the City will issue a new RFP.

Such termination will take effect thirty (30) calendar days from the date of notification and will not constitute an event of default.

### 1.3. Definitions

The following definitions apply to the interpretation of the Bid Document:

“ADDENDUM / ADDENDA” means a change, or addition, or correction significant enough to be formally made to this RFP. Addendums are posted on the City and BC Bid’s websites.

“AGREEMENT” means a legal document and any attachments that bind the City and all other parties subject to the provisions of the document(s).

“BUSINESS DAY” means any day from Monday to Friday inclusive, excluding statutory or civic holidays observed in British Columbia.

“CITY” means the City of Nanaimo.

“CLOSING DATE AND TIME” means the deadline for the submission of Proposals as set out herein.

“CLOSING LOCATOIN” means the location that all Proposals for this RFP will be accepted at.

“CONTRACTOR” means the Successful Proponent who enters into an Agreement with the City for the goods and services requested herein.

“MANDATORY REQUIREMENTS” means those requirements described herein, which shall be fully satisfied in order for any Proposal to be considered by the City as a qualified Proposal.

“MAY” used in this document denotes permissive.

“PROPONENT” means the Person, Company or Corporation providing a response to this RFP.

“REQUEST FOR PROPOSAL” (RFP) means the document issued by the City used to solicit submissions to provide goods, services or construction for the City.

“SHALL” or “WILL” or “MUST” used in this document denotes imperative.

“SUB-CONTRACTOR” means a legal entity approved by the City that may undertake the execution of a part of the Work pursuant to an Agreement with the Proponent, and may include both “brokers” and “Sub-Contractors”.

“SUBMISSION” or “PROPOSAL” means the information submitted by a Proponent in response to this RFP.

“SUCCESSFUL PROPONENT” means a Proponent who the City may award the agreement to, as a result of this RFP document.

“WORK” means the total goods and or services required by the RFP.

## Section 2.0 Instructions to Proponents

### 2.1. RFP Closing Date and Submission Instructions

It is the sole responsibility of the Proponent to submit their Proposal to the Purchasing Department prior to the established closing time. Proposals received after the noted due time WILL NOT be considered. The time clock in the Purchasing Department Office is the official time piece for the receipt of all Proposals.

Proposals shall be clearly marked **RFP 2121 Capital Project Management Framework** and received by one of the following two methods:

#### a. By hand/courier:

Sealed Proposals must be addressed to:

City of Nanaimo Purchasing Department  
2020 Labieux Road  
Nanaimo, BC, V9T 6J9

And include:

One (1) original hard copy and One (1) digital copy (CD/DVD/memory stick)

#### b. By Email:

At the only acceptable electronic address: [purchasinginfo@nanaimo.ca](mailto:purchasinginfo@nanaimo.ca)

Electronically submitted Proposals shall be deemed to be successfully received when a new email has been received by the Purchasing Department at the City of Nanaimo. The City of Nanaimo will not be liable for any delay for any reason including technological delays, spam filters, firewalls, job queue, file size limitations, or other and late receipt of Proposals will be cause for rejection of Proposal(s).

**Please note: Maximum email file size limit is 8MB.**

It is the Proponent's sole responsibility to ensure they allow themselves enough time to submit their Proposal prior to the established closing date and time.

Proposals received by facsimile WILL NOT be accepted.

### 2.2. Signature

The Proposal should be signed by a person authorized to legally bind the Proponent to the statements made in the Response to this RFP.

### **2.3. Contact Information**

It is the Proponent's responsibility to clarify interpretation of any matter the Proponent considers to be unclear before the Closing Time, by contacting:

Purchasing Manager

Email: [purchasinginfo@nanaimo.ca](mailto:purchasinginfo@nanaimo.ca)

Telephone: 250-756-5319

### **2.4. Communications and Enquiries**

All enquiries regarding this RFP are to be directed in writing or by email. Information obtained from any other source is not official and should not be relied upon. Enquires and responses will be recorded and may be distributed to all Proponents at the City of Nanaimo's option.

All enquiries must be received no less than five (5) business days before the established close date. Questions received after this date will be responded to at the City's discretion and responses cannot be guaranteed.

### **2.5. Addenda / Addendum**

If the City determines that an Addendum is necessary, the City's designate will post an Addendum on the City's and on BC Bid's websites, and shall become part in parcel part of the RFP Document(s). Upon submitting a Proposal, Proponents are required to acknowledge each of the Addenda on the Proponent's Information Form contained herein and will become part of the submission.

It is the responsibility of the Proponent to ensure that it has retrieved any and/or all Addenda/Addendum issued prior to the Closing Date and Time.

### **2.6. 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 to the Purchasing Department via email: [purchasinginfo@nanaimo.ca](mailto:purchasinginfo@nanaimo.ca), Attention: Purchasing Manager

### **2.7. No Claims**

The City and its representatives, agents, consultants and advisors will not be liable to any Proponent for any claims. Whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for an Agreement, or other activity related to or arising out of this RFP.

### **2.8. Examination of RFP Proposal Documents and Facilities**

It is the responsibility of each Proponent to examine the RFP Document(s) thoroughly. The Proponent may not claim, after the submission of a Proposal, that there was any misunderstanding with respect to the Services or Work and conditions imposed by the City.

There will be no opportunity to make any additional claim for compensation or invoice for

additional charges that were not considered and included in the Proposal Fee submitted, unless the City, at its sole discretion, deems that it would be unreasonable to do so, or there are additional Work requirements due to unforeseen circumstances and as approved by the City.

## **2.9. Liability for Errors**

While the City has taken considerable effort to ensure an accurate representation of information in this RFP, the information contained is supplied solely as a guideline for Proponent. The information is not guaranteed or warranted accurate by the City, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve the Proponent from forming their opinions and or conclusions with respect to the Work as described in this RFP.

## **2.10. Amendment to Agreement Documents**

The RFP Documents shall not be amended except as specifically agreed upon in writing and signed by both the City's designate and the Successful Proponent.

## **2.11. Changes to RFP Document**

Proponent must not alter any portion of this RFP document, with the exception of adding the information requested on the Bid Form, Appendix A and Schedule A where necessary. To do so may invalidate the submission of its Proposal.

## **2.12. Changes to the Proposal Wording and Content**

The Proponent is not allowed the opportunity to change the wording or content of its Proposal after the Closing and Time, and no words will be added to the Proposal, including changing the intent or content of the presentation of the Proposal, unless requested by the City (e.g. minor clarifications).

## **2.13. Acceptance and Rejection of Proposals**

This RFP does not commit the City, in any way to select any Proponent or accept any Proposal and the City reserves the right in its sole discretion to postpone or cancel this RFP at any time for any reason whatsoever and to proceed with the Services in some other manner separate from this RFP process.

Proponents are advised that the lowest or any Proposal may not necessarily be accepted and the City reserves the right to reject or accept any or all Proposals in whole or in part at any time without further explanation.

Proponents are cautioned to carefully read and follow the instructions stated herein as the City reserves the right to disqualify any Proposal that fails to meet any of the requirements of this RFP.

If any Proposal contains a deficiency or fails in some way to comply with any requirement of the RFP, which in the opinion of the City is not material, the City may waive the defect and accept the Proposal. The determination of whether or not to disqualify or otherwise remove any Proposal from the evaluation process will be made in the sole discretion of the City.



**2.14. Freedom of Information and Privacy Protection Act (FOIPPA)**

The contents of the Proposal are subject to the Freedom of Information and Privacy Protection Act (FOIPPA). The Proponent should note within its Proposal whether it considers any part of the Proposal as proprietary or trade secret. The City attempts to keep, to the best of its ability, proprietary or trade secret material confidential, only to the extent permitted by law. Notwithstanding the foregoing, the City has the sole discretion in determining whether any part(s) of Proponent Proposals contain information that is exempt from FOIPPA legislation.

**2.15. Solicitation of Council Members and City Staff**

Proponents and their agents will not contact any member of the City Council or City Staff with respect to this RFP, other than the City Representative named in this document or authorized by Purchasing, at any time.

**2.16. Ownership of Proposals**

All Proposals submitted, other than any Proposal withdrawn prior to the Closing Date and Time of Proposals or any late Proposals, become the property of the City and will not be returned to Proponents.

**2.17. Working Language**

The working language of the City is English and all Proposals must be submitted in English.

**2.18. Not a Binding Agreement**

Issuance of this RFP, the Proponent's preparation of a Proposal, and the subsequent receipt and evaluation of the Proposal by the City does not obligate the City in any manner whatsoever, including awarding an Agreement to any Proponent. Only the full execution and delivery of the final Agreement Documents between all parties will obligate the City in accordance with the Agreement terms and conditions.

**2.19. Debriefing**

Proponents may request a debriefing which may be made available at the City's convenience and must be made within fifteen (15) calendar days of notification of award. The intent of the debriefing is to aid the Proponent in presenting a stronger Proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process. The City will provide a debriefing upon request, after an Agreement award has been completed.

**2.20. Opening of Proposals**

Proposals will not be opened publicly.

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## Section 3.0 General Terms and Conditions

### 3.1. Acceptance of Terms

All the terms and conditions of this RFP are assumed to be accepted by the Proponent and incorporated in its Proposal, except those revisions that are proposed or requested in the Proposal and accepted by the City.

### 3.2. The City Reserve Rights

The City reserves the right to:

- a. Waive any irregularity or insufficiency in any Proposal;
- b. Accept the Proposal which is deemed most favourable to the interest of the City;
- c. Accept any Proposal in whole or in part;
- d. Seek Proposal clarification with the Proponents to assist in making evaluations;
- e. Negotiate with the selected Proponent;
- f. Approve substitutions for the Goods or personnel for the Work;
- g. Use any and all ideas presented in any Proposal whether amended or not, and selection or rejection of the proposal does not affect this right;
- h. Reject any or all Proposals;
- i. Contact references other than, and/or in addition to, those furnished by the Proponent;
- j. Modify the terms of the RFP at any time in its sole discretion; up to the Closing Date and Time.

### 3.3. Indemnity

The Contractor agrees to indemnify, defend and save harmless the City, including and without limitation, to its Council Members, agents, servants and employees. This will be from and against all suits, claims, demands, losses, damages, expenses and costs made against or incurred, suffered or sustained by the City at any time or times (either before or after the expiration or termination of this Agreement). Where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor or by any servant, employee, officers, director or Sub-Contractor, the Contractor pursuant to the Agreement excepting always liability out of the independent acts of the City.

### 3.4. Insurance Requirements

The Contractor must, without limiting the Contractor's obligations or liabilities and at the Proponent's own expense, purchase and maintain throughout the Agreement term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the

City of Nanaimo, and shall also require such insurance to be purchased and maintained by all Sub-Contractors engaged in connection with the Agreement.

- a) Professional Liability Insurance (Errors and Omissions) coverage of a minimum of \$500,000 per occurrence, \$1,000,000 aggregate may be required.
- b) Comprehensive General Liability Insurance in an amount not less than \$2,000,000 with a provision naming the City as an additional insured and a Cross Liability clause.

- c) Motor Vehicle Insurance, including Bodily Injury and Property Damage in an amount no less than \$2,000,000 per accident with the Insurance Corporation of British Columbia on any licensed motor vehicles of any kind to be used to carry out the Work.
- d) A provision requiring the Insurer to give the City a minimum of fifteen (15) day's notice of cancellation or lapsing or any material change in the insurance policy.

The Contractor must provide to the City, prior to the commencement of the Services, a certificate of insurance or other evidence that satisfied the City that the required insurance has been acquired and is in force.

The Contractor is responsible for any deductible amounts under the policies. The cost of the required insurance by this RFP shall be included in the Proponent's fees.

Proof of the respective vehicle's ICBC Vehicle Registration/Owner's Certificate of Insurance for all personnel that will be driving for this Agreement.

### **3.5. WorkSafe BC**

The Contractor and any approved Sub-Contractors must be registered in good standing with WorkSafe BC, in which case WorkSafe BC coverage must be maintained for the duration of the Agreement. The Contractor agrees and shall:

- a. Provide at its own expense the necessary WorkSafe BC compensation coverage for all its employees and partners employed or engaged in the execution of the Work;
- b. Remain current with all assessment reporting and payments due there under and shall comply in every respect with the requirement of the WorkSafe BC Act and Regulations; and
- c. Be solely responsible for to ensure that all Sub-Contractors have proper WorkSafe BC coverage.

The Contractor will ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers Compensation Act* and Regulations pursuant thereto.

### **3.6. Business License**

At its own expense, the Contractor shall obtain and maintain a current City of Nanaimo or Inter-Community Business Licensee for the duration of the Agreement term.

### **3.7. Licenses and Permits**

The Contractor will provide and pay for all licenses and permits required to carry out the work.

### **3.8. Laws of British Columbia**

Any Agreement resulting from this RFP will be governed by and will be construed and interpreted in accordance with the laws of the Province of British Columbia.

### **3.9. Minimum Rate of Pay**

The Collective Agreement between the City of Nanaimo and Canadian Union of Public Employees, Local 401 states that:

Every contract made by the Employer for construction, remodelling, repair, or, demolition of any municipal works or for providing any municipal service or function shall be subject to the following condition:

“Minimum rate of pay for work performed under this Contract or under Sub-contract shall be classified in the current Agreement between the City of Nanaimo and Canadian Union of Public Employees, Local 401.”

### **3.10. Key Personnel**

The successful Proponent will be required to maintain key members of the project team as proposed throughout the term of the Agreement including but not limited to the team Lead, key staff and sub-consultants. Any proposed changes to the project team must be agreed upon in writing by the City.

### **3.11. Performance**

The successful Proponent will be evaluated on their performance throughout the Term. Consultants achieving a less than satisfactory rating under the evaluation will be notified and required to create and implement a corrective action plan that addresses any shortfall in the Consultant’s performance. If the Consultant fails to create or implement the corrective action plan or if the Consultant’s performance level does not improve The City may take further action including but not limited to cancelling the Agreement, removing the Consultant from the list of pre-qualified Consultants and/or suspension of the Consultant from future bidding opportunities.

### **3.12. Assignment/Sub-Contracting of Agreement**

The Contractor shall not assign or Sub-Contract its obligations under the Agreement, if any, in whole or in part, without prior written approval of the City’s designate.

### **3.13. Termination of Agreement**

The City reserves the right, at its sole discretion, to terminate the Agreement, in whole or in part, if the Contractor:

- Fails to deliver the promised Services at the required time and location;
- Fails to provide qualified personnel to perform the Services;
- Fails to provide satisfactory Work;
- Fails to meet the City’s standard of expected and agreed level of Services and performance; or
- Any other reason considered appropriate, at the sole discretion of the City.

Upon termination of the Agreement, the City will be under no further obligation to the

Contractor, except to pay to any outstanding amounts that the Contractor may be entitled to receive up to the date of termination. Such termination will not result in any penalty to the City.

### **3.14. Cancellation**

The Agreement may be cancelled by either party for any reason without cause or penalty upon ninety (90) calendar day's written notice.

### **3.15. Force Majeure**

Neither party will be liable for any failure or delay to perform that party's obligations resulting from any cause beyond that party's reasonable control. This will include but not be limited to fires, explosions, floods, strikes, Work stoppages or slowdowns or other industrial disputes, accidents, riots or civil disturbances, acts of civil or military authorities.

### **3.16. Gifts and Donations**

The Contractor will ensure that no representative of the Contractor will offer or extend any entertainment, gift, gratuity, discount, or special service, regardless of value, to any employee of the City. The Contractor will report any attempt by any employee of The City to obtain such favours to the City of Nanaimo's Chief Administrative Officer.

### **3.17. Dispute Resolution**

The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising from the Agreement; using the dispute resolution procedures set out in this section or otherwise agreed upon.

- a. **Negotiation:** The parties will make reasonable efforts to resolve any Disputes by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.
- b. **Mediation:** If all or any portion of a Dispute cannot be resolved by good faith negotiations within (30) days, either party may by notice to the other party refer the matter to mediation. Within (7) days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Nanaimo, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.
- c. **Litigation:** If within (90) days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.

### **3.18. Litigation Clause**

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

- a. Any other Agreement and or contract for works or Services; or
- b. Any matter arising from the City's exercise of its powers, duties or functions under the *Local Government Act* for another enactment

Within five (5) years of the date of this Request for Proposal.

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

### **3.19. Time is of the Essence**

The Contractor acknowledges that time is of the essence with respect to the required services.

## **Section 4.0 Evaluation and Selection Process**

To assist in receiving similar and relevant information, and to ensure your Proposal receives fair evaluation, the City asks Proponents to provide the following information.

### **4.1. Proposal Eligibility**

In order for Proposals to be eligible, they must:

- a) Be received on or before the established closing date and time at the location specified; and
- b) Include a copy of the Appendix A - Submission Form signed by an individual authorized to do so on behalf of the Proponent.

**PROPOSALS NOT IN COMPLIANCE WITH THE MANDATORY REQUIREMENTS WILL BE REJECTED.**

### **4.2. Evaluation Criteria**

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

<b>Item</b>	<b>Evaluation Criteria</b>	<b>Weight</b>
1.	Project Team Qualifications and Experience	45
2.	Work Approach and Schedule	45
3.	Proposed Fee - Cost of Services	10
	TOTAL	100

### **4.3. Proposal Content**

Proposals submitted should be in enough detail to allow the City 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.

#### **4.3.1. Project Team Qualifications and Experience**

- a. Identify the individual who will lead the consultant team through the entire project. The submission should demonstrate that the Project Lead has the both practical project management experience and experience working with municipalities or equivalent to develop project management policy and procedures. Include copy of Project Lead resume.
- b. Identify the rest of the proposed team and highlight the relevant qualifications and experience. Identify how the team will be structured and the roles of each supporting member. Include copies of resumes.
- c. For all key team members, specifically identify the level of experience in developing project management framework and providing project management support services as noted below.
  - i. Capital project management for municipal governments
  - ii. Development of policy documents
  - iii. Development of project management procedures
  - iv. Development of project documentation templates

- v. Working with municipal governments or equivalent to implement policy and procedure change.
- d. Provide up to three (3) projects of similar magnitude that have been successfully completed within the past three (3) years. Include a reference for each project including name and contact information. References may be contacted and their response may be used to form part of the evaluation score.
- e. Provide examples of previous work completed in a municipal government setting or equivalent. Samples should include:
  - i. Sample policy document
  - ii. Sample project management procedure
  - iii. Sample project documentation template
- f. If drawing from experiences from projects that are not municipal government, identify how the work is related.

#### **4.3.2. Work Approach and Schedule**

- a. Provide a detailed description of the proposed methodology highlighting how each key deliverable will be addressed and met in the desired timeline.
- b. Provide the proposed schedule that addresses each key deliverable.
- c. Describe the expectations of the City.
- d. Detail any foreseen challenges in meeting the schedule.

#### **4.3.3. Proposed Rates**

Include all costs to complete the scope of work including travel, accommodation (if required) and disbursements. Any applicable taxes should be shown as a separate line item.

#### **4.4. Conflict of Interest**

Proponents are to include a statement in their Proposal indicating whether or not the firm or any individuals proposed to work on the Agreement has a possible conflict of interest, and, if so, the nature of that conflict. The Municipality reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the project to be developed by the awarded respondent. The Municipality's determination regarding any questions of conflict of interest shall be final.

#### **4.5. Proposed Purchase Agreement**

A sample Agreement is included which will form the basis of any negotiation for the Work. Proponents should clearly indicate in their Proposal any conditions in Schedule B- Proposed Purchase Contract that are not acceptable and provide proposed wording that would be acceptable.

Proponents need to identify any specific provisions contained in this RFP with which it is unwilling or unable to comply from the attached form of Agreement.

#### **4.6. Evaluation of Proposals**

Proposals will be evaluated on a category basis as follows:



### **Stage 1 – Proposal Eligibility**

The City will examine all Proposals that meet the eligibility requirements as set out herein.

### **Stage 2 – Weighted Evaluation**

The City will evaluate the eligible Proposals based on the Evaluation Criteria in 4.2 using a weighted evaluation scoring method. Proposals will be evaluated using a scoring scale of 1-5 with the resulting score then multiplied by the pre-determined weighted evaluation value for each particular criterion. The weighted score for each item will be added together to arrive at an aggregate (total) score for the evaluation and ranking for all Proposals. The City will assign scores at the sole discretion of the City.

Where priced Proposals are required, the following equation will be used to allocate the points. The lowest proposed price will receive the full value of the allocated points. Each additional Proponent will receive a percentage of the total possible points by dividing the proposed price into the lowest price. i.e. lowest proposed price is \$10.00 from Proponent A and the allocated points for pricing is 10 points. Proponent A receives 10 points. Proponent B submits a proposed price of \$12.00. Proponent B receives 8 points ( $\$10.00/\$12.00 \times 10 = 8$ )

### **Stage 3 – Proposal Clarification**

The City may at their sole discretion, invite one or more Proponents for an interview, presentation or request further clarification to address any questions or clarifications relating to Proposals. Proponents will be responsible for any costs associated with the preparation for, and attendance at, the interview, to take place at a specified location within the City. An interview can be by a format selected by the City (i.e. in-person, phone, conference call, or other.)

The City may conduct credit and reference checks as part of the evaluation process, and may request additional financial information from any Proponent, at The City's sole discretion.

### **Stage 4 – Re-evaluation and Adjusted Scores**

The City may, if necessary, re-evaluate and assign adjusted scores to the previously determined scores of the Proponents invited for an interview based on the new or updated information received.

## **Section 5.0 Scope of Services**

### **5.1. INTRODUCTION**

The City of Nanaimo is requesting proposals from consulting firms to assist the City of Nanaimo in developing a Capital Project Management Framework.

The City has \$56 million of Capital Projects budgeted in 2018, and \$220 million budgeted over the next 5 years. Several different departments including Engineering and Public Works, Parks & Recreation, Fire Rescue and IT manage capital projects.

In 2016 the Western Management Consultants completed a Core Services Review (CSR) for the City of Nanaimo which recommended additional policy be developed around Capital Projects. Further to the CSR, Deloitte LLP completed a Corporate Project Planning, Design, Delivery and Operation Process Review in 2017 and developed 24 recommendations to improve the City's Capital Project delivery. The Core Services Review and Corporate Project Planning, Design, Delivery and Operation Process Review are included for reference under separate cover.

The purpose of this initiative is to develop policy and processes to ensure City project management practices are in line with the recommendations and best practices, appropriate to a municipality.

### **5.2. SCOPE OF WORK**

Working collaboratively with the city staff, the consultant will develop a Capital Project Management Framework. The scope of the project may include the following elements:

- a. Project Management Policy:  
Develop a Project Management Policy that will establish high-level overarching corporate direction for the Capital Projects. The policy will be adopted by Council and govern the execution of capital projects.
- b. Project Management Procedures Manual:  
Develop a Project Management Procedures Manual that will outline standard operating procedures for project management. The manual should include staff-level policy and procedures on scope development, risk management, cost estimating, establishing project contingencies, stakeholder consultation, procurement, quality control, and other topics as required. The manual also should include standardized tools and templates for documents such as project charters, project reports, project execution plans, risk registers, scope documents, and stage gate checklists

c. Recommendations for the implementation of a Project Management Office (PMO):

Review the current organizational structure and develop recommendation to create a PMO that would provide support and guidance to the management of capital projects across departments.

d. Training:

Conduct training to introduce staff, management and council to the Capital Project Management Framework.

### 5.3. SCHEDULE

The schedule will be subject to negotiation however, the following are key deliverables with milestone dates:

- Consultant Selection, and Contract Award - February 2018
- Capital Project Management Framework Development March – May 2018
- Presentation to Council and Capital Projects Management Policy adoption June 2018
- Staff awareness training and Capital Projects Framework implementation June – September 2018



**PROPOSED AGREEMENT**



## **CITY OF NANAIMO**

**Consulting Agreement**

**for**

**Project Name**

**with**

**Contractor Name**

**Contract Number: ####**

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**SCHEDULE A – SERVICES**

**SCHEDULE B – FEES AND EXPENSES**

**SCHEDULE C – CONTRACTOR PROPOSAL**

THIS AGREEMENT is dated for reference the \_\_\_\_ 'Month', 2018

BETWEEN:

(the "Contractor")

AND:

City of Nanaimo  
455 Wallace Street  
Nanaimo, B.C.  
V9R 5J6  
(the "City")

The City wishes to retain the Contractor to provide the services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those services, on the terms and conditions set out in this Agreement.

As a result, the City and the Contractor agree as follows:

## **1 DEFINITIONS**

### **General**

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which City government offices are open for normal business in British Columbia;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "Material" means the Produced Material and the Received Material;
- (d) "Produced Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced by the Contractor or a Subcontractor and includes the Incorporated Material;
- (e) "Received Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the City or any other person;
- (f) "Services" means the services described in Schedule A;
- (g) "Term" means the term of the Agreement described in Schedule A subject to that term ending earlier in accordance with this Agreement.

### **Meaning of "record"**

1.2 The definition of "record" in the *Interpretation Act* is incorporated into this Agreement and "records" will bear a corresponding meaning.

## **2 SERVICES**

### **Provision of services**

2.1 The Contractor must provide the Services in accordance with this Agreement.

#### Term

- 2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

#### Supply of various items

- 2.3 Unless the parties otherwise agree in writing, the Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under this Agreement, including the license under section 6.4.

#### Standard of care

- 2.4 Unless otherwise specified in this Agreement, the Contractor must perform the Services to a standard of care, skill and diligence maintained by persons providing, on a commercial basis, services similar to the Services.

#### Standards in relation to persons performing Services

- 2.5 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.

#### Instructions by City

- 2.6 The City may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the Services. The Contractor must comply with those instructions but, unless otherwise specified in this Agreement, the Contractor may determine the manner in which the instructions are carried out.

#### Confirmation of non-written instructions

- 2.7 If the City provides an instruction under section 2.6 other than in writing, the Contractor may request that the instruction be confirmed by the City in writing, which request the City must comply with as soon as it is reasonably practicable to do so.

#### Effectiveness of non-written instructions

- 2.8 Requesting written confirmation of an instruction under section 2.7 does not relieve the Contractor from complying with the instruction at the time the instruction was given.

#### Applicable laws

- 2.9 In the performance of the Contractor's obligations under this Agreement, the Contractor must comply with all applicable laws.

### **3 PAYMENT**

#### Fees and expenses

- 3.1 If the Contractor complies with this Agreement, then the City must pay to the Contractor at the times and on the conditions set out in Schedule B:
- (a) the fees described in that Schedule;

- (b) the expenses, if any, described in that Schedule if they are supported, where applicable, by proper receipts and, in the City's opinion, are necessarily incurred by the Contractor in providing the Services; and
- (c) any applicable taxes payable by the City under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b).

The City is not obliged to pay to the Contractor more than the "Maximum Amount" specified in Schedule B on account of fees and expenses.

#### Statements of accounts

- 3.2 In order to obtain payment of any fees and expenses under this Agreement, the Contractor must submit to the City a written statement of account in a form satisfactory to the City upon completion of the Services or at other times described in Schedule B.

#### Withholding of amounts

- 3.3 Without limiting section 9.1, the City may withhold from any payment due to the Contractor an amount sufficient to indemnify, in whole or in part, the City and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the City to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the City.

#### Appropriation

- 3.4 The City's obligation to pay money to the Contractor is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the City during which payment becomes due.

#### Currency

- 3.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

#### Non-resident income tax

- 3.6 If the Contractor is not a resident in Canada, the Contractor acknowledges that the City may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.

#### Prohibition against committing money

- 3.7 Without limiting section 13.10(a), the Contractor must not in relation to performing the Contractor's obligations under this Agreement commit or purport to commit the City to pay any money except as may be expressly provided for in this Agreement.

#### Refunds of taxes

- 3.8 The Contractor must:
- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, City or other tax or duty imposed on the Contractor as a result of this Agreement that the City has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under this Agreement; and

- (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the City.

#### **4 REPRESENTATIONS AND WARRANTIES**

4.1 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, the Contractor represents and warrants to the City as follows:

- (a) except to the extent the Contractor has previously disclosed otherwise in writing to the City,
  - (i) all information, statements, documents and reports furnished or submitted by the Contractor to the City in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct,
  - (ii) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable the Contractor to fully perform the Services, and
  - (iii) the Contractor holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Contractor's obligations under this Agreement; and
- (b) if the Contractor is not an individual,
  - (i) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Contractor, and
  - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

#### **5 PRIVACY, SECURITY AND CONFIDENTIALITY**

##### **Privacy**

5.1 The Contractor must comply with the Province of British Columbia's Freedom of Information and Protection of Privacy Act.

##### **Security**

5.2 The Contractor must:

- (a) make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration or disposal; and

##### **Confidentiality**

5.3 The Contractor must treat as confidential all information in the Material and all other information accessed or obtained by the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the City's prior written consent except:

- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;
- (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
- (c) if it is information in any Incorporated Material.

#### Public announcements

- 5.4 Any public announcement relating to this Agreement will be arranged by the City and, if such consultation is reasonably practicable, after consultation with the Contractor.

#### Restrictions on promotion

- 5.5 The Contractor must not, without the prior written approval of the City, refer for promotional purposes to the City being a customer of the Contractor or the City having entered into this Agreement.

### **6 MATERIAL AND INTELLECTUAL PROPERTY**

#### Access to Material

- 6.1 If the Contractor receives a request for access to any of the Material from a person other than the City, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the City.

#### Ownership and delivery of Material

- 6.2 The City exclusively owns all property rights in the Material which are not intellectual property rights. The Contractor must deliver any Material to the City immediately upon the City's request.

#### Matters respecting intellectual property

- 6.3 The City exclusively owns all intellectual property rights, including copyright, in:

- (a) Received Material that the Contractor receives from the City; and
- (b) Produced Material, other than any Incorporated Material.

Upon the City's request, the Contractor must deliver to the City documents satisfactory to the City that irrevocably waive in the City's favour any moral rights which the Contractor (or employees of the Contractor) or a Subcontractor (or employees of a Subcontractor) may have in the Produced Material and that confirm the vesting in the City of the copyright in the Produced Material, other than any Incorporated Material.

#### Rights in relation to Incorporated Material

- 6.4 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, the Contractor grants to the City:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute that Incorporated Material; and
  - (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute that Incorporated Material.

## **7 RECORDS AND REPORTS**

### Work reporting

- 7.1 Upon the City's request, the Contractor must fully inform the City of all work done by the Contractor or a Subcontractor in connection with providing the Services.

### Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the City. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

## **8 AUDIT**

- 8.1 In addition to any other rights of inspection the City may have under statute or otherwise, the City may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the City's discretion, copy any of the Material and the Contractor must permit, and provide reasonable assistance to, the exercise by the City of the City's rights under this section.

## **9 INDEMNITY AND INSURANCE**

### Indemnity

- 9.1 The Contractor must indemnify and save harmless the City and the City's employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the City or any of the City's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement, excepting always liability arising out of the independent acts or omissions of the City and the City's employees and agents.

### Insurance

- 9.2 The Contractor must provide their own insurance to protect their interests as they see fit and insurance as per APPENDIX B.

### Workers compensation

- 9.3 Without limiting the generality of section 2.9, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

### Personal optional protection

- 9.4 The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:

- (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
- (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.

Evidence of coverage

9.5 Within 10 Business Days of being requested to do so by the City, the Contractor must provide the City with evidence of the Contractor's compliance with sections 9.3 and 9.4.

## **10 FORCE MAJEURE**

Definitions relating to force majeure

10.1 In this section and sections 10.2 and 10.3:

- (a) "Event of Force Majeure" means one of the following events:
  - (i) a natural disaster, fire, flood, storm, epidemic or power failure,
  - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
  - (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
  - (iv) a freight embargoif the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and
- (b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

Consequence of Event of Force Majeure

10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

Duties of Affected Party

10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

## **11 DEFAULT AND TERMINATION**

Definitions relating to default and termination

11.1 In this section and sections 11.2 to 11.4:

- (a) "Event of Default" means any of the following:
  - (i) an Insolvency Event,



- (ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or
- (iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect; and
- (b) "Insolvency Event" means any of the following:
  - (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
  - (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,
  - (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
  - (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),
  - (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
  - (vi) the Contractor ceases, in the City's reasonable opinion, to carry on business as a going concern.

#### City's options on default

- 11.2 On the happening of an Event of Default, or at any time thereafter, the City may, at its option, elect to do any one or more of the following:
- (a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;
  - (b) pursue any remedy or take any other action available to it at law or in equity; or
  - (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

#### Delay not a waiver

- 11.3 No failure or delay on the part of the City to exercise its rights in relation to an Event of Default will constitute a waiver by the City of such rights.

#### City's right to terminate other than for default

- 11.4 In addition to the City's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the City may terminate this Agreement for any reason by giving at least 10 days' written notice of termination to the Contractor.

#### Payment consequences of termination

- 11.5 Unless Schedule B otherwise provides, if the City terminates this Agreement under section 11.4:
- (a) the City must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to the City's satisfaction before termination of this Agreement; and

- (b) the Contractor must, within 30 days of such termination, repay to the City any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that the City has notified the Contractor in writing was not completed to the City's satisfaction before termination of this Agreement.

#### Discharge of liability

- 11.6 The payment by the City of the amount described in section 11.5(a) discharges the City from all liability to make payments to the Contractor under this Agreement.

#### Notice in relation to Events of Default

- 11.7 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the City of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.

## 12 DISPUTE RESOLUTION

#### Dispute resolution process

- 12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
  - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
  - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Arbitration Act*.

#### Location of arbitration or mediation

- 12.2 Unless the parties otherwise agree in writing, an arbitration or mediation under section 12.1 will be held in Nanaimo, British Columbia.

#### Costs of mediation or arbitration

- 12.3 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a mediation or arbitration under section 12.1 other than those costs relating to the production of expert evidence or representation by counsel.

## 13 MISCELLANEOUS

### Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by email to the addressee's email address provided to the City
  - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
  - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

### Change of address or email address

- 13.2 Either party may from time to time give notice to the other party of a substitute address or email address, which from the date such notice is given, will supersede for purposes of section 13.1 any previous address or fax number specified for the party giving the notice.

### Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights under this Agreement without the City's prior written consent.

### Subcontracting

- 13.4 The Contractor must not subcontract any of the Contractor's obligations under this Agreement to any person without the City's prior written consent. No subcontract, whether consented to or not, relieves the Contractor from any obligations under this Agreement. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under this Agreement; and
  - (b) any person retained by a person described in paragraph (a) to perform those obligations fully complies with this Agreement in performing the subcontracted obligations.

### Waiver

- 13.5 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

### Modifications

- 13.6 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

### Entire agreement

- 13.7 This Agreement (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.

#### Survival of certain provisions

- 13.8 Sections 2.9, 3.1 to 3.4, 3.7, 3.8, 5.1 to 5.5, 6.1 to 6.4, 7.1, 7.2, 8.1, 9.1, 9.2, 9.5, 10.1 to 10.3, 11.2, 11.3, 11.5, 11.6, 12.1 to 12.3, 13.1, 13.2, 13.8, and 13.10, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely, even after this Agreement ends.

#### Schedules

- 13.9 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

#### Independent contractor

- 13.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:

- (a) an employee or partner of the City; or
- (b) an agent of the City except as may be expressly provided for in this Agreement.

The Contractor must not act or purport to act contrary to this section.

#### Personnel not to be employees of City

- 13.11 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the City.

#### Key Personnel

- 13.12 If one or more individuals are specified as "Key Personnel" of the Contractor on Schedule A, the Contractor must cause those individuals to perform the Services on the Contractor's behalf, unless the City otherwise approves in writing, which approval must not be unreasonably withheld.

#### Pertinent information

- 13.13 The City must make available to the Contractor all information in the City's possession which the City considers pertinent to the performance of the Services.

#### Conflict of interest

- 13.14 The Contractor must not provide any services to any person in circumstances which, in the City's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the City under this Agreement.

#### Time

- 13.15 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

#### Conflicts among provisions

13.16 Conflicts among provisions of this Agreement will be resolved as follows:

- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise; and
- (b) a provision in a schedule will prevail over any conflicting provision in a document attached to or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

#### Agreement not permit nor fetter

13.17 This Agreement does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the City or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the City or its agencies of any statutory, prerogative, executive or legislative power or duty.

#### Remainder not affected by invalidity

13.18 If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

#### Further assurances

13.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

#### Additional terms

13.20 Any additional terms set out in writing and attached herein apply to this Agreement.

#### Governing law

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

### **14 INTERPRETATION**

14.1 In this Agreement:

- (a) “includes” and “including” are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the City are referred to as “the parties” and each of them as a “party”;
- (d) “attached” means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;

- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

## 15 EXECUTION AND DELIVERY OF AGREEMENT

- 15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

<p>SIGNED on the ____ day of _____, 2018 by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories):</p>   <p>_____</p> <p>Signature</p>  <p>_____</p> <p>Print Name</p>  <p>_____</p> <p>Print Title</p>	<p>SIGNED on the ____ day of _____, 2018 on behalf of the City by its duly authorized representative:</p>   <p>_____</p> <p>Signature</p>  <p>_____</p> <p>Print Name</p>  <p>_____</p> <p>Print Title</p>
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## **Schedule A – Services**

### **PART 1. TERM:**

The term of this Agreement commences on 'DATE', 2018 and ends on 'DATE', 2018 unless terminated by either party in writing prior to the end date.

When mutually agreeable between the City and the Contractor, this agreement may be renewed under the same terms and conditions for a period not to exceed one (1) additional year, and said option to renew this Agreement for a one-year period shall be in effect for each year thereafter for a total period not to exceed three (3) additional years.

Services commence upon notification to proceed from the City of Nanaimo designated Project Manager.

### **PART 2. SERVICES:**

As per the Contractor's proposal and subsequent agreements.

### **PART 3. KEY PERSONNEL:**

The Key Personnel of the Contractor are as follows:

- (a) List Project Team Members

City of Nanaimo designate is, City Project Manager, 'email address', 'phone number'.

## **Schedule B – Fees and Expenses**

### **1. MAXIMUM AMOUNT PAYABLE:**

**Maximum Amount:** \$VALUE Canadian Dollars is the maximum amount which the City is obliged to pay to the Contractor for fees and expenses under this Agreement exclusive of any applicable taxes.

### **2. FEES:**

Contractor Fees are in accordance with the attached Contractors proposal dated 'DATE', 2018.

### **3. EXPENSES:**

All expenses not included in the attached proposal must be pre-approved by the City's designated project manager.

### **4. STATEMENTS OF ACCOUNT:**

#### **Invoicing:**

In order to obtain payment of any fees under this Agreement the Contractor must deliver to the City on a monthly basis, a written invoice in a form satisfactory to the City containing:

- (a) services rendered from and including the 1st day of a month to and including the last day of that month;
- (b) the Contractor's legal name and address;
- (c) the date of the statement, and the Billing Period to which the statement pertains;
- (d) the Contractor's calculation of all fees claimed for that Billing Period, including a declaration by the Contractor of all hours worked during the Billing Period.
- (e) the City of Nanaimo Purchase Order Number.
- (f) the Contractor's calculation of any applicable taxes payable by the City in relation to the Services for the Billing Period;
- (g) any other billing information reasonably requested by the City.

### **5. PAYMENTS DUE:**

**Payments Due:** Within 30 days of the City's receipt of the Contractor's written statement of account delivered in accordance with this Schedule, the City must pay the Contractor the fees (plus all applicable taxes) claimed in the statement if they are in accordance with this Schedule.

### **6. INSURANCE**

1. Each policy of insurance required under this agreement shall be maintained during the continuance of this agreement and shall not be capable of cancellation unless 30 days' notice is first given to the City.
2. The Contractor must ensure that every sub-contractor provides and maintains insurance



substantially in accordance with the requirements of this agreement and shall be as fully responsible to the City for acts and omissions of sub-contractors and of persons employed directly or indirectly by them as for acts and omissions of persons directly employed by the Contractor.

3. The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in British Columbia and in forms and amounts acceptable to the City:

#### **GENERAL LIABILITY INSURANCE**

1. The Contractor shall obtain and maintain for the duration of the Services, at its own cost, the following insurance, on terms and from insurers satisfactory to the Client:
  - a) Comprehensive General Liability coverage, covering premises and operations liability;
  - b) Contractor's Contingency Liability coverage, covering operations of sub-contractors;
  - c) Completed Operations Liability coverage;
  - d) Contractual Liability coverage; and
  - e) Owned and Non-owned Automobile Liability Insurance coverage.
2. The limits of coverage shall not be less than the following:
  - (a) Bodily Injury Liability - \$2,000,000.00 each occurrence; \$2,000,000.00 aggregate products and/or completed operations;
  - b) Property Damage Liability - \$2,000,000.00 each occurrence; \$2,000,000.00 aggregate products and/or completed operations; and
  - c) Owned & Non-owned Automobile - \$2,000,000.00 any one accident.
3. A Cross Liability clause shall be made part of the Comprehensive General Liability Insurance.
4. The City of Nanaimo to be named as additionally insured.

#### **PROFESSIONAL LIABILITY INSURANCE**

Professional Liability Insurance (Errors and Omissions) coverage of a minimum of \$500,000 per occurrence, \$1,000,000 aggregate.

Add insurance requirement as applicable to the project.

#### **7. BUSINESS LICENSE**

Contractors performing work for the City of Nanaimo must acquire and maintain a City of Nanaimo Business License for the duration of this agreement.

#### **8. SPECIAL CONDITIONS (as applicable)**