

# Request for Proposal

RFP No. 2020-RISK-001  
Property Appraisal Services  
October 2020

Capital Regional District  
Corporate Services  
625 Fisgard Street  
Victoria BC V8W 1R7

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CAPITAL REGIONAL DISTRICT  
REQUEST FOR PROPOSAL  
PROPERTY APPRAISAL SERVICES  
RFP NO. 2020-RISK-001

**1 Instructions to Proponents**

**1.1 Invitation**

The Capital Regional District and Capital Region Housing Corporation invite detailed proposals from consultants (the "Proponents") in strict accordance with these Proposal Documents (CRD, RFP No. 2020-RISK-001). The proposals will be evaluated for the selection of a consultant (or consultants) with the intent to enter into a contract (the "Contract") to provide the services described in Appendix "A".

The Capital Regional District and Capital Region Housing Corporation, hereinafter referred to as the "CRD", invite Proposals for the appraisal of buildings and structures for the purpose of establishing replacement costs for insurance purposes.

A Contract will not necessarily result from this Request for Proposal ("RFP").

Submission on this RFP may result in one or more follow-on contracts awarded without competition.

**1.2 Closing Time and Date for Submission of Proposals**

The CRD will accept each proposal, in accordance with the instructions contained herein (section 4.1) at the following specific physical location:

**Attention:** Ross Cameron  
Manager, Risk and Insurance Management  
Corporate Services

**Address:** Capital Regional District  
625 Fisgard Street  
Victoria BC V8W 1R7

On or before the following date and time (the "Closing Time"):

**Time: 4:00 P.M. (16:00) Pacific Standard Time**  
**Date: November 9, 2020**

- The CRD reserves the right to extend the Closing Time at its sole discretion.
- Proposals sent by fax or electronically will not be accepted.

**1.3 Not a Tender**

This is a Request for Proposal and not a tender call.

**1.4 Proposal Documents**

Each Proponent will ensure it provides its correct name, address, email address and telephone number to the CRD at the time the Proponent receives a set of Proposal Documents.

**Failure to return the attached Receipt Confirmation Form to the CRD Representative listed in section 1.5 within five (5) days of receiving the Proposal Documents may result in no further communication regarding this RFP.**

- Please use and reference the above RFP number on all correspondence.
- Proponents are advised to read and respond appropriately to all sections of the RFP.
- Incomplete proposals may be rejected at the sole discretion of the CRD.

## **1.5 Inquiries**

All inquiries related to this RFP, including whether or not the Contract has been awarded, should be directed in writing to the person named below (the "CRD Representative"). Information obtained from any person or source other than the CRD Representative may not be relied upon.

Name: Ross Cameron, Manager, Risk and Insurance Management  
Address: 625 Fisgard Street, Victoria, BC V8W 1R7  
Telephone: 250-360-3015  
Email: [rlcameron@crd.bc.ca](mailto:rlcameron@crd.bc.ca)

Inquiries should be made no less than seven (7) days prior to Closing Time. The CRD reserves the right not to respond to inquiries made less than seven (7) days prior to Closing Time. Inquiries and responses will be recorded and may be distributed to all Proponents at the discretion of the CRD.

Proponents finding discrepancies or omissions in the Contract or RFP, or having doubts as to the meaning or intent of any provision, should immediately notify the CRD Representative. If the CRD determines that an amendment is required to this RFP, the CRD Representative will issue a written addendum to the Proponents. No oral conversation will affect or modify the terms of this RFP or may be relied upon by any Proponent.

## **1.6 Information Meeting**

The CRD will not be holding an information meeting for this RFP.

## **1.7 Addenda**

If the CRD determines that an amendment is required to this RFP, the CRD will issue a written addendum and distribute to all Proponents and will be incorporated into and become a part of this RFP. Failure to acknowledge and address all addenda in a Proposal may render the Proposal invalid.

## **1.8 Late Proposals**

Proposals received after the Closing Time will not be accepted or considered. Delays caused by any delivery, courier or mail service(s) will not be grounds for an extension of the Closing Time. Proposals received after the Closing Time will be returned unopened to the Proponent.

## **1.9 Amendments to Proposals**

Proposals may be revised by written amendment, provided they are delivered to the location set out in section 1.2. An amendment must be signed by an authorized signatory of the Proponent in the same manner as provided by section 2.3. Any amendments must be received prior to the Closing Time.

## **1.10 CRD's Right to Modify Terms and Negotiate**

The CRD, at its sole discretion, reserves the right to modify the terms of the RFP at any time before the Closing Time. The CRD also reserves the right following the Closing Time, and in accordance with the terms of this RFP, to negotiate with one or more Preferred Proponents any modification or variation of the terms of the RFP, including any of the documents referred to in the definition of "Contract" herein or any modification or variation of the terms of any Proposal, including price, that the CRD considers to be in its best interests. For certainty and without limiting the foregoing, the CRD may, for the purpose of entering into a Contract with any Proponent, amend the description of the required work included in this RFP so that it accurately reflects the services to be provided by the Proponent.

## **1.11 Examination of Contract Documents and Site**

Each Proponent will be deemed to have carefully examined and understood the requirements and limitations of the RFP, including all attached Appendices, the Contract and the Site (as

applicable) prior to preparing and submitting a Proposal, with respect to any and all facts which may influence the decision to prepare and submit a Proposal.

#### **1.12 Extension of Contract to other Divisions and Facilities**

Proponents should note that the RFP and resulting Contract permits the CRD to extend the Contract and the right to purchase the contracted services under the same price, terms and conditions, to any other divisions or facilities (present or future) in the CRD which may not have participated in this RFP process (the “other facilities”).

## **2 Proposal Submission Form and Contents**

### **2.1 Package**

Each Proposal must be submitted using a two-envelope process. One envelope must contain the Proponent’s price, fee schedule or cost of its Proposal and be clearly marked “Financial Proposal” and the other envelope must contain the balance of the Proposal and be clearly marked “Technical Proposal”. Proposals must be in a sealed package and marked on the outside with the Proponent’s name, title of the Project and RFP number.

### **2.2 Form of Proposal**

Proponents must submit their Proposal in accordance with the instructions set out in Appendix “B” – Form of Proposal.

### **2.3 Signature**

The Proposal should be signed by a person authorized to sign on behalf of the Proponent and include the following:

- a) If the Proponent is a corporation then the full legal name of the corporation should be included, together with the names of the authorized signatories. The Proposal should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the Proposal on behalf of the corporation is submitted.
- b) If the Proponent is a partnership or joint venture then the legal name of the partnership or joint venture and the name of each partner or joint venturer should be included and each partner or joint venturer should sign personally (or, if one or more person(s) having signing authority for the partnership or joint venture should provide evidence to the satisfaction of the CRD that the person(s) signing have signing authority for the partnership or joint venture). If a partner or joint venturer is a corporation then such corporation should sign as indicated in subsection (a) above.
- c) If the Proponent is an individual, including sole proprietorship, the name of the individual should be included.

## **3 Evaluation and Selection**

### **3.1 Evaluation Team**

The evaluation of Proposals will be undertaken by the Evaluation Team that consists of CRD members. The evaluation team may consult with others including CRD staff members, third party consultants and references, as the Evaluation Team may at its sole discretion decide is required.

### **3.2 Evaluation Criteria**

The Evaluation Team will compare and evaluate each Proposal to determine the Proponent’s strength and ability to provide the Services in order to determine the Proposal which is most advantageous to the CRD, using the following general criteria:

- a) Understanding of issues specific to this assignment including proposed work methodology proposed level of effort, proposed work schedule and sequence of work.
- b) Experience and capability of firms and staff in similar assignments
- c) Past performance of firm and staff as determined from the CRD and references.
- d) Availability and commitment of resources including staff, office and technical support.
- e) Past performance of cost and scheduling control practice.
- f) Fee schedule and total cost of services (upset fee) to the CRD.

Specific criteria and their importance are outlined in the Evaluation Form attached as Appendix "C".

### **3.3 Litigation**

In addition to any other provision of this RFP, the CRD may, in its absolute discretion, reject a Proposal if the Proponent, or any officer or director of the Proponent submitting the Proposal, is or has been engaged directly or indirectly in a legal action against the CRD, its elected or appointed officers, representatives or employees in relation to any matter.

In determining whether or not to reject a Proposal under this section, the CRD will consider whether the litigation is likely to affect the Proponent's ability to work with the CRD, its contractors and representatives and whether the CRD's experience with the Proponent indicates that there is a risk the CRD will incur increased staff and legal costs in the administration of the Contract(s) if awarded to the Proponent.

### **3.4 Additional Information**

The Evaluation Team may, at its discretion, request clarifications or additional information from any Proponent with respect to any Proposal. The Evaluation Team may consider such clarifications or additional information in evaluating a Proposal.

### **3.5 Interviews**

The Evaluation Team may, at its discretion, invite some or all of the Proponents to appear before the Evaluation Team to provide clarifications of their Proposals. In such event, the Evaluation Team will be entitled to consider the answers received in evaluating Proposals.

### **3.6 Multiple Preferred Proposals**

The CRD reserves the right and discretion to divide up the Services, either by scope, geographic area, or on any other basis as the CRD may decide, and to select one or more Preferred Proponents to enter into discussions and/or negotiations with the CRD for one or more Contracts to perform all or a portion or portions of the Services. In addition to any other provision of this RFP, Proposals may be evaluated on the basis of advantages and disadvantages to the CRD that might result or be achieved from the CRD dividing up the Services and entering into one or more Contracts with one or more Proponents.

### **3.7 Negotiation of Contract and Award**

If the CRD selects one or more Preferred Proponents, then it may enter into a Contract with the Preferred Proponent(s), or enter into discussions with the Preferred Proponent(s) to attempt to negotiate the terms of the Contract(s), and such discussions may include but are not limited to negotiating amendments to the scope of Services and the Preferred Proponent's price(s).

If at any time the CRD reasonably forms the opinion that a mutually acceptable agreement is not likely to be reached within a reasonable time, the CRD may give the Preferred Proponent(s) written notice to terminate discussions, in which event the CRD may then either open discussions and/or negotiations with another Proponent or Proponents, or terminate the RFP and retain or obtain the Services in some other manner.

Proponents will be notified in writing when a Contract has been awarded.

### **3.8 Intention of the Capital Regional District**

The Proponent that's submits to the CRD the most advantageous Proposal and which best represents the interests of the CRD, may enter into a Contract Agreement to deliver the proposed services outlined in the Proponent's proposal.

This solicitation may result in qualified Proponents awarded follow-on contractual work without a competitive process.

#### **4 General Conditions**

##### **4.1 No CRD Obligation**

This RFP does not commit the CRD in any way to select a Preferred Proponent, or to proceed to discussions or negotiations for a Contract, or to award any Contract, and the CRD reserves the complete right to at any time reject all Proposals, and to terminate this RFP process for any reason.

##### **4.2 Proponents Expenses**

Proponents are solely responsible for their own expenses in preparing, submitting Proposals, and for any meetings, negotiations or discussions with the CRD or its representatives and contractors relating to or arising from this RFP.

##### **4.3 No Contract**

By submitting a Proposal and participating in the process as outlined in this RFP, Proponents expressly agree that no contract of any kind is formed under, or arises from, this RFP, prior to the signing of a formal written Contract.

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

A Proponent shall disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with the CRD, its elected or appointed officials or employees. The CRD may rely upon such disclosure.

##### **4.5 Solicitation of CRD Staff, Board Members, Contractors**

Proponents and their agents will not contact any member of the CRD Board, CRD staff or CRD contractors with respect to this RFP, other than the CRD Representative named in section 1.5, at any time prior to entering into a Contract or the cancellation of this RFP.

##### **4.6 Disclaimers/Limitations of Liability**

Neither acceptance of a Proposal nor execution of a Contract constitute approval of any activity or development contemplated in any Proposal that requires any approval, permit or license pursuant to any federal, provincial, regional or municipal statute, regulation or bylaw. It is the responsibility of the Proponent to obtain such approval, permit or license prior to commencement of the work under the anticipated Contract.

The CRD, its elected officials, appointed officers, employees, agents, contractors and volunteers expressly disclaim any and all liability for representations or warranties expressed, implied or contained in, or for omissions from this RFP package or any written or oral information transmitted or made available at any time to a Proponent by or on behalf of the CRD. Nothing in this RFP is intended to relieve a Proponent from forming its own opinions and conclusions in respect of this RFP.

The CRD, its elected officials, appointed officers, employees, agents, contractors and volunteers will not be liable to any Proponent for any claims, whether for costs, expenses, losses, damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by a 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. By submitting a Proposal, each Proponent shall be deemed to have agreed that it has no right to make such claims.

##### **4.7 Confidentiality**

The RFP documents, or any portion thereof and any other confidential information to which a Proponent may have access as a result of this RFP process, may not be used by a Proponent for any purpose other than submission of Proposals.

By submitting a Proposal, every Proponent agrees not to divulge, release or otherwise use any information that has been given to it or acquired by it from the CRD on a confidential basis as a result of or during the course of the RFP process.

**4.8 Ownership of Proposals and Freedom of Information**

Each Proposal submitted, as well as any other documents received from a Proponent, become the property of the CRD, and as such are subject to the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"). FOIPPA grants a general right of access to such records, but also includes grounds for refusing the disclosure of certain information.

Proponents are asked to specifically identify information contained in their Proposal that is submitted on a confidential basis. Subject to any requirement for access under FOIPPA, the CRD will hold in confidence any such information received from a Proponent. However, the CRD specifically reserves the right to distribute information about any Proposal internally to its own directors, officers and employees, to its consultants and contractors where the distribution of that information is considered by the CRD to be necessary to its internal consultation process.

**4.9 Time**

The timing for the submission and receipt of Proposals and any amendments thereto shall be determined by reference to the CRD local area network time.

**4.10 Acceptance of Terms**

The submission of a Proposal constitutes the agreement of the Proponent that all the terms and conditions of this RFP are accepted by the Proponent and incorporated in its Proposal.

CRD  
REQUEST FOR PROPOSAL  
Property Appraisal Services  
RFP No. 2020-RISK-001

**RECEIPT CONFIRMATION FORM**

Please complete this form and return it within five (5) working days from receipt to:

Ross Cameron  
Manager, Risk and Insurance Management  
Capital Regional District  
625 Fisgard Street, Victoria, BC V8W 1R7

Tel: (250) 360-3015  
Email: rlcameron@crd.bc.ca

Failure to return this form may result in no further communication regarding this RFP.

**COMPANY:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

**CONTACT EMAIL:** \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

**CONTACT EMAIL:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

I have received a copy of the above-noted Request for Proposal, and (check one item):

- we will be submitting a proposal
- we will NOT be submitting a proposal

**SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## APPENDIX “A” – SCOPE OF SERVICES

The Capital Regional District and the Capital Region Housing Corporation requires an appraisal of buildings and structures for the purpose of establishing replacement costs for property insurance and other risk management purposes.

### Background

The Capital Regional District is a local government that delivers over 200 local, regional and sub-regional services for residents of the region including thirteen (13) municipalities and three (3) electoral areas on southern Vancouver Island and the Gulf Islands.

The Capital Regional District is a large and diverse region encompassing communities from Salt Spring Island and the Southern Gulf Islands, to North Saanich at the north end of the Saanich Peninsula to Victoria at the southern-most-tip in Oak Bay, to the east and extending west to the Juan de Fuca Electoral Area and Port Renfrew. A map of the administrative boundaries is attached.

### Scope of Work

The Capital Regional District and the Capital Region Housing Corporation require an appraisal for buildings and structures with an estimated replacement cost exceeding one hundred thousand dollars (\$100,000).

There are 321 buildings/structures that fall under the Capital Regional District and 52 buildings/structures that fall under the management of the Capital Region Housing Corporation (two of these 52 buildings will be added in December of 2020 and one in March of 2021); all of which require annual appraisals. Building/structures include, but are not limited to, office buildings, fire halls, water treatment plants, docks, pump stations, dams, reservoirs, bridges, a landfill, recreation centres, residential complexes, health services facilities and communication towers. A full schedule of buildings/structures to be appraised is available to interested Proponents upon email request to [rlcameron@crd.bc.ca](mailto:rlcameron@crd.bc.ca).

The appraisal report should include a detailed description of each building (identified by CRD building number) including:

- Name and address;
- Use and occupancy;
- Year built;
- Total gross floor area (above grade, at grade and basement area);
- Construction (building frame, floor structure, interior construction, roof structure, exterior wall construction, electrical and lighting systems, plumbing and sewerage systems);
- Comments on recent upgrades and renovations;
- Description of and value of structure;
- Description of and value of HVAC systems;
- Description of and value of fire suppression and security systems;
- Description of vertical transportation systems;
- Description of yard features (square footage of pavement, fencing, sidewalks, curbs, retaining walls);
- Demolition and debris removal;
- Construction design and costs of reservoirs and dams; and
- Digital photograph of inside and outside features

Appraisal schedules must state methodology used to determine values and provide the replacement cost new and the reproduction cost new less depreciation, for each building supported by cost breakdown taking into consideration:

- Building construction and services (below grade and above grade assets)
- Building Codes and Bylaws (including sub-categories for parking spaces, special needs access, fire protection and building codes)
- Demolition and debris removal costs

The appraisal report must provide the recommended insurance valuation cost.

The successful proponent(s) will be required to deliver (1) bound hard copy, (1) electronic report in PDF format and an excel spreadsheet of the building costs.

### **Annual Appraisal Timelines**

In order to for appraisals to be available for property insurance renewals, all site visits and meetings with CRD staff must be undertaken in sufficient time so that the appraisal report is provided to:

- Capital Region Housing Corporation no later than April 30th of each year; and
- Capital Regional District no later than September 15<sup>th</sup> of each year.

During 2021, full onsite appraisals will be required for all Capital Regional District and Capital Region Housing Corporation facilities. For the years 2022 to 2025, annual updates would not require onsite visits unless there are newly acquired or constructed buildings/structures or major renovations.

## **APPENDIX “B” – FORM OF PROPOSAL**

### **Proposal Format**

The following format should be used to provide consistency in Proponent response and to ensure that each Proposal receives full consideration.

### **Cover Letter**

Your proposal should include a cover letter containing:

- company name, address, website address, telephone number, fax number, email address and primary contact name;
- signed by the person or persons authorized to sign on behalf of the company; and
- acknowledgement of any addendums issued for this Request for Proposal.

### **Company Profile**

Your proposal should provide a profile of your organization; its size; number of years in business and scope of products and services offered.

### **Qualifications and Experience**

Your proposal should provide:

- qualifications and curriculum vitae for the Project Manager who has overall responsibility for delivering the service;
- qualifications and curriculum vitae for all personnel who will be involved in the project (including any sub-consultants); and
- a brief summary of similar projects undertaken in the past three years.

### **References**

Your proposal should provide at least three (3) references with particular emphasis on services provided to municipalities or local governments with similar asset profiles. These references should contain specific client contact information.

### **Methodology and Work Plans**

Proponents should provide:

- their methodology of appraisal and ability to address building codes and bylaws;
- a proposed work schedule and timelines to achieve the project objectives; and
- an example of your typical appraisal report

### **Financial Proposal**

Proponents should provide Financial Proposal(s) in a sealed envelope (refer to details in Section 2.1 of the Request for Proposal document).

The Financial Proposal should include an explanation of the makeup of the total costs for the project including:

- fees quoted separately for the Capital Regional District (CRD) and Capital Region Housing Corporation (CRHC) as if they were two fee proposals but submitted in one envelope;
- onsite appraisal fees quoted separately for the CRD and CRHC for the year 2021;

- fees for annual appraisal updates quoted separately for the years 2022 to 2025;
- a schedule of hourly rates should additional services be required
- a list of expenses, disbursements and any other probable costs; and
- all applicable taxes





## **CRD Consultants Policy—Evaluation Procedures**

Both technical merit and cost are awarded a maximum of 500 points each, for a total potential of 1,000 evaluation points. Technical proposals will be opened and marked out of a total score of 500 points against the evaluation grid before any financial proposals are opened. Each technical presentation will be evaluated on the basis of the firm's experience, competence of its personnel and acceptability of the method proposed.

A firm's technical proposal shall be deemed qualified only if it complies with all requirements contained in the Request for Proposal.

Only proposals whose technical scores are within 15% of the proposal awarded the highest technical score will have their financial proposals opened and evaluated. All other financial proposals will be returned unopened upon appointment of the selected firm. The only exception to this policy is when the proposal of the second-ranked firm is more than 15% below the highest technical score and still technically qualified. In such a case, the second-ranked firm would have its financial proposal opened to avoid a non-competitive situation.

In all cases, the CRD reserves the right to cancel the competition and call for new proposals.

Financial proposals can be awarded a maximum of 500 points. The financial proposal with the lowest cost of fees will be awarded 500 points, which will be added to the technical score, resulting in the firm's total score. The percentage by which each of the remaining firms' proposed costs exceeds the cost of the lowest qualified proposal will be the percentage by which the 500 points is reduced, prior to adding it to the technical score resulting in each firm's total score.

For example, if the proposed cost of Firm A exceeds the lowest proposed cost (Firm B) by 10%, Firm A will add 500 minus (10% of 500), or 450 points to its technical score. The firm receiving the highest total score will be judged to have the best value to the Region.

### **COSTS INCLUDED IN PROPOSAL EVALUATION**

All personnel fees, salaries, wages and reimbursable expenses will be taken into account in the proposal evaluation.

### **DEBRIEFING**

Subsequent to final selection of a firm for contract award, all other proposing firms have the right to receive a debriefing on the strengths and weaknesses of their proposal. Points awarded by evaluation teams for both technical and financial proposals will remain confidential and may not be divulged to any proposing firm.

### **Minimum Technical Score**

Technical proposals must achieve a score of at least 350 points (70%) to be considered "technically qualified". Financial proposals for firms failing to achieve the minimum technical score will not be opened.

## APPENDIX "D" – PRO FORMA CONTRACT

### CONTRACT FOR SERVICES

THIS AGREEMENT dated for reference and made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

BETWEEN:

**CAPITAL REGIONAL DISTRICT**  
625 Fisgard Street, PO Box 1000  
Victoria, BC V8W 2S6  
Fax No.

("CRD", "we", "us" or "ours" as applicable)

OF THE FIRST PART

AND:

Fax No.

("Contractor", "you", "your" as applicable)

OF THE SECOND PART

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

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

#### 1 DEFINITIONS

##### General

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which CRD offices are open;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, that is incorporated or embedded in the Intellectual Property;
- (c) "Intellectual Property" means all materials produced by the Contractor or Subcontractors under this Agreement, including but not limited to plans, specifications, manuals, preliminary drafts, sketches, copies, designs, computer modules, software programs, technology, data and information;
- (d) "Services" means the services described in Part 2 of Schedule A;
- (e) "Laws" means an "enactment" as defined in the *Interpretation Act* (British Columbia);
- (f) "Subcontractor" means a person described in paragraph (a) or (b) of section 13.4; and
- (g) "Term" means the term of the Agreement described in Part 1 of Schedule A subject to that term ending earlier in accordance with this Agreement.

## **2 SERVICES**

### Provision of services

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

### Term

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

### Supply of various items

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

### Standard of care

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

### Standards in relation to persons performing Services

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

### Applicable laws

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

## **3 PAYMENT**

### Fees and expenses

3.1 If the Contractor complies with this Agreement, then the CRD must pay to the Contractor at the times and on the conditions set out in Schedule B:

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

### Maximum Amount

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

### Invoices

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

## Currency

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

## **4 REPRESENTATIONS AND WARRANTIES**

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

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

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

### Privacy

5.1 The Contractor must comply with the Privacy Protection Schedule attached as Schedule D.

### Security

5.2 The Contractor must make reasonable security arrangements to protect all information received from, and provided to the CRD, from unauthorized access, collection, use, disclosure, alteration or disposal.

### Confidentiality

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

- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;

- (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
- (c) if it is information in any Incorporated Material.

#### Restrictions on promotion

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

## **6 MATERIAL AND INTELLECTUAL PROPERTY**

#### Ownership of Intellectual Property

- 6.1 All Intellectual Property is and will remain the property of the CRD.

#### Use of Intellectual Property

- 6.2 The Contractor may retain copies, including reproducible copies of the Intellectual Property, until the expiry or earlier termination of this Agreement, at which point the Contractor must turn over all Intellectual Property to the CRD, keeping one single copy for archival purposes. The Contractor must not use the Intellectual Property on other projects or for other clients, or publish or make public any of the Intellectual Property, except with written consent from the CRD.

#### Rights in relation to Incorporated Material

- 6.3 Upon any Incorporated Material being used in the creation of the Intellectual Property, the Contractor grants to the CRD:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to exercise, in respect of that Incorporated Material, the rights set out in the *Copyright Act* (Canada), including the right to use, reproduce, modify, publish and distribute that Incorporated Material; and
  - (b) the right to sublicense or assign to third-parties any or all of the rights granted to the CRD under section 6.3(a).

## **7 RECORDS AND REPORTS**

#### Work reporting

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

#### Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the CRD.

## **8 AUDIT**

- 8.1 In addition to any other rights of inspection the CRD may have under statute or otherwise, the CRD may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the CRD's discretion, copy any information in connection

with the Services and the Contractor must permit, and provide reasonable assistance to, the exercise by the CRD of the CRD's rights under this section.

## **9 INDEMNITY**

9.1 The Contractor must indemnify and save harmless the CRD, its elected officials, appointed officers, employees and agents from any loss, claim, damage award, action, cause of action, cost or expense that the CRD or any of the CRD's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, (each a "Loss") to the extent the Loss is directly or indirectly caused or contributed to by:

(a) any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement; or

(b) any representation or warranty of the Contractor being or becoming untrue or incorrect.

## **10 INSURANCE**

### Insurance

10.1 The Contractor must comply with the Insurance Schedule attached as Schedule C.

### Workers compensation

10.2 Without limiting the generality of section 2.6, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* and *Occupational Health and Safety Regulation*.

### Evidence of coverage

10.3 Within 10 Business Days of being requested to do so by the CRD, the Contractor must provide the CRD with evidence of the Contractor's compliance with section 10.2.

## **11 DEFAULT AND TERMINATION**

### Definitions relating to default and termination

11.1 In this section and sections 11.2 to 11.3:

(a) "Event of Default" means any of the following:

(i) the Contractor becomes insolvent or is assigned into bankruptcy, or

(ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or

(iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect.

### CRD's options on default

11.2 On the happening of an Event of Default, or at any time thereafter, the CRD may, at its option, elect to do any one or more of the following:

(a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;

- (b) pursue any remedy or take any other action available to it at law or in equity; or
- (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

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

11.3 In addition to the CRD's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the CRD may terminate this Agreement for any reason by giving at least 30 days' written notice of termination to the Contractor.

#### Payment consequences of termination

11.4 Unless Schedule B otherwise provides, if the CRD terminates this Agreement under section 11.2(c) or 11.3:

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

#### Discharge of liability

11.5 The payment by the CRD of the amount described in section 11.4(a) discharges the CRD from all liability to make payments to the Contractor under this Agreement.

#### Notice in relation to Events of Default

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

## **12 DISPUTE RESOLUTION**

#### Dispute resolution process

12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:

- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
- (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the Mediate BC Society; and
- (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Arbitration Act*.

#### Location of arbitration or mediation

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

#### Costs of mediation or arbitration

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

#### Scope of Section

- 12.4 This section does not apply to the CRD's options under section 11.2 of this agreement for an Event of Default under section 11.2(c), nor the determination of whether a matter is an Event of Default.

### **13 MISCELLANEOUS**

#### Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by fax to the addressee's fax number specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
  - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
  - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.
  - (d) by email to the email address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day.

If normal mail service or fax service is interrupted by strike, force majeure or other cause beyond the control of the parties, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice shall utilize any other means of communication which have not been so interrupted or shall deliver such notice by hand in order to ensure its prompt receipt.

#### Change of address, email or fax number

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

#### Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights or obligations under this Agreement without the CRD's prior written consent which may be withheld in the complete discretion of the CRD.

#### Subcontracting

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

#### Waiver

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

#### Modifications

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

#### Entire agreement

- 13.7 This Agreement (including any modifications, the schedules, appendices, or other documents attached thereto) constitutes the entire agreement between the parties as to performance of the Services.

#### Survival of certain provisions

- 13.8 Sections 2.6, 3.1 to 3.2, 5.1 to 5.4, 6.1 to 6.3, 7.1, 7.2, 8.1, 9.1, 10.1 to 10.3, 11.2, 11.4, 11.5, 12.1 to 12.3, 13.1, 13.2, 13.8, 13.10, and 13.14, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely subject to any applicable limitation period prescribed by law, even after this Agreement ends.

#### Independent contractor

- 13.9 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:
- (a) an employee or partner of the CRD; or

(b) an agent of the CRD except as may be expressly provided for in this Agreement.

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

#### Personnel not to be employees of CRD

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

#### Pertinent information

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

#### Conflict of interest

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

#### Delay not a waiver

13.13 No failure or delay on the part of the CRD to exercise its rights in relation to this Agreement will constitute a waiver by the CRD of such rights.

#### Time

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

#### Conflicts among provisions

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

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

#### Remainder not affected by invalidity

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

#### Further assurances

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

Additional terms

13.18 Any additional terms set out in the attached Schedule E apply to this Agreement.

Governing law

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

**14 EXECUTION AND DELIVERY OF AGREEMENT**

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

The parties have executed this Agreement as follows:

<p>SIGNED on the ____ day of _____, 20__ on behalf of the CRD by its duly authorized representative:</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Print Name</p> <p>_____</p> <p>Print Title</p>	<p>SIGNED on the ____ day of _____, 20__ by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories):</p> <p>_____</p> <p>Signature(s)</p> <p>_____</p> <p>Print Name(s)</p> <p>_____</p> <p>Print Title(s)</p>
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