



## **REQUEST FOR PROPOSALS No. 21-071**

### **External Audit Services**

**ISSUED: August 19, 2021**

#### **CLOSING DATE AND TIME:**

Submissions must be received at the Closing Location on or before:  
**3:00 PM (15:00 hrs) Local Time on September 16, 2021**

#### **Regional District of Nanaimo (RDN) Contact for Questions:**

Jeannie Bradburne, CPA, CGA, MBA

Director of Finance

250-390-6528

[jbradburne@rdn.bc.ca](mailto:jbradburne@rdn.bc.ca)

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

#### **Proponent's Information Meeting:**

No Proponent's meeting will be held

Proposals will not be opened in public

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## 1. Instructions to Proponents

### 1.1 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 September 16, 2021.

Submission Method:

By Email: In PDF format with “21-071 External Audit Services” as the subject line at this electronic address:

[jbradburne@rdn.bc.ca](mailto:jbradburne@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.

### 1.2 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.

### 1.3 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](http://www.rdn.bc.ca)) and BC Bid ([www.bcbid.gov.bc.ca](http://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.

### 1.4 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.

### 1.5 Unsuccessful Vendors

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

## 2. INTRODUCTION

The purpose of this Request for Proposal is to solicit submissions from qualified firms for the provision of external audit services as prescribed in Section 377 of the *Local Government Act* and Part 6, Division 2 of the *Community Charter*.

This involves the audit of the annual financial statements of the Regional District of Nanaimo (RDN) and Nanaimo Regional Hospital District (NRHD) for a period of five years, commencing with the fiscal year ending December 31, 2021.

The fiscal year of the RDN and NRHD is the calendar year. The Auditor should have experience and expertise in performing audits of government corporations and/or other public bodies, be free of any obligations or interests that may conflict or affect their ability to perform and act as the Auditor for the RDN and have the capacity to provide this service in a timely manner.

## 3. BACKGROUND

### Regional District of Nanaimo

The Regional District of Nanaimo was incorporated in 1967 and is located on the central east coast of Vancouver Island. Covering an area of 202,000 hectares, it stretches from a point south of the Nanaimo Airport in Cassidy to Deep Bay in the north, as far inland as Mount Arrowsmith (approximately 9km from Port Alberni), and includes Gabriola, Mudge, and other smaller islands.

The area had a population of 155,698 people according to the 2016 Census. The Regional District is government by a 19 member board which includes representation from seven (7) unincorporated electoral areas, as well as four (4) member municipalities:

- City of Nanaimo
- City of Parksville
- District of Lantzville
- Town of Qualicum Beach

The RDN currently has an annual operating budget of approximately \$140 million and a capital budget of \$74 million and provides services to residents through 107 separate services. The RDN uses fund accounting to separately account for each service.

The RDN has a workforce of 318 full-time and part-time permanent staff, with another 169 temporary and casual employees.

Legislation requires that an external auditor be appointed to report to the Board on the Annual Financial Statements. A copy of the RDN and NRHD's 2020 Financial Statements can be obtained from the RDN's website located at [www.rdn.bc.ca](http://www.rdn.bc.ca).

### Nanaimo Regional Hospital District

The Hospital District financial activities are primarily capital project borrowing and repayment, and capital grants, with approximately 360 transactions annually. While the NRHD does not operate any health facilities, it does provide 40% capital funding for the designated facilities in its service area in the form of grants.

Hospital transactions are also accounted for through an Operating Fund, Capital Fund, and Reserve Fund. The NRHD's general ledger contains approximately 96 accounts. There are 4 investment accounts and one bank account. NRHD's revenue is derived for the most part from taxation requisitions within the boundaries of the NRHD, which are the same boundaries as the RDN.

The NRHD's financial records are maintained in a Vadim iCity financial software database that is separate from the RDN's. The internal controls and processes for the NRHD mirror those of the RDN, which receives an administration fee from the NRHD. The Board of Directors for the NHRD is the same as the RDN Board.

Legislation requires that an external auditor be appointed to report to the Board on the Annual Financial Statements. A copy of the 2020 audited financial statements can be obtained at the following website: [www.rdn.bc.ca/financial-reports](http://www.rdn.bc.ca/financial-reports).

## 4. SCOPE OF SERVICES

### 4.1 Regional Hospital District and Nanaimo Regional Hospital District

The RDN and NRHD's financial statements are prepared by RDN staff in accordance with Canadian generally accepted accounting standards for local governments as recommended by the Public Sector Accounting Board (PSAB) of the Canadian Chartered Professional Accountants.

Staff will make available to the Auditor a complete set of financial statements including notes that are ready for the audit for both organizations. It is expected that these statements will be available by late March of each year. These statements will be supported by a set of working papers and appropriate supporting documents.

The Auditor will be required to fulfill the duties and responsibilities prescribed in Sections 169-172 of the *Community Charter* and shall perform in compliance with generally accepted auditing standards. The audit is expected to be done in a timely manner and the Auditor shall provide relevant reports and requirements in accordance with a schedule satisfactory to the Director of Finance. The audit should be completed no later than April 30<sup>th</sup> of each year to allow the RDN to file the financial statements with the Province of BC no later than the 14<sup>th</sup> of May. The RDN's preferred timing for the year-end fieldwork is within the first two weeks of April. Preferred timing for interim fieldwork is the beginning of December.



Consolidated Financial Statements, working papers and schedules for both organizations will be prepared by RDN staff in Caseware and Microsoft Excel, and documents will be available electronically.

The RDN will provide resources and reasonable assistance to the Auditor for reproduction, pulling and re-filing documents and preparation of additional schedules.

The audit process includes evaluating the overall financial statement presentation as drafted by RDN staff. The Auditor shall also produce a management letter providing observations and recommendations relative to the District's internal accounting controls, systems, and procedures.

## 5. DELIVERABLES AND OUTCOMES

Responsibilities of the Auditor:

1. Providing an audit service plan to the RDN each year to provide an opportunity for areas of concern of additional focus to be discussed.
2. Conducting an audit engagement and expressing an audit opinion on the following financial statements:
  - a. Regional District of Nanaimo Consolidated Financial Statements, including the Regional District's proportionate share of the Arrowsmith Water Service (a joint venture agreement with the City of Parksville and Town of Qualicum Beach), and the Englishman River Water Service (a joint venture agreement with the City of Parksville).
  - b. Nanaimo Regional Hospital District Financial Statements
3. Performing relevant audit procedures on the above-mentioned financial statements. The audit procedures will include any additional audit work required to ensure compliance with the new Public Sector Accounting Standard (PSAS) requirements relating to Asset Retirement Obligations (PS3280) as well as new standards which may arise.
4. Preparing a report on the audit findings, including any internal control concerns identified during the course of the audit. This report will be reviewed and commented on by Management and the results will be reviewed by the RDN Board.
5. Presentation of the audit results at a public meeting of the RDN Board. The RDN Board may choose to convene a closed meeting to speak with the auditor about areas of concern, if any.
6. Providing guidance and assistance to the District's staff with respect to the implementation of new Canadian public sector accounting standards or other accounting issues impacting local governments.

7. Providing advice to RDN staff throughout the year on any accounting, auditing, tax, and other issues that arise. It is expected that such inquiries would not incur additional fees, unless agreed upon in writing in advance of the work being completed.

## 6. REFERENCE/BACKGROUND INFORMATION

Audit firms who are considering a proposal pursuant to this request for proposals are encouraged to visit the Regional District’s website at [www.rdn.bc.ca](http://www.rdn.bc.ca) for a more detailed overview of the Regional District’s characteristics and activities.

### Financial Reports

Examples of past financial statements included in the scope of this engagement, along with the Annual Report and the Five-Year Financial Plan can be found here:

[www.rdn.bc.ca/financial-reports](http://www.rdn.bc.ca/financial-reports)

### Financial Reporting and Software Programs

The Regional District utilizes the following software programs that are linked to financial reporting systems and processes, but it should be noted that this is not an exhaustive list and there will be other sub-systems used to track a variety of Regional District activities:

ActiveNet / Active Networks	Records revenues from facility bookings, program registration and general admissions for recreation facilities
Caseware	Financial statement and working paper preparation software
CityView	Property database software for issuing, tracking, and accounting for building and planning permit activities
FMW	Financial planning and budgeting software
Geoware	Transactions at solid waste collection sites
Sensus	Meter reading software
Vadim / iCity	General ledger maintenance, accounts payable, accounts receivable, utility billing, payroll, cash receipting, pet licensing transactions



**Financial Transactions and Statistics – Regional District of Nanaimo**

<b>CATEGORY</b>	<b>DESCRIPTION</b>	<b>2020</b>
Population	Population per 2016 Census	155,698
Services	Number of Established Services Provided	107
Accounts Payable	Total Invoices Processed	19,400
General Ledger	Number of G/L Accounts	11,900
Banking	Number of Banking and Investment Accounts	8
Payroll	Number of Full Time and Part Time Staff	318
Payroll	Number of Temporary and Casual Employees	169
Payroll	Average Gross Bi-Weekly Payroll	\$1,160,000
Utility Billing	Number of Garbage, Recycling, and Food Waste Accounts	18,600
Utility Billing	Number of Sewer Accounts	3,550
Utility Billing	Number of Water Accounts	3,100
Utility Billing	Approximate Annual Billings	\$4,000,000

## 7. 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.

Please include with your proposal:

- **Qualifications and experience of the audit firm and audit team**
  - Name of the key contact person and their curriculum vitae, including qualifications and experience
  - A brief résumé indicating experience and qualifications of all personnel who may be assigned to perform the audit and their roles
- **Demonstrated Success in Conducting Audits of Similar Organizations in Size and Complexity**
  - A minimum of three references, preferably local government or related agencies, for which your company has provided similar services within the last five years.

- **Methodology**
  - A statement of your understanding of the services to be performed and your ability and commitment to fulfil the responsibilities as described
  - Details or proposed audit methodology, including interim approach and the timing and duration of visits
  
- **Fees**
  - A summary of the fee estimates by year should be outlined on the Proposal Form (see Appendix 1)
  - The fee estimates should list the total cost (before GST) to perform audits for five years beginning with the fiscal year ending December 31, 2021, in Canadian dollars, including all hours and all disbursements
  - The bid for each year should be supplemented with more detailed budget information (see Appendix 2)
  
- **Value-Added Services**
  - Outline the details of any value-added services that the proponent may be willing to offer

Proposals will be evaluated on the following basis: 60% Technical, 40% Financial.

The lowest price proposal will receive full marks. Other proposals will receive reduced scores based on the proportion higher than the lowest price. i.e.  $\text{Score} = \text{Min Cost} / \text{Cost} \times \text{Fee Points}$ .

Proposals submitted should be in enough detail to allow the RDN to determine the Proponent's qualifications and capabilities from the documents received. The selection committee, formed at the RDN's sole discretion, will score the Proposals in accordance with the criteria provided.

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.

The selection committee may proceed with an award recommendation or the RDN may proceed to enter into negotiations with the highest evaluated proponent with the intent of developing an agreement. If the parties after having bargained in good faith are unable to conclude a formal agreement, the RDN and the Proponent will be released without penalty or further obligations other than any surviving obligations regarding confidentiality and the RDN may, at its discretion, contact the Proponent of the next best rated Proposal and attempt to conclude a formal agreement with it, and so on until a contract is concluded or the proposal process is cancelled.

The RDN reserves the right to award the assignment in whole or in part or to add or delete any portion of the work. 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.

## 8. ENGAGEMENT CONDITIONS

### 8.1 Awarding

The RDN will notify the successful Proponent in writing that its Proposal has been accepted.

### 8.2 Consulting Services Contract

The successful Proponent will be required to enter into a Consulting Services Contract with the RDN (see Appendix 3). As outlined in section 8.3, all contract terms will be accepted, except those revisions that are proposed or requested in the Proposal and accepted by the RDN.

### 8.3 Acceptance of Terms

All of 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 RDN. Proponents shall identify any specific provisions contained in this RFP with which it is unwilling or unable to comply. Proposed changes are subject to RDN review and approval in writing and may not be accepted in whole or in part.

### 8.4 Intended Term

It is expected that the successful firm will be the auditor for the RDN and NRHD for a period of five years, beginning with the audit for the year ending December 31, 2021.

### 8.5 Limits of Liability

In consideration of the provision of the Services by the Proponent to the RDN under this Agreement, the RDN agrees that any and all claims which the RDN may have against the Proponent, its employees, officers, agents, representatives and sub-consultants in respect of the services, howsoever arising, whether in contract or in tort, save and except for claims arising out of or in connection with any malicious act or malicious omission, shall be absolutely limited to the amount of the insurance available at the date such claim is brought, including any deductible portion therein, provided that neither the Proponent nor any of its employees, officers, agents, representatives nor sub-consultants has done anything to prejudice or impair the availability of such insurance.

In no event shall the Proponent be liable for any loss or damage occasioned by delays or other causes or circumstances beyond the Proponent's reasonable control.

### 8.6 Indemnity

Notwithstanding the provision of any insurance coverage by the RDN, and subject to paragraph 8.3, the Proponent shall indemnify and save harmless the RDN, its officers, employees, agents, successors, assigns, representatives, contractors and other consultants from and against any losses, claims, damages, actions and causes of action, costs, expenses, judgments and proceedings arising out of or in connection with any error, or negligent or malicious act or omission, by the Proponent or any of its officers, agents, representatives, employees or sub-consultants, except to the proportionate extent of any contributing negligent or wrongful act or omission of the Client, or any of its officers, agents, representatives, employees, contractors or other consultants. The terms and conditions, of this indemnity provision shall survive the completion of all services and the termination of this Agreement for any reason.



### 8.7 Insurance

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

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

Professional liability (errors and omissions) insurance coverage shall be maintained to a limit of not less than \$250,000 per claim, \$1,000,000 aggregate.

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

The Proponent will be responsible for paying any insurance deductibles.

### 8.8 Waiver

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

### 8.9 WorkSafe BC Coverage and Prime Contractor

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

The Proponent is designated as the Prime Contractor and shall fulfill the Prime Contractor responsibilities as defined in:

- a) WorkSafeBC Occupational Health and Safety Regulation, Notice of Project, Section 20.2, and Coordination of multiple employer workplaces, Section 20.3;
- b) Workers Compensation Act (BC), Coordination at multiple-employer workplaces, Section 118, Subsections (1) & (2); and
- c) General Requirements, Section 3.10 WorkSafe BC.

### 8.10 Confidentiality

The Proponent shall not disclose any information, data or confidential information of the Regional District to any person, other than representatives of the Regional District duly designated for that purpose in

writing by the Regional District and shall not use for its own purposes or for any purpose other than for the purpose of providing the Services any such information, data or confidential information it may acquire as a result of its engagement under this Agreement.

#### 8.11 Governing Law

The Engagement Letter is governed by and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

#### 8.12 Retention of Working Papers

The selected Proponent must retain working papers for a period of at least seven (7) years.

### 9. REQUEST FOR PROPOSAL - GENERAL CONDITIONS

#### 9.1 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.

#### 9.2 Privilege Clause

The lowest or any proposal may not necessarily be accepted.

#### 9.3 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.

#### 9.4 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.

#### 9.5 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.

#### 9.6 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.

### 9.7 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.

### 9.8 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.

### 9.9 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.



### Appendix 1 – Proposal Form

REGIONAL DISTRICT OF NANAIMO RFP 21-071 – EXTERNAL AUDIT SERVICES

**This form must be completed, signed, and included with each proposal submission.**

The undersigned confirms that its submission is in response to the above noted RFP.

Name of Proponent \_\_\_\_\_

Address \_\_\_\_\_

Contact Name \_\_\_\_\_

Phone \_\_\_\_\_ E-mail \_\_\_\_\_

All fees quoted below are in Canadian dollars before any applicable taxes:

	Five-Year Contract				
Fiscal year	2021	2022	2023	2024	2025
Total fees	\$	\$	\$	\$	\$
Hourly rate for additional services (attach separately if necessary)					
Other charges (attach separately if necessary)					

#### Confirmation of Proponent’s Intent to Be Bound

The enclosed proposal is submitted in response to the referenced Request for Proposal, including any Addenda. By submitting a proposal, the Proponent agrees to all the terms and conditions of the RFP including the following:

- a) The Proponent has carefully read and examined the entire Request for Proposal;
- b) The Proponent has conducted such other investigations as were prudent and reasonable in preparing the proposal; and
- c) The Proponent agrees to be bound by the statements and representations made in its proposal.

Name of authorized representative \_\_\_\_\_

Signature of authorized representative \_\_\_\_\_

Date \_\_\_\_\_

## Appendix 2 – Audit Team Hours and Budget Summary

Audit Year:			
Staff Assignment	Hours*	Rate	Budget
Audit Partner		\$	\$
Review Partner		\$	\$
Sector Specialists		\$	\$
Audit Manager		\$	\$
Other Staff		\$	\$
Staff not yet qualified		\$	\$
Totals (hours, budget)			\$
Misc. Disbursements			\$
Total Fee			\$

*\*One Budget Summary document should be completed for each year (2021-2025). The hours worked by each member of the team should be clearly identified.*





## Appendix 3 – Consulting Services Agreement

### REGIONAL DISTRICT OF NANAIMO

### CONSULTING SERVICES AGREEMENT

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

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road

Nanaimo, BC

V9T 6N2

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

AND:

<VENDOR NAME>

<Street Address>

<City, Province>

<Postal Code>

(hereinafter called the "Consultant")

### NOW THIS AGREEMENT WITNESSETH:

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

#### 1 Appointment

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

## **2 Term**

The Consultant will provide the Services for the fiscal years ending December 31, 2021 through December 31, 2025 (hereinafter called the "Term"), unless sooner terminated as hereinafter provided.

## **3 Payment**

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

## **4 Non-Resident Income Tax**

If the Consultant is not a resident in Canada, the Consultant acknowledges that the Regional District may be required by law to withhold income tax from the payments and then to remit that tax to the Receiver General of Canada on the Consultant's behalf.

## **5 Independent Contractor**

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

## **6 Assignment and Sub-Consultants**

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

## **7 Ownership of Documents and Confidentiality**

- a) The Regional District will own all written material that is prepared for and delivered to it under this Agreement, except as follows: the Consultant will own the Certificate of Registration, its working papers, pre-existing materials and software, as well as any general skills, know-how, processes, proprietary methodologies, questions and questionnaires (except to the extent that the Regional District has provided such material), or other intellectual property (including a non-Regional District specific version of any deliverables) which the Consultant may have discovered or created as a result of the Services (“Consultant Materials”).
- b) The title, property rights, moral rights and ownership in and to all copyright in all present and future literary or artistic works including, but not limited to, computer programs and software, plans, drawings and specifications and the title, property rights and ownership in and to all patent rights in any invention developed during the course of or out of providing the Services shall remain with the Consultant. The Regional District has a non-exclusive, non-transferable, perpetual, irrevocable, royalty-free, and fully paid-up license to use any Consultant Materials included in the deliverables for the Regional District’s own internal use as part of those deliverables (the “IP License”).
- c) The Consultant shall upon request by the Regional District, do all such things and execute and deliver to the Regional District all such documents and instruments as the Regional District shall reasonably require in order to maintain the Regional District’s IP License and title, property rights and ownership in the written deliverables.
- d) The Client may copy and use any of the Instruments of Service for record and maintenance purposes and for any future renovation, repair, modification, and extension work, including updating the original work, with respect to that part of the Project to which the Services relate.

## **8 Conflict**

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

## **9 Limits of Liability**

In consideration of the provision of the Services by the Consultant to the Client under this Agreement, the Client agrees that any and all claims which the Client may have against the Consultant, its employees, officers, agents, representatives and Sub-Consultants in respect of the Services, howsoever arising, whether in contract or in tort, save and except for claims arising out of or in connection with any malicious act or malicious omission under paragraph 9, shall be absolutely limited to the amount of the insurance available at the date such claim is brought, including any deductible portion therein, provided that neither the Consultant nor any of its employees, officers, agents, representatives nor Sub-Consultants has done anything to prejudice or impair the availability of such insurance.

In no event shall the Consultant be liable for any loss or damage occasioned by delays or other causes or circumstances beyond the Consultant's reasonable control.

## **10 Indemnity**

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

## **11 Insurance**

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

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

Professional liability (errors and omissions) insurance coverage shall be maintained to a limit of not less than \$250,000 per claim, \$1,000,000 aggregate.



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

The Consultant will responsible for paying any insurance deductibles.

## **12 Termination**

Notwithstanding any other provision of this Agreement:

- a) If the Consultant fails to comply with any provision of this Agreement, then, and in addition to any other remedy or remedies available to the Regional District, the Regional District may, at its option, terminate this Agreement immediately by giving written notice of termination to the Consultant.
- b) Either Party may terminate this Agreement at any time upon giving the other Party thirty (30) days' notice of such termination.

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

## **13 Prior Dealings**

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

## **14 Waiver**

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

## **15 Counterparts**

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

## **16 Dispute Resolution**

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

- a) the party initiating the process will send written notice to the other party (the “Dispute Notice”); and;
- b) the parties will promptly, diligently and in good faith, including the senior management of both parties, take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute.
- c) if the dispute is not resolved through collaborative negotiation within 30 Business Days of the dispute arising, the parties should then attempt to resolve the dispute through mediation under the rules of the Mediate BC Society and will be held in Nanaimo, BC. unless otherwise agreed.

## **17 Freedom of Information**

The Consultant 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.

## **18 Collection of Personal Information**

Unless the Agreement otherwise specifies or the Regional District otherwise directs in writing, the Consultant may only collect or create Personal Information that is necessary for the performance of the Consultant’s obligations, or the exercise of the Consultant’s rights, under the Agreement.

Unless the Agreement otherwise specifies or the Regional District otherwise directs in writing, the Consultant must collect personal information directly from the individual the information is about.

Unless the Agreement otherwise specifies or the Regional District otherwise directs in writing, the Consultant must tell an individual from whom the Consultant collects personal information:

- a) the purpose for collecting it;
- b) the legal authority for collecting it; and
- c) the title, business address and business telephone number of the person designated by the Regional District to answer questions about the Consultant’s collection of personal information.

## **19 Governing Law**

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

## **20 WorkSafe BC Coverage and Prime Contractor**

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

## **21 Confidentiality**

The Consultant shall not disclose any information, data or confidential information of the Regional District to any person, other than representatives of the Regional District duly designated for that purpose in writing by the Regional District and shall not use for its own purposes or for any purpose other than for the purpose of providing the Services any such information, data or confidential information it may acquire as a result of its engagement under this Agreement.

## **22 Delay in Performance**

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

## **23 Miscellaneous**

All provisions of this Agreement in favour of the Regional District and all rights and remedies of the Regional District, either at law or equity, will survive the expiration or sooner termination of this Agreement.

## **24 Working Paper Retention**

The Consultant must retain working papers for a period of at least seven (7) years.



**SIGNATORIES**

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

**For the Regional District of Nanaimo:**

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Signature

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Printed Name, Title

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

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Signature

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Printed Name, Title





**SCHEDULE 'A'**

**FEES & EXPENSES**

Total compensation to be paid to the Consultant by the Regional District of Nanaimo shall not exceed a maximum of the following amounts in Canadian Dollars, unless pre-approved by the Regional District in writing:

	<b>Amount</b>
Audit for the Year Ending December 31, 2021	\$ Insert Amount
Audit for the Year Ending December 31, 2022	\$ Insert Amount
Audit for the Year Ending December 31, 2023	\$ Insert Amount
Audit for the Year Ending December 31, 2024	\$ Insert Amount
Audit for the Year Ending December 31, 2025	\$ Insert Amount
<b>Total</b>	<b>\$ Insert Amount</b>

This compensation includes all fees and expenses excluding GST. If the services are completed by the consultant at less cost than maximum amount, the Regional District shall be billed only for actual hours worked and actual expenses incurred. If the Consultant receives the Maximum Fee, but has yet to complete the Services, it shall continue to provide the Services until it has provided all the Services.

The Consultant shall submit invoices to the Regional District after the conclusion of the interim audit services and the year end audit services. The Regional District shall pay invoices submitted to it for Services within 30 days' receipt thereof.



#### **SCHEDULE 'B'**

#### **SERVICES**

The Consultant will provide External Audit Services in accordance with the RDN's Agreement and the attached Consultant proposal dated **<Insert Date>**, 2021.