



Addendum #4

RFP TITLE: Asset Management Strategy & Software RFP

RFP NUMBER: 24008

DATE ISSUED: July 16, 2024

The responses below address questions received from proponents seeking clarity. Questions that did not introduce new information have not been included.

- 1. Question** Is there an incumbent vendor?

1. Answer No, there is no incumbent vendor.

- 2. Question** Please clarify whether this is a two-envelope submission (technical proposal should be in a separate file from the financial proposal).

2. Answer FVRD does not require a two-envelope submission.

- 3. Question** As per our understanding of the RFP under E.12, FVRD will not be liable to any Proponent or any person whatsoever, for any claims of any nature (in contract, in tort, or otherwise), for any costs, expenses, compensation, damages, or anything. Would FVRD accept the proponent to propose a liability cap in the proposal for consideration?

3. Answer No.

- 4. Question** Could the FVRD please provide a copy of their template agreement in advance, so that the proponent can review it as part of our proposal preparation process.

4. Answer Please see the template agreement below. This template could be amended as per the FVRD's requirements.

CONSULTING SERVICES AGREEMENT

(Project Name)

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CONSULTING SERVICES AGREEMENT

(Project Name)

THIS AGREEMENT made as of the ___ day of _____, 20__

BETWEEN:

FRASER VALLEY REGIONAL DISTRICT, a statutory corporation pursuant to the *Local Government Act* and having its offices at 45950 Cheam Avenue, Chilliwack, British Columbia V2P 1N6

(the "Regional District")

AND:

[CONSULTANT], [insert name, particulars and address of consultant]

(the "**Consultant**")

WHEREAS:

- A. Capitalized terms used in these Recitals and in this Agreement have the meanings ascribed to them in Section 1.1 of this Agreement
- B. The Regional District commenced a procurement process for the purposes of soliciting responses from suitably qualified consultants to provide [] for the [] ("**Project**") and the Consultant submitted a response thereto (the "**Submission**");
- C. The Consultant is in the business of providing the services contemplated by this Agreement;
- D. The Regional District wishes to engage the Consultant to provide the services described in this Agreement; and
- E. The Regional District and the Consultant have agreed to enter into this Agreement to provide for the terms and conditions of such engagement.

THEREFORE in consideration of the covenants set out in this Agreement, the parties covenant and agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement unless something in the subject matter or context is inconsistent therewith, the capitalized terms herein will have the meanings set out below:

- a. "Business Day" has the meaning given in Section 11.1;
- b. "Confidential Information" means:

- i. any information, in whatever form (including written, oral or stored in any computer or other electronic, magnetic or optical storage system), which is non-public, confidential or proprietary in nature, whether marked as such or not, obtained directly or indirectly from the Regional District and whether obtained by the Consultant before or after the date of this Agreement, including without limitation, corporate records and employee records;
- ii. any information, in whatever form, designated by the Regional District in writing as confidential or proprietary or marked with words of like import when provided to the Consultant or any other Person;
- iii. information orally conveyed to any director, officer, employee or other representative of the Consultant, if the Regional District states at the time of the oral conveyance or promptly thereafter that such information is confidential, and provides specific written confirmation thereof to the Consultant within ten (10) days of the oral conveyance; and
- iv. all Work Product as defined in this Agreement, except as may be agreed in writing by the parties as falling outside the definition of Confidential Information or has been prepared specifically for the public domain;

but does not include information:

- v. which was in the possession of the Consultant prior to disclosure by the Regional District;
- vi. which is already in the public domain or which subsequently becomes part of the public domain other than through disclosure by the Consultant;
- vii. which is independently developed or learned by the Consultant without use of any Confidential Information; and
- viii. which the Consultant receives from a third Person who was free to make such disclosure without breach of any legal obligation,

provided that the Consultant can demonstrate to the satisfaction of the Regional District that such information falls within the scope of the exclusions set forth above.

- c. "**Agreement**" means this agreement including the Schedules to this agreement, as amended from time to time with the written approval of the parties;
- d. "**Expenses**" has the meaning given in Section 4.1;
- e. "**Fees**" has the meaning given in Section 4.1;
- f. "**Invoice**" has the meaning given in Section 4.2;

- g. **"Person"** means any individual, corporation, limited-liability company, partnership, firm, joint venture, association, trust, or other entity or organization, including a government or an agency or instrumentality thereof;
- h. **"Procurement Documents"** means the procurement documents issued by the Regional District, titled _____ and dated _____, 20__ and attached hereto as Schedule F (if any);
- i. **"Project"** has the meaning given in Recital A;
- j. **"Services"** has the meaning given in Schedule A to this Agreement;
- k. **"Submission"** has the meaning given in Recital A;
- l. **"Term"** has the meaning given in Section 2.1 of this Agreement; and
- m. **"Work Product"** means all reports, drawings, plans, designs, models, specifications, computer software, concepts, products, designs or processes, figures, tables, data, calculations, logs, field notes, working papers or finished copy documents or other such information of any kind prepared, produced or developed by the Consultant in connection with this Agreement.

1.2 Headings

The division of this Agreement into articles and sections and the insertion of the recitals and headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement.

1.3 Currency

All transactions referred to in this Agreement will be made in lawful currency of Canada.

1.4 Singular, Plural, Gender and Person

Wherever in this Agreement the context so requires the singular number shall include the plural number and vice versa and any gender used shall be deemed to include the feminine, masculine or neuter gender.

1.5 Statutes

Each reference to a statute is deemed to be reference to that statute and to the regulations made under that statute as amended or re-enacted from time to time.

1.6 Schedules

The following attached schedules are incorporated in this Agreement and are deemed to be part of this Agreement:

- Schedule A - Services
- Schedule B - Payment and Fee Schedule
- Schedule C - Insurance

- Schedule D - Approved Subcontractors
- Schedule E - Consultant's Submission
- Schedule F - Regional District Procurement Documents

1.7 Order of Priority

If there is a conflict between a provision in a Schedule to this Agreement and any other provision of this Agreement, the other provision of this Agreement will prevail unless the provision in a Schedule expressly states that it will prevail over a conflicting provision of the Agreement. If this Agreement is a result of a competitive procurement process, the order of priority of documents from highest to lowest will be:

- a. this Agreement;
- b. Schedules A, B, C, D, E and F;
- c. the Regional District's purchase order for the Services (if any);
- d. extracts from the Consultant's Submission respecting the Services, that are attached as a Schedule (if any); and
- e. Regional District's Procurement Documents respecting the Services, that are attached as a Schedule (if any).

2. TERM OF AGREEMENT

2.1 Term

The term of this Agreement (the "**Term**") will commence on _____, 20__ and terminate on _____, 20__, subject to the following:

- a. earlier termination in accordance with the terms of this Agreement; and
- b. renewal or extension of the Term on such terms as the parties agree to in writing. If the parties agree to an extension of the Term, then the following will apply:
 - i. the parties will mutually agree on a new Schedule B – Payment and Fee Schedule;
 - ii. all other terms and conditions of this Agreement not mutually amended will remain the same; and
 - iii. the Term will be extended for the period(s) agreed to by the parties.

3. SERVICES PROVIDED

3.1 Services

The Consultant shall provide the Services described in Schedule A in accordance with this Agreement.

3.2 Supply all Labour and Materials

The Consultant shall supply and pay for all labour, materials, facilities and approvals necessary or advisable to perform its obligations under this Agreement.

3.3 Service Standards

The Consultant will at all times during the Term of this Agreement perform the Services:

- a. with that degree of care, skill and diligence as would reasonably be expected from a consultant qualified in British Columbia to perform services similar in scope, nature and complexity to the Services;
- b. in accordance with all applicable laws; and
- c. in accordance with the provisions of this Agreement.

3.4 Supervision

The Consultant shall ensure all persons employed or retained by the Consultant to perform the Services are competent to perform them, meet all professional qualifications, and are properly trained, instructed and supervised.

3.5 Regional District Instructions

The Regional District may from time to time give the Consultant reasonable instructions (in writing or otherwise) as to the Services required to be performed. The Consultant shall comply with those instructions; however, the Consultant shall determine the manner in which the instructions are carried out.

3.6 Regional District Facilities

The Regional District may, but is not required, to provide any facilities (including but not limited to work space, office equipment, computer equipment, telephone or other communication devices, or secretarial support) or other technical, accounting, transportation or other support services to the Consultant. Any instruments or tools necessary to perform the Services are the responsibility of the Consultant and are provided at the sole risk and expense of the Consultant. For certainty, the Regional District's provision of any facilities shall be for the convenience of the parties only and shall not create or be deemed to create an employment, partnership, joint venture or agency relationship between the parties.

3.7 Security Requirements

Only employees of the Consultant specifically assigned to perform the Services will be allowed on site at any of the Regional District's facilities. The Consultant will inform the Regional District in advance of the names of employees that will attend the Regional District's facilities in order to perform the Services. The Consultant will comply with all applicable Regional District procedures relating to security.

4. TERMS OF PAYMENT

4.1 Payment for Services

Subject to section 4.3, the Regional District will pay the Consultant, in full payment and reimbursement for providing the Services, the fees ("**Fees**") and expenses ("**Expenses**") (if any) set out in Schedule B and the Consultant hereby accepts the same as payment in full for all Services provided by the Consultant, including all profit and all costs of supervision, labour, material, equipment, overhead, financing and all other costs and expenses whatsoever incurred in performing the Services. The Consultant will be responsible for determining whether the Services provided are subject to GST pursuant to the *Excise Tax Act*, PST pursuant to the *Social Services Tax Act* or any other applicable taxes. The Consultant will apply for and immediately on receipt remit to the Regional District any refund or remission of federal or provincial tax or duty with respect to any items which the Regional District paid for under the provisions of this Agreement. The Regional District is not obliged to pay the Consultant any monies other than the Fees and Expenses (if any).

4.2 Invoices

Payments will be made on receipt of the Consultant's monthly itemized account ("**Invoice**"), or for such other periods as may be mutually agreed, subject to verification by the Regional District that the Services have been satisfactorily performed. Expenses, if any, described in Schedule B shall be supported by proper receipts. The Consultant's Invoice shall show the period the billing pertains to, the services performed by task, the specific personnel involved, their hours worked and hourly rate charged during the invoice period, and shall itemize all taxes as separate line items. Where required by the Regional District, the Consultant will deliver to the Regional District a written statement of any goods and services taxation and or business identification numbers in addition to any other billing information reasonably required by the Regional District. The Consultant must also submit a monthly invoice summary, or such other periods as may be mutually agreed, showing the cumulative totals for current and prior billing relative to each of the task budget and total budget.

4.3 Maximum Liability

The maximum payable by the Regional District to the Consultant under this Agreement for the provision of Services shall be \$_____, inclusive of Expenses and taxes. The Parties may increase this amount by mutual amendment of this Agreement in the event that the extent of Services increases beyond that contemplated at the time of execution of the Agreement.

4.4 Non Resident of Canada

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

4.5 Services Provided after Expiry of the Term

No payment will be made for Services provided after the Term of this Agreement, unless the Term has been renewed or extended in accordance with this Agreement.

4.6 Withholding of Payments

In the event that the Consultant fails to perform its obligations pursuant to the Agreement on a timely basis the Regional District may at its discretion withhold any payments otherwise owed to the Consultant. No interest will be paid to the Consultant as a result of any such withholding. Any withholding of payments are in addition to and will not prejudice the Regional District's other rights and remedies under this Agreement.

4.7 Due Date for Payment

Payment by the Regional District shall be net thirty (30) days from the receipt of Invoices provided by the Consultant in accordance with the terms of the Agreement. Payment by the Regional District will be made by cheque mailed to the Consultant's address as indicated in this Agreement, or as otherwise mutually agreed by the parties.

5. RECORDS AND BOOKS OF ACCOUNT

5.1 Records

The Consultant shall maintain time records and books of account, invoices, receipts and vouchers of all expenses incurred in the form and content satisfactory to the Regional District acting reasonably and shall retain all such records and books of account for two years following termination of the Agreement, or for any longer period required by law.

5.2 Inform the Regional District

Upon the Regional District's request, the Consultant shall fully inform the Regional District of all work done by the Consultant or an approved subconsultant in connection with providing the Services.

5.3 Inspection

The Consultant shall permit the Regional District at all reasonable times during the term of this Agreement and for a period of two (2) years thereafter, to inspect, review and copy all Work Product and other material that has been produced or received by the Consultant and any approved subconsultant as a result of this Agreement including without limitation accounting records, findings, software, data, specifications, drawings, reports and documents whether complete or not.

5.4 Audit

The Regional District shall have the right to audit the work performed by the Consultant during the Term of this Agreement and for two (2) years following expiry of the Term or any extension thereof.

6. INDEPENDENT CONTRACTOR

6.1 Independent Contractor

The Consultant is at all times an independent contractor with control over the manner and means of the Consultant's performance. The Consultant is not an employee, servant or agent of the Regional District and nothing herein shall create or be deemed to create an employment, partnership, joint venture or agency relationship between the parties. The Consultant is primarily responsible for performance of the Services and may not delegate or assign any Services to any other party except as provided in this Agreement. The Consultant will be solely liable for the wages, fringe benefits, work schedules and work conditions of any employees and payments due to any subconsultants or subcontractors.

6.2 No Entitlement to Benefits

As an independent contractor, the Consultant is not entitled to any benefits or payments whatsoever over and above those specifically provided for in this Agreement. Specifically the Consultant will not be entitled to any rights or privileges as are available from time to time to employees of the Regional District including without limitation insurance benefits, health benefits, holidays and paid vacation.

6.3 Control and Direction of Employees

The Consultant acknowledges that the Consultant is responsible for the control and direction of its performance of the Services and the control and direction of the Consultant's employees.

6.4 Statutory and Other Payments

The Consultant shall be liable and responsible for payment to the proper authorities of all income tax payments, employment insurance premiums, Canada Pension Plan contributions, Workers Compensation premiums and assessments, and all other employment expenses, statutory or otherwise in relation to the Services provided under this Agreement.

6.5 WCB Compliance

6.5.1 Consultants Obligations

The Consultant will:

- a. comply with the Workers Compensation Act;
- b. at its own expense, obtain, provide and maintain for the Term full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in the supply of the Services and will, upon request by the Regional District provide particulars of such coverage; and
- c. without limiting the generality of any other indemnities granted by the Consultant in this Agreement, indemnify and save harmless the Regional District from and against all claims, demands, causes of action, suits, losses, damages, costs, liabilities, expenses, judgements, penalties and proceedings (including all actual legal costs) which the

Regional District incurs, suffers or is put to arising out of or in any way related to unpaid Workers' Compensation Board assessments owing from any person or corporation engaged in the performance of this Agreement or arising out of or in any way related to the Consultant's failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including penalties levied by the Workers' Compensation Board. This indemnity will survive termination of the Agreement.

6.5.2 Regional District Right to Pay and Withhold Payment

The Regional District has the unfettered right to set off the amount of unpaid premiums and assessments for Workers' Compensation Board coverage against any monies owing by the Regional District to the Consultant. The Regional District will have the right to withhold payment under the Agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the Services have been paid in full.

6.6 Consultant's Costs of Tax and WCB Compliance

The Consultant acknowledges and agrees that the costs to the Consultant in complying with Sections 6.4 and 6.5 are not subject to additional reimbursement over and above the amount provided for under the terms of this Agreement.

6.7 Risk of Liability

The Consultant assumes all risk and liability for personal injury or damage to personal property in carrying out the terms of this Agreement and for which adequate levels of insurance coverage shall be obtained by the Consultant.

6.8 No Agency

The Consultant will not comment or purport to commit the Regional District to pay any money unless specifically authorized by this Agreement.

7. CONFIDENTIALITY

7.1 Fiduciary Position

The Consultant acknowledges that as a consequence of entering into this Agreement and providing the Services to the Regional District, the Consultant is in a fiduciary position with respect to the Regional District. The Consultant will at all times during the Term and thereafter treat as confidential all Confidential Information and other reports, studies, memoranda, correspondence, manuals, records, plans or other written, printed or otherwise recorded documents, papers, materials and documents supplied to, obtained by or which comes to the knowledge of the Consultant, or its subconsultant, as a result of this Agreement, whether marked confidential or not, obtained directly or indirectly from the Regional District and whether obtained by the Consultant before or after the date of this Agreement. The Consultant shall not at any time during the Term or thereafter permit the

publication, release or disclosure of the same without the prior written consent of the Regional District except as required by applicable law.

7.2 Non-Disclosure

The Consultant will not, at any time either during the Term or thereafter, disclose to or discuss with anyone other than an authorized Regional District employee or representative, any Confidential Information of the Regional District or its elected officials, officers or employees. The Consultant will use such Confidential Information and knowledge only for Regional District purposes unless the Consultant has obtained the Regional District's prior express written authorization to do so otherwise.

7.3 No Use of Information

The Consultant shall not use Confidential Information or any other information relating to the affairs of the Regional District for the Consultant's own benefit or purposes or for the benefit or purpose of any other Person whether before or during the Term or after the expiry of the Term.

7.4 Survival

The provisions of this confidentiality clause shall survive termination of the Agreement.

8. OWNERSHIP

8.1 Work Product

The Work Product, any Confidential Information and any property provided by the Regional District to the Consultant or any approved subconsultant, is the Regional District's exclusive property. The copyright in the Work Product belongs exclusively to the Regional District and the Consultant hereby waives any moral rights in such Work Product and confirms the vesting of copyright in such Work Product in the Regional District.

8.2 Assignment of Rights in Work Product

The Consultant hereby irrevocably assigns to the Regional District all right, title and interest worldwide in and to all Work Product. In the event the Consultant has any rights in the Work Product which cannot be assigned, the Consultant agrees to waive enforcement worldwide of such rights against the Regional District. The Consultant shall take all actions and execute all documents as may be requested by the Regional District from time to time to fully vest in the Regional District all right, title and interest worldwide in and to such Work Product. The Regional District agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any claim, liability or cost directly attributable to the negligent misuse or incorrect use of the Work Product by the Regional District.

8.3 Assistance

The Consultant will in every reasonable way assist, at the Regional District's expense, to secure, maintain and defend for the Regional District's benefit all copyrights, patent rights, mask work rights, trade secret rights and other proprietary rights in and to the Work Product during and after the Term.

8.4 Copyright Infringement

The Consultant agrees that it will not infringe any third party's intellectual property rights in creating Work Product pursuant to this Agreement. The Consultant agrees to indemnify the Regional District from and against any loss, damage or liability for the infringement of any patent, trade mark, trade secret or copyright by the Regional District arising from or in connection with the Regional District's usage of the Work Product. The Consultant agrees it shall defend, settle or compromise at its own expense any action for patent, trade mark, trade secret or copyright infringement brought against the Regional District or the Consultant. The Consultant warrants and represents that all Services and/or Work Product provided to the Regional District pursuant to this Agreement do not infringe any existing patent, trade mark, trade secret or copyright registered or recognized in Canada or elsewhere.

8.5 Surrender of Documents and Materials

The Consultant shall not at any time or in any manner unless otherwise agreed to in writing by the Regional District, make or cause to be made copies, pictures, duplicates, facsimiles or other reproductions or recordings of any type, or any abstracts or summaries of any Work Product, reports, studies, memoranda, correspondence, manuals, records, plans or other written, printed or otherwise recorded documents, papers or materials of the Regional District, or which relate in any manner to the present or prospective operations of the Regional District, except as may be necessary in the performance of Services under this Agreement.

9. CONFLICT OF INTEREST

9.1 No Conflict of Interest

The Consultant represents and warrants to the Regional District that the Consultant does not have an interest, directly or indirectly either individually or in conjunction with another entity in any firm, association, syndicate, company, corporation or other business enterprise which could benefit or otherwise be affected by any decision likely to be made by the Regional District in reliance on or as a result of the Services provided by the Consultant under this Agreement. The Consultant shall comply with the Regional District's conflict of interest and standards of business conduct procedures notwithstanding the Consultant is an independent contractor and not an employee of the Regional District.

9.2 No Conflict with Other Relationships

The Consultant will not, during the Term, perform a service for or provide advice to any person, firm or corporation if in the reasonable opinion of the Regional District, such performance will give rise to a conflict of interest between the Consultant and the Regional District, and the Consultant shall take all steps to ensure the avoidance of all direct or indirect conflicts of interest (either actual or potential) between the interests of the Consultant and its directors, officers, servants, agents and employees, and those of the Regional District.

9.3 Disclosure of Conflict of Interest

The Consultant will immediately disclose all conflicts of interest and potential conflicts of interest to the Regional District as soon as any real or perceived conflict of interest arises.

9.4 Good Faith

The Consultant will discharge the Consultant's obligations to the Regional District in all dealings and transactions relating to the Services in the utmost good faith.

10. ASSIGNMENT AND SUBCONTRACTING

10.1 Assignment

The Consultant will not assign this Agreement or any part thereof or enter into a subcontract for all or any of the Services without the prior written consent of the Regional District. Approval by the Regional District of a subconsultant shall not relieve the Consultant of its obligations under this Agreement except to the extent those obligations are in fact properly performed. In the event the Regional District approves a subconsultant, the Consultant shall secure compliance and enforce at its own expense for the benefit of the Regional District, each of the Consultant's contracts with subconsultants. Nothing contained in this Agreement shall create any contractual relationship between the subconsultant and the Regional District. The Consultant agrees to bind every subconsultant to the terms and conditions of this Agreement which are appropriate and applicable to the work to be performed by the subconsultant and the Consultant shall be fully responsible to the Regional District for the acts and omissions and errors of all subconsultants and of persons directly employed or contracted by them.

10.2 Sub-Contracting

The Consultant will not subcontract any of the Consultant's obligations under this Agreement to any Person other than the Persons listed in Schedule D (if any) without the prior written consent of the Regional District. No subcontract, whether consented to or not, will relieve the Consultant from any obligations under this Agreement. The Consultant will ensure that any subconsultant that is retained by the Consultant fully complies with this Agreement in performing the subconsultant's obligations.

11. INDEMNIFICATION

11.1 General Indemnity

The Consultant shall indemnify and save harmless the Regional District, its elected officials, officers, employees, servants and agents from and against any and all losses, claims, demands, damages, actions, causes of action, fines, penalties, liens, costs and expenses the Regional District may sustain or incur at any time, either before or after the expiration or termination of this Agreement, arising directly or indirectly by reason of: (a) negligence in the performance of the Services undertaken by the Consultant pursuant to this Agreement; (b) any breach of the Agreement by the Consultant, or any agent, employee, director, officer or subcontractor of the Consultant; (c) the errors or omissions of the Consultant or any agent, employee, director, officer or subcontractor of the Consultant including any

injury to or death of any person or any damage to any and all persons or property, whether deliberate, accidental or through negligence except to the extent that any such claim arises solely from the negligence of the Regional District. The Regional District shall not be liable to the Consultant in connection with any claim for any special, incidental, indirect or consequential loss or damages 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 Regional District, its other consultant(s), assign(s) and authorized representatives.

11.2 Survival

The provisions of this indemnity clause will survive termination of the Agreement.

12. TERMINATION

12.1 By the Regional District Due to Default of the Consultant

Notwithstanding any other provision of this Agreement, if the Consultant is in breach of any provision of this Agreement, the Regional District may, by written notice to the Consultant, require that such default be corrected. If within 5 Business Days after receipt of such notice such default shall not have been corrected or reasonable steps taken to correct such default, at the sole discretion of the Regional District, the Regional District may, give a further written notice to the Consultant to terminate immediately this Agreement. In the event the Regional District gives notice of termination pursuant to this Section 12.1, the Regional District may withhold payment of any amount owing to the Consultant under this Agreement for the performance of the Services, set-off any damages suffered by the Regional District against any amounts owing to the Consultant under this Agreement for performance of the Services and pursue other remedies to recover damages from the Consultant for any losses caused to the Regional District.

Notwithstanding any other provision of this Agreement, if the Consultant is in breach of any provision of this Agreement, the Regional District may at its option terminate this Agreement immediately by giving written notice of termination to the Consultant. In the event the Regional District gives notice of termination pursuant to this Section 12.1, the Regional District may withhold payment of any amount owing to the Consultant under this Agreement for the performance of the Services, set-off any damages suffered by the Regional District against any amounts owing to the Consultant under this Agreement for performance of the Services and pursue other remedies to recover damages from the Consultant for any losses caused to the Regional District.

12.2 Termination Without Cause

Notwithstanding any other provision of this Agreement, the Regional District may terminate this Agreement for any reason upon giving not less than ten (10) days written notice of termination to the Consultant. The Agreement may also be terminated in a shorter period of time as may be mutually agreed upon in writing by the parties. In the event the Regional District gives notice of termination pursuant to this section 12.2, the Regional District will pay the Consultant, pursuant to Schedule B, Fees for such Services that were completed in accordance with the provisions of this Agreement

before termination and such Expenses as shall have been incurred before termination. Upon payment of such amounts, no other amounts will be owed by the Regional District to the Consultant and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Services not performed.

12.3 By the Consultant Due to Default of the Regional District

If the Regional District fails to make payment to the Consultant in accordance with this Agreement, then the Consultant may, by written notice to the Regional District, require that such default be corrected. If within 5 Business Days after receipt of such notice such default shall not have been corrected, or reasonable steps taken to correct such default, the Consultant may, without limiting any other right or remedy it may have, give a further written notice to the Regional District to terminate immediately this Agreement. In such event, in addition to any other rights or remedies the Consultant may have, the Consultant shall be paid by the Regional District for all Services performed pursuant to this Agreement and remaining unpaid as of the effective date of such termination. In the event of any other default by the Regional District, the Consultant shall only have the right to claim damages, but not the right to terminate this Agreement.

12.4 Limitation of Liability

The Consultant agrees that notwithstanding anything herein or any duty, principle, term or rule of law to the contrary, whether express or implied, the Regional District shall not be liable to the Consultant for any loss or damage of any nature whatsoever flowing from early termination of this Agreement, including without limitation any special, incidental, direct, indirect or consequential damages arising out of such early termination nor shall the Regional District be under any obligation to the Consultant save and except for the payment for such Services as may have been performed in accordance with the terms of this Agreement up to the date of termination.

12.5 Limits of Consultant's Liability

The Regional District agrees that any and all claims which the Regional District may have against the Consultant, its employees, officers, agents, representatives and subcontractors in respect of the Services, howsoever arising, whether in contract or in tort, shall be absolutely limited to the amount of the insurance available at the date such claim is brought, including any deductible portion therein, provided that neither the Consultant nor any of its employees, officers, agents, representatives nor subcontractors has done anything to prejudice or impair the availability of such insurance.

12.6 Warranties to Continue

If for any reason the whole or any part of this Agreement is terminated, the Consultant's obligations in this Agreement as to quality and correction of errors and omissions will continue in force after such termination with respect to the Services performed by the Consultant up to the time of termination.

12.7 Survival

The provisions of this termination clause will survive termination of the Agreement.

13. INSURANCE

13.1 Maintain Insurance

The Consultant shall at its expense, obtain, provide and maintain insurance on the terms, including coverage, amounts and deductibles outlined in Schedule C, if any, as modified from time to time in accordance with the Regional District’s requirements.

13.2 Evidence of Insurance

The Consultant will provide, upon request, a copy of all policies of insurance required by this Agreement and proof of payment of premiums thereon.

13.3 Regional District Named as Additional Insured

The Consultant will ensure that all policies of insurance providing coverage required by this Agreement (except motor vehicle insurance) name the Regional District as an additional insured and are endorsed to provide the Regional District thirty (30) days advance written notice of any cancellation or change in the policy.

13.4 Survival

The provisions of this insurance clause and Schedule C will survive termination of the Agreement.

14. NOTICES

14.1 Notices

All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and delivered by hand, facsimile transmission, e-mail or prepaid registered mail (return receipt requested) to the party to which it is to be given as follows:

- a. If to the Regional District:

Contact Name
Fraser Valley Regional District
45950 Cheam Avenue
Chilliwack, BC V2P 1N7
Fax: _____
E-mail: name@fvrd.ca

- b. If to the Consultant:

Contact Name
Company Name
Address
Fax: _____
E-mail: _____

or at such other address as the party to whom the notice is sent may specify by notice given in accordance with the provisions of this section. Any such notice, request, demand or other communication given as aforesaid will be deemed to have been given, in the case of delivery by hand, when delivered, in the case of facsimile transmission or e-mail, when a legible facsimile or e-mail is received by the recipient if received before 5:00 p.m. on a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia or Canada (a "**Business Day**"), or on the next Business Day if such facsimile or e-mail is received on a day which is not a Business Day or after 5:00 p.m. on a Business Day, and in the case of delivery by prepaid registered mail, as aforesaid, on the date received. In the event of discontinuance of postal service due to strike, lockout, labour disturbance or otherwise, notice, demands, requests and other communications shall be delivered by hand or facsimile transmission or e-mail.

15. **DISPUTES**

15.1 **Dispute Resolution Process**

Differences between the parties to the Agreement as to the interpretation, application or administration of this Agreement or any failure to agree where agreement between the parties is called for, herein collectively referred to as disputes, shall be settled in accordance with the following:

- a. subject to (c), if the parties have agreed to submit a dispute to arbitration by subsequent agreement, then the dispute shall be submitted to arbitration in accordance with the provisions of the *Commercial Arbitration Act* (BC), as may be amended or replaced from time to time;
- b. subject to (c), if no agreement is made for arbitration, then either party may submit the dispute to the courts at such party's discretion;
- c. if the parties have agreed to submit a dispute to mediation by subsequent agreement, then both parties agree not to make a request for arbitration or to commence litigation without first seeking resolution through the mediation process in accordance with the provision of the parties' subsequent agreement. The cost of mediation shall be shared equally by both parties.

15.2 **Disputed Fees**

If the dispute relates to the Consultant's fees or disbursements under this Agreement, the Regional District shall be entitled to withhold the amount of fees and/or disbursements which are in dispute and the balance of the fees and disbursements not in dispute shall be paid by the Regional District in accordance with this Agreement.

16. **GENERAL**

16.1 **Right of Set Off**

In addition to any other set-off provisions in this Agreement, the Regional District shall be entitled to set off against a reasonable amount due or owing to the Consultant by the Regional District and for

which the Regional District is liable by virtue of the Consultant's failure to comply with any statutory or regulatory requirement, duty or obligation arising out of the Services under this Agreement, an amount sufficient to indemnify the Regional District against proven third party claims that arise in connection with the Services. The Regional District shall also have the right to withhold any payment which relates to that portion of the Services which have not been provided by the Consultant in accordance with the terms of the Agreement. When the Regional District is satisfied that the Services have been performed in accordance with the terms and conditions of this Agreement, the Regional District will cause to be paid to the Consultant, any amount held back by the Regional District.

16.2 Successors and Assigns

This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

16.3 Written Waivers

No indulgence or forbearance by the Regional District shall be deemed to constitute a waiver of its rights to insist on performance in full and in a timely manner of all covenants of the Consultant and any such waiver must be in writing and signed by the Regional District and then such waiver shall only be effective in a specific instance and for the specific purpose for which it is given.

16.4 Further Assurances

Each party will execute and deliver promptly all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions of this Agreement.

16.5 Remedies Cumulative

The rights and remedies under the Agreement are cumulative and are not in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

16.6 Amendment

This Agreement may not be amended except by a written instrument signed by the Regional District and the Consultant.

16.7 Entire Agreement

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement constitute the entire agreement between the parties and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings whether written or oral, express or implied, or otherwise.

16.8 Governing Law

This Agreement and any dispute arising out of or in connection with this Agreement shall be governed exclusively by and shall be enforced, construed and interpreted exclusively in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.

16.9 Attornment

The parties agree to submit to and hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia for any action arising out of or in connection with this Agreement.

16.10 Independent Legal Advice

The Consultant confirms it has had an opportunity to obtain independent legal advice in entering into this Agreement.

16.11 Severability

Each provision of this Agreement is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal or invalid or unenforceable for any reason whatsoever such provision shall be severed from this Agreement and will not affect the legality, validity or enforceability of the remainder of or any other provision of this Agreement.

16.12 Time of Essence

Time shall be of the essence of this Agreement.

16.13 No Derogation

The parties acknowledge and agree that nothing contained or implied in this Agreement will be construed as limiting or prejudicing the rights and powers of the Regional District in the exercise of its functions pursuant to the *Local Government Act* and the *Community Charter*, or any other right or power under any public or private statutes, bylaws, orders or regulations, all of which may be fully exercised as if this Agreement had not been entered into.

16.14 Counterparts

This Agreement may be executed by the parties in counterparts and may be executed and delivered by e-mail or fax and all such counterparts and e-mails and faxes together constitute one and the same agreement.

16.15 Survival

All obligations of each of the parties which expressly or by their nature survive termination or expiration of this Agreement, will continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

IN WITNESS WHEREOF this Agreement has been executed and delivered by the parties as of the day and year first above written.

FRASER VALLEY REGIONAL DISTRICT

[COMPANY NAME]

Authorized Signatory

Authorized Signatory

Authorized Signatory

Authorized Signatory

SCHEDULE "A"

SERVICES

"Services" means the work, tasks, labour, materials, responsibilities, functions, duties and obligations of the Consultant to be supplied or performed as set forth in this Agreement, including the following matters respecting design services and costs estimates services for the Project, and excluding only those items which are expressly identified as work or tasks to be performed by or obligations owed by the Regional District:

- i. evaluating two (2) optional construction sites and providing to the Regional District a comparative analysis of suitability with respect to land use, infrastructure, geotechnical and development costs;
- ii. developing preliminary programming of the two facilities (fire hall and RCMP detachment building) as individual projects and in combination;
- iii. prioritizing site selection and preliminary space programming;
- iv. presenting to Regional District staff and council, the results of the prioritizing site selection and preliminary space programming process;
- v. developing presentations for members of the public which inform and engage the public with respect to the proposed fire hall and RCMP detachment building and present the process comprising site selection and building(s) concepts;
- vi. developing a preliminary design suitable for cost estimates to class B standards within 15% contingency accuracy;
- vii. presenting to Regional District staff and council, a final draft of the preliminary design;
- viii. developing presentations for members of the public on the final draft of the preliminary design comprising suitable presentation formats such as digital text, digital drawings, hard copies, models, presentation boards, brochures, pamphlets and Power Point presentations;
- ix. involving members of the public through a minimum of one (1) public workshop as noted in item (v) above; and
- x. providing an outline of public education and information tools and opportunities that utilize various media forms.

SCHEDULE "B"

PAYMENT AND FEE SCHEDULE

B.1 Fees

Subject to section 4.3, in consideration of the Consultant satisfactorily performing the Services, the Regional District will pay the Consultant in accordance with the following fee schedule, plus goods and services tax:

B.2 Reimbursable Expenses

The following items are the reimbursable expenses referred to in section 4.1 and shall be at rates prevailing in the Regional District, except with the prior consent of the Regional District:

SCHEDULE "C"

INSURANCE

1. The Consultant shall, without limiting its obligations or liabilities herein and at its own expense, obtain, provide and maintain until all conditions of the Agreement have been fully complied with, the following insurance coverage in the amounts as hereinafter specified with insurers licensed in British Columbia, unless otherwise mutually agreed by the parties:
 - i. Professional Liability in an amount not less than \$_____ on a "per occurrence" basis insuring the Consultant's liability resulting from errors and omissions in the performance of professional services under this Agreement;
 - ii. Comprehensive General Liability coverage in an amount not less than \$_____ inclusive per occurrence, insuring against third party bodily injury, personal injury, death and/or property damage. Such insurance shall include, but not be limited to:
 - a. Products and Completed Operations Liability;
 - b. Owner's and Consultant's Protective Liability;
 - c. Blanket Written Contractual Liability;
 - d. Contingent Employer's Liability;
 - e. Personal Injury Liability;
 - f. Non-Owned Automobile Liability;
 - g. Cross Liability;
 - h. Employees (and if applicable, Volunteers) as Additional Insureds; and
 - i. Broad Form Property Damage.
2. The foregoing insurance shall be primary and not require the sharing of any loss by any coverage provider and/or insurer of the Regional District, except to the extent caused by a breach of this Agreement by the Regional District or the negligence or wilful misconduct of the Regional District.
3. All required insurance shall be endorsed to provide the Regional District with 30 days advance written notice of cancellation.
4. The Consultant hereby waives all rights of recourse against the Regional District with regard to damage to the Consultant's property.

SCHEDULE "D"

APPROVED SUBCONTRACTORS

List subcontractors that will be working on this Project (if any):

SCHEDULE "E"

CONSULTANT'S SUBMISSION

Attach Consultant's submission, if any:

SCHEDULE "F"

REGIONAL DISTRICT PROCUREMENT DOCUMENT

Attach procurement document, if any: