



REQUEST FOR PROPOSALS

Project Title:

**Regional District of Nanaimo
Regional Housing Capacity and Gap Analysis**

ISSUED: October 26, 2018

CLOSING DATE AND TIME:

Proposals are requested to be received at the Closing Location prior to:
4:00 PM (16:00 hrs) Pacific Time on Thursday, November 15, 2018

RDN CONTACT FOR QUESTIONS:

**Jamai Schile
Senior Planner, Long Range Planning
Strategic and Community Development
Telephone: 250-390-6510
Email: jschile@rdn.bc.ca**

Deadline for questions is five (5) business days before the closing date.

1. INSTRUCTIONS TO PROPONENTS

1.1 CLOSING DATE/TIME/LOCATION

Proponents are requested to submit their Proposal prior to the closing time of 4:00 PM (16:00 hrs), Pacific Time, **Thursday, November 15, 2018**. Submission method:

- By Email: With **Regional Housing Capacity and Gap Analysis** as the subject line and in PDF format at this electronic address: planning@rdn.bc.ca

Please note: Maximum email file size limit is 15MB, or less.

- Proposals received by hand delivery and facsimile are not encouraged.
- All costs to prepare the Proposal shall be borne solely by the Proponent.

1.2 COVER LETTER & SIGNATURE

The Proposal should include a cover letter summarizing your proposal and highlighting the reasons why the Regional District of Nanaimo (RDN) should select your firm for this assignment. The letter should be signed by a person authorised to legally bind the respondent to the statements made in the Request For Proposal (RFP).

1.3 AMENDMENT TO PROPOSALS

Proposals may be amended in writing and delivered to the closing location by email before the closing date and time. Such amendments should be signed by the authorized signatory of the Proponent.

1.4 ADDENDA

If the RDN determines that an amendment is required to this RFP, the RDN will post the Addendum on the RDN website (www.rdn.bc.ca). 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 any and all amendments are included prior to submitting their final Proposal submission.

1.5 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 or email to the named RDN contact.

1.6 UNSUCCESSFUL VENDORS

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

2. SCOPE OF SERVICES

2.1 INTRODUCTION

The RDN is a federation of four municipalities and seven electoral areas that deliver a variety of regional and local services that are designed to enhance the environmental, social and economic well-being of residents (Appendix 1: RGS Study Area and Participating Jurisdictions).

The RDN first adopted a Regional Growth Strategy (RGS) in 1997, which is one of two coordinating documents that links land use plans and servicing plans over a 20 year time horizon. Since some time has passed since the last full comprehensive review, the RGS is scheduled to undergo a focused review in 2018-19. The five areas for review and update include: the criteria for minor amendments; select land use and servicing policies; affordable housing policies; select RGS indicators/targets and demographic information.

As a discrete component of the preliminary research needed to inform the RGS review, the RDN is seeking consulting services to undertake a Regional Housing Needs and Gap Analysis. The results of the analysis will inform the RGS policies regarding the characteristic and location of housing needs to support livability throughout the region, and particularly within the municipalities and rural village centers. Additionally, the results are intended to inform a future Regional Affordable Housing Strategy and as a prerequisite for senior government grant funding to support the development of partnerships that result in the construction and/or repair of affordable housing within the region.

The budget for this project is **\$50,000 dollars**, exclusive of applicable taxes.

2.2 BACKGROUND

In 2009, the RDN's Housing Needs Overview report confirmed that the supply of affordable housing throughout the region fell short of meeting the needs of those least able to afford adequate housing. Earlier works confirmed that the availability of developable land was not a contributing factor. At fault was the widening gap between the cost of housing relative to peoples' incomes and the shortage of rental housing stock. This led to the development of the current RDN Housing Action Plan in 2010.

The Housing Action Plan sets out opportunities and clear actions to influence affordable housing using existing RDN resources. Within this defined scope, the Plan's focus is on land use provisions and other activities aimed at raising awareness, and coordinating efforts amongst government agencies, non-profits and private business. A review of the Action Plan reveals that many of the actions have been completed or are considered on-going communication/facilitation activities. While much has been achieved through the implementation of the Housing Action Plan, the RDN acknowledges the greatest opportunity for the RDN to influence affordable housing rests in establishing a strategic, regional approach to affordable housing that includes a combination of policy, regulatory and financial measures with housing management as a possible future development.

The outcomes of the Housing Capacity and Gap Analysis are intended to advance the RGS Goal 6: Facilitate the provision of appropriate, adequate, attainable, affordable and adaptable housing and align with the soon to be adopted Provincial requirements for local governments to prepare housing capacity assessments. Proponents must refer to the complete Request for Proposals documents for detailed information regarding proposal submission requirements.

2.3 PROJECT OBJECTIVES

The primary objectives of the study are to:

1. support a strategic approach to land use planning and implementation;
2. identify the current and emerging housing needs within the electoral areas and member municipalities;
3. evaluate the housing supply to identify gaps in housing across the Housing Continuum¹ and
4. compare housing supply with housing demand to determine the ability to meet future needs.

2.4 SCOPE OF SERVICES

The scope of work is to be framed by BC Housing's *Housing Need and Demand Study Template*, Provincial legislative and build on past and present housing related studies developed in the region. (See Section 2.8 Reference Information). This project will draw on housing-related information from both quantitative and qualitative sources. Quantitative information may come from available statistics, and the qualitative information may be obtained through stakeholder consultation. Both sources should be cross-examined in order to evaluate the housing supply against the Housing Continuum to identify gaps relative to income and household size and any other related issues within the region.

The analysis is to include, but is not necessarily limited to the following focus areas or themes:

- a. General Demographic Information
An analysis of demographic information, population and household projections over next 25 years, household characteristics, composition and economic indicators. Discrete data is required for each municipality and unincorporated electoral area.
- b. Housing Market Indicators
An analysis of the current housing market including such items as a comparison of historic sales values and reported dwelling values, inventory by structure type, age of housing stock, housing starts and completion, average rental rates and average vacancy rates by type.
- c. Housing Supply Indicators
An analysis that considers the supply of housing, including such items as home purchase and rental options, estimated number of occupied units, vacant units, units under construction, units completed and units demolished. This information maybe reported broadly and by population sub-groups based on unique circumstances and/or special needs.
- d. Housing Needs Indicators
A descriptive analysis of the current housing needs of residents in each municipality and unincorporated electoral area that includes such items as shelter to income ratio, shelter need by household type and tenure.

¹ The Housing Continuum or *The Community Housing Continuum* is a graphic tool used by the Canadian Mortgage and Housing Corporation to describe the range of housing in a community, both market and non-market housing.

- e. **Housing Challenges and Gaps Along the Housing Continuum**
Identify key underlying themes contributing to housing affordability and explore current policies and alternative policy options to address the housing needs and gaps (by income group) in the region.
- f. **Community Stakeholder Consultation**
Representatives of social service organizations, developers, housing related non-profits, local governments and other applicable stakeholders are to be contacted and invited to provide input and insights by telephone interview or online survey. The RDN will help to identify stakeholders and facilitate introductions between stakeholders and the consultant(s).
- g. **Funding Options List**
Compile a list of funding/financial options aimed at addressing the identified housing needs and gaps.

2.5 STUDY AREA

The RDN covers 2,070 square kilometres containing diverse geographical areas characterized by the Mount Arrowsmith Watershed and 188 kilometres of coastline. The focus of the project will be the RGS study area, inclusive of the four municipalities and seven electoral areas. The study area does not include First Nation communities as these are outside of the jurisdiction of the RDN. (See Appendix 1: Study Area Map).

It's important to note that the City of Nanaimo has recently completed an Affordable Housing Strategy and Area B (Gabriola Island) was included in a Housing Needs Assessment for the northern region of the Islands Trust. (See Section 2.8 Reference Information).

2.6 DELIVERABLES

1. **Housing Indicators Report** that contains the relevant housing data, including housing mix, tenure, rental prices, housing sales prices, household income, and housing vacancy rates. Inclusive of an affordability analysis of what residents can afford (at 30% and 50% of median income).
2. **Housing Capacity Assessment Report** that reflects on the data research and stakeholder input received, evaluate the housing supply and needs against the Housing Continuum and identifies housing issues and gaps in the region.

Based on the information collected and analysed, identifies limitation in the data and provides recommendations and possible opportunities for improving housing affordability.
3. **Consultation Summary Report** that provides insights and an overview of the comments received from the community stakeholders who participated in the consultation.
4. **Funding/Financial Options** a list of potential funding opportunities that the RDN could consider to help address the identified housing needs and gaps.
5. **Meta data** associated with the analysis accompanied by technical memo to describe the information.
6. The consultant will be responsible for routinely reporting to the RDN for the duration of the project.

Note: any deliverables not identified in this RFP that the Contractor will also provide to the RDN should be listed in the proposal.

2.7 Project Schedule/ Timelines

Milestone / Task	Schedule
Post request for RFPs	October 26, 2018
RFP closing date	November 15, 2018
Award contract (anticipated)	Week of November 26, 2018
Initiate project	January 2019
Preliminary results	June 2019
Final deliverables to RDN no later than	July 2019

2.8 REFERENCE INFORMATION (not an exhaustive list)

- [Regional District of Nanaimo Regional Growth Strategy, 2011](#)
- Regional District of Nanaimo Regional Growth Strategy Review Background Report: Land Inventory & Residential Capacity Analysis, 2007
- [Regional District of Nanaimo Housing Needs Overview, 2009](#)
- [Regional District of Nanaimo Connecting Housing Needs and Opportunities, 2009](#)
- [Regional District of Nanaimo Housing Action Plan, 2010](#)
- Municipal areas and [Electoral Areas](#) Official Community Plans
- [BC Housing's Housing Need and Demand Study Template](#)
- [City of Nanaimo Affordable Housing Discussion Paper, April 2018](#)
- [City of Nanaimo Affordable Housing Strategy, August 2018](#)
- [Housing Needs Assessment Northern Region of Islands Trust, June 2018](#)
- [Nanaimo's Action Plan to End Homelessness 2018-2023, October 2018](#)

3. 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:

3.1 Proposal Eligibility

Proposals should:

- a) be received on or before the established closing date and time at the location specified,
- b) include a cover letter signed by an authorized officer of the Proponent, and
- c) be in English.

3.2 Evaluation Criteria

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

Evaluation Criteria		Point Value	X Rating	Total Score
Corporate Qualifications and Experience		10		
Experience, Depth, and Breadth of Project Team		20		
Approach and Methodology		20		
Project Management and Quality Assurance		10		
Proposed Fees		40		
Total		100		
Rating	Description			
5	Exceeds Expectations, Proponent clearly understands the requirement, Excellent Probability of success			
4	Somewhat Exceeds Expectations			
3	Meets Expectations, Proponent demonstrates a good understanding of the requirement. Good probability of success			
2	Somewhat meets Expectations, Minor weakness and/or deficiencies. Fair probability of success			
1	Does not meet expectations, does not demonstrate a good understanding of the requirements, low probability of success			
0	Response indicates a complete misunderstanding of the requirements, very low probability of success.			

Evaluation Criteria Notes:

1. A score of ZERO (0) on ANY of the Rated Criteria items MAY result in disqualification of a Submission.
2. These are the ONLY factors which will be used to evaluate the submission.
3. The highest scoring or any submission will not necessarily be accepted.
4. The lowest price proposal will receive a rating of 5. Other proposals will receive reduced ratings based on the proportion higher than the lowest price. i.e. Rating = (Min Cost x 5)/Cost

Proposals submitted should be in enough detail to allow the RDN 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. The selection committee, formed at the RDN's sole discretion, will score the Proposals in accordance with the criteria provided.

The selection committee will proceed with an award recommendation and 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.

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 selection committee may seek additional clarification on any aspect of the Proposal to verify or clarify the information provided.

3.3 Proposal Content

Cover Letter & Signature

The Proposal should include a cover letter summarizing the Proposal and indicate why the RDN should select your firm.

3.3.1 Corporate Qualifications and Experience

- a. Include a brief summary of the company's background, area(s) of expertise, organization chart, and number of employees.
- b. List any sub-consultants proposed, and provide a similar summary as above.
- c. Provide at least two (2) project abstracts that clearly outline previous experience with similar projects. The referenced projects shall be of similar or greater magnitude and have been successfully completed by the company within the past three (3) years. The project abstracts shall clearly note the project value, project constraints, location, Project Manager, key staff members, client names, client references and their current contact details. Project references may be contacted and their response may be used to form part of the evaluation score.

3.3.2 Experience, Depth, and Breadth of Project Team

- a. Provide the Resume of the Project Manager and all other project team members that would be directly involved in the project. Relevant experience, qualifications, credentials, and notable achievements in each area of the work should be detailed.
- b. Provide a table clearly indicating what role and responsibility each team member will play, the anticipated hours of each, and the total role and project hours.

3.3.3 Approach and Methodology

- a. Provide an overview of the project to confirm understanding of the scope of work and clearly define and describe how the proposed approach would meet those requirements. At a minimum, the Proponent should identify the project constraints and challenges, the sequence and timing of milestones, the respective expertise involved, and their time allocation for each.
- b. Submit a schedule of key tasks and milestones with dates and sufficient detail for the Evaluation Team to assess the reasonable ability of the Proponent achieving the results in the time stated.
- c. Indicate when work would commence and approximately how long it would take to complete the assignment. Proposed start dates, progress meeting dates, milestones, other key events, and major project deliverables shall be clearly identified on the project schedule. The schedule shall identify the critical path, delineate what resources will be required, and when they will be required.
- d. Indicate post-project completion, support and de-brief offered.

3.3.4 Project Management and Quality Assurance

- a. Demonstrate the approach to project management and highlight the procedures to be utilized to ensure submissions are completed and delivered on time and on budget.
- b. Provide a description of an internal quality assurance and control program in place, including the provision of a quality assurance and control plan that ensures senior technical review of relevant project activities.

3.3.5 Proposed Fee

Provide pricing for the project tasks and milestones in a table showing a breakdown of fees using the same headings from the consultant's proposed methodology. The fee structure shall include hourly charge out rates and man-hour requirements for all personnel involved, sub-consultant fees, disbursements, meetings and all other costs to complete the work. Items listed as optional shall be shown separately. The total project cost is to be considered an upset limit, not to be exceeded unless approved in writing by the RDN, and shall be inclusive of all Consultant salary costs, general and overhead expenses, and disbursements. Disbursements shall include the costs of printing and reproducing, drawings, reports, travel/accommodation costs, out of pocket expenses, and all other anticipated expenses. Any applicable taxes should be shown as a separate line item.

3.3.6 Proposed Purchase Contract

Proponents need to identify any specific provisions contained in this RFP with which it is unwilling or unable to comply from the attached Draft Client-Consultant Agreement and suggest replacement language.

4. GENERAL CONDITIONS

4.1 No Contract

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

4.2 Privilege Clause

The lowest or any proposal may not necessarily be accepted.

4.3 Right of the RDN to Cancel the RFP Process

The RDN is not bound to select a preferred Proponent or accept any Proposal and reserves the right in its sole discretion to cancel this RFP, up until award, for any reason whatsoever including budget and to proceed with the Services in some other manner separate from this RFP process.

4.4 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.

4.5 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.

4.6 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 within five years of the date of this Call for Proposals 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.

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.

4.7 Acceptance and Rejection of Submissions

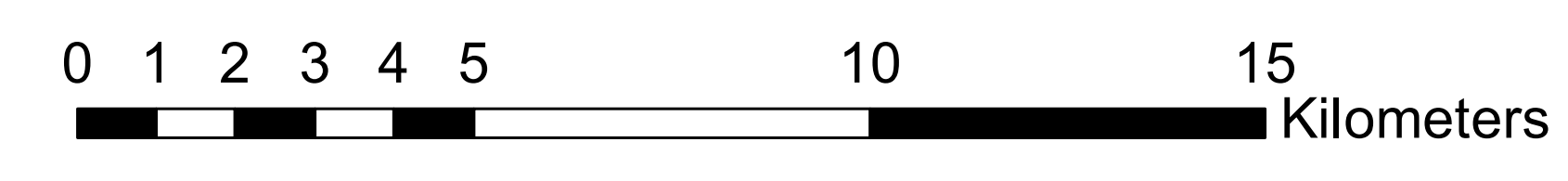
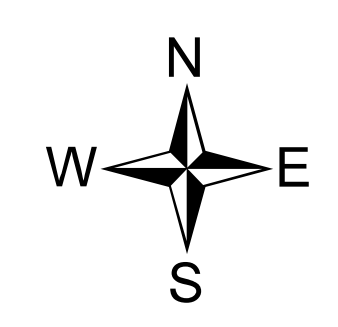
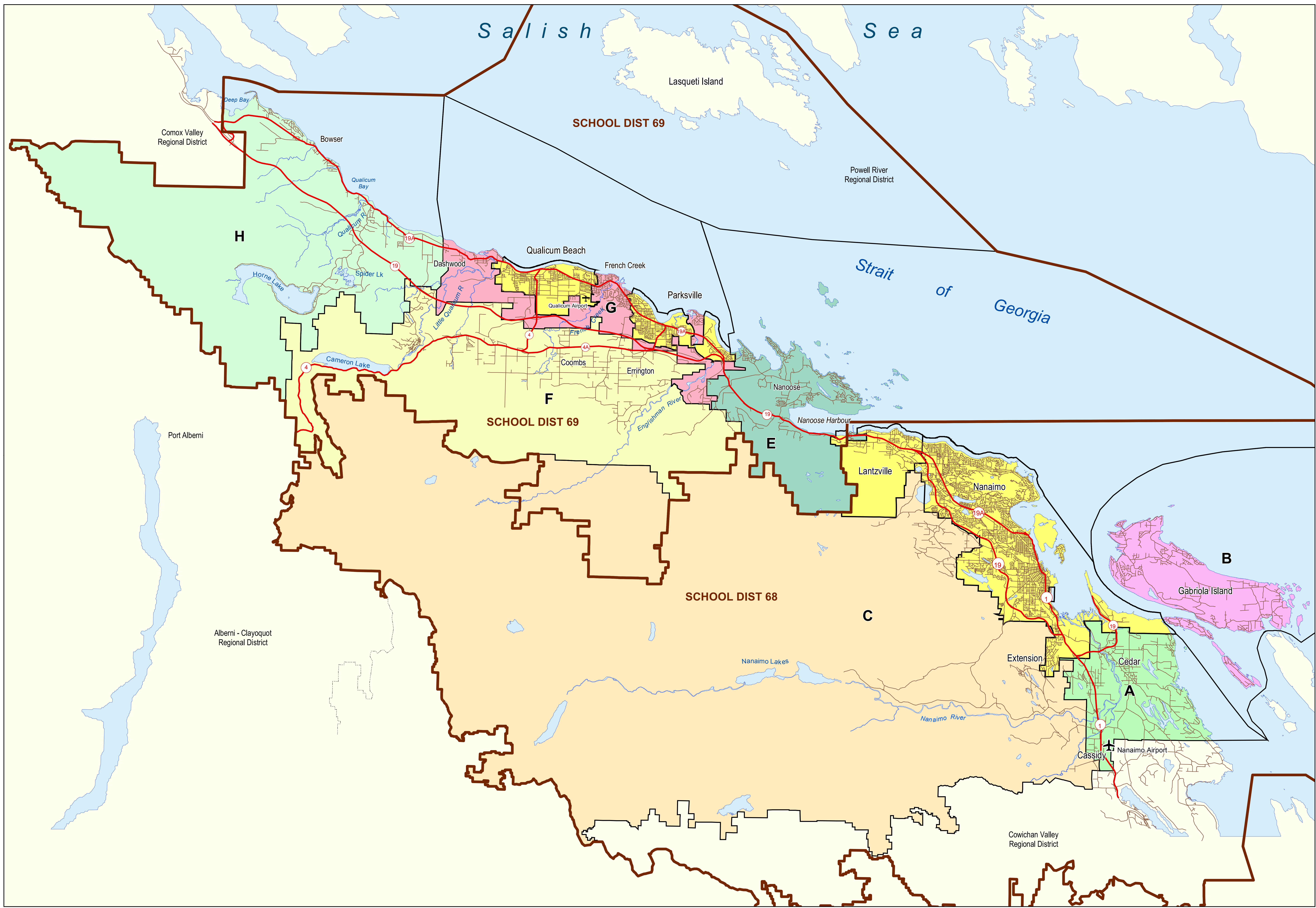
This RFP does not commit the RDN, in any way to select a preferred Proponent, or to proceed to negotiate a contract, or to award any contract. The RDN reserves the right in its sole discretion cancel this RFP, up until award, for any reason whatsoever

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.

5. Additional Information

Appendix 1: RGS Study Area Map

Appendix 2: Draft Professional Services Agreement



Regional District of Nanaimo ELECTORAL AREAS

Legend

A-H	RDN Electoral Area Boundary		Highway
	School District Boundary		Road
	Municipality		


 6300 Hammond Bay Rd
 Nanaimo, BC, V9T 6N2
 phone: (250) 390-4111
 phone toll free: 1-877-607-4111
 fax: (250) 390-4163
 web site: www.rdn.bc.ca

APPENDIX 2



REGIONAL DISTRICT OF NANAIMO

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

PROJECT TITLE:

**Regional District of Nanaimo
Housing Capacity and Gap Analysis**

[Awarded Company Name]

FORM OF AGREEMENT:	SECTION 01000
SCOPE OF SERVICES :	SECTION 01100
FEES, RATES AND CHARGES :	SECTION 01200
GENERAL CONDITIONS:	SECTION 01300

BETWEEN: [Awarded Company Name] *(the "Consultant")*

AND: The Regional District of Nanaimo *(the "Corporation")*
6300 Hammond Bay Road
Nanaimo, B.C., V9T 6N2

THIS AGREEMENT WITNESSES that the Corporation agrees to retain the Consultant to furnish certain consulting services and the Consultant agrees to furnish the consulting services under the terms and conditions as follows:

1.0 "Contract Documents" means the following documents:

- 1.1
- (1) the Agreement: Section 01000
 - (2) the letters of clarification, if any
 - (3) the most recent Addendum
 - (4) other Addenda, the more recent taking precedence over earlier Addenda
 - (5) the Scope of Services: Section 01100
 - (6) the Schedule of Fees, Rates and Charges: Section 01200
 - (7) the General Conditions: Section 01300
 - (8) the Notice of Intent to Award and/or Purchase Order
 - (9) the Proposal Response
 - (10) the Specifications, if any
 - (11) the Drawings, if any
 - (12) the Request for Proposal
 - (13) other relevant documents such as but not limited to any reports, standards or the like included by reference.
- 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 Period of Service:

- 2.1 The services to be provided by the Consultant are **consulting professional services** for the **Regional District of Nanaimo Housing Capacity Assessment and Gap Analysis** including those services described in **Section 01100 Scope of Services (to be developed)**, and otherwise set out in the Contract Documents (the "Services").
- 2.2 The Consultant shall, **between January 2019 to July 2019**, perform and complete the Services with care, skill, due diligence and efficiency.

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 Corporation shall pay to the Consultant a fee not to exceed **\$50,000** including expenses and disbursements in accordance with the estimate and rates included in Section 01200 Schedule of Fees, Rates and Charges for the Services to be provided.

3.2 The Consultant shall be paid on the basis of monthly progress billings for services performed and invoices approved by the Corporation, all in accordance with Clause 18 of Section 01300.

3.3 The Agreement amount stated in Section 01000 Clause 3.1 does not include applicable Provincial Services tax ("PST") or Goods and Services Tax ("GST"). The appropriate PST and GST will be shown separately on all invoices submitted by the Consultant.

4.0 Time of the Essence:

4.1 Time shall be of the essence.

5.0 Entire Agreement:

5.1 When duly executed by authorized officers of both parties, this Agreement constitutes the entire Consulting and Professional Services 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.

6.0 Amendment:

6.1 The Contract Documents shall not be amended except as specifically agreed in writing by both the Corporation and the Consultant.

7.0 Contract Administrator:

7.1 For the purposes of this Agreement, the Corporation designates as its Contract Administrator: Jamai Schile, Senior Planner, Regional District of Nanaimo located at 6300 Hammond Bay Road, Nanaimo, BC Telephone: 250-390-6510 Email: jschile@rdn.bc.ca

7.2 For the purposes of this Agreement, the Consultant designates as its Contract Administrator [], address [], telephone [], email []

8.0 Joint Ventures

8.1 If the Consultant is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, and claims, rights, powers, privileges and liabilities of the Consultant shall be joint and several.

9.0 Enurement:

9.1 This Agreement shall enure to the benefit of and be binding upon the Corporation and the Consultant and their respective heirs, executors, legal representatives, administrators, successors and permitted assigns.

10. Schedule of Fees, Rates and Charges:

(to be developed and included as Section 01200)

11. Counterparts

- 11.1 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 Corporation by:

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

[CONTRACTOR'S NAME]

by its authorized signatory on _____ day of _____, 20 :

SIGNED on behalf of the Contractor by:

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

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 include the plural number and vice versa.

- 1.1 "Agreement" means the agreement set out in Section 01000.
- 1.2 "Contract Administrator" has the meaning in Section 01000 Clause 7.0.
- 1.3 "Contractor" and "Consultant" shall both mean the successful Proponent selected as a result of this RFP.
- 1.4 "Notice of Intent to Award" means the written notice sent by the Corporation to the successful Proponent advising that, subject to disclosed conditions, its Proposal has been accepted.
- 1.5 "Proponent" shall mean the firm responding to the RFP.
- 1.6 "Proposal" means a Proponent's formal response to the RFP.
- 1.7 "Request for Proposal" and "RFP" both mean this document consisting of the items listed in the Table of Contents (Section 00001) and any subsequent Addenda.
- 1.8 "Services" has the meaning set out in Section 01000 Clause 2.1.
- 1.9 "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 Corporation, 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 Corporation.

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 Corporation may have, the Contractor at its sole cost upon written request of the Corporation shall rectify any of the Services which have not been performed in accordance with the care, skill and diligence set out in Section 01300 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 Corporation to satisfy the Corporation 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.

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 including, without limitation, all such information and data relating to the structure, personnel, and operations of the disclosing party, including financial, planning, marketing, advertising and commercial information and strategies; employee, supplier and customer information and data; contractual agreements, records and correspondence; computer programs, computer-related data and databases; trade secrets, inventions, designs, methods, processes and know-how; and items provided or disclosed to a party by third parties under an obligation of confidentiality.

- 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 and for a period of five (5) years thereafter, subject to Section 01300 Clause 4.3 and 4.4, 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 Corporation 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 Corporation fits within Section 21 of the Act, the Contractor must specifically advise the Corporation and request the Corporation not to disclose that information.

- 4.5 **Return of Confidential Information.** Upon expiration or earlier termination of this Agreement, each party shall promptly cease all use of the Confidential Information of the other party and upon written request will return all Confidential Information. This obligation shall not apply to

any Confidential Information of the Contractor required by the Corporation to make use of any work product under this Agreement.

5.0 CORPORATION'S RESPONSIBILITIES:

5.1 The Corporation 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 Regional District of Nanaimo 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 Corporation 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 Corporation, its other Contractor(s), assign(s) and authorized representative(s) or any other persons.

6.2 The terms and conditions of Section 01300 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 Section 01300 Clause 6.1 by the Contractor to the Indemnified Parties shall not in any way be limited or restricted by the insurance set out in Section 01300 Clause 11 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 Corporation 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 Corporation.

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 Corporation.

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 and Section 01000 Clause 10 Schedule of Fees, Rates and Charges.

9.0 DOCUMENTATION, PATENT AND COPYRIGHT:

- 9.1 **Title.** 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 including but not limited to plans, drawings, specifications, computer discs, listings, computer software and any other material or physical item on which information is stored shall vest in the Corporation without any payment by the Corporation therefor.
- 9.2 **Patent and Copyright.** The title, property 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 vest in the Corporation without any payment by the Corporation therefor.
- 9.3 **Further Assurances.** The Contractor shall upon request by the Corporation, do all such things and execute and deliver to the Corporation all such documents and instruments as the Corporation shall reasonably require in order to vest title, property rights and ownership in the Corporation as provided in Section 01300 Clause 9.1 and 9.2 and the Contractor shall execute and deliver all such assignments, documents and instruments as may, in the Corporation's opinion, be necessary or desirable for the application or the issuance of any patents, designs or the registration of any copyright.

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 and is effective if delivered in person, sent by registered mail, or by facsimile addressed to the party for whom it is intended at the address specified in Section 01000 Clause 7 of the Form of Agreement. Any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by facsimile when transmitted. The address of either party may be changed by notice in the manner set out in this provision.
- 10.2 If the Corporation is other than the Regional District of Nanaimo notices or written communications may be made on Regional District of Nanaimo letterhead, but if so made shall be deemed to have been made on behalf of the Corporation.

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) Automobile Liability Insurance

Automobile liability insurance with respect to owned and leased automobiles used directly or indirectly in the performance of the Services covering liability for bodily injury, death and damage to property with a limit of not less than \$2,000,000 inclusive for each and every loss.

(c) Comprehensive General Liability Insurance

Comprehensive General Liability Insurance providing third party bodily injury and property damage coverage in an amount of not less than \$1,000,000 per occurrence, indicating that the Corporation is additional insured and containing a cross liability and/or severability of interest clause protecting each insured to the same extent as if they were separately insured.

The Policy shall contain a clause providing that the Corporation will receive 30 days' notice of cancellation or of any material change in coverage which will reduce the extent of coverage provided to the Corporation. The certificate will also indicate that the policy contains non-owned automobile liability and contractual liability coverage. The insurance policy will be in a form and with a company which are, in all respects, acceptable to the Corporation.

(d) Professional Liability Insurance

Professional liability (errors and omissions) insurance coverage shall be obtained to a limit of not less than \$1,000,000 on a claims-made basis. Such coverage shall be maintained for a period of two years subsequent to conclusion of Services provided under this Agreement.

11.1.2 The Contractor shall, upon written request of the Corporation, provide to the Corporation certificates of insurance which shall include a provision that such insurance shall not be cancelled or modified without at least 30 days written notice to the Corporation.

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 WORKSAFE BC COVERAGE

The Consultant will provide to the Regional District, prior to the commencement of the Term, evidence satisfactory to the Regional District that the Contract 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.

13.0 DELAY IN PERFORMANCE:

13.1 Neither the Corporation 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 Corporation 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.

14.0 SEVERABILITY:

14.1 The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

15.0 CONFLICT OF INTEREST:

15.1 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 Corporation. If the Contractor does declare a conflict of interest the Corporation may direct the Contractor to resolve the conflict of interest to the Corporation's satisfaction.

16.0 GOVERNING LAW:

16.1 The Agreement shall be construed under and according to the laws of the Province of British Columbia and subject to an agreement to refer a dispute to arbitration under Section 01300 Clause 16, the parties agree to irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.

17.0 DISPUTE RESOLUTION:

17.1 All claims, disputes or issues in dispute between the Corporation and the Contractor shall be decided by arbitration 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.

17.2 In the event that the parties agree to arbitration, pursuant to Section 01300 Clause 16.1, the arbitration shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the parties, and failing agreement by the parties, shall be appointed by a Court of competent jurisdiction within the Province of British Columbia.

17.3 In the event that the parties agree to arbitration, the arbitration shall take place in Vancouver, British Columbia and be governed by the laws of British Columbia.

17.4 The procedure set out in Section 01300 Clause 16 is not meant to preclude or discourage informal resolution of disagreements between the Corporation and the Contractor.

18.0 TERMINATION:

Termination for Default

18.1 The Corporation may terminate the Agreement if the Contractor at any time becomes bankrupt, makes an assignment of his property for the benefit of his creditors, or if a receiver or liquidator should be appointed. Such termination shall be effective upon the Corporation giving written notice thereof.

18.2 The Corporation 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 Corporation acting reasonably deems it impractical, the Contractor shall be entitled to cure the default within 10 days of receipt of written notice from the Corporation. Failure to cure the default within the 10 day period or as mutually extended by agreement between the Corporation and the Contractor, shall entitle the Corporation to terminate this Agreement immediately.

18.3 The Corporation 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 in material non-compliance with, or has been convicted of a material offence or violation of, health, safety, labour or environmental laws.

18.4 If the Corporation terminates the Agreement under Section 01300 Clause 17.1, 17.2 or 17.3, 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 Corporation all drafts, reports, drawings, plans, specifications, computer discs, software and all other information and materials relating to the Services.

Termination without Default

18.5 Notwithstanding the provision of Section 01300 Clause 17.1, 17.2 or 17.3, the Corporation shall be entitled at any time during the Agreement to terminate this Agreement upon written notice to the Contractor. 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 Corporation all drafts, reports, drawings, plans, specifications, computer discs, software and all other information and materials relating to the Services.

Payment on Termination without Default

18.6 Upon termination under Section 01300 Clause 17.5, the Corporation shall pay the Contractor in accordance with Section 01000 Clause 10 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.

19.0 PAYMENT:

- 19.1 The Contractor shall submit invoices to the Corporation for Services performed monthly (the "billing period") during which the Services are performed under this Agreement; such invoices to be submitted as soon as practicable after each billing period.
- 19.2 The invoice submitted for each billing period shall be clearly itemized to show the amount of work performed, the billing rates, the reimbursable expenses and the costs incurred to employ any Subcontractors. The Contractor shall also provide to the Corporation upon written request such receipts, bills, invoices or other evidence in support of each invoice for a billing period as the Corporation shall request.
- 19.3 Except for the amounts which the Corporation in good faith is disputing and except for any set off which the Corporation may claim and except for invoices (or portions of invoices) in respect of which the Corporation has requested and not received supporting evidence under Section 01300 Clause 18.2, the Corporation shall pay invoices submitted to it for the Services within 30 days receipt thereof.
- 19.4 The Contractor shall keep and shall cause any Subcontractors to keep books, records, documents and other evidence relevant to the provision of the Services in accordance with generally accepted accounting principles and practices consistently applied. The Corporation or any of its duly authorized representatives shall for the purpose of audit and examination have access to and be permitted to inspect such books, records, documents and any other evidence for inspection, copying and audit for a period of three years after the termination, for any reason, of this Agreement.

20.0 SUBCONTRACTORS:

- 20.1 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.

21.0 EXTRA WORK:

- 21.1 Extra Work means the furnishing of services not directly or by implication called for in the Agreement. If the Corporation 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 Section 01000 Clause 10.

22.0 WORK AND SERVICES OMITTED:

- 22.1 Upon receipt of written direction from the Corporation, the Contractor shall omit Services to be performed under the Agreement. The Contractor shall have no claim against the Corporation for loss associated with any omitted Services.

23.0 THIRD PARTY RIGHTS:

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

24.0 WITHHOLDING TAX

24.1 [Regulation 105(1) of the Canadian Income Tax Act requires that payments to non-residents for any services performed in Canada, including work performed by Canadian and/or non-resident subcontractors, are subject to a Non-Resident Withholding Tax of 15%. Exemptions from this withholding tax are available in some circumstances, but you must apply directly with Canada Revenue Agency (CRA), at least 30 days before commencing work. Please call the CRA at 1-855-284-5946 if you have any questions or to receive a copy of the application form.]

END OF SECTION

DRAFT