



## The Village of Lions Bay

INVITATION TO TENDER

**ITT 1810**

For

**LIONS BAY COMMUNITY SIGNAGE PRODUCTION & INSTALLATION**

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**PROPOSALS WILL NOT BE OPENED PUBLICLY**

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SUBMISSIONS:

**Proposals will be accepted on  
Monday to Friday  
between 9:00 AM and 4:00 PM  
up to and including the closing date.**

SUBMIT QUOTATIONS TO:

Attention: Peter DeJong, Chief Administrative Officer  
Village of Lions Bay Municipal Hall  
PO Box 141-400 Centre Rd,  
Lions Bay BC, V0N 2E0

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## 1. KEY INFORMATION

Invitation No. & Title	<b>ITT 1810 – Lions Bay Community Signage Production &amp; Installation</b> <i>Bidders: Show this number and title in all correspondence, e-mail subject line and outside of any package delivered pertaining to this</i>
Overview	Lions Bay Community Signage Production & Installation: <ul style="list-style-type: none"> <li>• Fabrication of approximately <b>133</b> aluminium and <b>8</b> CNC carved or sandblasted wood signs in varying shapes and sizes.</li> <li>• Installation of these signs in the Village of Lions Bay, BC.</li> </ul>
Contact Person	Communications concerning this Invitation shall only be made in writing to:  <b>Mr. Nai Jaffer, Public Works Manager, works@lionsbay.ca.</b>
Site Tour Date, Time, & Location	A site tour is not planned. All the signs are to be installed at locations throughout the Village of Lions Bay including trail locations within the Municipality's boundaries.
Enquiry Deadline	11:59 pm, November 2, 2018
Tender Format	Tenders may be emailed to the Municipality: <b>cao@lionsbay.ca</b> Email is preferred; Word, PDF or Excel documents only accepted. Maximum file size of 6mb. Hard copy submissions are optional but <b><i>must include electronic versions of the submission documents on an appropriately sized USB flash Drive.</i></b>  <b><i>Tenders must NOT be submitted by fax.</i></b>
Hard Copy Submissions – “Closing Location”	Any proposals submitted by hard copy must be submitted by hand or courier to:  <b>Village of Lions Bay Municipal Hall 400 Centre Rd, Lions Bay BC, V0N 2E0 Phone: 604-921-9333</b>
Closing Time	Not later than: 4:00:00 PM, November 9, 2018
Opening	Tenders will be opened in private soon after the closing time.

## 2. OVERVIEW OF THIS INVITATION

### 2.1. PROPOSED SCHEDULE

Invitation issue date:	October 19, 2018
Latest date for receipt of enquiries:	November 2, 2018
Invitation closing time & date:	4:00:00 PM November 9, 2018
Issue of notice of award:	As soon as possible following closing
Contract starting date:	The term of this Agreement commences on the date the Agreement is signed by both parties

### 2.2. WHAT THIS INVITATION IS FOR

The Lions Bay Community Signage Production & Installation Project includes:

- Fabrication of approximately 133 aluminium and 8 CNC carved or sandblasted wood signs in varying shapes and sizes.
- Installation of these signs in the Village of Lions Bay, BC.

### 2.3. SCOPE

#### 1) Design

- Sign specifics including colour, fonts, layout, etc. are to be designed per the following documents contained within Appendix B:
  - Schedule 1: Community Signage Style Guide (Version 4);
  - Schedule 2: Community Signage Makeover Plan – Phase 1 Content Guide (Version 8);
  - Schedule 3: Sign Details and Counts Summary (Version 4) ; and
  - Schedule 4: Preliminary mock-ups downloadable via DropBox.
- Where specified, signs are to be designed to dimensions provided. For signs with a width but no length; designs are to accommodate Appendix B, Schedule 1 and wording from within the Appendix B, Schedule 2;
- Where possible, aluminium sign designs are to fit within standard blank sizes; and

- Production-ready mock-ups are to be provided to the Municipality prior to proceeding to the next step in this process.

## 2) Fabrication

- Fabrication of signs are in two forms:
  - Aluminium:
    - Aluminium signs up to 60 cm x 60 cm: 0.081 mm thickness, varying sizes, and Engineering Grade ASTM Type 1 vinyl unless specified; and
    - Aluminium greater than 60 cm x 60 cm: 0.125 mm thickness, varying sizes, and Engineering Grade ASTM Type 1 vinyl unless specified;
  - Cedar: 50 mm minimum thickness cedar, embossed to remove substrate and leave raised features.

## 3) Installation

- Safe traffic control practices required for signage installations on public roads;
- Installation of the signs to be at locations described within Appendix B, Schedule 2;
- Unless specified, all aluminium signs are to be mounted using 60.325 mm 14GA galvanized posts in 3.05 meter or 3.66 meter length and HS-1-SS sign brackets. Minimum clearance to the bottom of the signs is to be 2.13 meters where placement is near pedestrian paths using a single pole mount; and
- Unless specified, all cedar signs are to be mounted using 100 mm by 100 mm pressure treated wood with concrete footings.

## 4) The Contractor must:

- Complete and submit Appendix A - Signature And Tender Form as part of their submission;
- Provide a replacement warranty for each traffic sign covering all defects in material and labour for a minimum of 5 years. The warranty shall be unrestricted;
- Cooperate with the Municipality to permit regular inspections of the work

performed.

5) See Appendix B for Details of the Supply including:

- Schedule 1: Community Signage Style Guide (Version 4);
- Schedule 2: Community Signage Makeover Plan – Phase 1 Content Guide (Version 8);
- Schedule 3: Sign Details and Counts Summary (Version 4) ; and
- Schedule 4: Preliminary mock-ups downloadable via DropBox.

#### 2.4. HOLDBACKS

The Municipality reserves the right to hold back a minimum of 25% of the total invoice until all work has been completed to the Municipality's satisfaction or 100% of a reasonable estimate, as determined by the Municipality, on account of deficient Services, or both.

### 3. INFORMATION, INSTRUCTIONS, GENERAL TERMS AND CONDITIONS

#### 3.1. DEFINITIONS

Throughout this Invitation to Tender, the following definitions apply:

**"Addenda"** means all additional information regarding this ITT including amendments to the ITT;

**"BC Bid"** means the BC Bid website located at [www.bcbid.ca](http://www.bcbid.ca);

**"Closing Location"** includes the location or email address for submissions indicated in the Key Information Summary;

**"Closing Time"** means the closing time and date for this ITT as set out Key Information Summary of this ITT;

**"Contract"** means the written agreement resulting from the ITT executed by the Municipality and the successful Respondent;

**"Coordinator"**: The person appointed by the Municipality from time to time to represent the Municipality as liaison between the Municipality and the Contractor;

**"must"**, or **"mandatory"** means a requirement that must be met in order for a Tender to receive consideration;

**“Municipality”** or **“Village of Lions Bay”** means the legal entity the Village of Lions Bay issuing this ITT;

**“Municipal Contact”** means the individual named as the contact person for the Municipality in the ITT;

**“Preferred Respondent”**: means the Respondent deemed by the Municipality to have the highest ranked assessment of its Tender according to the process set out herein;

**“Respondent”** means a person or entity (excluding its parent, subsidiaries or other affiliates) with the legal capacity to contract, that submits a Tender in response to this ITT;

**“Tender”** means a written response to the ITT that is submitted by a Respondent;

**“Invitation to Tender”, “Invitation”** or **“ITT”** means the solicitation described in this document, including any attached or referenced appendices, schedules or exhibits and as may be modified in writing from time to time by the Municipality by Addenda;

**“Should”, “may”** or **“weighted”** means a requirement having a significant degree of importance to the objectives of the Invitation to Tender.

**“Supplier”** or **“Contractor”**: means the successful Respondent to the ITT who enters into a Contract with the Municipality;

**“WCB”**: Workers Compensation Board of British Columbia, doing business as WorkSafe BC.

### 3.2. ACCEPTANCE OF TERMS AND CONDITIONS

Submitting a Tender indicates acceptance of all the terms and conditions set out in the ITT, including those that follow and that are included in all appendices and any Addenda.

A Tender must be signed by a person authorized to sign on behalf of the Respondent with the intent to bind the Respondent to the ITT and to the statements and representations in the Respondent’s Tender. A scanned copy of the signed response form in Appendix A of this ITT is acceptable as is a cover letter identifying the Respondent, identifying the ITT and including a signature of an authorized representative of the Respondent that confirms the Respondent’s intent to be bound.

### 3.3. SUBMISSION OF TENDERS

Tenders must be submitted before Closing Time to the Closing Location using one of the submission methods set out in the Key Information Summary of this ITT. Tenders must not be sent by fax, except in the circumstances set out below. The Respondent is solely responsible for ensuring that, regardless of submission method selected, the Municipality receives a complete Tender, including all attachments or enclosures, before the Closing Time.

For electronic submissions (email), the following applies:

- (i) The Respondent is solely responsible for ensuring that the complete electronic Tender, including all attachments, is received before Closing Time;
- (ii) The maximum size of each attachment must be 6 MB or less (Respondents are solely responsible for ensuring that email Tender submissions comply with any size restrictions imposed by the Respondent's internet service provider);
- (iii) Respondents should submit email Tender submissions in a single email and avoid sending multiple email submissions for the same opportunity. If the file size of an electronic submission exceeds the applicable maximum size, the Respondent may make multiple submissions (multiple emails for the same opportunity) to reduce attachment file size to be within the maximum applicable size; Respondents should identify the order and number of emails making up the email Tender submission (e.g. "email 1 of 3, email 2 of 3...");
- (iv) For email Tender submissions sent through multiple emails the Municipality reserves the right to seek clarification or reject the Tender if the Municipality is unable to determine what documents constitute the complete Tender;
- (v) Attachments must not be compressed, must not contain a virus or malware, must not be corrupted and must be able to be opened. Respondents submitting by electronic submission are solely responsible for ensuring that any emails or attachments are not corrupted. The Municipality may reject Tenders that are compressed, cannot be opened or that contain viruses or malware or corrupted attachments.

For email Tender submissions, including any notices of amendment or withdrawal referred to in section 3.9, the subject line of the email and any attachment should be clearly marked with the name of the Respondent, the ITT number and the project or program title.



The Municipality strongly encourages Respondents using electronic submissions to submit Tenders with sufficient time to complete the upload and transmission of the complete Tender and any attachments before Closing Time.

The Respondent bears all risk associated with delivering its Tender by electronic submission, including but not limited to delays in transmission between the Respondent's computer and the Municipality's Electronic Mail System.

While the Municipality may allow for email Tender submissions, the Respondent acknowledges that email transmissions are inherently unreliable. The Respondent is solely responsible for ensuring that its complete email Tender submission and all attachments have been received before Closing Time. If the Municipality Electronic Mail System rejects an email Tender submission for any reason, and the Respondent does not resubmit its Tender by the same or other permitted submission method before Closing Time, the Respondent will not be permitted to resubmit its Tender after Closing Time.

#### 3.4. ADDITIONAL INFORMATION

All Addenda will be posted on BC Bid. It is the sole responsibility of the Respondent to check for Addenda on BC Bid. Respondents are strongly encouraged to subscribe to BC Bid's email notification service to receive notices of Addenda.

#### 3.5. LATE TENDERS

Tenders will be marked with their receipt time at the Closing Location. Only complete Tenders received and marked before the Closing Time will be considered to have been received on time. Tenders received late will be marked late and not considered or evaluated. In case of a dispute, the Tender receipt time as recorded by the Municipality at the Closing Location will prevail whether accurate or not.

#### 3.6. TENDER VALIDITY

Tenders will be open for acceptance for at least 90 days after the Closing Time.

#### 3.7. FIRM PRICING

Prices will be firm for the entire Contract period unless the ITT specifically states otherwise.

### 3.8. COMPLETENESS OF TENDER

By submitting a Tender the Respondent warrants that, if the ITT is to design, create or provide a system or manage a program, all components required to run the system or manage the program have been identified in the Tender or will be provided by the Contractor at no additional charge.

### 3.9. CHANGES TO TENDERS

By submitting a clear and detailed written notice, the Respondent may amend or withdraw its Tender before the Closing Time. Unless the ITT otherwise provides, Respondents should use a consistent submission method for submitting Tenders and any amendments or withdrawals. Upon Closing Time, all Tenders become irrevocable. The Respondent will not change any part of its Tender after the Closing Time unless requested by the Municipality for purposes of clarification.

### 3.10. CONFLICT OF INTEREST/NO LOBBYING

A Respondent may be disqualified if the Respondent's current or past corporate or other interests, or those of a proposed subcontractor, may, in the Municipality's opinion, give rise to an actual or potential conflict of interest in connection with the services described in the ITT. This includes, but is not limited to, involvement by a Respondent in the preparation of the ITT or a relationship with any employee, contractor or representative of the Municipality involved in preparation of the ITT, participating on the evaluation committee or in the administration of the Contract. If a Respondent is in doubt as to whether there might be a conflict of interest, the Respondent should consult with the Municipality's Contact prior to submitting a Tender. By submitting a Tender, the Respondent represents that it is not aware of any circumstances that would give rise to a conflict of interest that is actual or potential, in respect of the ITT.

A Respondent must not attempt to influence the outcome of the ITT process by engaging in lobbying activities. Any attempt by the Respondent to communicate for this purpose directly or indirectly with any employee, contractor or representative of the Municipality, including members of the evaluation committee and any elected officials of the Municipality, or with the media, may result in disqualification of the Respondent.

### 3.11. SUBCONTRACTORS

Unless the ITT states otherwise, the Municipality will accept Tenders where more than one organization or individual is proposed to deliver the services described in the ITT, so long as the Tender identifies the lead entity that will be the Respondent and that will have sole responsibility to deliver the services under the Contract. The Municipality will enter into a Contract with the Respondent only. The evaluation of the Respondent will include evaluation of the resources and experience of proposed subcontractors, if applicable.

All subcontractors, including affiliates of the Respondent, should be clearly identified in the Tender.

A Respondent may not subcontract to a firm or individual whose current or past corporate or other interests, may, in the Municipality's opinion, give rise to an actual or potential conflict of interest in connection with the services described in the ITT. This includes, but is not limited to, involvement by the firm or individual in the preparation of the ITT or a relationship with any employee, contractor or representative of the Municipality involved in preparation of the ITT, participating on the evaluation committee or in the administration of the Contract. If a Respondent is in doubt as to whether a proposed subcontractor might be in a conflict of interest, the Respondent should consult with the Municipality's Contact prior to submitting a Tender. By submitting a Tender, the Respondent represents that it is not aware of any circumstances that would give rise to a conflict of interest that is actual or potential, in respect of the ITT.

Where applicable, the names of approved subcontractors listed in the Tender will be included in the Contract. No additional subcontractors will be added nor other changes made to this list in the Contract without the written consent of the Municipality.

### 3.12. EVALUATION

Tenders will be assessed in accordance with the evaluation criteria. The Municipality will be under no obligation to receive further information, whether written or oral, from any Respondent. The Municipality is under no obligation to perform any investigations or to otherwise verify any statements or representations made in a Tender.

Tenders from not-for-profit agencies will be evaluated against the same criteria as those received from any other Respondents.

The Municipality may consider and evaluate any Tenders from other jurisdictions on the same basis that Municipal purchasing authorities in those jurisdictions would treat a similar Tender from a British Columbia supplier.

### 3.13. CONTRACT

By submitting a Tender, the Respondent agrees that should its Tender be successful the Respondent will enter into a Contract with the Municipality on substantially the same terms and conditions set out in Appendix C and such other terms and conditions to be finalized to the satisfaction of the Municipality, if applicable.

Written notice to a Respondent that it has been identified as the successful Respondent and the subsequent full execution of a written Contract will constitute a Contract for the goods or services, and no Respondent will acquire any legal or equitable rights or privileges relative to the goods or services until the occurrence of both such events.

### 3.14. CONTRACT FINALIZATION DELAY

If a written Contract cannot be finalized with provisions satisfactory to the Municipality within thirty days of notification of the successful Respondent, the Municipality may, at its sole discretion at any time thereafter, terminate discussions with that Respondent and either commence finalization of a Contract with the next qualified Respondent or choose to terminate the ITT process and not enter into a Contract with any of the Respondents.

### 3.15. DEBRIEFING

At the conclusion of the ITT process, all Respondents will be notified. Respondents may request a debriefing meeting with the Municipality.

### 3.16. RESPONDENTS' EXPENSES

Respondents are solely responsible for their own expenses in participating in the ITT process, including costs in preparing a Tender and for subsequent finalizations with the Municipality, if any. The Municipality will not be liable to any Respondent for any claims, whether for costs, expenses, damages or losses incurred by the Respondent in

preparing its Tender, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

### 3.17. LIMITATION OF DAMAGES

By submitting a Tender, the Respondent agrees that it will not claim damages, for whatever reason, relating to the Contract or in respect of the competitive process, in excess of an amount equivalent to the reasonable costs incurred by the Respondent in preparing its Tender and the Respondent, by submitting a Tender, waives any claim for loss of profits if no Contract is made with the Respondent.

### 3.18. LIABILITY FOR ERRORS

While the Municipality has used considerable efforts to ensure information in the ITT is accurate, the information contained in the ITT is supplied solely as a guideline for Respondents. The information is not guaranteed or warranted to be accurate by the Municipality, nor is it necessarily comprehensive or exhaustive. Nothing in the ITT is intended to relieve Respondents from forming their own opinions and conclusions with respect to the matters addressed in the ITT.

### 3.19. NO COMMITMENT TO AWARD

The ITT should not be construed as an agreement to purchase goods or services. The lowest priced or any Tender will not necessarily be accepted. The ITT does not commit the Municipality in any way to award a Contract.

### 3.20. NO IMPLIED APPROVALS

Neither acceptance of a Tender nor execution of a Contract will constitute approval of any activity or development contemplated in any Tender that requires any approval, permit or license pursuant to any federal, provincial, regional district or municipal statute, regulation or by-law.

### 3.21. LEGAL ENTITIES

The Municipality reserves the right in its sole discretion to:

- (i) disqualify a Tender if the Municipality is not satisfied that the Respondent is clearly identified;

- (ii) prior to entering into a Contract with a Respondent, request that the Respondent provide confirmation of the Respondent's legal status (or in the case of a sole proprietorship, the Respondent's legal name and identification) and certification in a form satisfactory to the Municipality that the Respondent has the power and capacity to enter into the Contract;
- (iii) not to enter into a Contract with a Respondent if the Respondent cannot satisfy the Municipality that it is the same legal entity that submitted the Respondent's Tender; and require security screenings, such as a Criminal Record Check, for a Respondent who is a natural person, subcontractors and key personnel before entering into a Contract and decline to enter into a Contract with a Respondent or to approve a subcontractor or key personnel that fail to pass the security screenings to the Municipality's satisfaction.

### 3.22. RESERVATION OF RIGHTS

In addition to any other reservation of rights set out in the ITT, the Municipality reserves the right, in its sole discretion:

- (i) to modify the terms of the ITT at any time prior to the Closing Time, including the right to cancel the ITT at any time prior to entering into a Contract with a Respondent;
- (ii) in accordance with the terms of the ITT, to accept the Tender or Tenders that it deems most advantageous to itself;
- (iii) to waive any non-material irregularity, defect or deficiency in a Tender;
- (iv) to request clarifications from a Respondent with respect to its Tender, including clarifications as to provisions in its Tender that are conditional or that may be inconsistent with the terms and conditions of the ITT, without any obligation to make such a request to all Respondents, and consider such clarifications in evaluating the Tender;
- (v) to reject any Tender due to unsatisfactory references or unsatisfactory past performance under contracts with the Municipality, or any material error, omission or misrepresentation in the Tender;
- (vi) to negotiate with the Preferred Respondent in accordance with section 4.3 of this ITT;
- (vii) at any time, to reject any or all Tenders; and

- (viii) At any time, to terminate the competition without award and obtain the goods and services described in the ITT by other means or do nothing.

### 3.23. OWNERSHIP OF TENDERS

All Tenders and other records submitted to the Municipality in relation to the ITT become the property of the Municipality and, subject to the provisions of the *Freedom of Information and Protection of Privacy Act* and the ITT, will be held in confidence. For more information on the application of the Act, go to:

[http://www.cio.gov.bc.ca/cio/priv\\_leg/index.page](http://www.cio.gov.bc.ca/cio/priv_leg/index.page)

### 3.24. CONFIDENTIALITY AGREEMENT

The Respondent acknowledges that prior to the Closing Time it may be required to enter into a confidentiality agreement with the Municipality in order to obtain access to confidential materials relevant to preparing a Tender.

### 3.25. ALTERNATIVE SOLUTIONS

If more than one approach to deliver the services described in the ITT are offered, Respondents should submit the alternative approach in a separate Tender.

### 3.26. COLLECTION AND USE OF PERSONAL INFORMATION

Respondents are solely responsible for familiarizing themselves, and ensuring that they comply, with the laws applicable to the collection and dissemination of information, including resumes and other personal information concerning employees and employees of any subcontractors. If the ITT requires Respondents to provide the Municipality with personal information of employees who have been included as resources in response to the ITT, Respondents will ensure that they have obtained written consent from each of those employees before forwarding such personal information to the Municipality. Such written consents should specify that the personal information may be forwarded to the Municipality for the purposes of responding to the ITT and used by the Municipality for the purposes set out in the ITT. The Municipality may, at any time, request the original consents or copies of the original consents from Respondents, and upon such request being made, Respondents will immediately supply such originals or copies to the Municipality.

### 3.27. TRADE AGREEMENTS

This ITT is covered by trade agreements applicable to Municipality and other jurisdictions, including the following:

- Canadian Free Trade Agreement; and
- New West Partnership Trade Agreement.

For more information, Respondents may contact the Municipality's Contact.

## 4. SPECIFIC TERMS AND CONDITIONS

### 4.1. MANDATORY CONDITIONS

- a. The Tender must be received in its entirety at the address for delivery on or before the closing time stated in the Key Information Summary.
- b. A completed and signed form substantially similar in form and content to that in Appendix A is included with the Tender;
- c. The Tender is in the English Language; and,
- d. The Tender must be accompanied by tender security in the form of a bid bond issued by a surety licensed to carry on the business of suretyship in British Columbia in a form reasonably satisfactory to the Municipality in an amount equal to 20% of the Tender Price.

### 4.2. SIGNATURES

If an individual is making the Tender, they should print or type their name and address on the Tender form and sign the same in the spaces provided. Their signature should be witnessed and the witness should give their address.

If a partnership is making the Tender, the name and address of the partnership should be printed or typed on the Tender form and the names of all members of the partnership should be printed or typed in the spaces provided. The Tender should be signed by one or more of the partners in the following manner: for example, "Smith and Jones by John Jones a partner". The signature or signatures should be witnessed and the witness or witnesses should give their address or addresses.

If a company is making the Tender, the name of the company and its place of business should be printed or typed on the Tender form and the form should be signed by the person or persons authorized to sign the Tender on behalf of the company, indicating



the capacity in which they sign: for example, "John Doe Company Ltd. by John Smith, Secretary" or as the case may be.

Tenders signed by an agent should be accompanied by evidence of their authority.

#### 4.3. NEGOTIATIONS

The Municipality reserves the right, at its sole discretion, to negotiate with the Preferred Respondent. In no event will the Municipality be required to offer any modified terms to any other Respondent prior to entering into an agreement with the Preferred Respondent and the Municipality shall not incur any liability to any Respondent as a result of such negotiation or modifications.

It is the intent of the Municipality to ensure it has the flexibility it needs to arrive at a mutually acceptable Contract. It is not the intent of the Municipality to allow for new or significantly altered Tenders in any negotiations with the Preferred Respondent.

Negotiations may include:

- a. Price adjustments;
- b. Changes to the requirements and responsibilities;
- c. Phasing of any or all of the production or installation of signage;
- d. Contract payment details.

If a Contract cannot be negotiated with the Preferred Respondent, the Municipality will follow the process outlined in section 4.4.

#### 4.4. NEGOTIATION DELAY

If a written Contract cannot be negotiated within thirty (30) days of notification of the Preferred Respondent, the Municipality may, at its sole discretion at any time thereafter, terminate negotiations with that Respondent and either negotiate a Contract with the next best qualified Respondent and so on, or choose to terminate the Invitation for Tender process and not enter into a Contract with any of the Respondents. Such cancellation does not preclude the Municipality from later entering into a contract with a Respondent in respect of any aspect of the work contemplated by this Invitation.

## 5. TENDER EVALUATION

This section outlines the process and criteria for evaluation of responses to this Invitation to select a preferred respondent or respondents if this Invitation allows for the possibility of contracting with multiple suppliers.

### 5.1. EVALUATION TEAM

The evaluation team may consist of Municipality employees, contractors to the Municipality and others as may be appointed to the evaluation team by the Municipality. All persons on the evaluation committee shall be bound by the same standard of confidentiality.

### 5.2. EVALUATION PROCESS

Evaluation of Tenders will be made in the same and subsequent order as stated in the subsections to this section.

#### 5.2.1. MANDATORY CRITERIA

Tenders will be first evaluated against the mandatory criteria. Tenders not meeting these criteria will be rejected and excluded from any further consideration.

#### 5.2.2. CONFORMANCE TO SPECIFICATIONS

Respondents, in submitting a tender, warrant that products and services tendered conform to the specifications stated herein and in Appendix B except where specifically excepted by the respondent in their tender.

<b>Item</b>	<b>Desirable Criteria</b>	<b>Maximum Points</b>
1	References (3)	15
2	Schedule	5
3	Price	80
	Total Possible	100

### 5.2.3. INTERVIEW AND/OR PRESENTATION

Selected Respondents may be invited to attend an interview with the Municipality's evaluation committee and/or make a presentation to the committee. This stage of the selection process may or may not be applicable as stated immediately below.

#### 5.2.3.1. APPLICABILITY:

Respondents may be asked to clarify or verify any part of their written Tender.

### 5.2.4. REFERENCES CHECK

#### 5.2.4.1. APPLICABILITY:

The references of the Preferred Respondent may be contacted to validate any part of a Tender. The Municipality reserves the right to conduct such independent reference checks or verifications as are deemed necessary by it to clarify, test, or verify the information contained in the Tender and confirm suitability of the Respondent.

The Municipality will not enter into a Contract with any Respondent whose references, in the Municipality's sole and reasonable opinion, are found to be unsatisfactory.

### 5.2.5. PRICES EVALUATION

Prices will be evaluated according to the formula:

$$\begin{array}{r} \text{Maximum Points} \\ \text{Available for price} \end{array} \times \frac{\text{Lowest Price Offered}}{\text{Price being Evaluated}} = \begin{array}{r} \text{Price} \\ \text{Evaluation} \end{array}$$

### 5.2.6. NOTIFICATION

All respondents will be notified of the outcome of the appraisal and award process. Unsuccessful respondents may request a de-briefing interview with the Municipality.

## 6. APPENDICES

- A. Signature and Tender Form
- B. Scope of Work, Details of the Supply
- C. Professional Services Agreement

**APPENDIX A: SIGNATURE AND TENDER FORM***COMPLETE THIS SECTION AND ENCLOSE IT WITH YOUR TENDER*

The undersigned agrees, on behalf of the company named below, to supply the goods and services listed at the prices quoted and within the terms and conditions as identified in Invitation for Tender #1810. This Offer is valid and enforceable for at least Ninety (90) days following the closing date.

The undersigned further agrees that they: have read this Invitation in its entirety, understand its meaning and effect on their Tender, have conducted such other investigations as were prudent and reasonable, agree to the terms and conditions, and comply with all requirements.

This Respondent further warrants that this Tender is made without collusion with any other party except those expressly disclosed in this Tender and that the Respondent has no conflict of interest.

The undersigned warrants that they have the authority to bind the company to this contract.

Company Name:

Address:

City:

Postal Code:

Phone:

Fax:

E-Mail:

Signature of  
Signing Officer

Print Name

Date

Title of Signing Officer:

Signature of  
Witness

Print Name

Date

Address of Witness:

WCB Registration Number:

**ADDENDA ACKNOWLEDGMENT**

Addenda No.	Date Issued

**TENDER FORM – RECENT PREVIOUS CONTRACTS**

Complete the following table and enclose with your Tender. References for work similar to that specified herein are preferred. The respondent authorizes the Municipality to make such enquiries of references that it deems appropriate.

Owner	Contact Name and Contact Information	Description of the Work	Approx. Value	Completion Date

**TENDER FORM – PRICES PROPOSED**

Prices shall be given in Canadian Dollars with applicable taxes itemized and shown separately.

Item	Dimension (cm)	Count	Unit Price	Extension
01. Informational – Alberta Creek.pdf	30 x 20	10		
02. Informational - Harvey Creek.pdf	30 x 20	6		
03. Information (Historical-Naming variant) - Lions Bay - Central Village.pdf	60 x 40	2		
04. Information (Historical-Naming variant) - Lions Bay- Brunswick Beach.pdf	60 x 40	1		
05. Information (Historical-Naming variant) - Lions Bay - Kelvin Grove.pdf	60 x 40	2		
06. Information (Architectural) - Notice Board (blank1 ).pdf	60 x 60	1		

Item	Dimension (cm)	Count	Unit Price	Extension
07. Information (Architectural) - Top of Steps (blank1).pdf	60 x 60	1		
08. Information (Architectural) - Council Chambers (blank2).pdf	45 x 22	1		
09. Information (Architectural) - Common Room (blank2).pdf	45 x 25	1		
10. Information (Architectural) - Conference Room (blank2).pdf	45 x 22	1		
11. Information (Architectural) - Municipal Offices (blank2).pdf	45 x 25	1		
13. Information (Municipal) - Off Leash.pdf	30 x 25	12		
14. Information (Municipal) - Off Leash variant.pdf	30 x 25	1		
15. Information (Municipal-Regulatory) - No Smoking.pdf	30 x 45	12		
16. Information (Municipal) - Drinking Water.pdf	45 x 30	6		
17. Information (Municipal) - Kelvin Grove Plant.pdf	60 x 90	1		
18. Information (Municipal) - Harvey Creek Intake.pdf	60 x 60	1		
19. Information (Municipal) - Magnesia Creek Intake.pdf	60 x 60	1		
20. Information (Municipal) - Frank Smith Public Works Yard.pdf	60 x 35	1		
20A. Information (Architectural) - Public Works Yard (blank3).pdf	60 x 35	1		
21. Information (Municipal) - Water Treatment.pdf	30 x 25	2		
22. Information (Municipal-Warning) - Keep Off Roof.pdf	30 x 20	1		
23. Information (Recreational) - Lions Bay Beach Park.pdf	45 x 45	2		
24. Information (Recreational) - Kelvin Grove Marine Park.pdf	45 x 45	1		
25. Information (Recreational) - BBQ Area.pdf	20 x 20	2		
26. Information (Recreational) - Brunswick Beach Park.pdf	45 x 45	1		

Item	Dimension (cm)	Count	Unit Price	Extension
27. Information (Recreational) - Lions Bay Community Field.pdf	45 x 45	3		
28. Information (Municipal) - Private Property.pdf	45 x 20	1		
29. Information (Regulatory) - Water Conservation Advisory.pdf	75 x 75	8		
30. Information (Regulatory) - Boil Water Advisory.pdf	75 x 75	8		
31. Information (Municipal) - Trail Risk.pdf	30 x 15	18		
32. Information (Recreational) - Forest Wildlife.pdf	60 x 60	7		
33. Information (Recreational) - Backcountry Trailhead-Sunset Drive N.pdf	60 x 75	1		
35. Information (Recreational) - Backcountry Trailhead-Sunset Drive S.pdf	60 x 75	1		
36. Information (Recreational) - Backcountry Trailhead-Oceanview Rd.pdf	60 x 75	1		
37. Information (Municipal) - Parking Lot.pdf	45 x 20	1		
38. Information (Recreational) - Howe Sound.pdf	60 x 90	1		
39. Information (Recreational) - Howe Sound @ Lions Bay Beach.pdf	60 x 90	1		
40. Information (Recreational) - Howe Sound @ Kelvin Grove Beach.pdf	60 x 90	1		
41. Information (Recreational) - Alberta Creek.pdf	30 x 30	1		
42. Information (Recreational) - Coastal Forest Fire.pdf	30 x 30	1		
43. Information (Recreational) - Lions Bay's Creeks.pdf	30 x 30	1		
44. Information (Recreational) - Coastal Tailed Frog.pdf	30 x 30	1		
45. Information (Recreational) - Eagle View Lookout.pdf	30 x 30	1		
46. Information (Recreational) - Douglas-Fir.pdf	45 x 45	2		
47. Information (Recreational) - Western Redcedar.pdf	45 x 45	1		



Item	Dimension (cm)	Count	Unit Price	Extension
48. Information (Recreational) - Western Hemlock.pdf	45 x 45	1		
49. Information (Recreational) - Pacific Dogwood.pdf	30 x 30	1		
50. Information (Recreational) - Big Leafed Maple.pdf	30 x 30	1		
51. Information (Recreational) - Arbutus.pdf	45 x 45	1		
52. Information (Recreational) - Heritage Logged Tree.pdf	45 x 45	1		
53. Information (Recreational) - Himalayan Blackberry.pdf	30 x 30	1		
54. Information (Architectural) - Klatt Building (blank4).pdf	125 x 70	1		
55. Architectural - Lions Bay Fire Rescue.pdf	90 x 40	1		
56. Information - Lions Bay Search & Rescue.pdf	40 x 46	1		
Installation of signs				
			Sub-Total	
			PST	
			GST	
			TOTAL	

**SCHEDULE PROPOSED**

Milestone	Date

**SUB-CONTRACTORS**

List any sub-contractors involved in the delivery of the work and the portion of the work assigned to each.

Sub-Contractor	Contact	Portion of the work

**APPENDIX B: SCOPE OF WORK, DETAILS OF THE SUPPLY**

Schedule 1: Community Signage Style Guide (Version 4);

Schedule 2: Community Signage Makeover Plan – Phase 1 Content Guide (Version 8);

Schedule 3: Sign Details and Counts Summary (Version 4); and

Schedule 4: Preliminary mock-ups downloadable via DropBox at the following link:

[https://www.dropbox.com/s/25uvtzxs11pvc4w/VOLB ITT 1810 Community Signage Mock-ups.zip?dl=0](https://www.dropbox.com/s/25uvtzxs11pvc4w/VOLB_ITT_1810_Community_Signage_Mock-ups.zip?dl=0)

**APPENDIX C – PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

BETWEEN:

**VILLAGE OF LIONS BAY**, a municipality duly incorporated under the laws of British Columbia and having an address at 400 Centre Road, Lions Bay, BC, V0N 2E0 (the "**Municipality**").

AND:

\_\_\_\_\_, doing business as \_\_\_\_\_, having an address at \_\_\_\_\_, [city] \_\_\_\_\_, BC, [Postal Code] (the "**Contractor**")

WHEREAS the Municipality wishes to engage the Contractor to provide professional services in respect of production and installation of the Municipality's Community Signage Makeover Plan, and the Contractor wishes to provide such services to the Municipality in accordance with the terms and conditions of this Agreement;

NOW THEREFORE in consideration of the payment of one (\$1.00) dollar and other good and valuable consideration paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) the Municipality and the Contractor agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these General Terms and Conditions:

- (a) "Agreement" means this Agreement and all appendices attached hereto;
- (b) "Municipality" means the Village of Lions Bay;
- (c) "Contractor" means the Contractor who is providing Services under this Agreement;

- (d) "Disbursements" means the actual out-of-pocket costs and expenses associated with the provision of the Services and not included in "Fees";
- (e) "Fees" means the lump sum compensation to be paid to the Contractor, other than Disbursements, upon completion of the Services;
- (f) "Indemnitees" means the Municipality and all of its elected and appointed officials, officers, employees, servants, representatives, and agents;
- (g) "Services" means the services as described generally in Appendix 1, Phase 1, including anything and everything required to be done for the fulfilment and completion of this Agreement; and
- (h) "Term" has the meaning described in Section 3.1

## 1.2 Agreement

This Agreement may be modified only by express and specific written agreement. In the event of a conflict between the provisions of any documents listed below, then the following documents shall govern and take precedence in the following order:

- (a) this Agreement and any written amendments to this Agreement;
- (b) other terms, if any, that are agreed to by the parties in writing;
- (c) the Municipality's Request for Proposals;
- (d) the Contractor's Proposal.

## 1.3 Appendices

The following attached Appendices are part of this Agreement:

Appendix A, Signature and Tender Form;

Appendix B, including Schedules 1, 2, 3, and 4; and

Appendix C, being the Contractor's tender, as amended by agreement of the parties, or signed off on by the Municipality.

## 2 SERVICES

### 2.1 Services

The Contractor covenants and agrees with the Municipality to provide the Services as described generally in Appendix B, including installation and anything and everything required to be done for the fulfillment and completion of this Agreement (the “**Services**”).

### 2.2 Changes to Services

The Municipality and the Contractor may, from time to time, by written agreement, make changes in the scope of the Services. The Contractor will not provide any additional Services in excess of the scope of Services unless requested in writing by the Municipality. Any services provided outside the scope of this Agreement shall be deemed to be provided on a volunteer basis to Municipality.

### 2.3 Standard of Care

The Contractor will perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner performing services similar to the Services, and on the understanding that the Municipality is relying on the Contractor's experience and expertise. The Contractor represents that it has the expertise, qualifications, resources, and relevant experience to provide the Services.

### 2.4 Inspection and Acceptance

All Services performed under this Agreement may be subject to inspection and verification by the Municipality. The Contractor shall provide the Municipality with copies of all documentation deemed necessary by the Municipality for efficient expediting. The Municipality will notify the Contractor in writing of any questions or of any dispute in respect of Services which are not in accordance with the description or specifications stipulated in this Agreement and the parties shall resolve the matter in accordance with section 11.1 of this Agreement. No acceptance by, or on behalf of, the Municipality shall release the Contractor of its obligations as further stated hereunder.

## 2.5 Holdback for deficient Goods or Services

The Municipality may hold back from payments otherwise due to the Contractor up to 25% of the total contract price or up to 100% of a reasonable estimate, as determined by the Municipality, on account of deficient Services. This holdback may be held, without interest, until such deficiency or defect is remedied.

## 2.6 Completion

Completion of the Services shall be made free and clear of all liens and encumbrances within the time, in the manner, and to the destination stipulated in this Agreement. In the event of failure to meet this condition, the Municipality shall be entitled to holdback sufficient monies otherwise payable under this Agreement and, in addition, may cancel this Agreement without liability or penalty and the Contractor shall be held liable for any and all expenses or losses resulting from such failure.

## 2.7 Patents, Copyrights and Trademarks

The Contractor warrants and guarantees that Services delivered under this Agreement do not infringe any valid patent, industrial design, copyright or trademark, foreign or domestic, owned or controlled by any other corporation, firm or person, and agrees to indemnify and save harmless the Municipality and all of its elected and appointed officials, officers, employees, servants, representatives and agents, from and against any and all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) by reason of any claim, action or litigation arising out of any alleged or actual infringement of any patent, copyright or trademark, foreign or domestic, relating to the use or sale of any Services supplied under this Agreement.

# 3 TERM

## 3.1 Commencement Date and Term

The Contractor shall complete the Services by \_\_\_\_\_, 2019 (the "Term").

### 3.2 Term may be Extended

The parties may extend the Term by mutual agreement. If the Term is extended, the provisions of this Agreement will remain in force except where amended in writing by the parties.

### 3.3 Time

The Contractor acknowledges that time is of the essence with respect to the provision of the Services and accordingly the Contractor will provide the Services within the performance or completion dates or time periods (the "**Time Schedule**") as set out in Section 3.1 of this Agreement, or as otherwise agreed to in writing by the Municipality and the Contractor. If at any time the Contractor discovers that the Time Schedule cannot be met it will immediately advise the Municipality in writing and provide a revised Time Schedule. If the Contractor is delayed by an action or omission of the Municipality, then the Term will be extended for such reasonable time as agreed between the parties.

## 4 PERSONNEL

### 4.1 Qualified Personnel

The Contractor has the qualifications, experience and capabilities to perform the Services, or will provide only personnel who have the qualifications, experience and capabilities to perform the Services.

### 4.2 Listed Personnel and Sub-Contractors

The Contractor will perform the Services personally unless otherwise stipulated in this Agreement.

### 4.3 Replacement of Personnel or Sub-Contractors

If the Municipality reasonably objects to the performance, qualifications, experience or suitability of any of the Contractor's personnel or sub-contractors then the Contractor will, on written request from the Municipality, replace such personnel or sub-contractors.



#### 4.4 Sub-Contractors and Assignment

Except as provided for in this Agreement, the Contractor will not engage any personnel or sub-contractors, or sub-contract or assign its obligations under this Agreement, in whole or in part, without the prior written approval of the Municipality.

#### 4.5 Agreements with Sub-Contractors

The Contractor will preserve and protect the rights of the Municipality with respect to any Services performed under sub-contract and incorporate the terms and conditions of this Agreement into all sub-contracts as necessary to preserve the rights of the Municipality under this Agreement. The Contractor will be as fully responsible to the Municipality for acts and omissions of sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

### 5 LIMITED AUTHORITY

#### 5.1 Not Agent of Municipality

The Contractor is not and this Agreement does not render the Contractor an agent or employee of the Municipality, and without limiting the above, the Contractor does not have authority to enter into any contract or reach any agreement on behalf of the Municipality, except for the limited purposes as may be expressly set out in this Agreement, or as necessary in order to provide the Services. The Contractor will make such lack of authority clear to all persons with whom the Contractor deals in the course of providing the Services.

#### 5.2 Independent Contractor

The Contractor is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The Municipality will not control or direct the details, means or process by which the Contractor provides the Services. The Contractor is primarily responsible for provision of the Services and may not delegate or assign the provision of any Services to any other person except as provided for in this Agreement. The Contractor will be solely liable for the wages, benefits, work schedules and work conditions of any partners, employees or sub-contractors of the Contractor.

## 6 FEES

### 6.1 Fees And Disbursements

The Municipality will pay to the Contractor the Fees and Disbursements in accordance with this Agreement. Payment by the Municipality of the Fees and Disbursements will be full payment for the Services and the Contractor will not be entitled to receive any additional payment without the prior written approval of the Municipality.

### 6.2 Costs included in Fees and Disbursements

For greater certainty, costs of general management, non-technical supporting services, general overhead, mobilization/demobilization, travel and all other items associated with the Services are deemed to be covered by the Fees and will not be subject to additional payment by the Municipality unless specifically agreed to in this Agreement.

### 6.3 No increase in Fees and Disbursements without Written Agreement.

No increases in Fees and Disbursements will be accepted by the Municipality without prior written acceptance by the Municipality.

### 6.4 Payment

- (a) Upon completion of the Services to the satisfaction of the Municipality, the Contractor will render an invoice to be paid by the Municipality within 30 days, subject to the terms of this Agreement;
- (b) the Contractor will, on request from the Municipality, provide receipts and invoices for all Disbursements claimed;
- (c) if the Municipality reasonably determines that any portion of an Invoice is not payable, then the Municipality will so advise the Contractor;
- (d) the Municipality will pay the portion of an Invoice which the Municipality determines is payable within 30 days of the receipt of the Invoice less any deductions for setoffs or holdbacks permitted by this Agreement;
- (e) invoices will be submitted in person, by mail or by email by the Contractor addressed to:

Accounts Payable Department  
Village of Lions Bay  
PO Box 141, 400 Centre Road, Lions Bay, BC V0N 2E0  
[accounting@lionsbay.ca](mailto:accounting@lionsbay.ca);

- (f) the payment by the Municipality of any invoice will not bind the Municipality with respect to any subsequent payment or final payment and will not mean that the Municipality has accepted Services that are not in accordance with the requirements of this Agreement, or that the Contractor is in any manner released from its obligation to comply with this Agreement; and
- (g) unless otherwise provided, all dollar amounts referred to in this Agreement are in lawful money of Canada.

## 7 INDEMNITY, INSURANCE, DAMAGES AND LICENCING

### 7.1 Indemnity

The Contractor will indemnify and save harmless the Municipality and all of its elected and appointed officials, officers, employees, servants, volunteers, representatives and agents (collectively the “**Indemnitees**”), from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) for damage to or destruction or loss of property, including loss of use, and injury to or death of any person or persons which any of the Indemnitees incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Contractor of any obligation of this Agreement, or any wrongful or negligent act or omission of the Contractor or any employee or agent of the Contractor.

### 7.2 Survival of Indemnity

The indemnity described in section 8.1 will survive the termination or completion of this Agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of the Indemnitees.

### 7.3 Contractor's Insurance Policies

The Contractor will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout this Agreement the following insurances

in forms and amounts acceptable to the Municipality from insurers licensed to conduct business in Canada:

- (a) automobile liability insurance on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than two million (\$2,000,000) dollars per occurrence for bodily injury, death and damage to property;
- (b) Contractors' equipment insurance in an all risks form covering machinery and equipment used for the performance of the Services.

#### 7.4 Insurance Requirements

The Contractor will provide the Municipality with evidence of the required insurance prior to the commencement of this Agreement. Such evidence will be in the form of a completed certificate of insurance acceptable to the Municipality. The Contractor will, on request from the Municipality, provide certified copies of all of the Contractor's insurance policies providing coverage relating to the Services, including without limitation any professional liability insurance policies. All required insurance will be endorsed to provide the Municipality with thirty (30) days advance written notice of cancellation or material change restricting coverage. The Contractor will be responsible for deductible amounts under the insurance policies. All of the Contractor's insurance policies will be primary and not require the sharing of any loss by the Municipality or any insurer of the Municipality.

#### 7.5 Contractor Responsibilities

The Contractor acknowledges that any requirements by the Municipality as to the amount of coverage under any policy of insurance will not constitute a representation by the Municipality that the amount required is adequate and the Contractor acknowledges and agrees that the Contractor is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage limits shall not be construed as relieving the Contractor from responsibility for any amounts which may exceed these limits, for which the Contractor may be legally liable.

#### 7.6 Waiver of Subrogation

The Contractor hereby waives all rights of recourse against the Municipality for loss or damage to the Contractor's property.

#### 7.7 Protection of Property

The Contractor shall protect the Municipality's property and adjacent properties from damage that may arise as the result of the Contractor's operations under the Agreement. Any such damage caused by the Contractor shall be made good by the Contractor at the Contractor's expense.

#### 7.8 WorkSafe BC And Occupational Health And Safety

The Contractor agrees that it will ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers Compensation Act* and Regulations pursuant thereto.

### 8 TERMINATION

#### 8.1 Termination by the Municipality

The Municipality may at any time and for any reason by 30 days written notice to the Contractor terminate this Agreement before the completion of the provision of all Services. Upon receipt of such notice, the Contractor will provide no further Services other than what is reasonably required to terminate the supply of Services and return the Municipality's property to the Municipality. Despite any other provision of this Agreement, if the Municipality terminates this Agreement before the completion of providing all the Services, the Municipality will pay to the Contractor all amounts owing under this Agreement for Services provided by the Contractor up to and including the date of termination, plus reasonable termination costs in the amount as determined by the Municipality in its sole discretion. Upon payment of such amounts no other or additional payment will be owed by the Municipality to the Contractor, and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Services not supplied or other profit opportunities.

## 8.2 Termination for Cause

The Municipality may terminate this Agreement for cause as follows:

- (e) if the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the Municipality may, without prejudice to any other right or remedy the Municipality may have, terminate this Agreement by giving the Contractor or receiver or trustee in bankruptcy written notice; or
- (f) if the Contractor is in breach of any term or condition of this Agreement, and such breach is not remedied to the reasonable satisfaction of the Municipality within five days after delivery of written notice from the Municipality to the Contractor, then the Municipality may, without prejudice to any other right or remedy the Municipality may have, terminate this Agreement by giving the Contractor further written notice.

If the Municipality terminates this Agreement as provided by this Section, then the Municipality may:

- (i) enter into contracts, as it in its sole discretion sees fit, with other persons to complete the Services;
- (ii) withhold payment of any amount owing to the Contractor under this Agreement for the Services;
- (iii) set-off the total cost of completing the Services incurred by the Municipality against any amounts owing to the Contractor under this Agreement, and at the completion of the provision of Services pay to the Contractor any balance remaining; and
- (iv) if the total cost to complete the provision of Services exceeds the amount owing to the Contractor, charge the Contractor the balance, which amount the Contractor will forthwith pay.

## 8.3 Curing Defaults

If the Contractor is in default of any of its obligations under this Agreement, then the Municipality may without terminating this Agreement, upon five days written notice to the Contractor, remedy the default and set-off all costs and expenses of such remedy against any amounts owing to the Contractor. Nothing in this Agreement will be interpreted or construed to mean that the Municipality has any duty or obligation to remedy any default of the Contractor.

## 9 COMPLIANCE WITH LAWS

### 9.1 Applicable Laws

This Agreement shall be governed by and construed in accordance with the laws and statutes of the Province of British Columbia, regulations or bylaws. The Municipality and the Contractor accept the jurisdiction of the courts of British Columbia and agree that any action under this Agreement shall be brought in such courts and that any reference to any statute, regulation or bylaw refers to that enactment as it may be amended or replaced from time to time.

### 9.2 Compliance with Applicable Laws

The Contractor will provide the Services in full compliance with all applicable federal, provincial and municipal enactments and regulations.

### 9.3 Interpretation of Enactments

The Contractor will, as a qualified and experienced contractor, interpret enactments and regulations applicable to the provision of the Services. If an authority having jurisdiction imposes an interpretation which the Contractor could not reasonably have verified or foreseen prior to entering into this Agreement, then the Municipality will pay the additional costs, if any, of making alterations so as to conform to the required interpretation.

## 10 CONFIDENTIALITY, DISCLOSURE OF INFORMATION AND WORK PRODUCT

### 10.1 No Disclosure

Except as provided for by law or otherwise by this Agreement, the Contractor will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of the performance of the Services and this Agreement, and will not, without the prior express written consent of the Municipality, publish, release, disclose or permit to be disclosed any such information to any person or corporation, either before, during or after termination of this Agreement, except as reasonably required to complete the Services.

## 10.2 Freedom of Information and Protection of Privacy Act

The Contractor acknowledges that the Municipality is subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia and agrees to any disclosure of information by the Municipality required by law.

## 10.3 Return of Property

The Contractor agrees to return to the Municipality all of the Municipality's property at the completion of this Agreement, including any and all copies or originals of reports provided by the Municipality.

## 10.4 Use of Work Product

All work produced by the Contractor in respect of the Services shall be the sole property and copyright of the Municipality, to use or amend as it sees fit. The Contractor shall have a limited licence to display the said work product in its portfolio but may not use or copy any of the drawings, designs, concepts, plans, reports, models, specifications, computer software, programs or processes without the express written consent of the Municipality.

# 11 DISPUTE RESOLUTION

## 11.1 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this Agreement or related to this Agreement ("**Dispute**") using the dispute resolution procedures set out in this section 11.1 as follows:

- (a) the parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations;
- (b) If all or any portion of a Dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within seven days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place



of mediation will be Lions Bay, British Columbia, or such other place as the Municipality may, in its sole discretion, specify. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation; and

- (c) If within 90 days of the request for mediation, the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then the parties may mutually agree to submit the Dispute to binding arbitration in accordance with the rules of the British Columbia International Commercial Arbitration Centre, or either party may, without further notice, commence litigation.

## 12 MUNICIPAL POWERS

### 12.1 Powers Preserved

Nothing in this Agreement limits or abrogates, or will be deemed to limit or abrogate, the jurisdiction of the Council of the Municipality in the exercise of its powers, rights or obligations under any public or private statute, regulation or by-law or other enactment.

### 12.2 No financial commitments beyond current fiscal year

The Contractor recognizes and agrees that the Municipality cannot make financial commitments beyond the Municipality's current fiscal year. The Municipality will annually make good faith requests for appropriation of sufficient funds to cover all payments covered by this Agreement. If Municipality Council does not appropriate funds, or appropriates insufficient funds, the Municipality will notify the Contractor of its intention to terminate or reduce the services so affected within 30 days after the non-appropriation becomes final. Such termination shall take effect 30 days from the date of notification, shall not constitute an event of default and shall relieve the Municipality, its officers and employees, from any responsibility or liability for the payment of any further amounts under this Agreement.

## 13 GENERAL

### 13.1 Entire Agreement

This Agreement, including the Appendices and any other documents expressly included by reference in this Agreement, contains the entire agreement of the parties regarding the provision of the Services, and no understandings or agreements, oral or otherwise, exist between the parties except as expressly set out in this Agreement. This Agreement supersedes and cancels all previous agreements between the parties relating to the Services. In the event that the Contractor issues an invoice, packing slip, sales receipt, or any like document to the Municipality, the Municipality accepts the document on the express condition that any terms and conditions in it which constitute terms and conditions which are in addition to or which establish conflicting terms and conditions to those set out in this Agreement are expressly rejected by the Municipality.

### 13.2 Amendment

This Agreement may be amended only by agreement in writing, signed by both parties.

### 13.3 Merger And Survival

The representations, agreements, covenants and obligations set out in this Agreement shall survive the performance of the Services and payment of the Fees and Disbursements.

### 13.4 Unenforceability

If any provision of this Agreement is invalid or unenforceable, it will be severed from the Agreement and will not affect the enforceability or validity of the remaining provisions of the Agreement.

### 13.5 Cumulative Remedies

The Municipality's remedies under this Agreement are cumulative and in addition to any right or remedy which may be available to the Municipality at law or in equity.

### 13.6 Notices

Any notice, report or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise expressly provided for, and will be deemed to be validly given to and received by the addressee:

- (a) by hand, on delivery;
- (b) by facsimile or email, by acknowledgement; or
- (c) by mail, five calendar days after posting.

The addresses for delivery will be as shown in the tender documents.

### 13.7 Headings

The headings in this Agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of this Agreement.

### 13.8 Assignment

This Agreement may not be assigned in whole or in part by the Contractor without the prior written consent of the Municipality.

### 13.9 Singular, Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the context so requires.

### 13.10 Waiver

Any failure of the Municipality at any time or from time to time to enforce or require the strict keeping or performance of any of the terms and conditions contained in this Agreement shall not constitute a waiver of the terms and conditions and shall not affect or impair the terms or conditions in any way or the Municipality's right at any time to avail itself of any remedies as the Municipality may have for any breach of the terms and conditions.

### 13.11 Counterparts

This Agreement may be executed in one or more counterparts all of which when taken together will constitute one and the same Agreement, and one or more of the counterparts may be delivered by fax transmission or as a PDF file by email or as a hard copy.

### 13.12 Enurement

This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the Municipality and the Contractor.

**END OF PAGE**

