

PROFESSIONAL SERVICES AGREEMENT

Dated this

BETWEEN:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT
1229 Esquimalt Road
Esquimalt, BC V9A 3P1

("The Township")

OF THE FIRST PART

AND:

("Consultant")

OF THE SECOND PART

- A. The Township wishes to retain services of the Consultant, for the Inflow and Infiltration Master Plan as specified in the attached Schedules.
- B. The Consultant, in order to perform the services as described in the attached Schedule "A", has the skill, training, and technical knowledge expected of a properly qualified and experienced person in a work environment.
- C. The Consultant is willing to provide the services as described in Schedule "A" for the fees as outlined in Schedule "B".

The Parties agree as follows:

1.0 **AGREEMENT**

1.1 Attached hereto and forming part of this Agreement are:

- 1. Schedule A – Services
- 2. Schedule B – Terms of Payment
- 3. Schedule C – Certificates of Insurance

2.0 **DEFINITIONS**

In this Agreement:

- 2.1 "**Fees**" means the fees to be paid by The Township to the Consultant as set in the Terms of Payment, Schedule "B".

2.2 “**Services**” means those services to be provided by the Consultant in accordance with Schedule “A”.

2.3 “**PSAB**” means Public Sector Accounting Board.

3.0 **TERM**

3.1 This Agreement commences on _____ and ends upon completion of the Services to the full satisfaction of The Township, which completion shall not be later than _____

4.0 **SERVICES**

4.1 The Consultant shall provide the Services described in the attached Schedule “A” entitled Inflow and Infiltration Master Plan (the “**Project**”).

4.2 The Consultant shall comply with all reasonable requirements established by The Township for the performance of the Services, including but not limited to value, security, safety, emergency procedures, and access.

4.3 The Consultant shall exercise the degree of care, skill, and diligence normally provided by professional consultants in the performance of services in respect of projects of a similar nature to those services required under this Agreement.

4.4 The Township and the Consultant, by agreement in writing, may from time to time, make changes to the Services by altering, adding to, or deducting from the scope of the Services. The time for completion of the Services shall be adjusted accordingly. All Services shall be executed under the conditions of this Agreement.

5.0 **INVOICING**

5.1 Invoices are to be addressed to the Financial Services Department, The Township of Esquimalt, 1229 Esquimalt Road Esquimalt B.C., V9A 3P1.

5.2 The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.

5.3 **Taxes must be shown separately** on the invoice.

5.4 The invoices must conform to The Township’s *PSAB* requirements.

6.0 **PAYMENT**

6.1 The Township agrees to pay the Consultant in accordance with the provisions of Schedule “B”.

6.2 The Township shall not pay any amount exceeding _____ (excluding applicable taxes) in Canadian funds, unless prior written authorization has been obtained by the Consultant from The Township.

6.3 Where changes have been made to the Services in accordance with Clause 4.4, The Township and the Consultant may adjust the payment schedules accordingly.

7.0 **CONSULTANT**

7.1 The Parties acknowledge that the Consultant is an independent contractor and is not the agent, servant, or employee of The Township. The Consultant shall pay for any required Workers' Compensation coverage for any employee employed by it in the performance of Services under this Agreement and shall be solely responsible to remit any amounts that may be owing to the Government of Canada for GST, Income Taxes, Employment Insurance and Canada Pension Plan contributions.

8.0 **SUB-CONSULTANTS**

8.1 The Consultant may not hire any Sub-consultant without the prior approval of The Township. The Township shall be entitled to inquire as to the credentials and qualifications of the Sub-consultant and satisfy itself that the Sub-consultant is a suitable party to provide services in connection with this Agreement.

8.2 The Consultant shall be responsible for all services under this Agreement even if the Sub-consultants are approved by The Township.

8.3 For Sub-consultants retained by the Consultant and approved by The Township, the Consultant shall bind the Sub-consultant to the terms of this Agreement.

9.0 **INFORMATION AND PROPRIETARY RIGHTS**

9.1 The Township agrees to provide the Consultant with such information as may be reasonably required by the Consultant in the performance of the Services.

9.2 Any information collected or generated by the Consultant in the course of the performance of the Agreement is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), as well as all other regulation requirements governing the management of personal information.

9.3 The Consultant agrees that all data, information, and material provided to the Consultant by The Township are and shall be confidential, both during and after the term of this Agreement. The Consultant acknowledges that this is a fundamental term of this Agreement and the Consultant and its officers, directors, and employees will not directly or indirectly disclose or use at any time any confidential information acquired in the course of performing this Agreement. All provided data, reports, and material shall be returned to The Township upon termination of the Agreement.

9.4 All material prepared or assembled by the Consultant in connection with this Agreement and the Services shall be the property of The Township. This includes all reports, drawings, sketches, designs, plans, specifications, media copy, logos, questionnaires, tapes, computer applications, photographs, and other materials of any type whatsoever. Proprietary software supplied by the Consultant is excluded.

9.5 Copyright and all such material shall belong exclusively to The Township and, whenever requested by The Township, the Consultant shall execute any and all applications, assignments, and other instruments which The Township deems necessary in order to apply for and obtain the copyright to any part of the work produced by the Consultant and in order to assign to The Township the sole and exclusive copyright in such work.

10.0 LEGAL REQUIREMENTS

10.1 The Consultant shall ensure that the Services comply with all relevant legislation, including codes, bylaws, and regulations, as well as The Township's policies and procedures. Where there are two or more laws, bylaws, ordinances, rules, regulations or codes applicable to the services, the more restrictive shall apply.

11.0 INDEMNITY AND INSURANCE

11.1 The Consultant shall indemnify and save harmless The Township, its officers, agents, and employees against all third party claims, demands, actions, losses, expenses, costs or damages of every nature and kind whatsoever which they may incur or suffer as a result of the negligence of the Consultant or its officers, agents, or employees in the performance of this Agreement.

11.2 The Consultant shall maintain, in full force and effect with insurers licensed in the Province of British Columbia the following insurance:

1. Comprehensive General Liability Insurance in respect to the services and operations of the Consultant for bodily injury and/or property damage with policy limits of not less than \$2,000,000 per occurrence. The Township shall be added as an additional insured.
2. Professional Liability Insurance in respect to the services provided by the Consultant with policy limits of not less than \$1,000,000 per claim.
3. Certificates evidencing the existence of the policies shall be provided to The Township by the Consultant upon request and evidence of renewal shall be provided to The Township not less than thirty (30) days prior to the expiry dates of the policies.
4. The Consultant shall be responsible for the payment of all premium and deductible amounts relating to the said insurance policies and the Consultant shall maintain the required insurance during the term of this Agreement.
5. If The Township wishes, because of its particular circumstances, or otherwise to increase the amount of coverage of the aforementioned insurance policy, or to obtain other special insurance coverage, then the Consultant will cooperate with The Township to obtain increased or special coverage at The Township's expense.

12.0 BREACH OF CONTRACT

12.1 Where The Township determines that the performance by the Consultant of the obligations in this Agreement is not in accordance with this Agreement, The Township may require the Consultant by written notice to remedy such deficiency at the Consultant's sole expense and within seven (7) days of the giving of notice.

12.2 If such deficiency is not remedied to the satisfaction of The Township, The Township shall have the right, but shall be under no obligation, to remedy the deficiency to its satisfaction at the sole expense of the Consultant.

12.3 The Consultant shall be liable for all costs incurred by The Township to remedy such deficiency including, but not be limited to, all legal fees and disbursements on a solicitor and own client (full indemnity) basis.

13.0 **SUSPENSION OF AGREEMENT**

- 13.1 The Township may suspend the Consultant's services at any time upon seven (7) days written notice.
- 13.2 The Township shall pay all Fees due to the Consultant accrued to the time of suspension, but payment of all other Fees may at The Township's sole discretion be suspended.
- 13.3 The Township shall not be responsible to pay any fees incurred by the Consultant during the period of any suspension unless the Consultant satisfies The Township, before incurring any such fees, of the necessity for the same and provides The Township with such documentation as may be required by The Township in support of the claim for fees.

14.0 **TERMINATION OF AGREEMENT**

- 14.1 The Township may terminate this Agreement by giving seven (7) days notice in writing, if the Consultant
 - 1. fails to fully complete the Services within the time limited by the Agreement, or
 - 2. fails to complete the Services to the satisfaction of The Township, or
 - 3. becomes insolvent, or
 - 4. commits an act of bankruptcy, or
 - 5. abandons the Project, or
 - 6. assigns the Agreement without the required written consent, or
 - 7. has any conflict of interest that may, in the opinion of The Township, have an adverse effect on the Project.
- 14.2 The Township may terminate this Agreement upon seven (7) days written notice to the Consultant if funds are not available for completion of the Services or if The Township abandons the Project.
- 14.3 The Township shall, in the event of termination of this Agreement, pay to the Consultant all amounts for completed work due to the Consultant in accordance with this Agreement, as well as all reasonable fees incurred up to the date of termination. The Township shall have no further liability of any nature whatsoever to the Consultant for any loss of profit or any other losses suffered, either directly or indirectly, by the Consultant as a result of the termination of this Agreement.
- 14.4 The Consultant may terminate this Agreement upon seven (7) days written notice to The Township if any invoice payable by The Township to the Consultant for services in accordance with the terms of this Agreement remains unpaid for a period in excess of sixty (60) days upon receipt.
- 14.5 The Consultant agrees that termination or suspension of this Agreement or a change to the Services to be provided under this Agreement in accordance with clause 4.4 does not relieve or discharge the Consultant from any obligation under the Agreement or imposed upon it by law with respect to the Services or any portion of Services that it has completed.

15.0 **TERMINATION FOR CONVENIENCE**

- 15.1 The Township may terminate this Agreement at any time upon thirty (30) days written notice to the Consultant, whereupon The Township shall be liable for any Consultant's fees and expenses for satisfactorily completed work up to the date of termination and not thereafter.

16.0 **DISPUTE RESOLUTION**

- 16.1 All claims, disputes, and other matters arising out of this Agreement or relating to a breach may, upon the agreement of both parties, be referred to either:
1. Mediation – voluntary, no risk, non-binding process bringing the parties to a resolution. The mediator will be appointed upon the agreement of both parties;

or

 2. Arbitration – upon the agreement of both parties, be referred to a single arbitrator under the *Commercial Arbitration Act*, and if so referred, the decision of the arbitrator shall be final, conclusive and binding upon the parties. If the parties are not able to agree on an arbitrator, the choice shall be referred to the British Columbia Supreme Court for decision. All costs associated with the appointment of the arbitrator shall be shared equally unless the arbitrator determines otherwise in accordance with the *Commercial Arbitration Act* of British Columbia.

17.0 **FORCE MAJEURE**

- 17.1 Neither party shall be responsible for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to fire, flood, explosion, war, embargo, governmental actions, act of public authority, Act of God, or to any other cause beyond its control except labour disruptions.
- 17.2 In the event force majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party and shall take all reasonable steps to eliminate the cause.
- 17.3 Should force majeure event last longer than thirty (30) days either party may terminate this Agreement by notice in writing without further liability, expense or cost of any kind.

18.0 **NOTICES**

- 18.1 Any notices or other correspondence required to be given to an opposite party shall be deemed to be adequately given if sent by mail, fax or email, addressed as follows:

The Corporation of the Township of Esquimalt
Attention: Joel Clary, Director of Engineering and Public Works
1229 Esquimalt Road
Esquimalt BC V9A 3P1
Phone: (250) 414-7130 Fax: (250) 414-7160
Email: Joel.Clary@esquimalt.ca

To the Consultant at:

- 18.2 Such notice shall conclusively be deemed to have been given on the fifth business day following the date on which such notice is mailed, or the day following the day the notice is sent by fax or email.
- 18.3 Either party may, at any time, give notice in writing to the other of any change of address or other contact information.

GENERAL

19.0 ASSIGNMENT

- 19.1 The Consultant shall not, without the prior written consent of The Township, which consent may be withheld at the discretion of the Township, assign the benefit or in any way transfer the obligations of this Agreement.

20.0 TIME OF ESSENCE

- 20.1 The Services must be provided within the time limits as herein specified.

21.0 GOVERNING LAW

- 21.1 This Agreement shall be deemed to have been made in accordance with the laws of the Province of British Columbia. The Courts of British Columbia shall have sole and exclusive jurisdiction over any dispute or lawsuit between the parties.

22.0 PURCHASE ORDER

- 22.1 Purchase Order does not supersede and take precedence over the terms and conditions in this Agreement.

23.0 SEVERABILITY

- 23.1 Should any term or portion of this Agreement be found to be invalid or unenforceable the remainder shall continue to be valid and enforceable.

24.0 WAIVER

- 24.1 The Township may at any time insist upon strict compliance with this Agreement regardless of past conduct or practice with this or any other consultant.

25.0 **EXECUTION**

25.1 No work shall be performed by the Consultant until the Agreement has been executed by both parties hereto.

26.0 **ENTIRE AGREEMENT**

26.1 This Agreement is the whole agreement between the parties and may not be modified, changed, amended or waived except by signed written agreement of the parties.

The parties hereto have executed this Agreement as of the day, month and year first above written.

Corporation of the Township of Esquimalt

Per: _____

Per: _____

Joel Clary, P. Eng, PMP

Director of Engineering and Public Works

Per: _____

Deb Hopkins

Director of Corporate Services

Schedule "A"

Services

Schedule "B"

Terms of Payment

Schedule "C"

Certificate of Insurance