



REQUEST FOR PROPOSALS No. 20-068

Hydrogeologist Services Standing Offer – 2 Year Term

ISSUED: November 27, 2020

CLOSING DATE AND TIME:

Submissions must be received at the Closing Location on or before:
3:00 PM (15:00 hrs) Local Time on Wednesday, December 23, 2020

Regional District of Nanaimo (RDN) Contact for Questions:

Murray Walters – 250-390-6753 – mwalters@rdn.bc.ca

Questions are requested at least five (5) business days before the closing date.

Proposals will not be opened in public



Instructions to Proponents

Closing Date/Time/Submission Method

Submissions must be received at the closing location on or before 3:00 PM (15:00 hrs), Local Time, on December 23, 2020.

Submission Method:

By Email: In PDF format with "Hydrogeologist Services Standing Offer" as the subject line at this address:

rcu@rdn.bc.ca

Please note: Maximum email file size limit is 20MB, or less. The RDN will not be liable for any technological delays of submissions.

Submissions received in any other manner will not be accepted.

Amendment to Proposals

Proposals may be amended in writing and sent via email to the RDN contact person identified on the cover page on or before the closing. Such amendments should be signed by the authorized signatory of the Proponent.

Addenda

If the RDN determines that an amendment is required to this RFP, the RDN will post the Addendum on the RDN (www.rdn.bc.ca) and BC Bid (www.bcbid.gov.bc.ca) websites. Each addendum will be incorporated into and become part of the RFP. No amendment of any kind to the RFP is effective unless it is contained in a written addendum issued by the RDN. It is the sole responsibility of the Proponent to check and ensure all amendments are included prior to submitting their final Proposal submission.

Withdrawal of Proposals

The Proponent may withdraw their Proposal at any time by submitting a written withdrawal email to the RDN contact person identified on the cover page on or before the closing.

Unsuccessful Vendors

The District will offer debriefings to unsuccessful Proponents, on request, at a mutually agreeable time.



1. INTRODUCTION

The purpose of this Request for Proposal is to solicit submissions from qualified firms leading to the selection of up to five (5) preferred proponents that would provide the Regional District a Standing Offer for consulting hydrogeological services for various surface and groundwater based projects in support of the departmental mandate over the term. This Standing Offer Agreement (SOA) will allow the RDN's staff to work directly with the preferred proponent best suited to each project as they arise without having to issue a separate RFP for each project.

The consultant will provide these services on an "as required" basis for the duration of the term. The contract will be for a two year term from January 31, 2021 to December 31, 2023 with the possibility of extension for another two years.

Individual projects will be assigned to the consulting team to complete under this contract under the authority of the Manager of Water Services.

2. BACKGROUND

The RDN's Drinking Water & Watershed Protection (DWWP) program was established as an RDN service in 2008 to address education, science, and policy development associated with water resource protection in the region. The program recently celebrated its first decade and was reinvigorated with the RDN Board's adoption of a new 10 year action plan in 2020. Key elements of the action plan include enhanced education and outreach programs, increased focus on science and data collection, and the move to convert the science to useful policy development with respect to land use decision making. Hydrogeologist services to the DWWP program would include water quantity and quality studies, detailed water budget analyses, data analysis, and third party reviews among other tasks.

In addition to the work carried out under the DWWP program, the RDN operates a number of water service areas throughout the region. These water service areas all take advantage of groundwater and require hydrogeologist services related to those water resources. This includes well and groundwater assessments, well location and design assistance, and well protection plans among other tasks.

3. SCOPE OF SERVICES

Hydrogeological Consulting services will be provided to the Regional District on an "as required" basis for the duration of the contract. The extent of these services will depend on the expertise of individuals in the project team, professional service needs, and financial requirements. Projects will be assigned to the consulting team best suited to complete the work under this contract under the authority of the Manager of Water Services.

When the RDN requests the consultant work on a project under the SOA, the consultant will work collaboratively with the RDN to develop a scope and a fee budget. If the scope and fee budget are approved by the RDN, the consultant will be issued a purchase order (PO). Following the issuance of a PO for project, any scope change must be approved by the RDN prior to the additional work being carried out.



The RDN may choose at its discretion to present some projects, particularly larger projects, to all successful SOA firms in the form of a distinct Request for Proposal (RFP) or Request for Statement of Qualifications.

Projects assigned to the firms selected to the SOA may include but not be limited to:

- Groundwater modelling
- Groundwater surface water interaction
- Recharge area mapping
- Water quality and quantity studies
- Monitoring groundwater and surface water
- Water budget analysis
- Groundwater supply planning
- Groundwater protection
- Assisting with well drilling programs
- Developing well head protection plans

4. DELIVERABLES AND OUTCOMES

The deliverables and outcomes required from the firms selected for the SOA will be established in the contract agreement or purchase order established for each project.

5. REFERENCE/BACKGROUND INFORMATION

The RDN has had an SOA in place for hydrogeological services since 2016, and many projects have been completed by SOA firms in that time.

6. PROPOSAL SUBMISSION AND EVALUATION

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

The Proposal shall consist of a cover letter and be not more than fifteen 8 ½ by 11 pages in length, **excluding title page, cover letter, table of contents, resumes, and project data sheets**. Each Proposal must be arranged as follows:

Title Page Showing the closing date and time, proponent name, address, and contact persons.

Letter of Introduction One page, introducing the proponent and signed by the person(s) authorized on behalf and to bind the proponent to statements made in response to this RFP.

Table of Contents – Include page numbers

Executive Summary

Section 1: Staff Qualifications and Experience

- Brief description of experience of each of the key proposed personnel, including proposed duties and responsibilities and professional affiliations
- Include team organization chart
- Attach resumes (appendix)
- Describe general capacity to undertake assignments

Section 2: Corporate Experience

- Describe the type of company or companies and office location
- Description of the company size and history
- Describe the company's experience with these types of assignments
- Describe the hydrogeological services available
- Describe the firm's quality management system

Section 3: Relevant Experience

- List three relevant projects including scope of work, value of project, value of services provided, company personnel involved, and client/owner references with telephone numbers.
- List any familiarity and experience with the RDN's water service areas or DWWP initiatives.
- If desired, data sheets for up to 8 projects may be attached in an appendix. Project data sheets must not exceed one page per project.

Section 4: Project Management Approach and Project Methodology

- Provide a description of the firm's project management approach.
- Provide information on how services will be provided if your main office is located outside the Regional District. (i.e. How will traveling be handled and what will the associated costs be)
- List those services for which sub-consultants would be required.
- Provide information on software programs used, and how project data (numerical and spatial) could be transferred to the RDN.

Section 5: Fee Structure

- Provide a proposed fee structure for the services to be provided, clearly identifying the rates applicable to the individuals listed in the RFP .
- Provide information on how travel time, disbursements, and sub-consultants will be charged.
- Fees should be fixed for the initial term of the agreement (2 years).

Proposals will be evaluated on the following basis:

Project Team Experience (20%)

- Firms organization and proposed team, including sub-consultants and specialists.
- Individual team member's experience.



Past Performance, Corporate Experience, and References (20%)

- Experience with hydrogeological consulting projects.
- Projects completed by the same team members as identified in the proposal.

Project Management Approach and Project Methodology (20%)

- Project management methodology and the relationship between key members of the proposed project team.
- Approach to establishing a scope and budget for a project.
- Cost/progress monitoring and communication.
- Software in use and data transfer methods.

Fee Structure (40%)

- Charge out rates.
- Travel costs and disbursements.

The selection committee, formed at the RDN's sole discretion, will score the Proposals in accordance with this criteria.

The RDN may evaluate proposals on a comparative basis by comparing one proponent's proposal to another proponent's proposal. The RDN reserves the right to not complete a detailed evaluation if the RDN concludes the proposal is materially incomplete or, irregular or contain any financial or commercial terms that are unacceptable to the RDN.

Throughout the evaluation process, the evaluation committee may seek additional clarification on any aspect of the Proposal to verify or clarify the information provided and conduct any background investigation and/or seek any additional information it considers necessary.

7. PROPOSED PURCHASE CONTRACT

The RDN's preferred form of Contract is attached herein. Proponents should carefully review this form of Contract. Proponents may (but are not required to) request that RDN consider revisions to the form of Contract, including the scope of Services. Proponents should include these requests with their submission. Failure to do so means acceptance of the agreement as presented.

8. GENERAL CONDITIONS

8.1 No Contract

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

8.2 Privilege Clause

The lowest or any proposal may not necessarily be accepted.



8.3 Acceptance and Rejection of Submissions

This RFP does not commit the RDN, in any way to select a preferred Proponent, or to proceed to negotiate a contract, or to award any contract. The RDN reserves the right in its sole discretion cancel this RFP, up until award, for any reason whatsoever

The RDN may accept or waive a minor and inconsequential irregularity, or where applicable to do so, the RDN may, as a condition of acceptance of the Submission, request a Proponent to correct a minor or inconsequential irregularity with no change in the Submission.

8.4 Conflict of Interest

Proponents shall disclose in their Proposals any actual or potential Conflict of Interest and existing business relationships it may have with the RDN, its elected officials, appointed officials or employees.

8.5 Solicitation of Board Members and RDN Staff

Proponents and their agents will not contact any member of the RDN Board or RDN Staff with respect to this RFP, other than the RDN Contact named in this document.

8.6 Litigation Clause

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

- (a) any other contract for works or services; or
- (b) any matter arising from the RDN's exercise of its powers, duties, or functions under the Local Government Act, Community Charter or another enactment within five years of the date of this Call for Proposals.

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

8.7 Exclusion of Liability

Proponents are solely responsible for their own expenses in preparing and submitting a Proposal and for any meetings, negotiations, or discussions with the RDN. The RDN will not be liable to any Proponent for any claims, whether for costs, expense, 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 a Contract, or other activity related to or arising out of this RFP. Except as expressly and specifically permitted in these Instructions to Proponents, no Proponent shall have any claim for compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim.



8.8 Ownership of Proposals

All Proposals, including attachments and any documentation, submitted to and accepted by the RDN in response to this RFP become the property of the RDN.

8.9 Freedom of Information

All submissions will be held in confidence by the RDN. The RDN is bound by the Freedom of Information and Protection of Privacy Act (British Columbia) and all documents submitted to the RDN will be subject to provisions of this legislation. The successful vendor and value of the award is routinely released.



Proposed Contract (Standing Offer Agreement)

REGIONAL DISTRICT OF NANAIMO

<Enter Project Title>

Date: <Enter Date>



BETWEEN: [] (the "Service Provider")

AND: The Regional District of Nanaimo (the "RDN")

THIS AGREEMENT WITNESSES that the RDN agrees to retain the Service Provider to furnish certain services on an "as and when requested basis" and the Service Provider agrees to furnish the services under the terms and conditions as follows:

1.0 "Contract Documents" means the following documents:

- 1.1 (1) Form of Agreement
- (2) Standing Offer Agreement Standards
- (3) General Conditions
- (4) Addenda, the more recent taking precedence over earlier addenda
- (5) Standing Offer Response from Contractor
- (6) Original Request for Standing Offers (RFSO)

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

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

2.0 Services To Be Performed And Term:

2.1 The services to be provided by the Service Provider on an "as and when requested basis" are <Enter Services> (the "Services") as outlined in the RFSO.

2.2 The term is <Enter dates> with <enter options, if any> renewal options based upon mutual written agreement between the parties.

3.0 Agreement Amount:

3.1 Subject to the terms and conditions of this Agreement and in consideration for the satisfactory performance of the Services, the RDN shall pay to the Service Provider in accordance with the rates included in the Contractor's accepted Standing Offer response fixed for the <Enter Term> year term.

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

4.0 Entire Agreement:

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

5.0 Amendment:

- 5.1 The Contract Documents shall not be amended except as specifically agreed in writing by both the RDN and the Service Provider.

6.0 Contract Administrator:

- 6.1 For the purposes of this Agreement, the RDN designates as its Contract Administrator name [], address [], telephone [], email [].

- 6.2 For the purposes of this Agreement, the Service Provider designates as its Contract Administrator name [], address [], telephone [], email [].

7.0 Counterparts

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



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

REGIONAL DISTRICT OF NANAIMO by its authorized signatory on _____ day of _____, 20__ (the date of Agreement):

SIGNED on behalf of the RDN by:

Signature: _____

Name: _____

Title: _____

[CONTRACTOR'S NAME] by its authorized signatory on _____ day of _____, 20__:

SIGNED on behalf of the Contractor by:

Signature: _____

Name: _____

Title: _____

REGIONAL DISTRICT OF NANAIMO (RDN)
STANDING OFFER AGREEMENT (SOA) – STANDARDS

The Standing Offer Agreement (hereafter called “Agreement”) is issued to cover the supply of goods or services specified, on an as-and-when required basis, to the Regional District of Nanaimo (“RDN”).

1. Definition

This Agreement is not an actual order for the supply of goods or services. It is an agreement to allow for the purchase of the specified goods and services when required by the RDN, in accordance with the prices, terms and conditions as detailed. It confirms the fact that you have offered to supply the services.

2. Rights

The RDN reserves the right to increase or decrease the financial expenditure estimate, and to amend, change, or terminate this Agreement prior to the expiry date.

3. Payment

The Contractor shall receive payment for those services as ordered and received or performed within this “Agreement”, on completion of the contractual obligations as detailed herein. The RDN will endeavour to pay suppliers’ invoices on a net 30 calendar days’ basis after receipt of invoices.

4. Procedure

The supply of any services by the Contractor to the RDN shall be made by means of one of the following ordering procedures (Actual acceptance of Standing Offer).

- a) by the issuing of a Purchase Order;
- b) by way of Purchase Card;

5. Invoicing

All ‘invoices’ as submitted by the Contractor, shall be for those services that have actually been received by the RDN. For Purchase Orders, invoices are to be submitted for payment to the office as indicated on the ordering document. All invoices must have the following details clearly shown:

- the Purchase Order number;
- listing of services supplied including site location;
- the number of hours, the rate and extended prices;
- the name of RDN staff person who requested the services.

6. Financial Expenditure Estimate

The RDN has determined the “Financial Limitation” on the basis of previous and/or anticipated consumption. This estimate is provided in good faith, but by no means constitutes a firm or implied commitment by the RDN to expend that or any amounts. The actual expenditure against this Agreement shall be restricted to those services ordered and received by the RDN.

REGIONAL DISTRICT OF NANAIMO
GENERAL CONDITIONS

PREAMBLE

The RDN will contract for work by the issuance of a Purchase Order or Purchase Card. Each time the RDN contracts for work under a Standing Offer Agreement that has resulted from this RFSO, a contract will be formed between the RDN and the Contractor for the specific project and the terms and conditions contained in this section will apply.

1.0 DEFINITIONS:

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

1.1 "Agreement" means the contract formed upon issuance of the RDN's Purchase Order or Purchase Card which includes all of the terms and conditions contained in the signed agreement.

1.2 "Contractor" mean the successful Respondent selected as a result of this RFSO.

1.3 "Respondent" shall mean the firm responding to the RFSO.

1.4 "Standing Offer" means a Respondent's formal response to the RFSO.

1.5 "Request for Standing Offers" and "RFSO" both mean this document consisting of the items listed in this Standing Offer and any subsequent Addenda.

1.6 "Subcontractors" means the independent contractors, associates and consultants retained by the Contractor to assist in the performance of the Services.

2.0 ASSIGNMENT:

2.1 The Contractor shall not assign the Agreement, in whole or in part, or any payments due or to become due under the Agreement, without the express written consent of the RDN, such consent not to be unreasonably withheld.

2.2 No assignment of the Agreement shall relieve the Contractor from any obligation under the Agreement or impose any liability upon the RDN.

3.0 STANDARD OF CARE AND QUALIFICATIONS:

3.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by Contractors experienced in providing such Services. The Contractor acknowledges that its qualifications and experience were a major factor in the selection of the Contractor for the work set out in this Agreement.

- 3.2 Without limiting any other remedy which the RDN may have, the Contractor at its sole cost upon written request of the RDN shall rectify any of the Services which have not been performed in accordance with the care, skill and diligence set out in Clause 3.1 or which have otherwise not been performed in accordance with the terms of this Agreement and in addition the Contractor shall do all such things that may be reasonably required by the RDN to satisfy the RDN that the Services have been duly rectified or performed in accordance with the terms of this Agreement.
- 3.3 The Contractor shall be responsible for the degree of care, skill and diligence exercised by any Subcontractors and for selecting Subcontractors having the appropriate qualifications and experience to provide that portion of Services to be provided by such Subcontractors.
- 3.4 The Contractor shall advise the RDN in a timely manner of any changes to its key personnel.
- 4.0 CONFIDENTIALITY:
- 4.1 Definition of Confidential Information - In this Agreement, "Confidential Information" means all information and data disclosed orally, in writing or electronically, by one party to the other party on a confidential basis.
- 4.2 Obligation of Confidentiality - It is contemplated that in the course of the performance of this Agreement each party may, from time to time, disclose its Confidential Information to the other party. During the term of this Agreement each party agrees:
- (a) to keep and use in strict confidence all Confidential Information of the other party that it acquires, sees, or is informed of, as a direct or indirect consequence of this Agreement and to not, without the prior written consent of the other party, disclose any such Confidential Information; and
 - (b) not to use, copy, duplicate or reproduce, either directly or indirectly, any of the Confidential Information of the other party or any recollections thereof for any purpose other than for the performance of its obligations under this Agreement, without the other party's prior written approval.
- 4.3 Freedom of Information and Protection of Privacy Act - The Contractor acknowledges and agrees that any Confidential Information disclosed by it to the RDN under this Agreement may be subject to a request for public disclosure under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c.165, as amended from time to time (in this Clause, the "Act").
- 4.4 Designation of Confidential Information - The Contractor acknowledges that the Act provides an exemption from disclosure for information as specified in Section 21 of the Act. Accordingly, if any information supplied to the RDN fits within Section 21 of the Act, the Contractor must specifically advise the RDN and request the RDN not to disclose that information.

5.0 RDN'S RESPONSIBILITIES:

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

6.0 INDEMNITY:

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

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

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

7.0 NO WAIVER:

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

8.0 CONTRACTOR STATUS:

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

- 8.2 It is understood and agreed that the Contractor will act as an independent Contractor and that it is entitled to no other benefits or payments whatsoever other than those specified in the Agreement.

9.0 DOCUMENTATION, PATENT AND COPYRIGHT:

9.1 Title, Patent and Copyright - The title, property rights and ownership in and to all present and future materials and information produced or prepared by the Contractor pursuant to this Agreement shall vest with the RDN without any payment by the RDN therefor.

10.0 NOTICES:

10.1 Where in the Agreement any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing.

11.0 INSURANCE:

11.1 Insurance to be provided by the Contractor.

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

(a) Contractor Equipment Insurance

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

(b) Third Party Automobile Liability Insurance

Third Party 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) Commercial General Liability Insurance

Commercial General Liability Insurance providing third party bodily injury and property damage coverage in an amount of not less than \$2,000,000 per occurrence, indicating that the Regional District of Nanaimo is named as 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 Regional District of Nanaimo will receive 30 days' notice of cancellation or of any material change in coverage which will reduce the extent of coverage provided to the Regional District of Nanaimo. 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 RDN.

11.1.2 The Contractor shall, upon written request of the RDN, provide to the RDN 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 RDN.

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

12.0 DELAY IN PERFORMANCE:

12.1 Neither the RDN nor the Contractor shall be deemed to be in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to abnormal weather conditions, flood, earthquake, fire, epidemic, war, riot and other civil disturbance, strike, lockout, work slowdown and other labour disturbances, sabotage, judicial restraint and inability to procure permits, licenses or authorizations from any local, provincial or federal agency for any of the supplies, materials, accesses or services required to be provided by either the RDN or the Contractor under this Agreement. If any such circumstances occur, the non-performing party shall, as soon as possible after being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

13.0 CONFLICT OF INTEREST:

13.1 The Contractor declares that the Contractor has no pecuniary interest in the business of any third party that would cause a conflict of interest or be seen to cause a conflict of interest in carrying out the Services. Should such an interest be acquired during the term of the Agreement, the Contractor shall declare it immediately in writing to the RDN. If the Contractor does declare a conflict of interest the RDN may direct the Contractor to resolve the conflict of interest to the RDN's satisfaction.

14.0 GOVERNING LAW:

14.1 The Agreement shall be construed under and according to the laws of the Province of British Columbia.

15.0 DISPUTE RESOLUTION:

15.1 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 business days, the dispute is not resolved, both parties agree to appoint a mediator to resolve the dispute and their decision will be final. The mediation shall take place in Nanaimo, British Columbia, unless agreed otherwise. Parties will be responsible for their own costs.

15.2 All claims, disputes or issues in dispute between the RDN 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.

16.0 TERMINATION:
Termination for Default

- 16.1 The RDN may terminate the Agreement, without any cost or penalty or consequence whatsoever, if it concludes, acting reasonably on the information available to it, that the Contractor is bankrupt, or threatening bankruptcy or is in material non-compliance with, or has been convicted of a material offence or violation of, health, safety, labour or environmental laws.
- 16.2 The RDN may terminate the Agreement in whole or in part in writing if the Contractor defaults in the fulfilment of any or all of its obligations under this Agreement provided that, except in the case where the RDN acting reasonably deems it impractical, the Contractor shall be entitled to cure the default within 10 days of receipt of written notice from the RDN. Failure to cure the default within the 10 day period or as mutually extended by agreement between the RDN and the Contractor, shall entitle the RDN to terminate this Agreement immediately.
- 16.3 If the RDN terminates the Agreement under Clause 16.1, or 16.2 upon receipt of written notice of termination, the Contractor shall discontinue providing the Services in accordance with the notice and within the period of time set out in the notice deliver to the RDN all drafts, reports, drawings, plans, specifications, computer discs, software and all other information and materials relating to the Services.

Termination without Default

- 16.4 Notwithstanding the provision of Clause 16.1 or 16.2 the RDN shall be entitled at any time during the Agreement to terminate this Agreement upon 30 calendar days' written notice to the Contractor. Upon receipt of written notice of termination, the Contractor shall discontinue providing the Services in accordance with the notice.

Payment on Termination without Default

- 16.5 Upon termination under Clause 16.4, the RDN shall pay the Contractor for the Services provided to the date of termination together with the actual and reasonable out-of-pocket expenses directly and necessarily incurred by the Contractor as a result of the termination.

17.0 SUBCONTRACTORS:

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

18.0 EXTRA WORK:

- 18.1 Extra Work means the furnishing of services not directly or by implication called for in the Agreement. If the RDN requires extra work it may do so by itself or by the

employment of others or it may direct the Contractor to do the extra work by issuance of a written direction. The Contractor shall perform any extra work at the rates provided for in the Standing Offer.

19.0 THIRD PARTY RIGHTS:

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

20.0 WorkSafe BC Coverage:

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

20.2 If the Contractor is a sole proprietor, or a partner in a partnership, the Contractor must be registered with WorkSafe BC and obtain and pay for Personal Optional Protection for health care, wage-loss, and rehabilitation benefits. The Contractor will maintain coverage throughout the term.