

HJA Water Management Consulting

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To: Mayor and Council, District of Oak Bay

From: Jack Hull MBA, P.Eng.

Date: March 4, 2016

Re: Uplands Combined Sewer Separation - Phase 1 Geotechnical Investigation

At the February 22, 2016 meeting, Council directed staff to prepare a Request for Proposals (RFP) to retain the services of a consultant to undertake a geotechnical investigation in the Uplands. A draft RFP is attached to this memorandum. Proponents will also be provided with information electronically as to the possible pipe locations.

The purpose of the investigation is to:

1. to establish the elevation of rock in relation to the road surface to a maximum depth of 5 metres;
2. to determine the suitability of the native subsurface materials for reuse as trench backfill and,
3. to record any other geotechnical information that would be of relevance to the installation of a sewer pipe, for example, the presence of groundwater, potential for trench sloughing etc.

The information will be used at the design stage for cost estimation and to include in the construction contracts. This geotechnical information will reduce the uncertainty with respect to the volume of rock excavation and reuse of excavated trench materials. If native trench material is unsuitable for re-use it will have to be trucked off site to a suitable disposal location and trench backfill material imported. Both the amount of rock excavation and the need for imported backfill will have a significant impact on the cost of construction.

It is expected that the geotechnical investigation will include a combination of probing to locate rock and drilling a small diameter hole to recover subsurface materials. At the Council meeting on February 22, 2016 a member of Council asked if geophysical methods could be employed for the geotechnical investigation to minimize disturbance of the roads. While geophysical methods could be used to locate rock they cannot be used to determine the suitability of native materials for reuse as trench backfill. That requires obtaining samples of the subsurface materials for evaluation.

The results of this geotechnical investigation will reduce the risk of cost over-runs and potential claims from the contractor(s) by improving the certainty of the volume of rock and trench backfill.

If approved on March 29, the RFP would be posted on BC Bid that week with proposals due on April 22. Following the evaluation of the proposals, a recommendation would be brought to Council on May 9. It is expected that the field work would be completed and a final report submitted by mid-July.

DISTRICT OF OAK BAY

Request for Proposals

The Uplands Combined Sewer Separation Project
Phase 1 Geotechnical Investigation

RFP No. OBMH - 01 - 2016

April 2016

DISTRICT OF OAK BAY

Request for Proposal

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DISTRICT OF OAK BAY
REQUEST FOR PROPOSALS
THE UPLANDS COMBINED SEWER SEPARATION PROJECT
Phase 1 Geotechnical Investigation
RFP No. OBMH - 01 - 2016

1. Instructions to Proponents

1.1. Invitation

The District of Oak Bay (District) invites detailed proposals from consultants (the "Proponents") in accordance with these Proposal Documents (RFP No. OBMH – 01 - 2016). The proposals will be evaluated for the selection of a consultant (or consultants) with the desire to enter into a contract (the "Contract") to provide the services described in Appendix A .

The Uplands Subdivision of 400 homes constructed in the early 1900's and covering an area of 188 hectares is serviced by a combined sewer system in which the domestic sewage from homes and runoff from roads and impermeable surfaces on the residential lots is conveyed in a single pipe. The District of Oak Bay is planning to separate the combined sewers in the Upland's Subdivision. The objective of this Request for Proposals (RFP) is to ascertain the sub-surface conditions along the sewer alignment including the depth to rock, the suitability of the native material for reuse as trench backfill and to record any other relevant geotechnical information.

A Contract will not necessarily result from this RFP.

1.2. Closing Time and Date for Submission of Proposals

The proponent will submit four (4) copies of each proposal, in accordance with the instructions contained herein, at the following specific physical location:

Attention: Fernando Pimentel
Deputy Director of Financial Services

Address: The District of Oak Bay
2167 Oak Bay Avenue
Victoria, BC., V8R 1G2
Fax: 250-598-9108

On or before the following date and time (the "Closing Time"):

Time: 3:00 pm [local time]
Date: April 22, 2016

The District reserves the right to extend the closing time at its sole discretion.

Proposals must not be sent by fax or electronically.

1.3. Not a Tender

This is a Request for Proposal and not a tender call.

1.4. Proposal Documents

Each Proponent will ensure it provides its correct name, address, email address, telephone number and facsimile number to the District at the time the Proponent receives a set of Proposal Documents.

Failure to return the attached Receipt Confirmation Form to the District Representative listed in section 1.5 within five (5) days of receiving the Proposal Documents may result in no further communication regarding this RFP.

Please use and reference the above RFP number on all correspondence.

Proponents are advised to read and respond appropriately to all sections of the RFP. Incomplete proposals may be rejected at the sole discretion of the District.

1.5. Inquiries

All inquiries related to this RFP, including whether or not the Contract has been awarded, must be directed in writing to the person named below (the "District Representative"). Information obtained from any person or source other than the District Representative may not be relied upon.

Name: Jack Hull MBA, P. Eng.

Telephone: 250-885-3711

E-mail: Jack.Hull@telus.net

Inquiries should be made no less than seven (7) days prior to Closing Time. The District reserves the right not to respond to inquiries made less than seven (7) days prior to Closing Time. Inquiries and responses will be recorded and may be distributed to all Proponents at the discretion of the District.

Proponents finding discrepancies or omissions in the Contract or RFP, or having doubts as to the meaning or intent of any provision, should immediately notify the District Representative. If the District determines that an amendment is required to this RFP, the District Representative will issue a written addendum to the Proponents. No oral conversation will affect or modify the terms of this RFP or may be relied upon by any Proponent.

1.6. Information Meeting

There will be an information meeting hosted by the District Representative to discuss the District's requirements under this RFP. **At the time of issuance of this RFP a meeting has been scheduled as follows:**

Date: April 6, 2016
Time: 1:30 (Local Time)
Location: District of Oak Bay Municipal Hall - Council Chamber
2167 Oak Bay Avenue

1.7. Addenda

If the District determines that an amendment is required to this RFP, the District will issue a written addendum to all Proponents of record that will be incorporated into and become a part of this RFP. Failure to acknowledge and address all addenda in a Proposal may render the Proposal invalid.

1.8. Late Proposals

Proposals received after the Closing Time will not be accepted or considered. Delays caused by any delivery, courier or mail service(s) will not be grounds for an extension of the Closing Time. Proposals received after the Closing Time will be returned unopened to the Proponent.

1.9. Amendments to Proposals

Proposals may be revised by written amendment, provided they are delivered to the location set out in section 1.2. An amendment must be signed by an authorized signatory of the Proponent in the same manner as provided by section 2.3. Fax amendments are permitted provided they are received by the District's fax machine prior to the Closing Time, but such fax amendments may show only the change to the proposal price(s) and in no event disclose the actual proposal price(s). A Proponent bears all risk that the District's fax equipment functions properly so as to facilitate timely delivery of any fax amendment. All faxed amendments should be sent to the District fax number listed in section 1.2.

1.10. District's Right to Modify Terms and Negotiate

The District, at its sole discretion, reserves the right to modify the terms of the RFP at any time before the Closing Time. The District also reserves the right following the Closing Time, and in accordance with the terms of this RFP, to negotiate with one or more Preferred Proponents any modification or variation of the terms of the RFP, including any of the documents referred to in the definition of "Contract" herein or any modification or variation of the terms of any Proposal, including price, that the District considers to be in its best interests. For certainty and without limiting the foregoing, the District may, for the purpose of entering into a Contract with any Proponent, amend the description of the required work included in this RFP so that it accurately reflects the services to be provided by the Proponent.

1.11. Examination of Contract Documents and Site

Each Proponent will be deemed to have carefully examined and understood the requirements and limitations of the RFP, including all attached Appendices, the Contract and the Site (as applicable) prior to preparing and submitting a Proposal,

with respect to any and all facts which may influence the decision to prepare and submit a Proposal.

2. Proposal Submission Form and Contents

2.1. Package

Each Proposal must be submitted using a two-envelope process. One envelope must contain the Proponent's price, fee schedule or cost of its Proposal and be clearly marked "Financial Proposal" and the other envelope must contain the balance of the Proposal and be clearly marked "Technical Proposal". Proposals must be in a sealed package and marked on the outside with the Proponent's name, title of the Project and RFP number.

2.2. Form of Proposal

Proponents must submit their Proposal in accordance with the instructions set out in Appendix "B" - Form of Proposal.

2.3. Signature

The Proposal must be signed by a person authorized to sign on behalf of the Proponent and include the following:

- (a) If the Proponent is a corporation then the full legal name of the corporation should be included, together with the names of the authorized signatories. The Proposal should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the Proposal on behalf of the corporation is submitted.
- (b) If the Proponent is a partnership or joint venture then the legal name of the partnership or joint venture and the name of each partner or joint venture should be included and each partner or joint venture should sign personally (or, if one or more person(s) having signing authority for the partnership or joint venture should provide evidence to the satisfaction of the District that the person(s) signing have signing authority for the partnership or joint venture). If a partner or joint venture is a corporation then such corporation should sign as indicated in subsection (a) above.
- (c) If the Proponent is an individual, including sole proprietorship, the name of the individual should be included.

3. Evaluation and Selection

3.1. Evaluation Team

The evaluation of Proposals will be undertaken on behalf of the District by the Evaluation Team. The Evaluation Team may consult with others including District staff members, third party consultants and references, as the Evaluation Team may in its discretion decide is required.

3.2. Evaluation Criteria

The Evaluation Team will compare and evaluate each Proposal to determine the Proponent's strength and ability to provide the Services in order to determine the Proposal which is most advantageous to the District, using the following general criteria:

- (a) Understanding of issues specific to this assignment including proposed work methodology, proposed level of effort, proposed work schedule and sequence of work.
- (b) Experience and capability of firms and staff in similar assignments
- (c) Past performance of firm and staff as determined from the District and references.
- (d) Availability and commitment of resources including staff, office and technical support.
- (e) Past performance of cost and scheduling control practice.
- (f) Fee schedule and total cost of services (upset fee) to the District.

Specific criteria and their importance are outlined in the Evaluation Form attached as Appendix "C".

3.3. Litigation

In addition to any other provision of this RFP, the District may, in its absolute discretion, reject a Proposal if the Proponent, or any officer or director of the Proponent submitting the Proposal, is or has been engaged directly or indirectly in a legal action against the District, its elected or appointed officers, representatives or employees in relation to any matter.

In determining whether or not to reject a Proposal under this section, the District will consider whether the litigation is likely to affect the Proponent's ability to work with the District, its contractors and representatives and whether the District's experience with the Proponent indicates that there is a risk the District will incur increased staff and legal costs in the administration of the Contract if it is awarded to the Proponent.

3.4. Additional Information

The Evaluation Team may, at its discretion, request clarifications or additional information from any Proponent with respect to any Proposal. The Evaluation Team may consider such clarifications or additional information in evaluating a Proposal.

3.5. Interviews

The Evaluation Team may, at its discretion, invite some or all of the Proponents to appear before the Evaluation Team to provide clarifications of their Proposals. In

such event, the Evaluation Team will be entitled to consider the answers received in evaluating Proposals.

3.6. Multiple Preferred Proposals

The District reserves the right and discretion to divide up the Services, either by scope, geographic area, or on any other basis as the District may decide, and to select one or more Preferred Proponents to enter into discussions and/or negotiations with the District for one or more Contracts to perform all or a portion or portions of the Services. In addition to any other provision of this RFP, Proposals may be evaluated on the basis of advantages and disadvantages to the District that might result or be achieved from the District dividing up the Services and entering into one or more Contracts with one or more Proponents.

3.7. Negotiation of Contract and Award

If the District selects one or more Preferred Proponents, then it may enter into a Contract with the Preferred Proponent(s), or enter into discussions with the Preferred Proponent(s) to attempt to negotiate the terms of the Contract(s), and such discussions may include but are not limited to negotiating amendments to the scope of Services and the Preferred Proponent's price(s).

If at any time the District reasonably forms the opinion that a mutually acceptable agreement is not likely to be reached within thirty days, the District may, at its discretion at any time thereafter, terminate negotiations with the preferred proponent and either enter into negotiations with any qualified Proponent or cancel the RFP process in its entirety.

Proponents will be notified in writing when a Contract has been awarded.

4. General Conditions

4.1. No District Obligation

This RFP does not commit the District in any way to select a Preferred Proponent, or to proceed to discussions or negotiations for a Contract, or to award any Contract, and the District reserves the complete right to at any time reject all Proposals, and to terminate this RFP process for any reason.

4.2. Proponents Expenses

Proponents are solely responsible for their own expenses in preparing, submitting Proposals, and for any meetings, negotiations or discussions with the District or its representatives and contractors relating to or arising from this RFP.

4.3. No Contract

By submitting a Proposal and participating in the process as outlined in this RFP, Proponents expressly agree that no contract of any kind is formed under, or arises

from, this RFP, prior to the signing of a formal written Contract.

4.4. Conflict of Interest

A Proponent shall disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with the District, its elected or appointed officials or employees. The District may rely upon such disclosure.

4.5. Solicitation of District Staff, Council Members, Contractors

Proponents and their agents will not contact any member of the District Council, District staff or District contractors with respect to this RFP, other than the District Representative named in section 1.5, at any time prior to entering into a Contract or the cancellation of this RFP.

4.6. Disclaimers/Limitations of Liability

Neither acceptance of a Proposal nor execution of a Contract constitute approval of any activity or development contemplated in any Proposal that requires any approval, permit or license pursuant to any federal, provincial, regional or municipal statute, regulation or bylaw. It is the responsibility of the Proponent to obtain such approval, permit or license prior to commencement of the work under the anticipated Contract.

The District, its elected officials, appointed officers, employees, agents, contractors and volunteers expressly disclaim any and all liability for representations or warranties expressed, implied or contained in, or for omissions from this RFP package or any written or oral information transmitted or made available at any time to a Proponent by or on behalf of the District. Nothing in this RFP is intended to relieve a Proponent from forming its own opinions and conclusions in respect of this RFP.

The District, its elected officials, appointed officers, employees, agents, contractors and volunteers will not be liable to any Proponent for any claims, whether for costs, expenses, losses, damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by a Proponent in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this RFP. By submitting a Proposal, each Proponent shall be deemed to have agreed that it has no right to make such claims.

4.7. Confidentiality

The RFP documents, or any portion thereof and any other confidential information to which a Proponent may have access as a result of this RFP process, may not be used by a Proponent for any purpose other than submission of Proposals.

By submitting a Proposal, every Proponent agrees not to divulge, release or otherwise use any information that has been given to it or acquired by it from the District on a confidential basis as a result of or during the course of the RFP process.

4.8. Ownership of Proposals and Freedom of Information

Each Proposal submitted, as well as any other documents received from a Proponent, become the property of the District, and as such are subject to the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"). FOIPPA grants a general right of access to such records, but also includes grounds for refusing the disclosure of certain information.

Proponents are asked to specifically identify information contained in their Proposal that is submitted on a confidential basis. Subject to any requirement for access under FOIPPA, the District will hold in confidence any such information received from a Proponent. However, the District specifically reserves the right to distribute information about any Proposal internally to its own directors, officers and employees, to its consultants and contractors where the distribution of that information is considered by the District to be necessary to its internal consultation process.

4.9. Local Time

The timing for the submission and receipt of Proposals and any amendments thereto shall be determined by reference to the District local area network time.

4.10. Acceptance of Terms

The submission of a Proposal constitutes the agreement of the Proponent that all the terms and conditions of this RFP are accepted by the Proponent and incorporated in its Proposal.

APPENDIX A

SCOPE OF SERVICES

The Uplands Subdivision of 400 homes constructed in the early 1900's and covering an area of 188 hectares is serviced by a combined sewer system in which the domestic sewage from homes and runoff from roads and impermeable surfaces on the residential lots is conveyed in a single pipe. As a condition of the Capital Regional District's Core Area Liquid Waste Management Plan the District is required to separate the combined sewers in the Upland's Subdivision (Humber and Rutland catchment areas). The new sewer will be installed in the roads rights of way.

The objectives of this RFP are:

1. to undertake a geotechnical survey, to a maximum depth of five (5) metres, to determine the location of bedrock:
2. to assess the suitability of sub-surface soils for reuse as trench backfill and,
3. to record any other geotechnical information that would be of relevance to the installation of a sewer pipe, for example, the presence of groundwater, potential for trench wall sloughing etc.

The geotechnical information will be relied upon to prepare the detailed design for sewer installation, for estimating the volume of rock excavation, the quantity of imported trench backfill and for the disposal of unsuitable backfill material. In addition, the information will be used in the preparation of the bill of quantities in the construction contract(s).

The proponent should rely on its knowledge of the Uplands geology and other information sources to minimize the amount of probing/drilling /sampling required while still meeting the objectives of this proposal.

Information to be Provided by District

In 2015/16 the District undertook a predesign study of various options for eliminating the combined sewers. While the District has not selected a sewer separation option, a sewer will be installed within the roads rights of way generally as indicated the drawings included with the RFP package.

APPENDIX B

FORM OF PROPOSALS

Each Proponent's submittal shall contain the following schedules:

1. Corporate Profile

Identify all firms involved in this project. Identify joint venture partners, prime consultant and all sub-consultants and other participants. Identify specific corporate role or discipline each firm will contribute to this project. Provide a corporate organization chart to show how firms relate/report to each other.

2. Project Organization

Provide a project organization chart. Make it project specific. Identify only those staff members at the senior and intermediate levels that will be actively and directly contributing to this project and as such named in the fee proposal. Clearly delineate project responsibilities from the corporate role.

3. Key Personnel

Provide a table which identifies all key personnel to be used on this project, their specific role/title on this project, their years with the firm, their total years of relevant experience, and a matrix which shows both previous experience and specific project involvement for key aspects of this project.

4. Availability/Commitment of Key Personnel

Identify each members' availability to perform the tasks in relation to any other project or corporate responsibilities for the duration of this project.

5. References

Provide at least five recent (within the last 5 years) references that show specific relevance to this project. Provide project name, project date/duration, project location, contact name, contact title/position, phone number and e-mail address.

6. Schedule of Activities

Provide a list of specific project activities and tasks in relation to the Scope of Services. Provide a bar chart schedule which identifies those project activities and tasks, and the duration of each activity and task. The schedule shall include key milestones noted in the RFP (if applicable). Identify submission of key project deliverables.

7. Deliverables

Provide a list of project deliverables to meet the requirements of the Scope of Services.

8. Other Services

Provide details of any services which could be provided which are outside the current Scope of Services, but are believed to be essential to the successful completion of the

Project. Include time and cost estimates of such additional services.
The District reserves the right to accept or reject any or all of the proposed other services.

9. Level of Effort

Provide a matrix which identifies all personnel including sub-consultants to be used on the project, their specific title/role on the project and the number of hours they will be involved in activities and tasks noted in Schedule 6 – Schedule of Activities. Provide subtotals for hours by activity.

10. Proposed Variation to Contract Agreement

List the proposed variations to the Contract Agreement. The District reserves the right to accept or reject any or all of the proposed variations.

11. Fees, Rates and Charges

Provide a matrix which defines all personnel including sub-consultants to be used on the project, their specific role/title on the project, their hourly charge-out rate and the number of hours they will be involved in the activities and tasks noted in Schedule 9 - Level of Effort. Provide subtotals for hours and fee by person and subtotal hours and fee by activity. As instructed in 2.1 – Package the financial proposal must be submitted in a separate envelope containing the Proponent's price, fee schedule or cost of its Proposal and be clearly marked 'Financial Proposal'.

APPENDIX C

EVALUATION PROCEDURES

Evaluation of Technical Proposals

Technical Criteria

	Maximum Points
1. THE PROPONENT	
1.1 Experience with similar projects	50
1.2 General related project experience	35
1.3 Location of the proponent	15
TOTAL PROPONENT:	100
2. THE PERSONNEL	
2.1 Project Manager	
(a) General experience	20
(b) Specific Experience	50
(c) Qualifications	20
(d) Local knowledge	10
2.2 Project Specialists	
(a) Experience	25
(b) Qualifications	15
(c) Local knowledge	10
TOTAL PERSONNEL:	150
3. THE METHOD	
3.1 General approach	20
3.2 Proposed team organization	20
3.3 Roles/responsibilities definition	25
3.4 Proposed list of activities	30
3.5 Project control and reporting	25
3.6 Understanding of District's objectives	85
3.7 Quality of presentation	20
3.8 Proposed level of effort	25
TOTAL METHOD:	250
TOTAL TECHNICAL SCORE:	500

EVALUATION PROCEDURES

Both technical merit and cost are awarded a maximum of 500 points each, for a total potential of 1,000 points. Technical proposals will be opened and marked out of a total score of 500 points against the evaluation criteria before any financial proposals are opened. Each technical presentation will be evaluated on the basis of the firm's experience, competence of its personnel and acceptability of the method proposed.

A Proponent's technical proposal shall be deemed qualified if it complies with all requirements contained in the Request for proposals.

Only proposals whose technical scores are within 15% of the proposal awarded the highest technical score will have their financial proposals opened and evaluated. All other financial proposals will be returned unopened upon appointment of the selected Proponent. The only exception to this policy is when the proposal of the second ranked Proponent is more than 15% below the highest technical score and still technically qualified. In such case, the second ranked form will have its financial proposal opened to avoid a non-competitive situation.

In all cases, the District reserves the right to cancel the competition and call for new proposals.

Financial proposals can be awarded a maximum of 500 points. The financial proposal with the lowest cost of fees will be awarded 500 points, which will be added to the technical score, resulting in the Proponents total score. The percentage by which each of the remaining Proponents' proposed costs exceed the cost of the lowest qualified proposal will be the percentage by which the 500 points is reduced, prior to adding it to the technical score for the Proponent's total score.

For example, if the proposed cost of Proponent B exceed the lowest proposed cost (Proponent B) by 10%, Proponent B will add 500 minus (10% of 500) i.e., 450 points to its technical score. The Proponent receiving the highest total score will be judged to have the best value to the District.

COSTS INCLUDED IN THE PROPOSAL EVALUATION

All personnel fees, salaries, wages and reimbursable expenses will be taken into account in the proposal evaluation.

DEBRIEFING

Subsequent to the final selection of a Proponent for contract award, all other Proponents' have the right to receive a debriefing on the strengths and weaknesses of their proposal. Point awarded by the evaluation team for both technical and financial proposals will remain confidential and may not be divulged to any proponent.

MINIMUM TECHNICAL SCORE

Technical proposals must achieve a score of at least 350 points (70%) to be considered 'technically qualified'. Financial proposals for firms failing to achieve the minimum technical score will not be opened.

APPENDIX D

PROFORMA CONTRACT FOR SERVICES

This AGREEMENT dated for reference and made as of the (date)

BETWEEN:

THE DISTRICT OF OAK BAY

2167 Oak Bay Avenue
Victoria, BC., V8R 1G2
Fax No. 250 –

(‘The District’, ‘we’, ‘us’ or ‘our’ as applicable)

OF THE FIRST PART

AND:

CONTRACTOR NAME

ADDRESS

FAX No.

(‘Contractor’, ‘you’ or ‘your’ as applicable)

OF THE SECOND PART

WHEREAS:

- A. The District called for proposals for the provision of consulting services for (Contract No.) (the "Project"), and the Contractor in reply submitted a proposal dated (Date) A copy of the call for proposals is attached as Schedule "C" to this Agreement, and a copy of the Contractor's proposal is attached as Schedules "D" and "E" to this Agreement.
- B. The District has agreed to engage the Contractor and the Contractor has agreed to provide the services described in Schedule 'A' to this Agreement (the "Services") to the District in respect of the Project on the terms and conditions set out in this Agreement.

NOW THEREFORE the District and the Contractor, in consideration of their mutual duties and responsibilities to one another under this agreement (the "Agreement"), agree as follows:

CONTRACTOR'S OBLIGATIONS:

- 1. **Standard of Care** You must provide the Services with the degree of care, skill and diligence normally provided by consultants having similar qualifications in the performance of duties of a nature similar to the Services, and you must provide the Services within the time limits specified in Schedule "A" or, if no time limit is specified in Schedule "A", you must provide the Services promptly.
- 2. **Billable Charges** You must charge only those fees and disbursements specifically authorized for the Services in Schedule "A" to this Agreement. All other costs and expenses incurred by you to provide the Services, including labour, materials, permits, and licenses, must be paid by you.

3. **Confidentiality** You must not disclose any information, data or secret of the District to any person other than representatives of the District duly designated for that purpose in writing by us and you must not use for your own purposes or for any purpose other than those of the District any information, data or secret you may acquire as a result of being engaged pursuant to this Agreement.
4. **Conflict of Interest** You must not, during the term of this Agreement, perform a service for, or provide advice to any person, firm or corporation, which in our reasonable opinion gives rise to a conflict of interest between your obligations under this Agreement and your obligations to such other person, firm or corporation.
5. **Ownership of Materials** All plans, specifications, manuals, preliminary drafts, sketches, copies, designs, computer modules, software programs, technology, data and information and all other materials produced by you under this Agreement (collectively, the "**Intellectual Property**") are and will remain our property even though you or another party has physical possession of them. You hereby waive in our favour any moral rights you, your employees, sub-consultants or sub- contractors may have in the Intellectual Property. Until the expiry or earlier termination of this Agreement, you may retain copies, including reproducible copies of the Intellectual Property. You must not use the Intellectual Property on other projects or for other clients except with written consent from us. You must obtain our consent before you publish or make public any of the Intellectual Property in book, periodical, electronic or any other form.
6. **Retention of Intellectual Property on Termination** Upon expiry or earlier termination of this Agreement, you must turn over to us all Intellectual Property, keeping a single copy for your own archival purposes.
7. **Severability** It is understood and agreed that the covenants and agreements contained in paragraphs 3, 4, 5, 6 and 8 shall survive the expiry or earlier termination of this Agreement and that those paragraphs are severable for such purpose.
8. **Indemnification** You must indemnify and save harmless us and our elected officials, appointed officers, employees, agents and contractors from and against any claims, costs, losses, damages, actions, causes of action and expenses arising, from an error, omission or negligent or wilful act of you or your agents, employees, sub-consultants or sub-contractors, or from your breach of this Agreement.
9. **Insurance** You must provide and maintain at your expense any insurance that you are required to provide by law, or that is reasonably necessary to insure against any risks you may assume as a result of entering into this Agreement, including coverage for your employees as required by the *Workers Compensation Act*. Without limiting the foregoing, you must provide and maintain at your expense any insurance specifically required in Schedule "B" to this Agreement. You must provide satisfactory proof of insurance coverage to us upon request.
10. **Compliance with Laws** You must comply with all laws applicable to the provision of the Services.
11. **Assignment** You must not assign, subcontract, or transfer any interest in your rights under this Agreement without our prior written consent.
12. **Legal Relationship** The legal relationship between you and the District arising pursuant to this Agreement is that of an independent contractor and a purchaser of services. Nothing in this Agreement shall be interpreted so as to render us your employer or partner, or the employer of anyone working for you, and you must not do anything that would result in anyone working for

you being considered our employee.

13. **Agent** You are not, and must not claim to be our agent for any purpose unless we give you authorization in writing to act as our agent for specific purposes that are reasonably necessary to you rendering of Services pursuant to this Agreement.

PAYMENT

14. **Payment for Services** We must pay you the fees for your Services at the times set out in Schedule "A". Where you are specifically authorized in Schedule "A" to charge us for disbursements, we must pay such disbursements to you in accordance with Schedule "A" as long as they are reasonably necessary for the performance of the Services and supported by conclusive documentation, including receipts. Payment will be issued no more than 30 days after receipt of your invoice, in accordance with our accounts payable policies.
15. **Currency** Unless stated otherwise in this Agreement, all sums of money are in Canadian dollars.

TERMINATION AND SUSPENSION

16. **For Default** If you are in default of your obligations under this Agreement, and you have not corrected the default within thirty (30) days following written notice from us, or if the default reasonably requires more time to correct, and you are not taking active steps to correct the default within thirty (30) days following written notice from us, or if you become insolvent or are assigned into bankruptcy, we may immediately terminate this Agreement. Termination will be without prejudice to any other rights or remedies we may have.
17. **For Absence** If for any reason you are unable to provide the Services using the individuals or subcontractors named in your proposal and set forth in this Agreement for reasons other than reasonable annual vacation time or short term temporary absence because of illness, we may, following written notice and without limiting any other right we may have, immediately terminate this Agreement and shall pay you for the Services performed and disbursements incurred by you to the date of termination, less any amounts necessary to compensate us for damages or costs incurred by us arising from your default.
18. **Suspension** If your Services are suspended by the District at any time for more than thirty (30) days through no fault of yours, then you shall have the right at any time until such suspension is lifted by the District to terminate this Agreement upon giving written notice thereof to the District. In such an event, you shall be paid by the District for all Services performed and disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such suspension unless the parties otherwise agree in writing.
19. **With Notice** If we are unwilling or unable to proceed with the Project we may terminate this Agreement by giving you fifteen (15) days written notice. If you receive such notice, you must perform no further Services other than those reasonably necessary to close out the Services, and we will pay you the fees and authorized disbursements properly owing as of the effective date of termination.

GENERAL

20. **Client to Provide Information** We will make available to you all information in our possession which we consider pertinent to your performance of the Services. You may rely upon the accuracy and completeness of such information except where it is unreasonable

to do so. However, you acknowledge that the District, in the preparation of the call for proposals and this Agreement, the supply of oral or written information to you, the review of proposals or the carrying out of the District's responsibilities under this Agreement, does not owe a duty of care to you and you hereby waive for yourself, your successors and assigns, the right to sue the District in tort for any loss, including economic loss, damage, cost or expense, arising from or connected with any error, omission or misrepresentation occurring in the preparation of this Agreement, the call for proposals, the supply of oral or written information to proponents, the review of proposals, or the carrying out of the District's responsibilities under this Agreement.

- 21. Client to Respond** We will give prompt consideration to all draft reports, drawings, proposals and other documents relating to the Project provided to us by you, and, whenever prompt action is necessary, where possible inform you of a decision in such reasonable time so as not to delay your Services.
- 22. Site Access** We will arrange and make provision for your entry and ready access to property (public and private) as well as to the Project site, as necessary, to enable you to perform the Services. We will arrange a safety orientation for you and your employees, to identify the hazards of the site. Once we have provided such a safety orientation, you will be responsible for arranging any additional safety orientations necessary as a result of a change in your personnel or otherwise.
- 23. Jurisdiction** This Agreement is governed by and shall be construed in accordance with the laws in force from time to time in the Province of British Columbia.
- 24. Waiver** Except as may be specifically agreed in writing, no action or failure to act by the District or the Contractor shall constitute a waiver of any right or duty afforded either of them under this Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.
- 25. Entire Agreement** This Agreement, including the schedules attached to it, constitutes the entire Agreement between the District and the Contractor and supersedes all previous expectations, understanding, communications, representations and agreements whether verbal or written between the District and the Consultant with respect to the subject matters hereof and may not be modified except by subsequent agreement in writing executed by the District and the Contractor.
- 26. Conflict** In the event of a conflict between a provision in this Agreement and a provision in a schedule attached to this Agreement, the provision in this Agreement shall prevail.
- 27. Invalidity** If any part of this Agreement is or is declared invalid by a court of competent jurisdiction, the remainder shall continue in full force and effect and be construed as if the Agreement had been executed without the invalid portion.
- 28. Designation of Parties** In this Agreement, "we", "us" and "our" refer to the District alone and never refer to the combination of the Contractor and District. The combination of the District and the Consultant is referred to as "the parties".
- 29. Headings** The captions or headings appearing in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of it.
- 30. Interpretation** Whenever the singular or masculine is used in this Agreement, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.

31. Time Time is of the essence in this Agreement.

32. Enurement This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns. Neither party may assign, subcontract or transfer an interest in the Agreement without the prior written consent of the other.

DISPUTE RESOLUTION

33. Arbitration All matters in dispute under this Agreement which are not first resolved between the parties acting reasonably may, with the concurrence of both the District and the Contractor, be submitted to arbitration pursuant to the *Commercial Arbitration Act* (British Columbia) to a single arbitrator appointed jointly by them.

34. No Conflict of Interest No one shall be nominated to act as an arbitrator who is in any way financially interested in the conduct of the Project or in the business affairs of either the District or the Contractor.

35. Nominees If the parties cannot agree on the choice of an arbitrator, each party shall select a nominee and the nominees shall jointly appoint an arbitrator.

DESIGNATED REPRESENTATIVES

36. District Representative We shall by notice in writing to you designate a representative to act on our behalf with respect to the performance of this Agreement (the "District Representative") and we may at any time or from time to time thereafter, by notice in writing to you, designate another person to act as the District Representative in the place and stead of any person previously designated.

37. Project Manager You shall, by notice in writing to us, designate a representative to act on your behalf with respect to the performance of this Agreement (the "Project Manager") and you may at any time or from time to time thereafter, upon written approval from us, designate another person to act as the Project Manager in the place and stead of any person previously so designated.

NOTICE

38. Notice Unless otherwise specified in this Agreement, any notice required to be given by either party shall be deemed to have been given if delivered by hand, mailed by prepaid registered mail or faxed to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice shall be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered by hand, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, force majeure or other cause beyond the control of the parties, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice shall utilize any other means of communication which have not been so interrupted or shall deliver such notice by hand in order to ensure its prompt receipt.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first written above.

The District of Oak Bay by its authorized signatories:

(Name) by its authorized signatories:

APPENDIX E

INSURANCE REQUIREMENTS

1. The Contractor shall, at his own expense, provide and maintain during the term of this Agreement the following insurance in a form acceptable to the District with a company duly registered and authorized to conduct insurance business in the Province of British Columbia.
 - a. Commercial General Liability Insurance
 - i. The Contractor shall maintain Commercial General Liability Insurance covering losses to third party for bodily injury or death, property damage, and unlicensed vehicle and attachment equipment operations, and
 - ii. This insurance shall be an all risk, occurrence based policy with three million dollars (\$3,000,000) minimum limit on an occurrence basis, and
 - iii. The District of Oak Bay shall be named as an additional insured, and
 - iv. The policy shall contain separation of insureds, cross liability clause in the conditions of the policy and,
 - v. All such policies shall provide that no cancellation or material alteration in the policy shall become effective until 15 days after written notice of such cancellation or alteration has been given to the District of Oak Bay, and
 - vi. The Contractor shall provide the District of Oak Bay with a certificate or certificates of insurance as evidence that such insurance is in force including evidence of any insurance renewal or policy or policies. Every certificate, or certificates of insurance shall include certification by the insurance agent or the insurer that the certificate of insurance specifically conforms to all provisions required herein.
 - b. Automobile Insurance
 - i. The Contractor shall maintain Third Party Legal Liability Insurance in an amount not less than two million dollars (\$2,000,000) per occurrence in respect of all vehicles owned and/or operated by the Contractor in connection with this agreement.
 - c. Property Insurance

Notwithstanding anything contained elsewhere herein or within the service agreement, it is understood and agreed that the District of Oak Bay will not be liable for any loss or

damage to the Contractor's equipment including loss of use thereof. Each and every policy insuring Contractor's equipment to be use on this project shall contain a waiver of subrogation clause in favour of the District of Oak Bay.

d. Professional Liability (Errors and Omissions) Insurance

- (i) The Contractor shall maintain Professional Liability (Errors and Omissions) Insurance coverage with a limit of not less than Five Hundred Thousand dollars (\$500,000) per claim and an aggregate limit of not less than One Million dollars (\$1,000,000) per policy period.
 - (ii) The Contractor shall provide the District of Oak Bay with a certificate of insurance as evidence that such insurance is in force including evidence of any insurance renewal or policy or policies.
2. The Contractor shall require that each of his sub-contractors provide evidence of comparable insurance in the name of the Sub-Contractor to that set forth under this schedule.
3. Maintenance of insurance and the performance of the Contractor of its obligations under this schedule shall not relieve the Consultant of liability under the indemnity provisions set forth in this Agreement.
4. The District of Oak Bay may take out and maintain the insurance required by this agreement at the cost of the Contractor if the Contractor is in default under this Agreement

APPENDIX F

LOCATION OF THE WORKS

A plan of the Humber and Rutland catchment areas showing the potential location of the new sewer is available with this RFP on BC Bid.

THE DISTRICT OF OAK BAY

REQUEST FOR PROPOSALS

RFP NO. OBMH - 01- 2016

RECEIPT CONFIRMATION FORM

Please complete this form and Email it within five (5) working days to:

Mr. Fernando Pimentel
Deputy Director of Financial Services
The District of Oak Bay
fpimentel@oakbay.ca

COMPANY:

CONTACT PERSON:

Email:

Phone:

I have received the above noted Request for Proposals and (check one item):

- We will be submitting a proposal
- We will not be submitting a proposal

SIGNATURE:

TITLE:

DATE:

PROPONENT CHECKLIST

This checklist has been provided solely for the convenience of the proponent. Its use is not mandatory and it does not have to be returned with the proposal.

- The requirements of the Request for Proposal have been read and understood by everyone involved in putting together the proposal.
- The proposal has been signed.
- The proposal explicitly addresses everything asked for in the Request for Proposal.
- The proposal meets all the mandatory requirements of the Request for Proposal.
- The proposal clearly identifies the proponent and the Request for Proposal title.
- The proponent's name and the Request for Proposal title appear on the technical and financial proposal submittal envelopes.
- The appropriate number of copies of the proposal have been submitted. (Proposals without the correct number of copies may be rejected).