

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT dated for reference _____ is

BETWEEN:

TOWN OF SIDNEY, having an address at 2440 Sidney Avenue, Sidney BC V8L 1Y7
("Town")

AND: FIRM NAME., having an address ADDRESS
("Consultant")

GIVEN THAT the Town wishes to engage the Consultant for professional engineering services for trenchless watermain, storm drain and sanitary sewer main upgrades as described in the Consultant's Proposal and the Consultant wishes to provide such services to the Town in accordance with the terms and conditions of this agreement;

THIS AGREEMENT is evidence that in consideration of their mutual duties and responsibilities, and in consideration of the payment to be paid by the Town to the Consultant, the parties agree as follows:

Definitions

1. In this agreement, in addition to the words defined above,
 - (a) *"Consultant's Proposal"* means the Consultant's written proposal to the Town for performance of the Services, dated _____, a copy of which is attached as Schedule "A";
 - (b) *"Town's Representative"* means _____ or such other person as the Town may appoint in writing;
 - (c) *"Professionals"* means, subject to section 3, any individual identified by name in the Consultant's Proposal and any individuals employed or otherwise engaged by the Consultant to perform the Services with the prior consent of the Town;
 - (d) *"Project"* means Harbour Road Pumpstation Replacement – Engineering Design, as described in the Consultant's Proposal;
 - (e) *"Services"* means the acts, services and work described in the Consultant's Proposal and all acts, services and work necessary to achieve the objectives set out in the Consultant's Proposal.

Services to Be Performed By the Consultant

2. The Consultant agrees to perform the Services, in accordance with the Consultant's Proposal, on the terms and conditions of this agreement, as well as any additional Services related to the Project that are mutually agreed upon by the Town and the Consultant.

Employment of Professionals

3. Without affecting the Consultant's obligations under this agreement, the Consultant must only engage the services of individuals who have the education, training, skill and experience necessary to perform the Services in accordance with section 4, and must cause them to perform the Services on behalf of the Consultant.

Warranty as To Quality of Services

4. The Consultant represents and warrants to the Town that:
 - (a) the Consultant and the Professionals have the education, training, skill, experience and resources necessary to perform the Services; and
 - (b) the Services will be performed in accordance with all applicable enactments and laws, and with all relevant codes, rules, regulations and standards of any professional or industry organization or association, and
 - (c) if the Consultant is a corporation, it is duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;

and the Consultant acknowledges and agrees that the Town has entered into this agreement relying on the representations and warranties in this section.

Remuneration and Reimbursement

5. The Town must pay the Consultant for the Services in the amount provided in the Consultant's Proposal in accordance with this agreement.

Invoices

6. Not more than once each month, the Consultant may deliver an invoice to the Town, in respect of the immediately preceding month, setting out the aggregate amount of fees and disbursements claimed for Services performed in that preceding month.

Payment by Town

7. The Town must, to the extent the Town is satisfied the fees and disbursements are for Services reasonably and necessarily performed by the Consultant, pay the Consultant the fees and disbursements claimed in any invoice delivered in accordance with section 6. Payments are due within 30 days after delivery of an invoice to the Town.

Town's Representative

8. The Town appoints the Town's Representative as the only person authorized by the Town to communicate with the Consultant or to make determinations, decisions and directions in respect of this agreement. The Consultant agrees that the Town is not bound by any act, omission, communication, determination, decision or direction of any person other than the Town's Representative.

Indemnity

9. The Consultant must indemnify, and save harmless, the Town, and its elected and appointed officials, employees, contractors and agents, from and against all claims, losses, damages, costs, expenses (including legal fees and disbursements), liabilities, actions and proceedings, suffered, made, incurred, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner caused, based upon, occasioned by or attributable to, any personal injury or death, damage to or loss of property, or other loss or damage of any kind, connected with any wilful or negligent act or omission, or other actionable wrong, on the part of the Consultant, its employees or agents, connected with performance or breach of this agreement by the Consultant. The Consultant's liability to indemnify the Town and its elected and appointed officials, employees, contractors and agents under this section does not limit or affect any other rights or remedies the Town may have against the Consultant in respect of the Consultant's performance or breach of this agreement.

Termination or Suspension at Town's Discretion

10. Despite the rest of this agreement, the Town may, in its sole discretion, by giving notice to the Consultant, terminate or suspend all, or any part, of the Services. If the Town terminates or suspends all or part of the Services under this section, the Consultant may deliver an invoice to the Town for the period between the end of the month for which the last invoice was delivered by the Consultant and the date of termination or suspension, and sections 6 and 7 apply. The Consultant is not entitled to, and irrevocably waives and releases, damages or compensation for costs incurred, loss of profit, or loss of opportunity, directly or indirectly arising out of termination or suspension of all, or any part, of the Services.

Termination for Default

11. Despite the rest of this agreement, the Town 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 Town, in the Town's sole discretion, within five days after notice of the breach is given to the Consultant by the Town; 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 or dissolution of the Consultant, or the Consultant takes the benefit of any enactment relating to bankrupt or insolvent debtors.
12. Without limiting any other right or remedy available to the Town, if the Town terminates part or all of the Services under this section, the Town may arrange, upon such terms and conditions and in such manner as the Town considers appropriate, for performance of any part of the Services remaining to be completed, and the Consultant is liable to the Town for any expenses reasonably and necessarily incurred by the Town in engaging the services of another person to perform those Services. The Town may set off against, and withhold from amounts due to the Consultant such amounts as the Town determines, acting reasonably, are necessary to compensate and reimburse the Town for the expenses described in this section.

Records

13. The Consultant:

- (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 Town, 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 Town, 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 Town and must furnish the Town with such information as the Town may from time to time require regarding those documents; and
- (d) must preserve, and keep available for audit and inspection, all records described in section 13(a) through (c) for at least two years after completion of the Services or termination of this agreement, whichever applies.

Delivery of Records

14. If the Town terminates all or part of the Services under this agreement, the Consultant must immediately deliver to the Town, without request, all Project-related documents in the Consultant's possession or under its control.

Ownership of Intellectual Property

15. By this section, the Consultant irrevocably grants to the Town the unrestricted licence for the Town to use, for the Project and the Town's other activities related to the Project 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 licence granted by this section includes the right for the Town, at any time, to adapt, use and modify all such technical information and intellectual property for the Town's uses set out above.

Agreement for Services

16. This is an agreement for the performance of services and the Consultant is engaged under the agreement as an independent contractor for the sole purpose of providing the Services. Except as is otherwise expressly prescribed in this agreement, neither the Consultant nor any of its employees or contractors is engaged by the Town as an agent of the Town. The Consultant is solely responsible for any and all remuneration and benefits payable to its employees and contractors, 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 agreement does not create a joint venture or partnership.

Conflict of Interest

17. The Consultant must not perform, for gain, any services for any person other than the Town, or have an interest in any contract other than this agreement, if the Town 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 Town under this agreement and the obligations of the Consultant to the other person or between the obligations of the Consultant to the Town under this agreement and the Consultant's pecuniary interest.

Assignment

18. No part of this agreement may be assigned or subcontracted by the Consultant without the prior written consent of the Town, and any assignment or subcontract made without that consent constitutes a breach by the Consultant of this agreement. The Consultant agrees that, among other things, the Town may refuse its consent if the Town, in its sole discretion, determines that the proposed assignee or subcontractor has not got the skill, experience or corporate resources necessary to perform the Services. A permitted subcontract does not relieve the Consultant from any obligation already incurred or accrued under this agreement or impose any liability upon the Town.

Time of the Essence

19. Time is of the essence in this agreement.

Alternative Rights and Remedies

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

Severance

21. 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.

Confidentiality

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

Notice

23. Any notice, direction, demand, approval, certificate or waiver which may be or is required to be given under this agreement must be in writing and delivered personally or by courier or sent by e-mail, addressed as follows:

- (a) to the Town:

Town of Sidney, 2440 Sidney Avenue, Sidney BC V8L 1Y7

Email: TBD

Attention: TBD

- (b) to the Consultant:

Email: _____

Attention: _____

or to such other address or e-mail address of which notice has been given as provided in this section.

24. Any notice, direction, demand, approval or waiver delivered is to be considered given on the next business day after it is dispatched for delivery. Any notice, direction, demand, approval or waiver sent by e-mail is to be considered given on the day it is sent, if that day is a business day and if that day is not a business day, it is to be considered given on the next business day after the date it is sent.

Interpretation and Governing Law

25. In this agreement

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) reference to a particular numbered section or Schedule is a reference to the correspondingly numbered section or Schedule of this agreement;
- (c) the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this agreement;
- (d) reference to any enactment is a reference to that enactment as amended, unless otherwise expressly provided;
- (e) reference to a month is a reference to a calendar month; and
- (f) section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement.

26. This agreement is governed by, and is to be interpreted according to, the laws of British Columbia.

Binding on Successors

27. This agreement enures to the benefit of and is binding upon the parties and their respective successors, subcontractors, trustees, administrators and receivers, despite any rule of law or equity to the contrary.

Entire Agreement

28. 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.

Waiver

29. Waiver of any default by either party must be express and in writing to be effective, and a waiver of a particular default does not waive any other default.

As evidence of the agreement of the parties to be bound by the above terms and conditions of this agreement, the parties have executed this agreement below, on the respective dates written below.

TOWN OF SIDNEY by its authorized signatories:

Signature:

Name:

Date:

CONSULTANT NAME. by its authorized signatories:

Signature:

Name:

Date:

Schedule "A"
CONSULTANT'S PROPOSAL