



REQUEST FOR PROPOSALS (RFP)

**Chaplin Road Culvert Replacement and Habitat
Enhancement: Engineering Services (RFP #2022-03)**

Issue Date: July 20th, 2022

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Glossary

For the purposes of this RFP, the terms in quotation marks have the following meanings:

“Acceptance” means confirmation of the District to accept the Proponent’s Proposal.

“Addendum” and **“Addenda”** are used interchangeably and mean any change(s) to this RFP communicated in writing by the District pursuant to this RFP.

“District” and **“Owner”** are used interchangeably and mean the District of Kent, British Columbia.

“Closing Location” means The District of Kent, Main Reception Desk, located at 7170 Cheam Avenue, Agassiz, British Columbia V0M 1A0

“Closing Time” has the meaning set out in the Instructions to Proponents.

“Completion Date” means the termination date of the Consulting Agreement, in accordance with the Agreement Documents.

“Contact Person” and **“Project Manager”** are used interchangeably and mean the District’s representative.

“Consultant” means the person or persons or a company whose Proposal has been accepted by the District and who has entered into a Consulting Agreement with the District and includes the Consultant’s personal representative or successors.

“Consultant’s Representative” means the representative of the Consultant designated under the Consulting Agreement.

“Consulting Agreement”, “Contract”, “Agreement” and **“Contract Documents”** are used interchangeably and mean the legal document to be negotiated between the District and the Preferred Proponent to undertake the Work.

“Evaluation Team” mean the personnel named by the District to evaluate the Proposals received in response to this RFP.

“Notice of Proposal Acceptance” means the date on which the Project Manager advises the Proponent of the District’s intent to accept the Proponent’s Proposal for the Project.

“Preferred Proponent” means the Proponent deemed to have the best overall Proposal in response to this RFP.

“Prime Contractor” means the directing Consultant, employer or other person who enters into a written Agreement with the Owner of that workplace to be the Prime Contractor and which Prime Contractor must ensure that the activities of employers, workers, and other persons at the workplace relating to occupational health and safety are coordinated and must do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Workers’ Compensation Act and the Occupational Health and Safety Regulations of British Columbia.

“Project Team” means the District staff and professional advisors who have prepared the RFP, the Agreement and all Schedules and Appendices.

“Proponent” means responder to this Request for Proposals.

“Proposal” means the submission by the Proponent.

“Proposal Price” and **“Price”** are used interchangeably and mean payment to the District as set out in Appendix “A” (Financial Submission).

“Request for Proposals” and **“RFP”** means and includes the complete set of documents, specifications and addenda issued by the District in respect of the Project.

“Standards” means any and all laws, building codes, professional standards and specifications applicable to the Work, or to work such as the Project, as they are in force from time to time or in the latest current version thereof, as the case may be.

“Substantial Completion” means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

“Successful Proponent” means the party or entity representing the Preferred Proponent once the Consulting Agreement is signed.

“Work” and **“Service”** are used interchangeably and mean any action required under the Consulting Agreement to fulfill the obligations of the Successful Proponent.

Summary of Key Information

TITLE	<p>The title of this RFP is:</p> <p>RFP #2022-03 Chaplin Road Culvert Replacement and Habitat Enhancement: Engineering Services</p> <p>Please use this title on all correspondence.</p>
PROJECT MANAGER	<p>Dave Charbula, Environmental and Engineering Technologist District of Kent 7170 Cheam Avenue Agassiz, BC V0M 1A0</p> <p>Phone No.: 604-796-2235 Email: dcharbula@kentbc.ca</p>
CLOSING TIME	<p>The Closing Time is 3:00 p.m. (local time), September 21st, 2022 as determined by the clock at the Reception Desk.</p>
NUMBER OF COPIES OF PROPOSAL	<p>As instructed in 1.4.5 Submission of Proposals</p>
SUBMISSION LOCATION	<p>The District of Kent will be allowing both electronic or hard copy bid submissions.</p> <p>Electronic Proposals are to be emailed to: info@kentbc.ca</p> <p>Hard Copy Proposals are to be delivered to: District Clerk, Main Reception Desk District of Kent 7170 Cheam Avenue Agassiz, BC V0M 1A0</p>

1.0 Instructions to Proponents

1.1 General

1.1.1 Purpose and Eligibility

The purpose of this RFP is to solicit Proposals from qualified Proponents for **RFP #2022-03 - Chaplin Road Culvert Replacement and Habitat Enhancement: Engineering Services**.

All Proposals received in response to this RFP will be evaluated and the Proponent judged to have the “best overall Proposal” will be selected to enter into negotiations leading to an Agreement with the District for the Work.

If negotiations with the Preferred Proponent are unsuccessful, the next highest rated Proponent may be deemed to be the Preferred Proponent and negotiations would be commenced with it.

1.1.2 Definitions

Unless otherwise defined, capitalized terms used in this RFP are defined in the Glossary.

1.1.3 Receipt of Complete RFP

It is the Proponent’s responsibility to ensure that it has received a complete RFP as listed in the Table of Contents. The submission of a Proposal constitutes representation by a Proponent that it has verified receipt of a complete RFP including any and all Addenda. Each and every Proposal will be deemed to be made on the basis of the entire RFP, including any and all Addenda issued prior to the Closing Time.

1.1.4 Closing Time and Submission Location for Proposal Delivery

The Closing time is 3:00 p.m. (local time), on September 21st, 2022. Proposals must be received at the Submission Location identified in the Summary of Key Information by the Closing Time. The clock at the main reception desk is the official clock.

1.1.5 Late Proposals

Proposals received after the Closing Time will not be considered or accepted. It is the sole responsibility of the Proponent to ensure that its Proposal is received at the Submission Location by the Closing Time.

1.1.6 Revisions to Proposals Prior to Closing Time

Proponents may make changes to their Proposals after the submission of their Proposals provided each revision is submitted in a sealed envelope and is received at the Submission Location, or submitted electronically in a separate file, before Closing Time. Revisions must be signed by an authorized signatory of the Proponent.

For the revisions to receive full consideration, Proponents should indicate the revisions made and should identify every page of a revision as:

Revision to Proposal
RFP #2022-03 - Chaplin Road Culvert Replacement and
Habitat Enhancement: Engineering Services.
(Proponent’s Name)

Revisions received after the Closing Time will not be considered and will be returned unopened.

1.0 Instructions to Proponents

1.1.7 Withdrawal of Proposal Prior to Closing Time

A Proponent may withdraw its Proposal at any time before the Closing Time, by submission of a written notice from a duly authorized representative of the Proponent's team, to the Contact Person that clearly and unequivocally states the Proponent's intention to withdraw its Proposal.

1.1.8 Proponent's Clarification

The Proponent must review the entire RFP prior to submitting a Proposal. Any requests for clarification of issues related to the RFP must be transmitted in writing to the Contact Person. Unless otherwise expressly permitted by the Contact Person in writing, requests for clarification of the subject matter of this RFP must be transmitted in writing to the Contact Person no later than three (3) days before the Closing Time.

The Contact Person will distribute copies of all RFP clarification requests and the corresponding responses to such requests to all Proponents with the exception of issues raised at commercial in confidence meetings.

By submitting a Proposal, the Proponent indicates acceptance of the entire RFP and waives any further right to rectify, clarify, or qualify any aspect of the RFP.

1.1.9 Addenda

Written Addenda are the only means of changing, amending or correcting this RFP. The Contact Person may change, amend or correct this RFP by issuing an Addendum to each Proponent. No employee or agent of the District, other than the Contact Person, is authorized to change, amend or correct the RFP or issue any Addenda.

Information pertaining to this RFP that is offered by or obtained from sources other than the Contact Person is not official, may be inaccurate, and must not be relied on in any way by any Proponent for any purpose associated with this RFP.

1.1.10 Conflict of Interest and Restricted Parties

Any Proposal is subject to disqualification if, in the District's sole discretion, the current or past corporate or other interests of any person named in the Proposal might, in the District's sole opinion, give rise to an actual potential or perceived conflict of interest in connection with the Project, and if a suitably qualified alternative person cannot be nominated by the Proponent within five (5) days of being notified by the District of the potential disqualification of the Proposal due to the perceived, actual or potential conflict of interest.

Restricted Parties are those parties (including their former and current employees) who have participated or are currently involved in the planning or preparation of this RFP and who may provide a material unfair advantage or confidential information to a Proponent that is not, or would not reasonably be expected to be, available to other Proponents.

Restricted Parties are not eligible to advise any Proponent in regard to this RFP and must not participate as an employee, advisor, consultant or member of any Proponent. Should any Proponent have concern as to the eligibility of any person on their Team, that Proponent should contact the Contact Person for clarification.

1.1.11 Confidentiality

All documents and other records pertaining to the Project that are in the custody of or under the control of the District are subject to the *Freedom of Information and Protection of Privacy Act*. Subject to the limitations of the *Freedom of Information and Protection of Privacy Act*, all documents and other records submitted in response to this RFP will be considered confidential.

The District may make the names of the Proponents public.

1.0 Instructions to Proponents

Proponents may not make any public comment or carry out any activities to publicly promote their Proposal or interest in the Project without the prior written consent of the District.

1.1.12 Reservation of Rights

This is a Request for Proposals and is not a contract tender call. No contractual, tort or other legal obligations are created or imposed on the District by this RFP or by submission of any Proposal or by consideration of, or failure or refusal to, consider any Proposal by the District. Further, the Consulting Agreement, when executed, is the sole source of any contractual obligation on the District with respect to the Project.

1.1.13 Ownership of RFP Documents

The District and its Project Team prepared the RFP, the Consulting Agreement and all Schedules and Appendices. The RFP documents contain intellectual property which is protected by copyright. The RFP, the Consulting Agreement and all Schedules and Appendices are to be used by Proponents solely for the purpose of preparing Proposals. .

1.1.14 Proponent's Expenses

Proponents are solely responsible for their own costs and expenses in preparing and submitting Proposals, responding to requests for clarifications or further information, and for any meetings, negotiations or discussions with the District or its representatives and consultants, relating to or arising from this RFP.

1.1.15 Sufficiency of Information Supplied by the District

Without derogating from the obligations of a Proponent to investigate and satisfy itself of every condition affecting the Project, unless otherwise expressly indicated in writing in this RFP, the District assumes responsibility for the accuracy of data supplied in this RFP, but does not assume responsibility for the sufficiency or interpretation of that data or that the data provided is necessarily representative of anticipated or actual conditions. No warranty or guarantee as to accuracy, sufficiency, or relevance is made by any party for any other information, unless otherwise explicitly stated in this Section 1 - Instructions to Proponents.

1.1.16 Proponent's Investigation

By submitting a Proposal, a Proponent is deemed to have:

- a) Investigated and satisfied itself of every condition affecting the Work, including but not limited to the Site conditions, labour supply conditions, equipment and resources to be provided.
- b) Based its investigation on its own examination, knowledge, information, and judgement, and not upon any statement, representation, or information made or given by or on behalf of the District other than information contained in this RFP; and
- c) Assumed all risks regarding conditions affecting the Work.
- d) Been provided with the opportunity to request any additional information it may have required in order to prepare its Proposal.

1.1.17 Access to the Site

The existing culvert is located on a District maintained road, Chaplin Road, and can be accessed as necessary by the Proponent. The remaining project area that may require access for the habitat restoration portion of the work may require access through private property and if access is required through private property, the Proponent shall make initial arrangements through the District Project Manager, Dave Charbula.

1.0 Instructions to Proponents

1.1.18 Compliance with the Consulting Agreement

Proponents acknowledge that by submitting a Proposal, the Proponent who is selected to be the Preferred Proponent will be qualified to enter into a Consulting Agreement with the District and to perform the Work in strict accordance with the Consulting Agreement.

1.2 Responsibilities of the District

Pursuant to the provisions of the Consulting Agreement, the District will monitor the Consultant’s performance as a knowledgeable Owner and may perform quality audits to verify the Consultant’s delivery of the Services in accordance with the Consulting Agreement.

For clarity, nothing in this section creates any contractual or other legal obligation on the District. The Consulting Agreement, when executed, is the sole source of any contractual or other obligation on the District with respect to the Work.

1.3 Responsibilities of the Consultant

1.3.1 Scope of Responsibilities

The scope of the Consultant’s responsibilities includes, but is not limited to, the requirements and responsibilities of the Consulting Agreement, including the RFP and the Proponent’s Proposal.

1.3.2 Prime Contractor

By submitting a Proposal, a Proponent agrees that upon Acceptance of the Proposal, the Proponent, if selected as the Preferred Proponent, will execute the Consulting Agreement substantially in the form included in Appendix “B” of this RFP.

The Proponent also agrees that, upon Acceptance of its Proposal, the Proponent will be the Prime Contractor as defined in the Glossary for the Work.

1.3.3 Safety Program

The Consultant shall develop, maintain, implement and supervise for the duration of the Contract, a comprehensive safety program that shall effectively incorporate and implement all safety precautions required by all applicable laws, ordinances, rules, regulations and orders and general operation practices for the safety of persons or property, including any general safety rules and regulations under the *Worker’s Compensation Act* (British Columbia) the Workplace Hazardous Waste Materials Information System or other Occupational Health and Safety legislation or regulations that may be applicable.

1.4 Proposal Process and Schedule

1.4.1 Proposal Schedule

The anticipated schedule for the Project is as follows:

Anticipated Date	Action
July 20 th , 2022	Issue RFP to Proponents
September 21 st , 2022	RFP Closing Date
October 13 th , 2022	Proposal Acceptance (subject to change)
March 31 st , 2023	Substantial Completion

This schedule is subject to change and the District reserves the right to modify any and all dates at its sole discretion.

1.0 Instructions to Proponents

1.4.2 Contact Person

Questions or clarifications regarding this RFP document can be directed to Dave Charbula, Environmental and Engineering Technologist, by calling **604-796-2235**, or by email at dcharbula@kentbc.ca.

Information given orally by the District or by District staff members or representatives will not be binding on the District and will not be considered in any form or manner in the evaluation of the Proposals.

1.4.3 Site Meeting

A mandatory site meeting is not required prior to the award of this RFP. Nonetheless, proponents are encouraged to visit the site as required and can make arrangements for access as noted previously by contacting the District's Project Manager.

1.4.4 Commercial in Confidence Meeting(s)

All Proponents may request, in writing, commercial in confidence meeting(s) for the purpose of discussing in private the viability of their Proposal with the District prior to its submission, and for the purpose of discussing any other commercially sensitive issues relating to the Proponent's Proposal(s).

Proponents should submit written questions to the Contact Person at least three (3) days in advance of the scheduled commercial in confidence meeting(s). These questions should be clearly marked "Commercial in Confidence", and will not be distributed to all Proponents. The District will not distribute minutes of any commercial in confidence meeting. The District does however reserve the right to issue copies of any commercial in confidence questions and responses to all Proponents without compromising confidentiality.

Commercial in confidence meetings will be held at the sole discretion of the District.

1.4.5 Submission of Proposals

The District of Kent will be allowing both electronic or hard copy submissions for **RFP # 2022-03 – Chaplin Road Culvert Replacement and Habitat Enhancement: Engineering Services**. Electronic submissions must be submitted via email to info@kentbc.ca. Delivery of hard copy submissions will continue to be accepted at this time as an alternative.

In order to be compliant, the Proponent should submit a Proposal that addresses all of the documentation requirements of this RFP.

Proposal deliverables are specified in Section 3 – Submission Requirements. Proposal deliverables have been kept to a minimum so as to avoid unnecessary expenditures of effort by all of the Proponents, but still being sufficient for the District to conduct a fair, thorough and objective evaluation.

Proponents must submit their Proposals to the Closing Location or e-mail address specified. The District will not accept Proposals submitted to any other location or e-mail address.

HARD COPY SUBMISSIONS:

The Proposals must be delivered to the District at the Closing Location no later than

3:00 p.m., local time on September 21st, 2022.

The District will assume no responsibility for timely receipt of any Proposal.

1.0 Instructions to Proponents

Proposals are to be submitted in two (2) separately sealed envelopes;

- Envelope # 1 to contain three (3) copies of the Technical Proposal, and
- Envelope # 2 to contain two (2) copies of the Financial Proposal.

Each Proponent should ensure that its Proposal is clearly marked on the outside as follows:

**“RFP #2022-03 CHAPLIN ROAD CULVERT REPLACEMENT AND HABITAT
ENHANCEMENT: ENGINEERING SERVICES”**

District of Kent
7170 Cheam Avenue
Agassiz, BC V0M 1A0

CONFIDENTIAL – DO NOT OPEN

ELECTRONIC SUBMISSIONS:

Submissions must be forwarded via e-mail as follows:

info@kentbc.ca

Each RFP submission must be submitted in two (2) separate and clearly named files as follows:

**“RFP #2022-03 CHAPLIN ROAD CULVERT REPLACEMENT AND HABITAT
ENHANCEMENT: ENGINEERING SERVICES – Technical Proposal”**

**“RFP #2022-03 CHAPLIN ROAD CULVERT REPLACEMENT AND HABITAT
ENHANCEMENT: ENGINEERING SERVICES – Financial Proposal”**

Submissions submitted by email shall be deemed to be successfully received when displayed as new email in the in-box of the District email address no later than **3:00 pm, Wednesday, September 21st, 2022**. The District will not be liable for any delay for any reason including technological delays, or issues by either party’s network or email program, and the District will not be liable for any damages associated with Submissions not received. If submitting by email, early submission is strongly recommended.

Maximum email submission size is 36 MB. Compressed file formats, such as .zip, are flagged by our internal spam filter and may result in your submission not being received.

If your email submission is larger than 36MB, a link to a suitable filesharing service is acceptable. However, if the document is inaccessible for download by the District, it will be considered as not received. Submission using this method is at the Contractor’s own risk.

By responding to this Request for Proposal the Proponent, and all Team Members, acknowledges that:

- This RFP or the submission of any Proposal in response to it creates no contractual relationship or obligations between the District of Kent and any Team and is simply the District’s RFP process pursuant to which the District is seeking proposals only for the Work as specified in this RFP document;
- They confirm that the Proponent or each Prime Member has no interest whatsoever in the Proposal of any other Proponent, either directly or indirectly, has not entered into any agreement before the Proposal Due Date that could create such an interest;

1.0 Instructions to Proponents

- They have read and understood the provisions of this RFP;
- The District of Kent reserves the right to waive any irregularity in, to request clarification or additional information with respect to, and to negotiate modifications to any Proposal;

The District of Kent takes no responsibility for the accuracy or completeness of any information supplied during this Project and will not be responsible for any costs incurred in responding to this document

1.4.6 Evaluation of Proposals

Proposals will be evaluated by the District in accordance with Section 4 – Evaluation Process and Criteria.

1.4.7 Execution of Proposals

The Proponent is deemed to represent and warrant that its Proposal has been duly authorized and validly executed.

1.4.8 Proposal Acceptance

The District plans to advise Proponents of the selection of the Preferred Proponent within thirty (30) days of the Closing Time. The Preferred Proponent’s Proposal will be accepted, subject to successful post-selection negotiations, within sixty (60) days after the Closing Time.

The District reserves the right to negotiate changes to the Preferred Proponent’s Proposal and the Consulting Agreement with the Preferred Proponent prior to Acceptance.

If negotiations are not successfully concluded with the Preferred Proponent, the District may, at its sole discretion, cease negotiations with the Preferred Proponent and commence negotiations with the next highest ranked Proponent, or may terminate the RFP process.

1.4.9 Execution of the Consulting Agreement

Upon conclusion of negotiations, the District will provide the Preferred Proponent with three (3) copies of the Consulting Agreement, required for execution by the Preferred Proponent.

Within ten (10) days of the Preferred Proponent’s receipt of these documents, the Preferred Proponent will return them to the District, fully executed, together with any other documentation as defined in the Consulting Agreement.

The Consultant will proceed with the Work upon receipt of the fully executed Consulting Agreement from the District.

1.4.10 Invoices and Payment

Invoices should reference the Purchase Order number and are to be submitted to the

District of Kent
7170 Cheam Avenue
Agassiz, BC, V0M 1A0
Attention: Accounts Payable

Invoices may also be submitted electronically to dandrews@kentbc.ca

If the invoice is accepted by the District of Kent as being correct and complete, payment will be made within thirty (30) days of acceptance. The successful Consultant may offer a discount for earlier payment, but is not obligated to do so, nor is the District of Kent obligated to accept an early payment discount offer.

All transactions shall be in Canadian dollars.

1.0 Instructions to Proponents

1.5 Right Not to Award

The District reserves the right to reject any or all Proposals. If the District determines that all Proposal prices submitted by all Proponents are too high or that all of the technical proposals are unacceptable, or the District decides in their sole and absolute discretion that they do not, for any reason wish to continue with this RFP process, then the District may reject all of the Proposals. In the event the District rejects all of the Proposals, the District reserves the right to call for tenders or call for proposals for the same or similar Work.

1.6 Acceptance

1.6.1 Form of Proposal Acceptance

A written Notice of Proposal Acceptance is the only valid form of Acceptance of any Proposal.

1.6.2 Signing of the Consulting Agreement

By submitting a Proposal a Proponent agrees that upon the Proposal Acceptance, the Proponent, if selected as the Preferred Proponent, will execute the Consulting Agreement substantially in the form included in Appendix "B" of this RFP, within ten (10) days of the written Notice of Proposal Acceptance. The Preferred Proponent's Proposal or any portion thereof, if accepted by the District, will form a part of the Consulting Agreement.

1.6.3 Prior to Commencement of Work

The Preferred Proponent must, within fourteen (14) days of the receipt of the Notice of Proposal Acceptance, and prior to commencement of Work on the Site, obtain and deliver to the District:

- a) A copy of a current clearance certificate from WorkSafeBC certifying that they are registered with WorksafeBC and are not in arrears in any payments of assessments;
- b) Proof of Insurance as per the attached "Sample Consulting Agreement".

1.7 Dispute Resolution

Each Respondent, by submitting a Proposal, irrevocably agrees that:

- a) If the Respondent has any claim or dispute arising in connection with the procurement process of this RFP, it will not apply for injunctive relief or make any demand that this procurement process be postponed, cancelled or suspended;
- b) The Respondent shall, within fourteen (14) days of any claim or dispute arising in connection with the procurement process of this RFP, submit written notice to the Contact Person of any such claim or dispute;
- c) All claims or disputes not resolved through negotiation between the District and the applicable Respondent within twenty-one (21) days of the date of the written notice to the Contact Person will be referred to and finally resolved by binding arbitration in accordance with the *Commercial Arbitration Act*.

1.8 Limitation of Damages

If the District elects to reject any Proposal or all Proposals, the District will not be liable to any Proponent for any claims, whether for costs, damages, loss of anticipated profit, or any other matter whatsoever.

The District is not bound by, nor does it conduct its RFPs in accordance to any industry standard, practice or custom.

1.0 Instructions to Proponents

1.9 Collusion

Proponents will not discuss or communicate with one another the preparation of their Proposals. Each Proponent will ensure that its participation in the RFP process is conducted without collusion or fraud.

1.10 Lobbying

All Proponents are expressly forbidden from lobbying any member of the District, including elected leaders regarding this proposal call. Failure to comply with this requirement may lead to disqualification without further notice or warning.

1.11 Consultant's Performance Evaluation

During the performance of the Work, the District will monitor and evaluate the Consultant's performance in the delivery of the Service. This information will be used by the District as a reference should the Consultant participate in future District project competitions.

2.0 Scope of Work

2.1 Project Objectives & Requirements

The objectives of the Chaplin Road Culvert Replacement and Habitat Enhancement Project are to replace a piece of aging infrastructure, better convey water during high flow events, provide appreciable habitat benefits to a variety of species, and prepare a design suitable for environmental approvals and grant opportunities.

Proponents should have experience in culvert design, hydrology, geotechnical engineering, and aquatic ecosystems.

Proponents should also have senior-level staff with experience in First Nations consultation, traditional fisheries, and reconciliation.

It is the intent of this assignment that the Proponent will provide one (1) designated Project Manager who will oversee, communicate and represent directly with the District's Project Manager.

Regardless of the exact scope of the Work proposed by the Proponent, the Proponent's Work must meet the intent of the Project Objectives & Requirements.

2.2 Background

The Chaplin Road Culvert, located in the District of Kent approximately 3 kilometers northeast of Agassiz, BC, (Appendix A) conveys flows from the Maria Slough underneath Chaplin Road before continuing to flow into the Fraser River. The culvert receives flow from a drainage area approximately 23 km² in size.

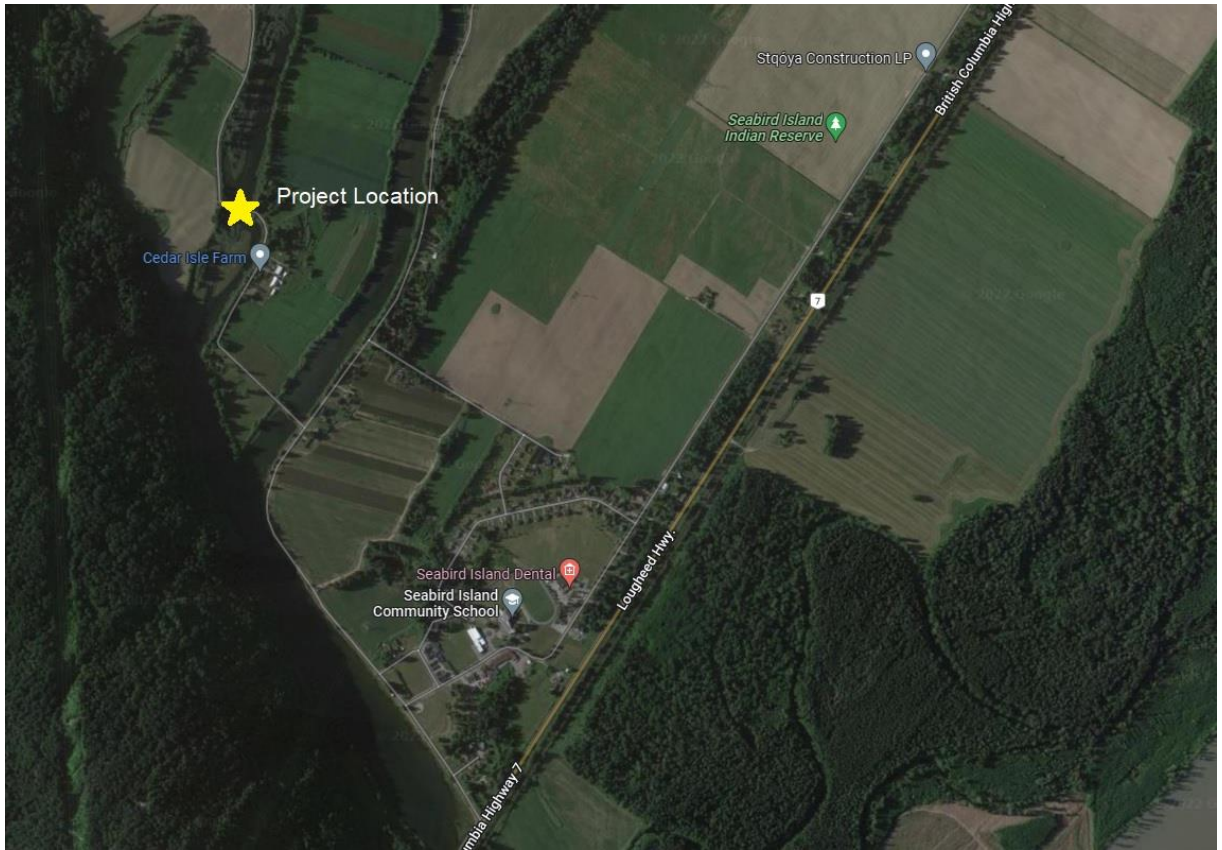
The wood-stave culvert is approximately two (2) meters in diameter and seventeen (17) meters in length. Externally visible components show signs of rot and wear. The replacement culvert must be of sufficient size to accommodate a one in two hundred (1/200) year flood event, similar in magnitude to the November 2021 extreme rainfall event.

There is a historical salmon enhancement project immediately downstream of the culvert and visible from the project site. Any design for the culvert should retain, incorporate, or improve this existing feature to best improve habitat and increase project eligibility for grant funding.

There are several upstream habitat projects aimed at improving breeding habitat for the Oregon Spotted Frog. Any design should take care not to damage these sites by dewatering the channel, and if possible, should incorporate habitat features for the Oregon Spotted Frog to increase grant eligibility.

To support project clarity, the following photos are included. Proponents are encouraged to visit the site themselves.

2.0 Scope of Work



Approximate location near Seabird Island Reserve

2.0 Scope of Work



Aerial view showing downstream spawning channel



Site view showing downstream spawning channel and culvert outlet

2.0 Scope of Work

2.3 Project Scope

The District of Kent (District) is seeking qualified engineering and environmental design services for the replacement of a wood stave culvert on Chaplin Road, which crosses the Maria Slough at an intersection point between the District of Kent and Seabird Island Band Reserve. The existing culvert is of indeterminate age but appears very old, and shows signs of wear, including missing boards near the inlet and outlet and development of small sinkholes in these areas. The culvert also surcharged during the November 2021 extreme rainfall event, indicating it is undersized for a 1/200 year rainfall event. Design must also include road restoration to the same pavement thickness and width as the existing location at Chaplin Road.

The Maria Slough is critical habitat for the Oregon Spotted Frog, as well as a known spawning channel for Chinook Salmon and other high value fish species. The District would like to ensure that the project scope extends beyond the footprint of the culvert itself, and also involves a design with features that appreciably provide habitat enhancement to the resident species. The District plans to use the detailed design to apply for government grants (such as the BC Salmon Restoration Innovation Fund or Habitat Stewardship Program) to fund part or all of the construction phase of the project.

In addition, the project area is located immediately adjacent to the Seabird Island Band Reserve, and has importance as a Chinook Salmon habitat site. Therefore, the project must be viewed through a First Nations fisheries restoration lens. Experience with traditional ecological knowledge, First Nations fisheries, and reconciliation will be considered as assets. The consultant should be prepared to consult early, meaningfully, and often with Seabird Island Band regarding project needs and design.

The initial project scope will be divided into two stages: Investigation and Design.

2.3.1 Investigation

- Meet with District staff to verify project requirements, schedule, payment procedures, budget constraints, etc. Set up dates and times for submission of deliverables (preliminary investigation, environmental and geotechnical assessment, study of available options, preliminary design, completed design, cost estimate);
- Review the following supplementary document provided by the District:

Technical Memo: Seabird Island 2021 Flood Damage Assessment prepared by Tetra Tech Canada Ltd. for Seabird Island Band;
- Undertake and administer any additional environmental and geotechnical assessments, identify, and note any concerns found along with recommendations to mitigate them;
- Meaningfully participate in the consultation and referral processes with local First Nations as required;
- As required, conduct review, field investigation, data collection and survey to pick up all relevant field information including but not limited to the following:
 - ✓ Flood level data;
 - ✓ Subsurface morphology/geology;
 - ✓ Existing and proposed elevations;
 - ✓ Storm event modelling; and,
 - ✓ Relevant plan, profile, and elevation information of existing infrastructure.

2.0 Scope of Work

2.3.2 Detailed Design

- Arrange a pre-design meeting with key District staff;
- Review results of investigation phase with District staff;
- Liaise as required with all affected agencies and stakeholders including adjacent property owners, Seabird Island Band and other local First Nations, BC Ministry of Forests Lands Natural Resource Operations and Rural Development (MFLNRD), Fisheries and Oceans Canada (DFO), any other provincial and/or federal agencies that require liaison prior to completion of the final design;
- Submit plans to all affected agencies and franchise utility companies and approve all necessary approvals and permits;
- Correspondence and the submission of designs for approval. The Consultant shall keep the District informed as to the status of all dealings with the agencies and stakeholders through regular written updates;
- Prepare detailed engineering drawings including plan/profile and special details. Submit digital copies of the 50% and 90% detailed design drawings, and Class B cost estimate for District review and approval;
- Upon approval by the District of the 90% detailed design drawings, submit three (3) hard copy (appropriately signed, sealed and noted "Issued for Construction") as well as digitally submit Issued for Construction Drawings and Class B Cost Estimate; and,
- Submit all necessary permit applications and required documentation to relevant provincial and federal agencies.

Following award of the project, the successful proponent (the Consultant) will have one (1) year to prepare a "shelf-ready" project for the District, including preparation of "Issued for Construction" design drawings, a Class B cost estimate, and application for necessary permits.

Following completion of the design phase, the District will request provisional prices for Tendering, Construction Administration, and Reporting phases to inform our applications for grant funding. Following successful grant application, the construction phase of the project would then proceed.

Subject to the completion of the above noted IFC's, Class B estimate, and permit applications, the District will be seeking grant funding for the project. Subject to a successful grant application, the construction phase will begin as soon as funding is secured. The District may also evaluate the use of capital reserve funds to fund all or a portion of the construction phase.

3.0 Submission Requirements

3.1 General Submission Requirements

Proposals are to be submitted as instructed in 1.4.5 Submission of Proposals.

In order to be compliant, the Proponent should submit a Proposal that addresses all of the documentation requirements of this RFP.

During the Evaluation Process, the District may require additional information or clarification by the Proponent.

The Proponent must ensure that a complete, clearly labelled and securely sealed Proposal is received at the Closing Location by the Closing Time. The District will assume no responsibility for timely receipt of any Proposal.

Any Proposal that is not complete in any way, or that does not comply with all of the requirements of this RFP, may be subject to disqualification at the sole discretion of the District.

Information provided by the District in any form that is part of this RFP must not be altered or contradicted in any way.

The Proposal submitted by each Proponent must be signed by an Authorized Signatory of the Proponent.

If the Proponent is a partnership or joint venture, a letter furnished by each partner or joint venturer and signed by an officer of the respective companies stating that the respective companies agree to be held jointly and severally liable for any and all duties and obligations of the Proponent under any Agreement arising therefrom, is to be included with their Proposal.

3.2 Financial Proposal

The Financial Proposal must include a signed copy of the Proposal Form, which is attached as Schedule 1 to Appendix "A"- Financial Submission. Appendix "A" clearly specifies the requirements for the Authorized Signatories to sign that document.

Proponents are to provide a detailed budget for the Project within the Financial Proposal, including but not limited to the following information:

- Hourly rates for each team member;
- Level of effort anticipated for each team member where the level of effort is related to tasks identified in the methodology;
- Disbursements;
- Total upset price.

3.3 Technical Proposal

In order to be compliant, the Proposal should address all of the documentation requirements set out in Section 4.2 – Evaluation Criteria.

4.0 Evaluation Process and Criteria

4.1 Evaluation of Proposals

4.1.1 Process

The RFP is to be submitted as instructed in 1.4.5 Submission of Proposals

Technical Proposal for all proposals will be opened and evaluated on its merits.

The evaluation criteria detailed in Section 4.2 will be used to evaluate technical proposals.

Financial Proposal will be opened after the technical proposal review and an assessment of cost/benefit will be conducted.

The District reserves the right to not open Envelope #2 if the technical point spread exceeds ten (20) points.

Points (total maximum combined of 100) will be awarded to the following maxims and based on scope of work:

- Technical Criteria - 80 points
 - Price Criteria - 20 points.
- TOTAL POINTS – 100

4.1.2 Clarification and Rectification

If a Proposal is determined to be unclear or deficient in some aspects but these deficiencies are capable of being clarified or remedied, the District Representative may prepare a list of questions for the Proponent to provide the Proponent with an opportunity to clarify or remedy its Proposal. If these clarifications and amendments do not overcome the deficiencies, the District may, in its sole discretion, decide to reject the Proposal.

4.1.3 Interviews

The Evaluation Team may, at its discretion, invite the Proponents to appear before the Evaluation Team to present their Proposals. In such event, the Evaluation Team will be entitled to consider the information provided in the Proponent's presentation in evaluating the Proposals.

4.1.4 Disqualification

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

4.2 Evaluation Criteria

4.2.1 Criteria

The criteria for evaluation of the Proposals are listed in no particular order or precedence and may include but are not limited to, the following.

The Proponent is to provide a perspective or clarification to each of the following to indicate a level of understanding and to quantify the level of effort to be applied to complete the project assignment. These criteria will be used for the technical evaluation.

4.0 Evaluation Process and Criteria

- **Project Manager's Statement** (10 technical points)

A statement or paragraph(s) by the Proponent's Project Manager to indicate the Project Managers understanding of, and commitment to this Project assignment is to be provided.

- **Project Management Plan** (25 technical points)

A comprehensive work plan showing tasks, key delivery and interim performance dates. Identify interaction stages between professionals assigned to each stage and the reporting and/or technical review meetings that will ensure the District's Project Manager is kept informed of the progress of the project. Provide a project management plan linked to the proposed project schedule.

- **Engineering Quality Control Plan** (15 technical points)

Identify the quality control plan as an ongoing process from start to finish of the project and ensure a smooth design process, keyed to the project requirements.

- **Cost Control** (15 technical points)

It is vital that detailed records of effort are maintained and a system accounts for personnel time, disbursements and historical costs. The project will be recorded in a manner that hours and productivity description charged against a budget can be monitored and advice on cost versus status of completion is provided.

Identify the fee basis (in Envelope #2) in conjunction with a detailed level of effort chart (in Envelope #1).

- **Key/Critical Issues** (15 technical points)

The District is seeking to reach optimum solutions on this project and its various components. Critical to the success in reaching the optimum solutions in a timely manner is the early identification of key/critical issues for each project. Identification of issues linked to the 'level of effort' must confirm your approach.

- **Financial** (20 points)

Points for price are calculated by the following formula (low price to receive 10 points):

$$20 - \left(1.25 \times \left(20 \times \frac{\text{Proponent's Net Price} - \text{Lowest Proponent's Net Price}}{\text{Lowest Proponent's Net Price}} \right) \right) = \text{Price Score}$$

If the Price Score is less than zero then the Price Score will default to zero.

4.2.2 Final Evaluation

Once the Preferred Proposal has been identified, the District may enter into discussions with that Proponent to clarify any outstanding issues and to identify and finalize those portions of the Proposal, including negotiation of any changes that will form part of the Consulting Agreement.

If discussions are unsuccessful, the District reserves the right to enter into discussions with the next highest rated Proponent or to decide not to accept any Proposals.

4.0 Evaluation Process and Criteria

4.3 Debriefing

At the conclusion of the Proposal evaluation process, all Proponents will be notified of the identity of the Preferred Proponent. Any unsuccessful Proponent may request a confidential debriefing with the District which shall be limited to a review and discussion of that Proponent's Proposal. If at any time during the debriefing the District determines the debriefing is no longer considered constructive or appropriate, the District may, in its sole discretion, terminate that meeting.

Appendix A – Financial Submission

SCHEDULE 1 - PROPOSAL FORM

Proponent's Name: _____

As an appendix to your Proposal please provide a detailed budget for the Project including the following information:

- a. Hourly rates for each team member.
- b. Level of effort anticipated for each team member.
 - Relate the level of effort to tasks identified in the methodology.
- c. Disbursements.

The Agreement Price for the Work as described in this Request for Proposal is:

Chaplin Road Culvert Replacement and Habitat Enhancement	\$ _____
G.S.T.	\$ _____
TOTAL PRICE	\$ _____

The Proponent hereby declares that it has carefully read and examined the RFP package and the District supplied supporting documents, and that it has conducted such other field investigations which are prudent and reasonable in preparing such a Proposal, and hereby offers to furnish all labor, technical and professional services, supervision, materials, tools, supplies, maintenance of equipment, training, safety equipment, and to discharge all duties and obligations necessary to carry out the Work in accordance with the provisions stated in the RFP for the Proposal Price shown above.

The Proponent understands that if the District accepts this Proposal, it must execute the Consulting Agreement and deliver it to the District within ten (10) business days after having received the Consulting Agreement in executable form from the District.

Enclosed herewith is evidence of the good standing of the Proponent, whether it is a corporation, joint venture or Partnership, and evidence that the person(s) signing this Proposal Form is/are authorized to bind the Proponent (and each member of any joint venture or Partnership forming the Proponent) to this Proposal and to the Consulting Agreement resulting from this Proposal.

The Proponent acknowledges receipt, understanding and full consideration of the following Addenda to the Request for Proposals:

Addendum No. ____	Date Received _____	Addendum No. ____	Date Received _____
Addendum No. ____	Date Received _____	Addendum No. ____	Date Received _____

The Proponent certifies that it has examined and is fully familiar with all of the provisions of the Consulting Agreement; that it has carefully checked all the facts and figures and all statements made in this Proposal; that it has such other investigations which are prudent and reasonable in preparing this Proposal, including a thorough review of the RFP supporting documents; that it has satisfied itself with respect to the actual conditions of the Site and the nature and location of the Work, the general and other matters which in any way affect the Consultant's performance or the proposed payment; and

Appendix A – Financial Submission

that it has notified the District of any deficiencies in or omissions from any RFP Documents or other Documents provided by the District and of any unusual Site conditions observed prior to the date hereof. The Proponent hereby agrees that the District will not be responsible for any errors or omissions in this Proposal.

The Proponent further certifies that it has not discussed or communicated with any of the other Proponents about the preparation of their Proposals and that its participation in this RFP process has been conducted without collusion or fraud.

NOTE: If the Proponent is a partnership or joint venture, give the full names of all of the Partners or joint venturers. Evidence of the authority of the person signing on behalf of the Proponent, whether a corporation, partnership or joint venture, shall be attached to the Proposal Form.

Additionally, each partner or joint venturer of a Proponent will furnish a letter signed by an officer of the respective partnership or joint venture stating that the respective partnership or joint venture agrees to be held jointly and severally liable for any and all the duties and obligations of the Proponent under the RFP and any Consulting Agreement arising therefrom.

The Proponent has executed this Proposal Form on the _____ day of _____, _____.

By: _____
(Signature)

Name: _____
(Type or print)

Title: _____

Company _____

Date: _____

DISTRICT OF KENT



CONSULTING AGREEMENT

Chaplin Road Culvert Replacement and Habitat Enhancement: Engineering Services

Appendix B – Sample Consulting Agreement

This Sample Agreement will be filled out by the District of Kent once a successful Consultant has been selected. Proponents are encouraged to read this before they submit their Proposal.

THIS AGREEMENT made as of the (Insert Day) day of (Insert Month), (Insert Year) (the "Contract") for the **Chaplin Road Culvert Replacement and Habitat Enhancement** (the "Project").

BETWEEN:

DISTRICT OF KENT
7170 Cheam Avenue
Kent, BC V2P 8A4

("Owner")

AND:

(Insert Company Legal Name)
(Insert Address)

("Consultant")

WITNESSES THAT the parties mutually agree as follows:

ARTICLE 1 THE WORK

1.1 The Work consists of the performance of the Chaplin Road Culvert Replacement and Habitat Enhancement as described in this Agreement.

ARTICLE 2 CONTRACT TERM

2.1 Not applicable to this Contract.

ARTICLE 3 CONTRACT PRICE

3.1 The Owner agrees to pay the Consultant for the Performance of the Work and the fulfilment of all of the obligations of the Consultant under this Contract, in accordance with the terms of this Contract, the prices quoted in Schedule 1 – Proposal Form, plus applicable taxes, all in Canadian funds, (the "Contract Price"), inclusive of all specified cash and contingency allowances, bonds, insurance and all applicable sales, custom and excise duties and taxes, based on the estimated quantities contained in the Financial Submission, attached as Appendix "A" to this Contract.

3.2 The Consultant agrees that it shall not be entitled to any further payment with respect to the Contract, except for Extra Work and changes provided that such are authorized in writing and are strictly in accordance with the provisions of the Contract, and that prior to commencing any such work a written Change Order duly issued by the Owner in accordance with the provisions of the Contract has been obtained.

3.3 If the Owner fails to make payments to the Consultant as they become due under the terms of the Contract, interest on such unpaid amounts at the annual prime rate of interest specified from time to time by the Royal Bank of Canada as its prime lending rate for loans made in Canada in Canadian dollars, plus two (2%) per cent, calculated monthly and not compounded, shall also become due and payable until the date payment is received by the Consultant.

Appendix B – Sample Consulting Agreement

ARTICLE 4 ADDRESSES FOR NOTICES

4.1 Communications in writing between the Owner and the Consultant shall be addressed as follows:

To the Owner at: **DISTRICT OF KENT**
7170 Cheam Avenue
Agassiz, BC V0M 1A0
Attention: Dave Charbula, Project Manager
Phone No.: 604-796-2235
Email: dcharbula@kentbc.ca

To the Consultant at:

Attention:
Phone No.:
Email:

All such communications shall specifically refer to and identify the names of the parties and this Contract.

ARTICLE 5 LAW AND LANGUAGE OF THE CONTRACT

5.1 The law of the Province of British Columbia shall govern the interpretation of the Contract, which is drawn in English at the request of the parties.

ARTICLE 6 MISCELLANEOUS

6.1 The Contract shall enure to the benefit of and be binding upon the parties hereto and their respective successors, executors, administrators, legal representatives and assigns.

6.2 The Consultant hereby represents and warrants that the Consultant is incorporated in the province of British Columbia or, if incorporated in another jurisdiction, is registered and is in good standing as an extra-provincial company under the provisions of the *Business Corporations Act of British Columbia*.

ARTICLE 7 WORK FORCE AND RESTRICTIONS

7.1 The undersigned, having become thoroughly familiar with the terms and conditions of this Contract and with the local conditions affecting the performance and cost of the Work at the place where the Work is to be completed, and having fully inspected the site in all particulars, hereby offers to fully perform the Work within (_____) days, following written notification to proceed and in strict accordance with the Contract including furnishing of any and all labour and materials.

7.2 The average number of workers that shall be employed and maintained on the Work is (_____) workers, including the workers of Subcontractors as applicable.

7.3 Statutory holidays and weekends may be worked at the Consultant's option, unless written instructions from the Owner or the Owner's consultant are received by the Consultant. The Consultant may stop work for safety reasons if a danger exists to people or property and/or as per the Contract.

Appendix B – Sample Consulting Agreement

ARTICLE 8 PROJECT PERSONNEL

8.1 The following is a list of our key personnel:

Project Manager	(Insert Name)
Site Superintendent	(Insert name)
Site Safety Coordinator	(Insert Name)

This Contract represents and warrants that the above named personnel are available and will work on this Contract and the Consultant specifically agrees they will not be substituted or removed from the Work under the Contract without the express prior written approval of the Owner.

ARTICLE 9 DOCUMENT PRECEDENCE AND DEFINITIONS

- 9.1 If there is any conflict or inconsistency within or between any of the Contract Documents, the following order of priority among documents, proceeding from highest to lowest priority applies, and a Contract Document with higher priority prevails over a Contract Document with lower priority to the extent of any conflict or inconsistency:
- (i) Executed Contract Between Owner & Consultant;
 - (ii) later dated documents prevail over earlier documents of the same kind.
- 9.2 In the Contract, capitalized words and expressions have the meanings given to them in Article 59 of this Contract.
- 9.3 Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 9.4 References to the neuter, masculine or the singular shall be considered to include each other as well as the feminine and the plural, as the context requires.
- 9.5 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 9.6 The intent of this Contract is to include all labour, materials and services necessary for the performance of the Work in accordance with the Contract Documents.
- 9.7 This Contract supersedes all representations, discussions, communications, negotiations and agreements, either written or oral, relating to the Work that were made prior to the date of the execution of this Contract.
- 9.8 The Contract Documents shall be signed by the Owner and the Consultant in as many duplicates as the Owner may reasonably require.
- 9.9 The Consultant shall be provided without charge with one copy of the Contract Documents for the performance of the Work. If the Consultant requires additional copies of the whole or parts of the Contract Documents, the Owner may charge the Consultant a reasonable fee for such copies.
- 9.10 The language of the Specifications is, in many cases, written in the imperative for brevity. Clauses containing instructions or directions are directed to the Consultant and, in the case of conflicts, such sentences shall be construed and interpreted as if the words "the Consultant shall without additional compensation" immediately preceded the instructions or directions.
- 9.11 In the event of conflicts within the Contract Documents or conflicts between the Contract Documents and specified reference, national or industry Standards:

Appendix B – Sample Consulting Agreement

- a) the reference, national or industry Standards shall be interpreted as referring to the latest editions, including all applicable amendments and revisions, in effect as of the signing date of this Contract for the Work; and
- b) the most onerous and stringent provisions, resulting in the smallest tolerances and the best quality of Work, shall apply.

ARTICLE 10 CONSULTANT'S GENERAL OBLIGATION

10.1 The Consultant shall perform the Work, by doing everything necessary and providing all materials, supervision, labour and equipment other than that specifically provided by the Owner for , or incidental , to the proper execution of the Work described in the Contract Documents and all incidental Work and things necessary to complete the Work.

ARTICLE 11 CONSULTANTS REPRESENTATIONS - QUALITY OF SERVICES

11.1. The Consultant represents and warrants to the District that the Consultant and the Professionals have the education, training, skill, experience and resources necessary to perform the Services in accordance with the requirements of the RFP, and the Consultant acknowledges and agrees that the District has entered into this Agreement relying on this representation and warranty.

The Consultant agrees that:

- (a) the Consultant must perform the Services to a standard at least equal to that generally accepted in the professional engineering profession in British Columbia in respect of services such as the Services; and
- (b) the Services must be performed in general conformance with all applicable enactments, and with any relevant codes, rules, regulations or standards of any professional or industry organization of association.

ARTICLE 12 DISTRICT'S OBLIGATIONS

12.1 The District

- (a) must make available to the Consultant any Drawings, Environmental Reports or Geotechnical Reports prepared by or for the District for the purposes of the Project and that the District is lawfully entitled to provide to the Consultant,
- (b) authorizes the Consultant to act as the representative of the District to the extent necessary for the Consultant to perform the Services, but the Consultant has no authority to bind the District to any contract with any third party or otherwise to cause the District enter into or be liable for any legal liability, duty or obligation of any kind to or with any third party,
- (c) must consider any sketches, drawings, specifications, tender documents and other documents relating to the project that are provided to the District by the Consultant,
- (d) must use reasonable efforts to respond reasonably promptly to any communication from the Consultant, and
- (e) must obtain, and pay for, all approvals, permits, licenses, easements and statutory rights of way it determines are required for the construction, use and occupation of the Project.

ARTICLE 13 CONSULTANT'S USE OF DISTRICT-SUPPLIED INFORMATION

13.1 The District agrees that the Consultant is not responsible or liable for the accuracy or completeness of Drawings, Geotechnical Reports or Environmental Reports provided to the

Appendix B – Sample Consulting Agreement

Consultant by the District. In performing the Services, the Consultant must consider any Drawings, Geotechnical Reports or Environmental Reports provided to it by the District.

ARTICLE 14 OWNERSHIP OF INTELLECTUAL PROPERTY

14.1 By this section, the Consultant irrevocably grants to the District the unrestricted license for the District to use, for the Project and the District's other activities, all technical information and intellectual property, including inventions, conceived or developed, or first actually reduced to practice, in performing the Services. The Consultant agrees that the license granted by this section includes the right for the District, at any time, to adapt, use and modify all such technical information and intellectual property for other projects and uses of the District. A Copyright License Agreement for signature, is attached to this Agreement as Schedule "D";

ARTICLE 15 PROJECT MANAGER AS OWNER REPRESENTATIVE

15.1 The Project Manager is the Owner's representative during the Term and is to observe the Work in progress on behalf of the Owner for the purposes of ensuring that the Consultant provides the Work in a satisfactory manner. The Project Manager has the Owner's authority to act on the Owner's behalf with respect to this Contract and, without limiting the generality of the foregoing; the Project Manager is entitled to act as follows:

- a) to have access to and inspect Sites and the Work at all times, and the Consultant shall provide the Project Manager with full information and assistance so the Project Manager may ensure that the Work is performed in accordance with this Contract;
- b) to decide whether anything has been done as required by the Contract or to decide what the Consultant is required by this Contract to do, including questions as to the acceptability of the quality and quantity of any labour, equipment or material used in the Work and the timing and scheduling of the Work;
- c) in the Project Manager's sole discretion, to order a Work Change under Article 24;
- d) for the purpose of payments to the Consultant, to determine the actual quantity of the Work and certify the amounts payable to the Consultant based on the unit prices, if any; and
- e) if at any time the Project Manager is of the opinion, in his sole discretion, that there exists a danger to life or to property, the Project Manager may order the Consultant to stop Work or to take such remedial measures as the Project Manager considers necessary.

15.2 The Consultant shall comply with any determination, decision, direction or order of the Project Manager identified under Article 4. Neither the giving nor the carrying out of such orders shall entitle the Consultant to any extra payment and the Owner shall not be held liable for any damages or for any breach of government laws, bylaws or regulations that may result.

ARTICLE 16 CONTROL OF WORK AND SUPERVISION

16.1 The Consultant is solely responsible for performance of the Work in accordance with this Contract and shall effectively direct and supervise the Work so as to ensure performance of the Work for the Term, including by being solely responsible for the means, methods, techniques, sequences, and procedures and for co-coordinating the various parts of the Work during its performance.

16.2 The Consultant shall comply with the requirements of the *Workers' Compensation Act* (British Columbia), and all other federal and provincial legislation regarding wages and labour relations, employment Standards and health and safety, including payment of any and all income taxes, duties, levies, or charges made under or in relation to the Contract.

Appendix B – Sample Consulting Agreement

ARTICLE 17 ASSIGNMENT AND SUBCONTRACT

- 17.1 The Contract shall not be assigned or subcontracted, in whole or in part, without the prior written consent of the Owner.
- 17.2 The Consultant agrees to employ those Subcontractors proposed by him in writing and accepted by the Owner at the signing of this Contract. Before the Consultant shall be allowed to subcontract any part of that work the Consultant must first provide the Owner with a written explanation of the reasons why that part of the Work must be subcontracted. Unless the Owner otherwise agrees in writing, the Consultant shall provide the Owner with the names of a minimum of three different proposed Subcontractors for that part of the Work, each of whom must be acceptable to the Owner in the Owner's discretion, and the Consultant shall then use the Subcontractor selected by the Owner. Article 17.8 shall not apply to the foregoing and the Consultant agrees that the Consultant shall be solely responsible and liable for the Work of that Subcontractor and for any and all costs and delays incurred by the Consultant associated with the foregoing.
- 17.3 The Owner may, for reasonable cause, object to the use of a proposed Subcontractor and require the Consultant to employ one of the other subcontract bidders.
- 17.4 Unless Owner otherwise specifically consents in writing, all Subcontractors shall have a minimum of three (3) years of experience in their respective trades and shall have been in business for at least that long. The Consultant shall not engage any Subcontractor that is not so qualified unless the Consultant has first provided to the Owner detailed reasons to support the use of such Subcontractor and the Owner has approved such use. No approval by the Owner, however, shall relieve the Consultant from sole responsibility for the selection of the Subcontractor or the quality or performance of work, or lack thereof, by the Subcontractor.
- 17.5 If requested by the Owner with regard to any Subcontractor, the Consultant shall show evidence, in writing, that the proposed Subcontractor has, immediately prior to the effective date of the Contract, been in business and actively engaged for a minimum period of three (3) years in the trade in which the Subcontractor has been proposed for use by the Consultant. Evidence shall consist of the names of previous projects and the names of the owner and general contractor for each project.
- 17.6 Failure to provide evidence satisfactory to the Owner of involvement and experience in its trade for the specified periods for any Subcontractor may result in rejection of the Subcontractor. The Consultant shall indemnify and hold the Owner harmless from any and all liability to and claims by the Subcontractor relating to the rejection by the Owner of such Subcontractor.
- 17.7 Subcontractors identified in the Contract shall not be changed without the prior written approval of the Owner. This provision is for the sole benefit of the Owner and the enforcement or failure to enforce the same shall not create any duty, obligations or liabilities on the Owner towards any Subcontractors, whether nominated or not, or to any party whatsoever.
- 17.8 If the Owner requires a change from a proposed Subcontractor, the Contract price shall be adjusted by the difference in cost and mark-up occasioned by such required change. However, the Consultant shall not be required to employ as a Subcontractor a person or firm to whom he may reasonably object.
- 17.9 The Consultant agrees to preserve and protect the rights of the parties under the Contract with respect to work to be performed under subcontract and to:
- a) enter into contracts or written agreements with his Subcontractors to require them to perform their work in accordance with of the Contract Documents, and
 - b) be as fully responsible to the Owner for acts and omissions of his Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

Appendix B – Sample Consulting Agreement

The Consultant therefore agrees that he shall incorporate the Contract Documents into all subcontracts he enters into with his Subcontractors.

- 17.10 The Owner may, upon reasonable request and at his discretion, provide to a Subcontractor, information as to the percentage or quantity of the Subcontractor's work which has been certified for payment.
- 17.11 The Contract Documents are arranged in a general manner for convenience of reference only and not to identify or limit the scope of the work of any Subcontractor, notwithstanding the use of headings, sections, divisions or other partitions in the Contract Documents. The Consultant and each of its Subcontractors shall interpret the Contract Documents as a whole. Subcontractors should carefully review all of the Contract Documents as information regarding the work applicable to each sub-trade may be contained throughout the Contract Documents. The Consultant shall be solely responsible for establishing limits of work between the Consultant and its Subcontractors, notwithstanding the arrangement of the Contract Documents.
- 17.12 The Consultant shall remain and be fully responsible for the proper performance of the Work and liable to the Owner under this Contract for all acts or omissions of Subcontractors and all persons directly or indirectly employed by the Subcontractors in the performance of the Work, notwithstanding any other provision of the Contract, any rule of law to the contrary, the identification of a Subcontractor in the Contract, or the consent to or nomination of a Subcontractor by the Owner.
- 17.13 Subcontractors shall not further subcontract any portion of the Work which is the subject of their subcontract without the prior written approval of the Owner.
- 17.14 Each subcontract shall be deemed to incorporate the following, whether or not specifically stated therein:
- "Notwithstanding any provision of the subcontract not any rule of law or interpretation to the contrary, the Subcontractor acknowledges and agrees that nothing contained in the Subcontract or this Contract, not the relationship between the Subcontractor and any one or more of the Owner, the Project Manager and any employee or agent of the Owner or the foregoing arising out of the subject matter of this Subcontract shall give rise to any contractual relationship between the Subcontractor and any one or more of the Owner, the Project Manager and any agent or employee of any of them, nor give rise to any duty of care whatsoever owed by any of them to the Subcontractor."
- 17.15 Where the Owner has given consent to the Consultant to assign this Contract, it is a condition of that consent that the Consultant shall first obtain the written agreement of the proposed assignee with the Owner to be bound by this Contract as if the assignee had been an original party to the Contract.

ARTICLE 18 PRIVATE LAND

- 18.1 The Consultant shall not enter upon lands other than those provided by the Owner without obtaining prior written permission from the land owners or occupiers.
- 18.2 The Consultant shall not enter upon lands owned by others on which the Owner has easements or rights of way without having received a written authorization of the Owner for such entry. The Consultant shall ascertain from the Owner the conditions on which easements or rights of entry have been granted on private lands and shall abide by these conditions at all times.

ARTICLE 19 CONTRACT SITE CONDITIONS

- 19.1 The Consultant acknowledges and agrees that it is the sole responsibility and risk of the Consultant to examine the Sites and the actual Site conditions in order to satisfy itself with respect to conditions and their effect on the Work.

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- 19.2 The Consultant shall inspect the Work site prior to performing the Work each working day and evaluate the site conditions for foreseeable damage caused by the performance of the Work done that day. The Consultant shall notify the Owner if the site conditions are in poor shape to the extent that the Consultant may cause damage to the site if the performance of the Work is carried out. The Owner shall assess the site conditions and inform the Consultant if or how he is to proceed.

ARTICLE 20 DELAY, NON-COMPLIANCE OR BREACH BY THE CONSULTANT

- 20.1 If the Consultant delays in the commencement, performance or completion of the Work, fails to comply with a direction or decision of the Project Manager, or is otherwise in breach of the Contract, and the delay, failure or Contract breach continues for five (5) days after notice of it has been given to the Consultant by the Project Manager and the Consultant is not, in the sole opinion of the Project Manager, diligently proceeding with a cure of the breach to the Project Manager's satisfaction, the Project Manager may, without it constituting a breach or termination of the Contract;
- a) at the Consultant's expense, do such things as the Project Manager deems necessary to correct the Consultant's breach, including by causing the Work to be performed by the District's forces or by another party, the Consultant shall reimburse the Owner for all costs, expenses and damage incurred or sustained by the Owner by reason of the Consultant's breach or in correcting the breach; or
 - b) take all or any part of the Work out of the Consultant's hands and employ such means as the Project Manager considers desirable to perform the Work or part of it.
- 20.2 The Project Manager shall consult with the Owner before taking the Work out of the Consultant's hands. The cost of performing the Work or part of it, taken out of the Consultant's hands shall be deducted from any amount otherwise payable to the Consultant. If the cost of performing the Work, or part of it, taken out of the Consultant's hands exceeds any such amounts, the excess is a debt due and owing by the Consultant to the District, together with any change sustained by the District.

ARTICLE 21 SUSPENSION OR TERMINATION OF CONTRACT

- 21.1 The Project Manager may give notice to the Consultant suspending the Contract at any time for convenience and the Consultant shall comply with that notice immediately by ceasing performance of the Work. Upon ceasing performance of the Work, the Consultant shall take all steps reasonably necessary to protect all portions of the Work from damage or destruction by natural or human causes. If the Project Manager suspends the Work for thirty (30) days or less, the Consultant shall continue performance of the Work when called upon to do so. If the Project Manager suspends the Work for a period in excess of thirty (30) days, the Consultant may request the Project Manager to terminate the Contract.
- 21.2 The Project Manager may terminate all, or any part of, the Services, by giving notice of termination to the Consultant, which is effective upon delivery of the notice, if:
- a) the Consultant breaches this Agreement and the Consultant has not cured the breach, or is not diligently pursuing a cure for the breach to the satisfaction of the District, in the District's sole discretion, within five days after notice of the breach is given to the Consultant by the District; or
 - b) the Consultant becomes bankrupt or insolvent, a receiving order is made against the Consultant, an assignment is made for the benefit of its creditors, an order is made or resolution passed for the winding up of the Consultant, or the Consultant takes the benefit of any enactment relating to bankrupt or insolvent debtors.

If the District terminates part or all of the Services under this section, the District may arrange, upon such terms and conditions and in such manner as the District considers appropriate, for

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performance of any part of the Services remaining to be completed, and the Consultant is liable to the District for any expenses reasonably and necessarily incurred by the District in engaging the services of another person to perform those Services. The District may set off against, and withhold from amounts due to the Consultant such amounts as the District determines, acting reasonably, are necessary to compensate and reimburse the District for the expenses described in this section.

- 21.3 Despite the rest of the Contract, the Owner may terminate the Contract at any time for cause or convenience and the Consultant shall comply with that notice immediately by ceasing performance of the Work.

If the Owner terminates the Contract for convenience, the Owner must pay the outstanding Consultant's fees for services performed up to and including the termination date. For clarity, the Owner is not obligated to pay for any services under this Contract that would have been performed by the Consultant had the Contract not been terminated or to otherwise compensate the Consultant for any losses, damages or costs it may suffer or incur in any manner whatsoever related to the termination of this Contract.

If the Owner terminates the Contract for cause, the Owner must pay the outstanding Consultant's fees for all services performed up to and including the termination date, after deducting any costs, expense, damage or loss caused to the Owner by the Consultant's breach of the Contract, insolvency or bankruptcy, subject to the dispute provisions of this contract regarding the quantum of the deductions. Where the amount of the outstanding Consultant's fees is less than the amount of the deduction for all costs, expense, damage or loss caused to the Owner by the Consultant's breach of the Contract, the Consultant shall immediately pay to the Owner the shortfall. Termination under this section does not relieve the Consultant of any Contract obligations other than the Consultant's obligations to perform the Work.

ARTICLE 22 TERMINATION BY THE CONSULTANT

- 22.1 The Consultant may give notice to the Project Manager terminating the Contract for either of the following reasons:

- a) where an order of any court or other public authority other than the District, causes the Work to be stopped or suspended, for a period exceeding ninety (90) days and such stoppage or suspension occurs through no act or fault of the Consultant. In the event of termination under this section, the Owner shall pay the Consultant for the Work performed and losses sustained to the date of the notice. The Owner shall not be liable for any loss of profits, damages or expenses incurred by the Consultant as the result of such stoppage or suspension or termination of the Contract; or
- b) where, without authority in the Contract, the Owner fails to pay the Consultant for Work performed, as provided in the Contract Documents, within thirty (30) days after the date for payment, and fails to remedy such default within ten (10) days of notice by the Consultant to do so.

ARTICLE 23 FORCE MAJEURE

23. Neither the District nor the Consultant shall be deemed to be in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of the 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 labor 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 District or the Consultant under this Agreement. If any such circumstances occur, the non-performing party shall, as soon as possible after being prevented from performing, give

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written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 24 CHANGE ORDERS

- 24.1 At any time after the Notice of Award, but before the end of the Work, the Project Manager may give notice to the Consultant ordering the Consultant to perform a Work Change and the Consultant shall promptly begin performance of that Work Change in accordance with the Change Order.
- 24.2 A Change Order is, for the purposes of the Contract, considered to be part of the Work and all of the provisions of the Contract and Contract Documents apply to that Change Order.
- 24.3 The Consultant is entitled to be paid for any Work Change that is an addition to or revision of the Work, but not any Work Change which is a deletion from the Work.
- 24.4 No Work Changes under Article 24.1 shall be undertaken by the Consultant without a Change Order from the Project Manager, except in an emergency endangering life or property, and no claims for additional compensation shall be valid unless the Work Change was ordered by the Project Manager.

ARTICLE 25 PAYMENT

- 25.1 Not more than once each Month, the Consultant may deliver an invoice to the District, in respect of the immediately preceding Month,
- a) setting out the aggregate amount of fees claimed for Services performed in that preceding Month; and
 - b) describing in reasonable detail the Services rendered by the Consultant in that preceding Month, including where applicable under section 9, by stating the hours and tenths of an hour spent by each Professional, or other individual whose services are paid for by the District on an hourly basis, in performing the Services.
- 25.2 The District must, to the extent that the District is satisfied the fees are for Services reasonably and necessarily performed by the Consultant, pay the Consultant the fees claimed in any invoice delivered in accordance with Article 25.1. Payments are due within the period after delivery of each invoice that is set out for that purpose in the Proposal. If the Proposal contains no such date, payment is due within thirty (30) days after delivery of an invoice to the District.

The District must also reimburse the Consultant for expenses claimed by the Consultant in any invoice that the Consultant is entitled to be reimbursed for as set out in the Proposal, but only to the extent the District is satisfied the expenses were reasonably and necessarily incurred by the Consultant in performing the Services

ARTICLE 26 PAYMENT WITHHELD

- 26.1 The Owner may withhold or suspend the whole or a portion of any payment if:
- a) the Consultant has failed to satisfactorily perform the Work in the reasonable opinion of the Project Manager;
 - b) the Consultant has failed to remedy any defective or faulty Work as directed by the Project Manager;
 - c) a claim of builder's lien has been made, or is a reasonable prospect, to any land upon which the Work is located;

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- d) the Consultant has failed to make prompt payments as they become due to any Subcontractors or for Materials or labour or equipment;
 - e) the Owner has corrected deficiencies under Article 20.
- 26.2 Where the Consultant has failed to make prompt payment to Subcontractors or for materials or labour or equipment, the Owner may make payment, after fifteen (15) days written notice of same to the Consultant, to the Subcontractor or supplier directly, and may deduct the amount of such payments from amounts otherwise due to the Consultant from the Owner , or immediately proceed against the surety of the Consultant under any bonds, or cash security, or letters of credit provided by the Consultant.
- 26.3 If any person or persons shall file any claim of builders' lien against the lands comprising the Work site, or any portion thereof or interest therein, or on any improvements thereon, and such person or persons shall allege that it is entitled to a claim of builders' lien by reason of any default or neglect by the Consultant, or by any Subcontractor, material supplier or agent of the Consultant or by anyone claiming through or under any of the foregoing, then the Consultant shall be in default of a material and fundamental term under this Contract and if the Consultant fails to remove the lien within seven (7) calendar days of being notified to remove the lien by the Owner, the Consultant hereby irrevocably authorizes the Owner, without further investigation by the Owner, to take such steps as are reasonably required in the opinion of the Owner to remove or to discharge such lien, including payment into Court of the full amount of such claim of lien, together with security for costs related thereto, and the Owner may deduct from any sums owing the Consultant all costs and expenses thereby incurred by the Owner, including without limitation any account at actual cost for legal fees and disbursements incurred by the Owner. Alternatively and in addition to the foregoing, if the Consultant does not remove the lien or liens within the time period aforesaid after being requested to do so by the Owner, then the Owner may declare the Consultant in default under the Contract and either or both immediately proceed against the surety of the Consultant under any bonds or cash security or letters of credit provided by the Consultant or terminate the Contract for cause.
- 26.4 The Consultant shall indemnify and save the Owner harmless from and against the costs of any and all actions commenced against the Owner pursuant to the *Builders Lien Act* of British Columbia, or any successor legislation, including solicitor and client costs, and the Consultant shall indemnify and save the Owner harmless from and against the amounts of any declarations of lien. This provision shall not apply to liens filed by the Consultant if the Owner is in default in payments to the Consultant as required under this Contract.
- 26.5 Notwithstanding the provisions of Article 26.3 and Article 26.4, the Consultant shall promptly upon receipt of notice in writing from the Owner or the Project Manager remove any liens against the project or against any lands on which the Project is situated or work was performed. No payments whatsoever shall be due or owing to the Consultant so long as any liens remain registered against any of the foregoing. Failure to remove the liens promptly shall entitle the Owner to all damages suffered or incurred by the Owner associated with such liens.
- 26.6 Delay by the Owner making payment is not a breach of the Contract except as provided in Article 22.1(b), but subject to Article 20, if payment is not made when due, the Consultant is entitled to the amount overdue and the Owner shall, when making payment in the amount overdue, pay to the Consultant interest on the amount overdue, calculated for the period of the delay at the Royal Bank of Canada's annual prime commercial rate of interest then in effect for Canadian dollar demand commercial loans to its most credit worthy customers.
- 26.7 Without affecting any other right or remedy the Owner may have against the Consultant, the Owner may set off and deduct from amounts payable to the Consultant, an amount equivalent to any expense, loss or damage caused to the Owner by any breach of the Contract by the Consultant.

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ARTICLE 27 INDEMNIFICATION

- 27.1 Notwithstanding the provision of insurance coverage by the District, The Consultant hereby agrees to indemnify and save harmless the District 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 District may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Contract, that arise out of errors, omissions or negligent acts of the Consultant or its Subcontractor(s), servant(s), agent(s) or employees(s) under this Contract, 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 District, its other consultant(s), assign(s) and authorized representative(s) or any other persons.
- 27.2 The terms and conditions of the Article 27.1 shall survive notwithstanding the completion of all services and the obligations and duties under this Contract and the termination for any reason whatsoever of this Contract.

ARTICLE 28 COMPLETION CLEAN UP

- 28.1 The Consultant shall maintain the site in as clean a condition as possible to the satisfaction of the Owner’s consultant or the Owner during his work and shall remove from this and the surrounding properties any debris from his work on the completion of the job. Failure to do this will result in this cleaning and removal being instituted by the Owner and the cost deducted from the amount owing this Consultant.

ARTICLE 29 INSURANCE

- 29.1 Insurance to be provided by the Consultant as per the attached Schedule D – Insurance.

ARTICLE 30 PROPERTY OF THE OWNER

- 30.1 The Consultant is responsible for any loss of or damage to, excluding reasonable wear and tear, any property or any property adjacent to the Owner’s property of the Owner arising out of the performance of the Contract. The Consultant shall be responsible for the making good of such damage at his own expense. Reasonable wear and tear shall not be considered damage.
- 30.2 The Consultant shall contact the Project Manager within (24) twenty-four hours to report any damage to District Property or any property adjacent to the Owner’s property arising out of the performance of the Contract.

ARTICLE 31 BYLAWS AND PERMITS

- 31.1 The Consultant shall comply with all statutes, laws and regulations relating to, and obtain all permits and licenses required for, the Work, whether federal, provincial or municipal.

ARTICLE 32 ENVIRONMENTAL MATTERS

- 32.1 Without limiting the Consultant's other Contract obligations, the Consultant shall do everything reasonably necessary to ensure that the Work is performed so as to avoid and prevent any disturbance or damage to the environment.

ARTICLE 33 INDEPENDENT CONTRACTOR

- 33.1 This is a Contract for the performance of work and the Consultant is engaged under this Contract as an independent contractor for the sole purpose of performing the Work. Neither the Consultant nor any of its employees or Subcontractors are engaged by the Owner as an employee of the Owner. The Consultant is solely responsible for any and all remuneration and benefits payable

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to its employees and all payments or deductions required to be made by any enactment, including those required for Canada Pension Plan, unemployment insurance, workers' compensation, and income tax. This Contract does not create a joint venture or partnership.

ARTICLE 34 NOTICE

- 34.1 All notices under this Contract to the Owner, the Project Manager or the Consultant shall be in writing. The Consultant shall deliver to the Owner a copy of all notices delivered by the Consultant to the Project Manager.
- 34.2 Any notice given under the Contract shall be sufficient in all respects and considered as having been made if mailed in Canada or the United States by registered prepaid mail, actually delivered, or sent by fax to the recipient at either the addresses stated in the executed Contract or any substitute address of which the party sending the notice has had prior notice in writing as provided in the Contract. Any such notice shall be deemed to have been given at the time it is delivered by hand, or if mailed as aforesaid within four (4) Working Days after the date of mailing if mailed in Canada and six (6) Working Days after the date of mailing if mailed in the United States, or if sent by fax then on the date it is transmitted if transmitted prior to 4:30 p.m. local time at the place of receipt, otherwise on the morning of the following Working Day.
- 34.3 Any notice, direction or order provided under the Contract shall be deemed to have been given to the Consultant if delivered personally to the Consultant's Representative or Site supervisor.

ARTICLE 35 TIME

- 35.1 Time is of the essence for this Contract. In calculating time for the purposes of the Contract, the first day is to be excluded and the last day included.

ARTICLE 36 SUCCESSORS

- 36.1 The Contract binds the parties to it and their respective successors, heirs, executors, administrators and permitted assigns and Subcontractors.

ARTICLE 37 JOINT AND SEVERAL OBLIGATIONS

- 37.1 If the Consultant is a joint venture, each member of the joint venture and each member of the joint venture executing the Contract hereby represents and agrees that it shall, in respect to the Owner, be jointly and severally liable to the Owner to fulfill all obligations and liabilities of the Consultant to the same extent and for the same purposes as if that member had alone executed the Contract as the sole Consultant. The foregoing shall not limit any rights the joint venture member may subsequently have to claim contribution and indemnity under the terms of the joint venture agreement from other members of the joint venture.

ARTICLE 38 APPLICABLE LAW

- 33.1 The Owner and the Consultant agree that the Contract is to be interpreted in accordance with, and governed by, the law in force in British Columbia and the Consultant irrevocably submits to the exclusive jurisdiction of the courts of British Columbia.

ARTICLE 39 SEVERANCE

- 39.1 If any portion of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, the illegal or invalid portion must be severed and the decision that it is illegal or invalid does not affect the validity of the remainder of this Agreement.

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ARTICLE 40 APPROPRIATIONS

- 40.1 Payment under the Contract is subject to there being an appropriation for the Contract for the fiscal year in which any commitment under the Contract would come due in the ordinary course of performance of the Contract.

ARTICLE 41 MEMBERS OF THE DISTRICT OF KENT COUNCIL

- 41.1 No member of the District of Kent Council may be given or receive any share or part of this Contract or any benefit arising from it.

ARTICLE 42 WAIVER

- 42.1 An alleged waiver of any breach of the Contract is effective only if it is an express waiver in writing of the breach. A waiver of a breach of the Contract does not operate as a waiver of any other breach of the Contract.

ARTICLE 43 SAFETY PROGRAM

- 43.1 The Consultant shall develop, maintain, implement and supervise for the duration of the Contract, a comprehensive safety program that shall effectively incorporate and implement all safety precautions required by all applicable laws, ordinances, rules, regulations and orders and general operation practices for the safety of persons or property, including any general safety rules and regulations under the *Worker's Compensation Act* (British Columbia) the Workplace Hazardous Waste Materials Information System or other Occupational Health and Safety legislation or regulations that may be applicable.
- 43.2 The Consultant is deemed the "Prime Contractor" for the purposes of all applicable occupational health and safety laws, including the *Workers' Compensation Act* (British Columbia), and the Consultant is responsible for filing any documents necessary to comply with the *Workers' Compensation Act* (British Columbia), including, but not limited to, a Notice of Project, if applicable. The Consultant shall comply, and shall ensure that all Subcontractors and Other Contractors comply with all requirements with the *Workers' Compensation Act* (British Columbia) and any other occupational health and safety Laws, applicable to the Project, the Work or to the Work Site. The Prime Contractor shall compensate the District of any loss or damage, fines or penalties to the District arising out of any actions by the Consultant, or its Subcontractors, in the performance of the Work.
- 43.3 Prior to commencing the Work and as a condition of receiving payment, the Consultant shall provide the Owner with satisfactory written evidence of compliance by the Consultant with all requirements under the *Workers' Compensation Act* (British Columbia), including payments of assessments due under it to the Workers' Compensation Board. Without limiting the foregoing, the Owner's Representative may at any time require the Consultant to provide evidence of compliance with all requirements under the *Workers' Compensation Act* (British Columbia), or payment of assessments due under it to the Workers' Compensation Board, or both.
- 43.4 When required to do so by the Owner, the Consultant shall provide the Owner with evidence of its compliance of any or all its Subcontractors under 43.3.
- 43.5 The Consultant will have a safety program acceptable to the Workers Compensation Board and will ensure that all Workers Compensation Board Safety Rules and Regulations are observed during the performance of this Contract.
- 43.6 The Consultant will provide only professional personnel who have the qualifications, experience and capabilities to perform the Work.
- 43.7 The Prime Contractor must ensure that the health and safety activities of all employees, workers and supervisors at a multiple-employer workplace are coordinated. Further, the Prime Contractor

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must do everything reasonable to ensure that employees, workers and supervisors comply with all regulations pertaining to health and safety.

- 43.8 Each employer at a multiple-employer workplace must supply the Prime Contractor the name of the person who has been designated to supervise the employer's workers.

ARTICLE 44 DUE CARE

- 44.1 Any damage to private property caused by the Consultant in the performance of the Work shall be repaired or replaced by the Consultant at the Consultant's expense. The Owner may withhold payment to the Consultant and use any holdbacks to pay for the repairs or replacement of the damaged property caused by the Consultant in the performance of the Work. The Owner shall in its sole opinion determine the percentage of fault of the Consultant.

ARTICLE 45 MATERIALS

- 45.1 All materials shall meet the specifications provided in the Contract Documents.

ARTICLE 46 CLIMATIC CONDITIONS

- 46.1 Provide protection at all times against weather so as to maintain work, materials, equipment and property free from injury or damage, and as necessary to ensure work is carried out expeditiously in accordance with agreed time schedule and Completion Date.

ARTICLE 47 PROCEDURE

- 47.1 All Work is to be carried out following the specifications provided in this Contract.

ARTICLE 48 ACCESS TO WORK

- 48.1 Access to the Site is to be confirmed by the Owner's Representative. Minimize disturbance of adjacent property.

ARTICLE 49 INSPECTION

- 49.1 Inspection to be carried out by the Owner. Cost of inspection service is to be paid directly by the Owner and is not to be included in the Contract Price.

ARTICLE 50 PAYMENT OF ACCOUNTS BY CONSULTANT

- 50.1 The Consultant shall promptly and satisfactorily settle and pay all accounts in connection with the Work and shall ensure that everyone employed by or through the Consultant similarly promptly and satisfactorily pays all account incurred by or through them in connection with the Work. If, after having received seven (7) working days written notice from the Owner to settle and pay any accounts incurred by the Consultant or any claims made against the Consultant, the Consultant fails or refuses to pay or settle the same, the Owner shall have the right, but will not be obligated, to pay such account and/or claims to the account of the Consultant and any receipt issued to the Owner with respect to such accounts and/or claims shall be conclusive evidence as to such payments and the amount thereof. Notwithstanding the foregoing, the Consultant shall not be required to pay any such account or claim if the Consultant has, in the opinion of the Owner, reasonable grounds for disputing same, in which case the Owner will have the right to pay or settle such accounts and/or claims in such manner as in the opinion of the Owner will not prejudice the Consultant's right to dispute same.

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ARTICLE 51 WORKSAFEBC CLEARANCE CERTIFICATE

51.1 A copy of a current clearance certificate from WorksafeBC certifying that you are registered with WorksafeBC and are not in arrears in any payments or assessments required to be submitted to WorksafeBC shall be submitted to the Owner prior to the start of the Work.

ARTICLE 52 BUSINESS LICENSE

52.1 The Consultant must show proof that they hold a valid District of Kent or Inter-Municipal business license before the Work can begin. The business license must be in effect for the duration of the Contract.

ARTICLE 53 REPORTING AND RECORDS

53.1 The Consultant shall at its expense keep and maintain records and accounts in connection with the performance of the Work. Upon request, the Consultant shall provide to the Project Manager an accurate written allocation of the total paid to date, for performance of the Work, to the various elements of the Work completed.

- a) must keep proper accounts and records of its performance of the Services, including invoices, receipts and vouchers, which must at all reasonable times be open to audit and inspection by the District, which may make copies and take extracts from the accounts and records;
- b) must keep reasonably detailed records of performance of the Services by the Consultant, which must at all reasonable times be open to inspection by the District, which may make copies and take extracts from the records;
- c) must afford facilities and access to accounts and records for audit and inspection by the District and must furnish the District with such information as the District may from time to time require regarding those documents; and
- d) must preserve, and keep available for audit and inspection, all records related to this Project for at least two (2) years after completion of the Services or termination of this Agreement, whichever applies.

If the District terminates all or part of the Services under this Agreement, the Consultant must immediately deliver to the District, without request, all Project-related documents in the Consultant's possession or under its control, including all copies of Drawings, Environmental Reports, Geotechnical Reports, and other District's consultant's reports and work product, drawings, specifications and Contract Documents.

ARTICLE 54 CONFLICT OF INTEREST

54.1 The Consultant must not perform, for gain, any services for any person other than the District, or have an interest in any contract other than this Agreement, if the District determines, acting reasonably, that performance of the services, or the Consultant's interest in the contract, creates a conflict of interest between the obligations of the Consultant to the District under this Agreement and the obligations of the Consultant to the other person or between the obligations of the Consultant to the District under this Agreement and the Consultant's pecuniary interest.

ARTICLE 55 ALTERNATIVE RIGHTS AND REMEDIES

55.1 Exercise by a party to this Agreement of any right or remedy of that party, whether granted in or under this Agreement or at law or equity, does not limit or affect any other right or remedy of any kind, whatever its source, that the party may have against the other party and does not affect the

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right of the party exercising the right or remedy to exercise other rights or remedies against the other party.

ARTICLE 56 MEDIATION

56.1 If either party disagrees with the other party's interpretation of this Agreement, or considers that the other party is in breach of this Agreement, the first party may give notice of dispute to the other party. Within ten (10) days after a notice of dispute is given, the parties must attempt, acting reasonably, to resolve the dispute to their mutual satisfaction. If the parties cannot resolve the dispute within the ten (10) days, either party may give notice requiring that the dispute be referred for mediation, which mediation process must be completed within thirty (30) days after the notice of mediation is given, by a single mediator acceptable to both parties, and the costs of any arbitration must be borne equally by the parties.

ARTICLE 57 ENTIRE AGREEMENT

57.1 This Agreement is the entire agreement between the parties and it terminates and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

ARTICLE 58 GENERAL RELEASE AND WAIVER OF LIENS

58.1 The Consultant shall provide a general release of all claims in the form attached as Appendix "C" to the Contract Document within thirty (30) days after the expiration of the Term.

ARTICLE 59 GLOSSARY

59.1 Wherever used in the Contract, the following terms shall have the following meanings:

- a) "**as indicated**" means as indicated in the Specifications which are part of this Contract.
- b) "**as specified**" means collectively all terms, requirements, stipulations and other provisions described for the respective equipment, material or method in this Contract.
- c) "**Authorized**", "**directed**", "**required**", "**reviewed**", "**requested**", "**approved**", "**ordered**", "**instructed**", "**sanctioned**", "**alternate**", "**inspected**", "**submitted**", "**satisfactory**", "**equivalent**" and similar words, unless some other meaning is obvious from the context, mean respectively authorized, directed, required reviewed, requested, approved, ordered instructed, inspected or sanctioned by, or submitted or satisfactory to, the Owner.
- d) "**Authority having jurisdiction**", "**Authorities having jurisdiction**" and similar terms mean any and all federal, provincial, regional, municipal and other bodies, boards or authorities having jurisdiction over all aspects of the performance of the Work, including without limitation licensing, regulation, permits, certificates, occupational health and safety, workers' compensation, environment, pollution, traffic noise, employment Standards, hours of work and conditions of work.
- e) "**Change**" means an addition, substitution, deletion, variation, cancellation or omission of part or all of the Work required to be performed or supplied under this Contract.
- f) "**Change Order**" and "**Work Change**" are used interchangeably and mean a Change to the Agreement authorized in writing by the Project Manager.
- g) "**District**" means the District of Kent, and its elected and appointed officials, officers, agents and employees.

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- h) "**Completion**" means the date on which any part of, and all of, the Work comprised in the Project, as appropriate, reaches total completion as certified in writing by the Project architect, engineer or other professional responsible for doing so.
- i) "**Consulting Agreement**", "**Contract**", "**Agreement**" and "**Contract Documents**" are used interchangeably and mean this executed Agreement entered into between the Owner and the Consultant for the performance of the Work.
- j) "**Contract Price**" means the price to be paid by the Owner in exchange for the Work to be performed by the Consultant in accordance to this Contract.
- k) "**Contract Time**" means the time specified in this Agreement for Total Performance of the Work.
- l) "**Consultant**" means the person, firm or corporation identified as such in this executed Contract.
- m) "**Consultant's Representative**" means the representative of the Consultant designated as such by the Consultant in writing to the Owner and who shall have authority to act on behalf of the Consultant during the execution of the Work. In the absence of a designation by the Consultant, the Consultant's Representative shall be the representative of the Consultant on Site and apparently in charge of the Work on behalf of the Consultant.
- n) "**Day**" and "**day**" means Work Day, except when expressed as a "calendar day".
- o) "**Drawings**" means any plans or drawings for the purposes of the Project.
- p) "**Environmental Report**" means any report regarding environmental impacts or other environmental aspects of the Project
- q) "**Extra Work**" means a Change for which a duly authorized Change Order has been issued. A Change for which a Change Order has not been issued shall not constitute or be construed as Extra Work.
- r) "**Geotechnical Report**" means any report regarding geotechnical aspects of the Project, including soil and subsurface conditions at or affecting the Project site
- s) "**GST**" and "**G.S.T.**" means the Goods and Services Tax.
- t) "**Material**" means any technical information, intellectual property, reports, work data, design drawings, plans, sketches, graphic representations, specifications or inventions that are conceived, developed, created or compiled in performing the Services
- u) "**Month**" means a calendar month
- v) "**Notice of Award**" means the written notice or letter from the Owner to the Consultant notifying the Consultant that it has been awarded the Contract for the Work. The Notice of Award may be issued subject to conditions, in which case the Consultant shall comply with such conditions. If all or part of the Work cannot proceed until after one or more of the conditions have been met or satisfied, the Consultant shall not proceed with that part of the Work until after it has received a written Notice to Proceed from the Owner.
- w) "**Notice to Proceed**" means the written notice or letter from the Owner to the Consultant notifying the Consultant that one or more conditions specified in the Notice of Award have been satisfied or met, or waived by the Owner, and immediately upon receipt of the Notice of Proceed, or within such period of time as specified in the Notice to Proceed, the Consultant shall commence the performance of the whole of the Work or that part of the Work specified in the Notice to Proceed.
- x) "**Other Contractor**" means a person, firm or corporation employed by or having a separate contract directly or indirectly with the Owner for work other than that required by the Contract.

Appendix B – Sample Consulting Agreement

- y) "**Owner**", "**client**", "**Client**", "**Kent**" and "**District**" shall, unless the context otherwise requires, be interpreted as synonymous and mean the District of Kent.
- z) "**Professionals**" means any individual identified by name in the Proposal, or, if no individuals are identified there, any individuals employed or otherwise engaged by the Consultant to perform the Services with the prior consent of the District
- aa) "**PST**" and "**P.S.T**" means the Provincial Sales Tax.
- bb) "**Project**" means the total Work or Service contemplated by the Owner, of which the Work may be the whole or a part.
- cc) "**Project Manager**" and "**District's Representative**" means the person designated as such by the Owner but whose authority shall be limited to that authority expressed in this Contract.
- dd) "**Proposal**" means the Consultant's written proposal to the District for performance of the Services.
- ee) "**Proposal Call**" means the terms of reference or proposal call for the Services issued by the District.
- ff) "**Schedule**", when referred to an appendix, Schedule or similar attachment included in the Contract, or specifically incorporated by reference therein, means the Schedule identified as such in the Contract.
- gg) "**Services**" and "**Work**" are used interchangeably and mean the carrying out and performance of all things, whether of a temporary or permanent nature, that are required to be done by the Consultant pursuant to the terms and provisions of this Agreement and, without limiting the generality of the foregoing, includes the furnishing and transport of all labour, materials and equipment necessary or incidental to the performance of this Contract, excepting only those materials specifically identified in this Agreement to be supplied by the Owner.
- hh) "**Site**", "**jobsite**", "**worksite**", and similar expressions mean the places where the Work is being performed and the immediate vicinity thereof.
- ii) "**Specifications**" means those specifications specifically identified in and forming part of this Contract, as supplemented or added to by the Owner during the performance of the Work
- jj) "**Subcontractor**" means any person, firm or corporation assigned to or employed by, the Consultant to perform the Work or any part thereof, and includes any employee, agent, representative or Subcontractor of the Subcontractor, and any person, firm or corporation who directly for the Consultant or for any Subcontractor furnishes materials or services.
- kk) "**Substantial Completion**" and "**Substantially Completed**" mean the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or a portion thereof for its intended.
- ll) "**Term**" shall be the duration of the Agreement which shall begin on the date stated in the Notice to Proceed or if the Notice to Proceed does not contain a specific start date then the start date shall be the day the Notice to Proceed is received by the Consultant. The Contract shall end sixty (60) days after final completion.
- mm) "**Total Performance of the Work**" means when the entire Work has been performed to the requirements of this Agreement and is so certified by the Owner.
- nn) "**Work Day**" and "**Working Day**" mean days other than Saturdays, Sundays and holidays which are observed by the District of Kent.

Appendix B – Sample Consulting Agreement

As evidence of the agreement of the parties to be bound by the above terms and conditions of this Agreement, they have caused to be affixed below their respective corporate seals, attested to by the signatures of their respective officers duly authorized for that purpose, on the dates set out below:

IF A CORPORATION, CONSULTANT SIGNS AND SEALS HERE:

The Corporate Seal of _____)
(Insert Company Name))
was hereunto affixed in the presence of:)
_____) (C/S)
Authorized Signatory)
_____))
Authorized Signatory)
_____))
Authorized Signatory)

Date executed by _____: _____, _____.
(Insert Company Name) (Insert Date)

Notes –

- If you do not have a corporate seal, simply write the word "Seal" beside your signature.
- If a partnership, all partners must sign - add a schedule if more room is needed.

Signed, Sealed and Delivered in the presence of:)
_____))
(Insert Name))
_____))
(Insert Address))
_____))
(Insert Occupation))

Date witnessed: _____, _____.

The Corporate Seal of the **DISTRICT OF KENT**)
was hereunto affixed in the presence of:)
_____) (C/S)
Mayor)
_____))
Corporate Officer)

Date executed by the District of Kent: _____, _____.

AGREEMENT – SCHEDULE A

Terms of Reference

AGREEMENT – SCHEDULE B

Proposal

AGREEMENT – SCHEDULE C

Prime Contractor

SCHEDULE C – PRIME CONTRACTOR
Applicable if any on-site field work is required.

- 1.0 The successful Consultant will be designated as the “Prime Contractor” as per WorksafeBC Regulations, and will be required to:
- a) submit a “Safety Plan” to the Project Manager prior to the start of the Work,
 - b) post signage at the job site stating that they are the “Prime Contractor”, and
 - c) have a qualified Safety Coordinator assigned to the Work.

AGREEMENT – SCHEDULE D

Insurance

SCHEDULE D - INSURANCE

- 1.1. The successful Consultant shall maintain and keep in force until termination of this Agreement a Commercial General Liability Insurance providing third party bodily injury and property damage coverage in an amount of not less than **\$5,000,000** per occurrence, indicating that the District of Kent as an 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 maximum deductible shall be not more than \$10,000.00, and the policy is to include the following:
- a) Premises & Operations
 - b) Products & Completed Operations
 - c) Blanket Contractual
 - d) Contingent Employers Liability
 - e) Personal & Advertising Liability
 - f) Consultant's Equipment (Owned & Non-owned)
 - g) Other extensions which may be required now or at a later date during the Term of the Contract.
- 1.2 The District of Kent shall be added as an Additional Insured which shall include their employees and officers with the exception of Section 1.6.
- 1.3 The Policy shall contain a clause providing that the District will receive thirty (30) days written notice of cancellation or of any material change in coverage which will reduce the extent of coverage provided to the District of Kent. 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 District.
- 1.4 The Consultant shall, before occupying the premises or conducting business of any kind on the premises, submit to the District certificates of insurance as required by this section and shall provide the District, from time to time, if and when required by the District, satisfactory proof by the District that all such insurance is still in full force and effect and that all premiums have been paid.
- 1.5 The Consultant shall not do or permit anything to be done which would render any insurance void or voidable or which would cause an increase in the insurance premiums. If the Consultant fails to keep and maintain the required insurance, the District may in its sole discretion may keep and maintain the insurance and the cost to the District for doing so shall be a debt due and owing by the Consultant to the District. The District may terminate the Agreement by notice given to the Consultant if the Consultant fails to deliver any required certificates of insurance or any proof that insurance is still in full force and effect as required by this section.
- 1.6 The Consultant shall maintain and keep in force until the end of the Term automobile liability insurance on all owned, rented or leased vehicles in an amount of not less than **\$5,000,000**.
- 1.7 Professional liability (errors and omissions) insurance coverage shall be obtained to a limit of **\$2,000,000** on a claims-made basis. Such coverage shall be maintained for a period of two (2) years subsequent to conclusion of services provided under this Agreement.

Appendix C – General Release and Waiver of Liens

DISTRICT OF KENT GENERAL RELEASE AND WAIVER OF LIENS

In the Matter of the Agreement made as of *(Insert Date)* (the “Agreement”) for the *(Insert Project Name)* (the “Project”) between:

District of Kent (the “District”)
7170 Cheam Avenue
Kent, BC V2P 8A4

and

(Insert Company Legal Name & Address) (the “Consultant”)

As a condition precedent to obtaining Total Performance of the Work, as defined in the Agreement, and for and in consideration of the payment of *(Insert Amount)* plus applicable taxes (“Final Payment”) to the Consultant by the District, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Consultant, the Consultant covenants, represents, warrants and agrees as follows:

1. The Consultant has properly and completely performed all of the Work, as defined in the Agreement, including but not limited to providing all of the work, services and materials required to be provided and performed by the Agreement.
2. Everyone contracting with or through the Consultant, including without limitation all Subconsultants and everyone contracting with or through the Consultant has been paid in full for all work, services and materials provided in connection with the performance of the Agreement.
3. There are no outstanding liens or claims by the Consultant or by anyone employed or engaged by or through the Consultant in connection with the performance of the Agreement. Further, no one has any right to file or enforce or claim a lien on account of work or services performed or materials supplied under or pursuant to the Agreement.
4. All claims and demands of the Consultant for Extra Work and Changes, as defined in the Agreement, or in connection with the Agreement in any way, have been presented in writing to the District and resolved to the satisfaction of the Consultant.
5. Except for the Consultant’s claim for the Final Payment as defined herein, the Consultant hereby agrees to release and forever discharge, and by these presents does for itself, its successors and assigns, remise, release and forever discharge the District, the District’s Representative and their respective officers, directors, employees, servants, agents, consultants, successors and assigns, and each of them, of and from any and all liabilities, causes of action, claims, proceedings, demands, suits, debts, duties, damages, interest and costs of any nature or kind whatsoever or wheresoever, whether at law or at equity and whether known or unknown, suspected or unsuspected, which the Consultant, its successors and assigns have or hereafter can, shall or may have, relating to or arising out of the Agreement, the Project, the subject matter of the Agreement and the Project, and all facts and circumstances related thereto.
6. This Release and Waiver of Lien has been executed voluntarily by the Consultant after receiving independent legal advice.
7. All provisions of this Release are contractual and not merely recitals.

Appendix C – General Release and Waiver of Liens

8. This Release is governed by the laws of the Province of British Columbia, and the parties agree to submit and attorn to the exclusive jurisdiction of any competent Court in British Columbia any dispute which involves or may involve the interpretation of this Release.

IN WITNESS WHEREOF the Consultant has executed this Release and Waiver of Lien as of the _____ day of _____, ____ by its duly authorized officers.

The Corporate Seal of _____)
(Insert Company Name))

was hereunto affixed in the presence of:) (C/S)

_____)
Authorized Signatory (Consultant))

_____)
Authorized Signatory (District Witness))

* If you do not have a corporate seal, simply write the word **"Seal"** beside your signature.

Appendix D – Copyright License Agreement

DISTRICT OF KENT

COPYRIGHT LICENSE AGREEMENT

1. The Consultant shall retain the copyright in any plans, sketches, design drawings, graphic representations, specifications or other works that are provided by the Consultant to the District under this Agreement (the “Drawings”).
2. The Consultant grants to the District an irrevocable license to use the Drawings for any municipal purpose, including the construction, alteration or repair of any building, structure or other work, whether contemplated by this Agreement or not, and to authorize others to use the Drawings for such purposes, but the District shall not use the Drawings, or make their use available to others, for the construction, alteration or repair of any building, structure or other work outside the District’s boundaries, except insofar as the construction, alteration or repair is undertaken by or on behalf of the District.
3. The Consultant waives absolutely and irrevocably all moral rights that it has, or may acquire, in the Drawings or in any buildings, structures, or other works produced by the District, or authorized or required by the District to be produced, from the Drawings.
4. The Consultant covenants and warrants that it is the sole owner of all copyright and moral rights in or to the Drawings and that no license or permission to use the Drawings has been granted to any person other than the District.
5. The Consultant shall not transfer its copyright in or to the Drawings or grant any license or permission to use the Drawings, or any copies thereof, to any person other than the District, without the District’s prior written permission.
6. The Consultant shall indemnify and save harmless the District from any loss, damages, liabilities, costs and expenses suffered by the District directly or indirectly as a result of a breach of any covenant or warranty contained in paragraphs 1 through 5.

Project Name: _____
Insert Project name

Company Name

Date

Signature of Company Representative

Signature of District of Kent Representative