



REQUEST FOR PROPOSALS

RFP – 2019 - 12

STABILITY ASSESSMENT FOR WHITEHEAD DAM

RFP ISSUE DATE: **Monday, May 6, 2019**

Two (2) complete original printed copies and one (1) complete digital copy on a USB drive in PDF format of the Proposal in a sealed envelope clearly and plainly marked **“RFP-2019-12 STABILITY ASSESSMENT FOR WHITEHEAD DAM”** may be hand delivered, couriered or mailed and must be received prior to the Closing Date and Time. Faxed or emailed copies will not be accepted.

Proposals received after the Closing Date and Time will not be considered. Proposals will not be opened in public.

RFP CLOSING DATE: **Thursday, May 30, 2019**

RFP CLOSING TIME: **2:00 PM PST**

Delivered to: **Wendy Rose, Manager of Procurement and Contract Administration**
DISTRICT OF SUMMERLAND
MUNICIPAL HALL
PO BOX 159, 13211 HENRY AVENUE
SUMMERLAND, BC V0H 1Z0

The District's website is the only authorized website to obtain competitive bid documents for the District of Summerland opportunities. The District of Summerland shall not be held responsible for our competitive bid documents that are located on any other website.

Summary, Contents & Instructions:

Summary:

Through this Request for Proposals, the District of Summerland is seeking proposals from qualified and experienced consultants to provide engineering services to complete a Stability Assessment for Whitehead Dam.

Further details on the Scope of Work and deliverables are provided in Part A – The Services.

Procurement Documents are available for download at:

- District of Summerland website at [Bid Opportunities](#)

Procurement Opportunities can also be viewed at:

- BC Bid website at [BC Bid](#)
- Civic Info BC website at [Civic Info BC](#)

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Part A: The Services

This Part A provides detail on the services required by the District of Summerland. Proponents should ensure they are fully capable of providing all of the work and deliverable outlined, as this section will form the Scope of Work in the Agreement.

1. Background:

1.1. The District of Summerland:

The District of Summerland (the “District”) is a municipality of 11,615 residents located in the Okanagan Valley in southern British Columbia, with an unparalleled blend of rural, agricultural and urban living.

Further details on the District can be found at www.summerland.ca

2. Scope of Work:

Whitehead Reservoir is one of the most remote of the Summerland storage facilities. It is approximately 50 km travel distance from Summerland, and 11 km West of Crescent Reservoir on a plateau above and West of North Trout Creek. A geotechnical investigation is required to support the completion of an updated stability assessment for the existing earthfill dam.

2.1. Project Scope:

1. Meet with District staff for a start-up meeting;
2. Prepare a Notice of Invasion Investigation, to be submitted to the Regional Dam Safety Officer for approval, as per the BC Dam Safety Regulation;
3. Drill three (3) auger test holes through the crest of the dam and into the underlying foundation soils, including the collection of the penetration data to evaluate density of fill and foundation materials;
4. Drill one (1) shallow test hole beyond the downstream toe of the dam;
5. Collect representative soil samples and routine index testing, including visual identification, moisture content, and sieve analysis to be completed;
6. Install two (2) standpipe piezometers to permit future monitoring of the phreatic surface within the embankment; and,
7. Complete updated slope stability analyses using limit equilibrium methods, including static, sudden drawdown and seismic loading conditions.

2.2. Method:

The Consultant’s method for completing the Stability Assessment for Whitehead Dam will be determined in the Proposal to the RFP, however it should include at a minimum the following elements:

- 2.2.1. Kick-off Meeting:** A kick-off meeting with District staff to review the project objectives, schedule, deliverables, and steps.
- 2.2.2. Documentation:** Consultant to work with District staff to gather appropriate documentation. Documentation to be provided (as available) will include:
 - 2017 Whitehead Dam Inspection Memo

- 2017 Survey Plan
- 2017 Survey Sections 1-3
- 2019 Whitehead Dam IDF and Spillway Capacity Assessment

2.2.3. Staff Interviews: The Consultant will meet with District staff to discuss findings.

2.2.4. Report / Presentation: The Consultant will produce a full report which details, at a minimum, the following:

- Prepare a Geotechnical investigation report summarizing the above work, including a test hole location plan and test hole logs.

The report will be delivered in electronic format (PDF format), suitable for sharing with District staff

2.3. Budget:

The District is not disclosing a budget for the Services as part of this RFP process. Proponents should provide their required remuneration as detailed in Part C.

2.4. Timeline:

The District anticipates executing a Contract with the Consultant for the Services no later than **June 21, 2019**

2.5. Additional Information:

It is the District's expectation that the Proponent will develop a comprehensive proposal outlining their proposed methodology including the required components and detailing the included deliverables.

Proponents are required to include a separate section in their Proposal that outlines any services they will be providing that are not included in the Scope of Services, but which the Proponent deems necessary to successfully complete this consulting assignment.

It is the Proponent's responsibility to determine if, as part of their evaluation of this consulting assignment and the preparation of their Proposal, they need to request access to any information not attached to but outlined in the RFP.

3. Pre-Requisites for the Consultant:

The Consultant must possess the following:

- Business License
 - WorkSafe BC Clearance Letter of account in good standing and coverage for all employees/team members and sub-consultants proposed.
 - Commercial General Liability Insurance \$2,000,000 naming the District as additional insured
 - Automobile 3rd Party Liability Insurance \$5,000,000
 - Professional Errors and Omissions Insurance \$2,000,000 per occurrence and \$2,000,000 aggregate.
- The District's preference of Professional Errors and Omissions Insurance would be between \$3,000,000 and \$5,000,000 per occurrence and between \$5,000,000 and \$10,000,000 aggregate. This will affect the pre-requisite scored criteria in the evaluation process.**

Part B: The RFP Process

This Part B details the terms and conditions of how this RFP process will be run by the District, and how the Consultant will be selected. Proponents to this RFP to ensure they follow all the terms detailed below. Failure to follow the terms of this Part B may result in a Proposal being rejected.

1. Key Details:

1.1. RFP Process:

Not a Tender Call

This RFP is not a tender call and the submission of any response to this RFP does not create a tender process. This RFP is not an invitation for an offer to contract made by the District.

By this RFP, the District reserves itself the absolute and unfettered discretion to invite Proposal Submissions, consider and analyze submissions, select short-listed Proponents or attempt to negotiate a contract with the successful Proponent as the District considers desirable. Proposal submission by a Proponent and its subsequent receipt by the District does not represent a commitment on the part of the District to proceed further with any Proponent or Project.

1.2. No Obligation to Proceed:

Though the District fully intends, at this time, to proceed through the RFP, the District is under no obligation to award a contract as a result of this RFP. The receipt by the District of any information (including any submissions, ideas, plans, drawing, models or other materials communicated or exhibited by any intended Proponent or on its behalf), shall not impose any obligations on the District. There is no guarantee by the District, its officers, employees or agents, that the process initiated by the issuance of this RFP will continue, or that this RFP process or any RFP process will result in a Contract with the District.

1.3. RFP Contact Person:

The point of contact at the District of Summerland for any queries or questions related to this RFP is:

- Devon van der Meulen, Manager of Utilities
- **Email: dvandermeulen@summerland.ca**
- **Phone: (250) 404-4075**

Proponents shall carefully review the RFP documents. The Proponent is solely responsible for seeking any clarification as to the meaning or intent of any provision by notifying the RFP Contact Person, not less than five (5) business days prior to the Closing Date. This will allow the District, at its discretion, to issue addendum prior to Closing Date. Questions received after the Deadline for Questions will be addressed if time permits.

Verbal discussion between District staff and a Proponent shall not become a part of the RFP unless confirmed by a written Addendum. The District shall not be held responsible for any misunderstanding by the Proponent.

1.4. [Timetable:](#)

This RFP process will follow the timetable noted below and may be amended at the District's discretion through the issuance of an addendum to this RFP.

Event:	Date:
Issue Date of this RFP	Monday, May 6, 2019
Deadline for Questions	May 24, 2019 at 2:00 PM PST
Last Day for Issue of Addenda	May 31, 2019
RFP Closing Date and Time:	Thursday, May 30, 2019 at 2:00 PM PST
Contract Execution Date (estimated)	June 21, 2019

1.5. [Site Meeting Details:](#)

A site meeting will be held on **Tuesday, May 22nd at 9:00 am** at the **Water Treatment Plant, 16700 Prairie Valley Road, Summerland, BC**. This site meeting is non-mandatory. Proponents should submit any questions they may have by the Deadline for Questions of May 24, 2019.

1.6. [Submission of Proposals:](#)

Proposal submission to this RFP are to be address to the Manager of Procurement and Contract Administration and submitted to the following address:

▪ **Closing Location:**

District of Summerland
Municipal Hall
PO Box 159, 13211 Henry Ave
Summerland, BC V0H 1Z0
Attention: Wendy Rose, Manager of Procurement and Contract
Administration

- **RFP Closing Date and Time:** Proposals must be received no later than the RFP Closing Date and Time detailed in section 1.4 above.
- **Proposal Format:** Two (2) paper originals and one (1) electronic copy in PDF format, in a sealed envelope or package containing all the information required in the forms listed under Part C – Proposal Submission Forms. The envelope must be clearly marked with the name and address of the Proponent, as well as the words "**RFP-2019-12**" "**STABILITY ASSESSMENT FOR WHITEHEAD DAM**".
- **Proposal Submission Form (signed and dated):** Proposals to include a completed, signed, and dated Proposal Submission Form acknowledging all Addenda issued by the District. A copy of this form is included in Part C.
- **Proponent Profile:** Proposals shall include a description of the firm's capabilities and background that makes it well suited to this project. The profile will also include:
 - The manager who the Proponent has appointed to lead the Proponent's project team and who will be the main contact for the District; and,

- The professional designation, responsibilities, qualifications, and relevant experience of each of the Proponent's project team members.
- **Approach and Methodology:** Proposals shall include a detailed work plan outlining all relevant tasks along with the personnel, estimated hours, hourly rates for each personnel, and total estimated costs for each task as well as:
 - Detailed breakdown of anticipated disbursements including, but not limited to, vehicle costs, mileage, travel, meals, lodging, and administrative support;
 - A detailed outline clearly describing the methodology anticipated to complete this consulting assignment; and,
 - A list of all relevant tasks, meetings, milestones, and deliverables required to complete this consulting assignment.

It is the expectation of the District that the proposal will include a detailed "Approach and Methodology" section which clearly outlines the approach that the Successful Proponent will plan to take to complete the Project.

- Proposals Submissions may be delivered by hand, mail, or courier to the District address as detailed above in Section 1.6. The District office is open Monday through Friday from 8:30 am to 4:00 pm and is closed on weekends and statutory holidays.
- It is the Proponent's sole responsibility to ensure that the Proposal is received before the RFP Closing Date and Time.
- Proposals sent by facsimile or email will not be accepted.
- In the event that only one Proposal Submission is received, the District reserves the right to:
 - return the Proposal Submission unopened;
 - open the Proposal Submission privately. If the Proposal Submission is opened and does not meet the criteria or is in excess of the District's budget, the District reserves the right to re-issue the RFP Documents for re-bid without revising the existing RFP Documents.
- Proposals Submissions must be executed by an authorized signatory of the Proponent.
- Proposal Submissions remain valid, and may not be withdrawn, for a period of sixty (60) days following the Closing Date and Time of this RFP.
- This RFP and the successful Proponent's Submission may form part of any Contract Agreement entered into with the District.

1.7. Fee:

Proposals must include fees as listed in Section 1.6, and a list of any additional fees for services included in the Proponent's proposal that are not required in the Scope of Services, and identified as Value-Added;

- a) GST shall not be included in the Contract Fee. GST will be added to the Contract Fee at the time of payment by the District. All other applicable taxes are to be included in the Contract Fee; and,

- b) Proposals must include a total fee amount as well as a rate per hour for additional consulting services upon request. Proposals must include a total fee amount that identifies expenses associated with the proposal, including, but not limited to, consulting, reporting, presentations, community and stakeholder consultation, travel, and ancillary expenses.
- c) Proponents acknowledge that, if it is a non-resident company, payments to the Proponent, as a non-resident, may be subject to withholding taxes under the *Income Tax Act (Canada)*. Further, unless a non-resident Proponent provides the District with an official letter from Canada Revenue Agency waiving the withholding requirements, the District will withhold the taxes it determines are required under the *Income Tax Act (Canada)*.

1.8. References:

Proposals to include three (3) references with whom the Proponent has done similar work.

1.9. Eligibility:

Proposals will not be evaluated if the Proponent's current or past corporate or other interest may, in the District's opinion, give rise to a conflict of interest in connection with the RFP.

2. Definitions Used in this RFP:

- 2.1. **"Addendum" "Addenda"** means additional information or amendments to this RFP, issued by the District.
- 2.2. **"Agreement"** means the written agreement between the District of Summerland and the successful proponent resulting from this RFP.
- 2.3. **"Best Value"** means the highest total ranked score of evaluation and closest alignment with project goals as determined by the District.
- 2.4. **"CAO"** means the Chief Administrative Officer of the District of Summerland.
- 2.5. **"Consultant"** means the individual, firm, co-partnership, or corporation retained by the District to perform the Project or Work in accordance with the Contract Agreement Documents.
- 2.6. **"Contract"** means a written Agreement for the provision of the Services that may result from this RFP, executed between the District of Summerland and the successful Proponent to this RFP.
- 2.7. **"Closing Date and Time"** means the date and time that Proposals to this RFP must be received.
- 2.8. **"District"** means the District of Summerland.
- 2.9. **"Must", "Mandatory", or "Required"** means a requirement that must be met in order for a Proposal to receive consideration.
- 2.10. **"Project Manager"** means Choose an item..
- 2.11. **"Proponent"** means a person or entity that submits a Proposal to this RFP.
- 2.12. **"Proponent Submission"** means a response submitted to this RFP.
- 2.13. **"Proposal"** means a Proposal submitted by a Proponent in response to this RFP.
- 2.14. **"Proposal Evaluation Committee"** means the team of qualified staff appointed by the CAO to review and assess Proposals.
- 2.15. **"Request for Proposal" or "RFP"** means this Request for Proposals #RFP-2019-01 and includes the documents listed in the index and any modifications thereof or additions thereto incorporated by addendum before the Closing Date and Time.

2.16. **“Section”** means the numbered section of the referenced part of this RFP.

2.17. **“Services”** means the Consulting Services which the District seeks to be provided by the Consultant.

2.18. **“Work”** means and includes anything, and everything required to complete the Services for the fulfillment and completion of this Agreement.

3. Qualifications:

By submitting a Proposal Submission, the Proponent is representing that it has the competence, qualifications, and relevant experience to carry out the work and will employ the same experienced staff to efficiently and safely perform the requirements of the Project.

4. Value-Added Services:

Given the District’s objectives and the Proponent’s best practices experience, the Proponent may have additional project offerings that will ensure the overall short and long-term success of the District’s project as defined in this RFP.

The Proponent may include ideas beyond the scope of the RFP that provide added benefit to the District not specifically asked for in this RFP and what the Proponent is prepared to supply and provide as part of the Agreement. Unless otherwise stated, it is understood that there will be no extra costs for these services; however, if the Proponent identifies any additional costs pertaining hereto, the summary and explanation of the value-added costs should be included and identified in the Fee Schedule.

5. Amendment of a Proposal by Proponent:

A Proponent may amend a Proposal at any time up until the RFP Closing Date and Time. Amendments to be submitted in the same format as the original Proposal. Amendments to a Proposal must be clearly labelled as such, must contain the RFP reference number and title, and the full legal name and legal address of the Proponent. Amendments must clearly detail which part(s) of the Proposal is being amended or replaced.

Amendments to a Proposal may be sent by fax to (250) 494-1415. If a Proposal Amendment is sent by fax, the Proponent assumes the entire risk that the District will properly receive the fax before the Closing Date and Time. The District shall not be liable to any Proponent for any reason a fax is not properly received.

The Proponent will not change the wording of its Proposal after the RFP Closing Date and Time, and no words or comment will be added to the Proposal unless requested by the District for clarification. The District reserves the right to disqualify a Proponent if, in the opinion of the CAO or appointed District Representative, an amendment expressly, or by inference, discloses the Proponent’s Fees or other material elements of the Proposal such that the confidentiality may have been breached.

6. Withdrawal of a Proposal by Proponent:

A Proponent may withdraw a Proposal that is already submitted at any time throughout the RFP process prior to the Closing Date and Time by contacting the RFP Contact Person. After the RFP Closing Date and Time, all Proposals become irrevocable.

By submission of a Proposal, the Proponent agrees that should its Proposal be successful, the Proponent will enter into a Contract Agreement with the District.

7. Addenda Issued by District:

This RFP may only be amended by way of an Addendum issued in accordance with this Section. At any time up until the Closing Date and Time, the District may issue an Addendum in order to amend, clarify, or answer questions to this RFP. Each Addendum will be issued at the same location and in the same manner as this RFP document (at [Bid Opportunities](#)). Each Addenda will form an integral part of this RFP. Proponents are solely responsible for checking for Addenda up until the Closing Date and Time. If the District deems it necessary to issue an Addendum after the Last Day for Issue of Addenda, as detailed in Section 1.4 of this Part B, then the District may extend the Closing Date and Time in order to provide Proponents with more time to complete their Proposal.

Proposals must confirm receipt of all Addenda in Part C, Appendix A – Proposal Submission Form of their Proposal.

8. Evaluation of Proposals & Award of Contract:

The District will conduct the evaluation of Proposals and selection of a successful Proponent in accordance with the process detailed in this Section. Evaluation of Proposals will be by a Proposal Evaluation Committee. The District's intent is to enter into a Contract with the Proponent who has met all mandatory criteria and minimum scores, and who has the highest overall ranking based on this evaluation process.

8.1. [Mandatory Criteria:](#)

Proposals not clearly demonstrating that they meet the following mandatory criteria will be excluded from further consideration in the evaluation process. If all submissions do not meet the District's mandatory criteria, it shall remain the District's sole discretion to evaluate submissions and reject all or award to the Proponent with the highest overall ranking.

Mandatory Criteria:	
1	The Proposal must be received by the Closing Date and Time, in accordance with the requirements of Section 1.4 – RFP Timetable
2	The Submission of Proposal must be in in accordance with the requirements of Section 1.6 – Submission of Proposals
3	The Submission of Proposal must be received in accordance with the requirements of Section 1.7 - Fee
4	The Proposal must include the following completed form: <ul style="list-style-type: none">• Appendix A – Proposal Submission Form

8.2. Scored Criteria:

Proposals that meet all of the Mandatory Criteria will be further assessed against the following scored criteria.

Scored Criteria	
Budget and Fee <ul style="list-style-type: none"> Value for proposed services Explanation/breakdown of proposed budget 	30%
Pre-Requisites <ul style="list-style-type: none"> WorkSafeBC, Commercial General Liability Insurance, Errors & Omissions Insurance. 	5%
Experience/Project Team and References: <ul style="list-style-type: none"> Experience and education of the Project team as it relates to the Work outlined in the RFP. Experience (type and number of similar projects) of the firm. Reference – comments from clients utilizing the Proponent's services for similar projects. 	30%
Approach and Methodology <ul style="list-style-type: none"> The Approach and philosophy applied to complete the Services as outlined in the RFP. Demonstrated clear understanding of the scope of work, identification of key issues and initiatives. 	30%
Project Schedule A detailed Schedule of the proposed start and end date of the Project	5%

Proposals that do not meet the minimum score within a scored criterion will not be evaluated further.

8.3. Scoring Method:

The following method will be used to score the scored criteria:

- Total Fixed Lump Sum Per Unit Contract Price: Total Fixed Lump Sum Per Unit Contract Price will be scored relative to other Proponents' Total Fixed Lump Sum Per Unit Contract Prices using the following formula:
 - $\text{Lowest Total Fixed Lump Sum Per Unit Contract Price} \div \text{Proponent's Total Fixed Lump Sum Per Unit Contract Price} \times \text{Weighting} = \text{Score}$
- Other Criteria: All other criterion (except Total Fixed Lump Sum Contract Price) will be scored by the evaluation committee out of 100, which will then be multiplied by the Weighting factor to provide a weighted score.
- Award will be made based on the overall Best Value for proposed services, and the Best Value will be determined by the District. The quality of the service to be supplied, the conformity with the specifications, the suitability to requirements, qualifications and certifications, Pre-requisites (WorkSafeBC, Business License, Insurance Requirements), and references shall all be taken into consideration.

8.4. Evaluation Committee:

Proposal Submissions will be reviewed and evaluated by an evaluation committee established by the District and may include employees, or other individuals as the District deems suitable. Upon submitting a Proposal, Proponents agree that the District may disclose their company name; however, no prices, scores, weights or totals will be provided to any Proponents.

Awards will be made based on the Best Value offered, and the Best Value will be determined by the District. The quality of the service to be supplied, the conformity with the specifications, the suitability to requirements, guarantee clauses, past performance and references shall all be taken into consideration.

8.5. Rejection of Proposals:

The District reserves the right, at the District's sole discretion, to reject any or all Proposals, without limited the foregoing, any Proposal which:

- a) Is incomplete, obscure, irregular or unrealistic;
- b) Has non-authorized (not initialled or endorsed) erasures or corrections in the Proposal or any schedule;
- c) Omits or fails to include any one or more items in the Proposal for which a price is required as outlined in Part B;
- d) Fails to complete the required information by the RFP to be furnished with a Proposal; and/or,
- e) Fails to complete the information required, whether the same purports to be completed or not.

Further, a Proposal may be rejected on the basis of the Proponents past performance, financial capabilities, completion schedule and compliance with Federal, Provincial or Municipal laws and legislation. As it is the purpose of the District to obtain a Proposal most suitable to its interests and what it wishes to accomplish, the District has the right to waive any irregularity or insufficiency in any Proposal submitted and accept the Proposal which is deemed to provide the Best Value to the District.

8.6. Clarifications & Remedy Period:

Notwithstanding the requirements for mandatory criteria and scored criteria detailed in this Section 6, the District will allow the following remedies and clarifications at its sole discretion:

- consider and analyze Proposal submissions;
- reject any Proposal it considers not in its best interest;
- to request further details or clarification from the Proponent on aspects of a Proposal;
- to provide written notification to a Proponent which identifies any of the mandatory requirements not met and provide the Proponent with 5 calendar days to remedy and supply the requirements. This option to remedy missing requirements shall not apply to Proposals not received by the Closing Date and Time;
- to meet with the Proponents, either individually or collectively, to discuss the RFP and their submissions;

- after identifying the preferred Proponent, to negotiate any changes, amendments or modifications with the preferred Proponent, without offering the other Proponents the right to amend their Proposals;
- to cancel the RFP at any time without incurring liability to any Proponent;
- to reject any or all Proposals;
- not to accept the Proposal with the lowest fee; and/or,
- to alter any aspects of the RFP in its sole discretion.

It is the nature of the RFP process that the RFP and/or the Proposal in response to the RFP will not constitute a binding Contract, but will only form the basis for the Contract, and does not mean that the Proposal is necessarily acceptable in the form submitted.

8.7. Ranking of Proponents:

Following completion of the evaluation against the scored criteria, the weighted scores for each Proposal will be added together, and Proposals will be ranked according to their total weighted scores. In the event that two or more Proposals have an equal total weighted-scored, then the Proponent with the Best Value as determined by the District will be invited to enter into a Contract with the District.

8.8. Confidentiality of Proposals:

The District will endeavour to keep all Quotations confidential. The material contained in the Quotation from the Successful Proponent will be incorporated in a Contract and information which is considered sensitive and/or proprietary shall be identified as such by the Proponent. Technical or commercial information included in the District Contract shall not be released if the District deems such releases inappropriate, subject to the *Freedom of Information and Protection of Privacy Act*.

8.9. Confidentiality of District's Information:

Information pertaining to the District obtained by the Proponent as a result of participation in this RFQ process is confidential and must not be disclosed without written authorization from the District.

All Proponents and any other persons who, through this RFQ process, gains access to the District's confidential information, are required to keep all information strictly confidential, which in any way reveals confidential business, financial or investment details, programs, strategies or plans learned through this RFQ process. This requirement will continue with respect to such information learned by the Successful Proponent, if any, over the course of any contract for Contracting Services, which arises out this RFQ process.

8.10. Conclusion and Execution of a Contract:

Neither the District nor any Proponent will be legally bound to provide or purchase the Services until the execution of a written Contract. Following an invitation to a Proponent, by the District, to conclude a Contract, it is expected that the District and that Proponent would enter into discussions which may include, among other things:

- Clarification or amendment to the scope of work, plus any resulting price adjustments, based on items submitted in the Proposal.

The District would seek to execute a Contract within 30 days of issuing an invitation to the Proponent to conclude a Contract. If the District and Proponent do not, for any reason, execute a Contract within this time-period, the District may discontinue the process with that Proponent and invite the Proponent with the next-highest-ranked Proposal to conclude a Contract. The District may then continue this process until a Contract is executed, or there are no further Proponents, or the District otherwise elects to cancel the RFP process entirely. For clarity, the District may discontinue discussions with a Proponent if at any time the District is of the view that it will not be able to conclude a Contract with that Proponent.

9. Other Terms & Conditions of this RFP Process:

The following terms and conditions shall also apply to this RFP:

9.1. Proposals in English:

All Proposals are to be in the English language only.

9.2. Only One Entity as Proponent:

The District will accept Proposals where more than one organization or individual is proposed to deliver the Services, so long as the Proposal identifies only one entity that will be the lead entity and will be the Proponent with the sole responsibility to perform the Contract if executed. The District will only enter into a Contract with that one Proponent. Any other entity involved in delivering the Service should be listed as a Sub-Consultant. The Proponent may include the Sub-Consultant and its resources as part of the Proposal and the District will accept this, as presented in the Proposal, in order to perform the evaluation. All Sub-Consultants to be used in the Service must be clearly identified in the Proposal.

9.3. Proposals to Contain All Content in Prescribed Forms:

All information that Proponents wish to be evaluated must be contained within the submitted Proposal. Proposals should not reference external content in other documents or websites. The District may not consider any information which is not submitted within the Proposal or within the pre-prescribed forms set-out in this RFP.

9.4. References and Experience:

In evaluating a Proponent's experience, as per the scored criteria, the District may consider information provided by the Proponent's clients on the projects submitted in the Proposal and may also consider the District's own experience with the Proponent.

9.5. RFP Scope of Work is an Estimate Only:

While the District has made every effort to ensure the accuracy of the Services described in this RFP, the District makes no guarantees as to the accuracy of the information provided. Any quantities or measurements provided are estimates only and are provided to describe the general nature and scale of the Services. Proponents must obtain all information they deem necessary, including verification of quantities or measurements in order to complete a Proposal.

9.6. Proponent's Expenses:

Proponents are solely responsible for their own expenses in participating in this RFP process, including costs in preparing a Proposal and for subsequent finalizations of an agreement with

the District, if required. The District will not be liable to any Proponent for any claims, whether for costs, expenses, damages or losses incurred by the Proponent in preparing its Proposal, loss of anticipated profit in connection with any final Contract, or any matter whatsoever.

9.7. [Retention of Proposals and FOIPPA:](#)

All Proposals submitted to the District will not be returned and will be retained in accordance with the Freedom of Information and Protection of Privacy Act ("FOIPPA"). Proponents should note that in accordance with the provisions of FOIPPA, certain details of this RFP and any executed Contract may be made public, including the Consultant's Name and total Contract price. Proponents should identify with their Proposal any information which is supplied in confidence; however, Proponents should be aware of and review the District's obligations under FOIPPA and the District's limited ability to refuse to disclose third party information pursuant to section 21 of FOIPPA.

9.8. [Notification and Feedback to Unsuccessful Proponents:](#)

At any time up until or after the execution of a written Contract with the Consultant, the District may notify unsuccessful Proponents in writing that they have not been selected to conclude a Contract. Unsuccessful Proponents may then request a feedback email or telephone call with the District's RFP Contact Person in order to obtain feedback on how their Proposal fared in the evaluation. Such requests for feedback must be made within 30 days of notification of the RFP results to the unsuccessful Proponent. Details of feedback provided will be at the District's sole discretion in order to protect the confidentiality of other Proponents and the District's commercial interest.

9.9. [Conflict of Interest:](#)

All Proponents must disclose an actual or potential conflict of interest, as set-out in Appendix A – Proposal Submission Form. The District may, at its sole discretion, disqualify any Proponent from this RFP process, if it determines that the Proponent's conduct, situation, relationship (including relationships of the Proponent's employees and District employees) create or could be perceived to create a conflict of interest.

The District may rescind or terminate a Contract entered into if it subsequently determines that the Proponent failed to declare an actual or potential conflict of interest during this RFP process, as required under Appendix A – Proposal Submission Form.

9.10. [Confidentiality:](#)

All information provided to Proponents by the District as part of this RFP process is the sole property of the District and must not be disclosed further without the written permission of the District.

9.11. [No Contract A and No Claims:](#)

This RFP process is not intended to create and no contractual obligations whatsoever (including what is commonly referred to as 'Contract A') shall arise between the District and any Proponent upon the submission of a Proposal in response to this RFP.

Without limiting the above paragraph, no Proponent shall have any claim whatsoever against the District for any damage or other loss resulting from a Proponent's participation in this RFP,

including where the District does not comply with any aspect of this RFP and including any claim for loss of profits or Proposal preparation costs should the District not execute a Contract with the Proponent for any reason whatsoever.

9.12. [Right to Cancel RFP:](#)

Although the District fully intends to conclude a Contract as a result of this RFP, the District may at its sole discretion, cancel or amend this RFP process at any time without any liability to any Proponent.

9.13. [Governing Law and Trade Agreements:](#)

This RFP is governed by the laws of the Province of British Columbia and any other agreements which exist between the Province of British Columbia and other jurisdictions.

Part C: Proposal Submission Forms and Instructions

This Part C contains forms detailing the information that should be included in a Proposal, as detailed under Section 6 of Part B.

Part C Contents:

This Part C contains the following forms:

- Appendix A – Proposal Submission Form
- Appendix B – Pricing Form
- Appendix C – Methodology, Team, and Schedule Form
- Appendix D – Work Reference and Experience Form

APPENDIX A – PROPOSAL SUBMISSION FORM AND INSTRUCTIONS

Proponents to include the details requested in this Appendix A, as detailed in Part B, The RFP Process.

1. Proponent Details:

Full Legal Name of Proponent:	
Other “DBA” Names the Proponent Uses:	
Registered Address:	
Proponent Contact Person Name & Title:	
Contact Person Phone No.:	
Contact Person Email:	

2. Certification & Acknowledgement of RFP Process:

By signing this Appendix A – Proposal Submission Form, we the Proponent, certify and acknowledge the following:

- a. We have carefully read and examined this RFP document, including all Parts and Appendices, and have conducted such other investigations as were prudent and reasonable in preparing this Proposal. We are able to provide the Services detailed in Part A for the pricing submitted in this Proposal.
- b. We certify that the statements made in this Proposal are true and submitted in good faith.
- c. We acknowledge and understand that the RFP process and the submission of this Proposal do not give rise to any contractual obligations whatsoever (including what is commonly referred to as ‘Contract A’) between the District and us, the Proponent, and that no contractual obligations shall arise between the District and us, the Proponent, until and unless we execute a written Contract with the District.
- d. We certify that in relation to this RFP process, we have not engaged in any conduct which would constitute a conflict of interest and we understand that a conflict of interest would include the following situations:
 - i. The Proponent has an unfair advantage or engages in conduct which may give it an unfair advantage;
 - ii. The Proponent has had access to confidential information of the District which is not available to other Proponents to this RFP.
 - iii. The Proponent has influence over an employee of the District who is a decision-maker involved in this RFP process, which could reasonably be perceived as giving the Proponent an unfair advantage or preferential treatment.

3. Confirmation of Addenda Received:

We confirm receipt of the following addenda that were issued by the District up until the Closing Date and Time:

Addendum #	Issued On Date:

4. Execution of Consulting Services Agreement:

If the offer contained in this Proposal is accepted, upon being advised by the District that the Consulting Services Agreement is available, the Proponent will obtain the Consulting Services Agreement from the District and will execute the Agreement in a form and manner acceptable to the District of Summerland.

5. Confirmation of Ability to Obtain and Provide:

The Proponent hereby certifies that it has the ability to obtain and provide the following as required in **Part A – The Services, 3. Pre-requisites for the Contractor:**

- Business License
- WorkSafeBC Clearance Letter
- Health and Safety Program
- Insurance Requirements

6. Certification Signature:

The Proponent hereby certifies that the above statements are true and that the individual signing below has the authority to bind the Proponent:

Signature of Proponent Representative

Name of Proponent Representative

Title of Proponent Representative

Date

APPENDIX B – PROPOSAL PRICING FORM

Proposals to include a Task Fee Schedule Breakdown, in a format of your choice, and should detail the following in order for the District to be able to evaluate the level of effort included as per the Scored Criteria of Part B.

1. Pricing Basis:

Pricing entered into the tables of section 2 below, shall be on the following basis:

- a. All Prices are in Canadian funds, are inclusive of all applicable duties and taxes, except the GST which shall be itemized separately where indicated.
- b. The Total Lump Sum Contract Price is all-inclusive and includes for all labour, materials, supplies, site visits, travel, overheads, profit, insurance, expenses, disbursements, and all other costs and fees necessary to deliver the Services outlined in Part A.

2. Fixed Lump Sum Prices for the Services:

For completion of all Services detailed in Part A, the Consultant will be compensated the Fixed Lump Sum Prices as indicated below. Proponents should indicate which categories they are able to include in their report and provide lump sum pricing for both the 'Required' and 'Desired' vehicle categories identified below:

Task	Description	Price
1	Investigation Planning	
2	Field Investigations	
3	Lab Testing, Data Collection, Logs & Site Plan	
4	Geotechnical Analysis & Report	
5	Meetings and Project Management	
TOTAL FIXED LUMP SUM CONTRACT PRICE:		\$
GST:		\$

3. Value Added or Optional Services:

Task	Description	Price
1		
2		
5		
TOTAL FIXED LUMP SUM CONTRACT PRICE:		\$
GST:		\$

APPENDIX C – METHODOLOGY, TEAM AND SCHEDULE FORM

Proposals should include, in a format of your choice, the details requested in this Appendix C – Methodology, Team & Schedule Form, as detailed under Section 8.2 (Scored Criteria) of Part B. This section of your Proposal must be labelled as “Appendix C – Methodology, Team & Schedule Form”.

Evaluation Factors:

Factors to be considered during the evaluation in assessing suitability of methodology, team, and schedule will include:

- Quality and suitability of the method, work and deliverables proposed in order to meet the scope of work requirements detailed in Part A;
- Demonstration that the Proponent understands the work required and factors to be considered during the Services;
- Experience and expertise of the proposed team;
- Ease of working with the proposed team considering the setup and ease of meeting;
- Suitability of the schedule proposed; plus
- Level of effort and hours proposed for the Services (as per the Task Fee Schedule submitted under Appendix B).

1. Methodology:

Please provide, on a separate sheet and in a format of your choosing, details of the methodology, work and deliverables your company and sub-consultants (if applicable) proposes in order to deliver the Services outlined in Part A. This should include your project management approach and detailed methodology of how you will approach the audits.

2. Team:

Please provide, in a format similar to the table below, details of the team members from your company, and from Sub-Consultants (if applicable), that will deliver the Services outlined in Part A. Please also attach a resume for each named team member which provides an overview of their education and experience relevant to delivering the Service.

Team Member Name:	Position:	Employee or Sub-Consultant:
	Project Manager	

3. Schedule:

For the Services detailed in Part A, please provide a schedule, preferably in a gantt chart format, which details the following for key milestones, deliverables and activities:

- a. Start and Completion dates
- b. Sequence / work breakdown
- c. # of work days
- d. Predecessors and successors for each activity
- e. How the deliverable dates detailed in Part A will be met.

APPENDIX D – WORK REFERENCE AND EXPERIENCE FORM

Proposals should include, in a format of your choice, the details requested in this Appendix D – Work Reference and Experience Form, as detailed under Section 6.2 (Scored Criteria) of Part B. Proponents should provide details on 3 projects completed in the last 5 years which are the most relevant and similar to the Services. Proponents should note that the District may contact the client to provide a reference on the experience listed (including amending scoring in the evaluation based on the client's feedback).

Evaluation Factors:

Factors to be considered during the evaluation in assessing suitability of experience will include:

- Suitability of experience with similar work and projects;
- Feedback from Client references, if the District chooses to contact references; and
- The District's own experience.

Project Experience #1

Client Name & Phone Number:	
Project Name:	
Date Proponent Started Work on Project:	
Date Proponent Finished Work on Project:	
Brief Description of Project and Services Proponent Performed:	
Value of Proponent Contract on this Project (excluding GST):	

Project Experience #2

Client Name & Phone Number:	
Project Name:	
Date Proponent Started Work on Project:	
Date Proponent Finished Work on Project:	
Brief Description of Project and Services Proponent Performed:	
Value of Proponent Contract on this Project (excluding GST):	

Project Experience #3

Client Name & Phone Number:	
Project Name:	
Date Proponent Started Work on Project:	
Date Proponent Finished Work on Project:	
Brief Description of Project and Services Proponent Performed:	
Value of Proponent Contract on this Project (excluding GST):	

Part D: The Sample Agreement

CONSULTING SERVICES AGREEMENT

AGREEMENT NUMBER: RFP-2019-12
OUR FILE: 2240-XXxxx

THIS CONSULTING SERVICES AGREEMENT (the "Agreement") is effective the ____ day of _____, 2019.

BETWEEN: **DISTRICT OF SUMMERLAND,**
a Municipal Corporation having its
Offices at:
PO Box 159, 13211 Henry Ave
Summerland, BC V0H 1Z0
(the "District")

AND: **THE COMPANY**

(the "Consultant")

WHEREAS the District wishes to retain the services of **THE COMPANY** to provide Consulting Services to the District.

WHEREAS the Consultant has the requisite expertise, ability and capacity to provide Consulting Services to the District and wishes to provide same.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the parties hereto mutually agree as follows:

1. Project Title

The consulting assignment to which this Agreement pertains is titled "**Stability Assessment for Whitehead Dam Project**" and hereinafter shall be referred to as the "**Project**" or "**Work**".

2. Definitions

In this Agreement, in addition to the words defined above,

- (a) "**Agreement**" means the written agreement between the District and the successful proponent resulting from this RFP.
- (b) "**Consultant**" means the individual, firm, co-partnership, or corporation retained by the District to perform the Project in accordance with the Consulting Services Agreement.

- (c) **"Consultant's Proposal"** means the Consultant's written proposal to the District for performance of the Services, dated [Click or tap to enter a date.](#), a copy of which is attached.
- (d) **"District Representative"** means **Devon van der Meulen, Manager of Utilities** or such other person as the District may appoint in writing.
- (e) **"Governmental Approvals"** means any licenses, permits, consents, authorizations, certificates, operating certificates and other approvals of any kind from any Governmental Authority that are required for or in connection with the performance of the Services.
- (f) **"Governmental Authority"** means any federal, provincial, local or other government or governmental agency, authority, board, bureau or commission.
- (g) **"Personnel"** means any individuals identified by name in the Consultant's Proposal and any individuals employed or otherwise engaged by the Consultant to perform the Services with the prior consent of the District;
- (h) **"RFP"** means the Request for Proposals for the services issued by the District dated [Click or tap to enter a date.](#)

3. **Consultant Services**

The Consultant shall perform the Services and shall do so in accordance with the Specifications, all Standards and the terms of this Agreement.

The Consultant shall:

- (a) The Consultant shall diligently and carefully perform the Work required hereunder in a manner consistent with prudent industry standards.
- (b) The Consultant shall furnish all skills, labor, supervision, materials, equipment and supplies necessary thereof and, if permitted to subcontract, shall be fully responsible for all work and services performed by subconsultants.
- (c) The Consultant must be prepared to submit a list of potential subconsultants for approval by the District prior to the commencement of any project. The Consultant is responsible for supervising and coordinating all Services delegated to the subconsultant(s) and for the proper execution of the Services.
- (d) The District may, in its sole discretion, require security clearances in a form satisfactory to the District from the Consultant (and the Consultant's subconsultants). Any costs associated with obtaining such security clearances will be borne by the Consultant at no cost to the District.
- (e) The Consultant shall perform all Work in substantial compliance with Consultant's safety procedures and those of the District site safety procedures the Consultant has been instructed to follow and been provided copies of in writing prior reasonably in advance of provision of Work to that site, where the same do not conflict with applicable law.
- (f) The Consultant shall interfere minimally with the District's operations or that of other Consultants.
- (g) Upon completion of the Work, the Consultant shall leave the work site clear of all tools, equipment, and rubbish.

- (h) The Consultant shall not, without prior written authorization of the District, make any alterations or substitutions in the work, or perform extra work. The Consultant is not entitled to any payment for unauthorized work.
- (i) The Consultant shall comply with all the District of Summerland by-laws, ordinances, legal requirements, rules, regulations, codes and orders during the performance of the Work.

4. Project Scope Modifications

The Consultant is advised that the District may modify elements of the project scope where these modifications are in the best interests of the District. This may include deletion of certain tasks/deliverables, and/or cancellation of the project. The District will ensure the Consultant is paid all eligible fees for works completed to the date of any proposed modification. Where unanticipated delays occur (for any reason) that impact (delay) aspects of the Consultant's work program, the Consultant shall not seek compensation for said delays. Further, no additional works shall be undertaken in relation to this assignment without the prior written approval of District staff.

5. Agreement Documents

The Consulting Services Agreement Documents, in order of precedence, to which this Agreement pertains are:

- Consulting Services Agreement
- Schedule A: General Terms and Conditions
- Schedule B: Scope of Project
- Schedule C: Budget – Fees and Expenses
- Schedule D: Request for Proposals RFP-2019-12
- Schedule E: Consultant's Proposal

Where there is a conflict between the wording or interpretation of the Agreement Documents, wording or interpretation of the Agreement Documents with the highest precedence shall apply.

6. Term

This Agreement shall commence on _____ and expire on completion of the Services, which is to be no later than _____.

7. Consultant Personnel

The Consultant will perform the Services using only the Personnel named in the Consultant's Proposal, unless otherwise approved in writing by the District Representative.

8. Warranty as to Work

The Consultant represents and warrants to the District that the Consultant and the Personnel have the education, training, skill, experience and resources necessary to perform the Services in accordance with this Agreement and the Consultant acknowledges and agrees that the District has entered into this Agreement relying on the representations and warranties in this section and identified in Schedule A.

9. Remuneration & Reimbursement

The District shall pay the Consultant for the performance of the Services as follows:

A Fixed Lump Sum Contract Price of _____ excluding GST. This shall include for all labour, materials, supplies, travel and visits to the project site, overheads and profit, insurance, disbursements, expenses and all other costs and fees necessary to deliver the Services.

10. Taxes

The District shall be responsible for paying any goods and services taxes with respect to the provision of the services to the District.

11. Invoices & Payment

Not more than once each month, the Consultant may deliver an invoice to the District, in respect of the immediately preceding month, setting out a portion of the Fixed Lump Sum Contract Price claimed for Services performed in that preceding month, in accordance with the hours breakdown in the Consultant's Proposal. The District shall, to the extent the District is satisfied the Fixed Lump Sum Prices are for Services satisfactorily performed by the Consultant, pay the Consultant the Fixed Lump Sum Price(s) claimed in any invoice delivered in accordance with this section, within 30 days after delivery of such invoice to the District.

12. Hold Back or Set Off

Notwithstanding the invoicing process detailed in clause 8, the District may hold back payment or set off against payment if, in the opinion of the District acting reasonably, the Consultant has failed to comply with any requirements of the Contract, including adherence to the agreed milestones and schedule for the Services.

13. District's Representative

The District appoints the District Representative as the only person authorized by the District to communicate with the Consultant in respect of this Agreement. The District shall not be bound to the Consultant by communication from any person other than the District Representative or their delegate.

14. Indemnity

The Consultant shall indemnify, and save harmless, the District, and its elected and appointed officials, employees, Consultants and agents, from and against all claims, losses, damages, costs, expenses (including legal fees and disbursements), liabilities, actions and proceedings, suffered, made, incurred, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner caused by, based upon, occasioned by or attributable to, any willful or negligent act or omission, or other actionable wrong, on the part of the Consultant, its employees, subconsultants or agents, connected with the performance or breach of this Agreement by the Consultant. The Consultant's obligations under this section shall survive the expiry or earlier termination of this Agreement

15. Workers Compensation

The Consultant shall, at all times, in providing the Services and otherwise performing its obligations under this Agreement, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulation, and, upon request from the District, provide evidence of any required registration under that Act and evidence of compliance with any requirement under that Act to make any payments or pay assessments.

16. Insurance Requirements

The Consultant shall obtain and maintain during the currency of this Agreement Commercial General Liability insurance providing coverage for death, bodily injury, property loss and damage and all other losses arising out of or in connection with the provision of the Services in an amount not less than \$2,000,000.00 per occurrence, or in such a greater amount as may be required by the District Representative from time to time, acting reasonably.

The Consultant shall obtain and maintain during the currency of this Agreement Automobile Liability insurances providing coverage for death, bodily injury, property loss and all other losses arising out of or in connection with the provision of the Services in an amount not less than \$5,000,000 per occurrence, or in such a greater amount as may be required by the District Representative from time to time, acting reasonably.

17. Errors and Omissions

The Consultant shall provide the District with certificates of Errors and Omissions insurance confirming the placement and maintenance of the insurance, promptly after a request to do so from time to time by the District.

18. Insurance Certificates

The Consultant shall provide the District with certificates of insurance confirming the placement and maintenance of the insurance, promptly after a request to do so from time to time by the District.

19. District May Insure

If the Consultant fails to insure as required, the District may affect the insurance in the name and at the expense of the Consultant and the Consultant shall promptly repay the District all costs incurred by the District in doing so. For clarity, the District has no obligation to affect such insurance.

20. Termination at District's Discretion

The District may, in its sole discretion and without reason, terminate this Agreement upon notice to the Consultant. If the District terminates this Agreement under this section, the Consultant shall be entitled to be paid for all Services satisfactorily performed by the Consultant up to the date of such termination in accordance with this Agreement. The Consultant is not entitled to, and irrevocably waives and releases the District from any and all claims for, any damages or compensation for costs incurred, loss of profit or loss of opportunity, directly or indirectly arising out of termination of this Agreement.

21. Termination for Default

The District may terminate all or any part of, the Services by giving notice of termination to the Consultant, which is effective upon delivery of the notice, if:

- (a) the Consultant breaches this Agreement and the Consultant has not cured the breach, within five days after notice of the breach is given to the Consultant by the District; or
- (b) the Consultant becomes bankrupt or insolvent, a receiving order is made against the Consultant, an assignment is made for the benefit of its creditors, an order is made or resolution passed for the winding up or dissolution of the Consultant, or the

Consultant takes the benefit of any enactment relating to bankrupt or insolvent debtors.

Without limiting any other right or remedy available to the District, if the District terminates part or all of the Services under this section, the District may arrange, upon such terms and conditions and in such manner as the District considers appropriate, for performance of all or any part of the Services remaining to be completed, and the Consultant shall be liable to the District for any expenses reasonably and necessarily incurred by the District in engaging the services of another person to perform those Services (including the amount by which the fees, disbursements and other costs payable by the District exceed those that would have been payable to the Consultant for completion of the Services under this Agreement). The District may set off against, and withhold from amounts due to the Consultant, such amounts as the District estimates shall be required to cover the District's costs of correcting any breaches of the Consultant's obligations under this Agreement and to be incurred by the District to complete all or any part of the Services.

22. Records

The Consultant:

- (a) shall keep proper accounts and records of its performance of the Services, including invoices, receipts and vouchers, which shall at all reasonable times be open to audit and inspection by the District, which may make copies and take extracts from the accounts and records;
- (b) shall keep reasonably detailed records of performance of the Services, which shall at all reasonable times be open to inspection by the District, which may make copies and take extracts from the records;
- (c) shall afford facilities and access to accounts and records for audit and inspection by the District and shall furnish the District with such information as the District may from time to time require regarding those documents; and
- (d) shall preserve, and keep available for audit and inspection, all records described in this section for at least two years after completion of the Services, expiry of this Agreement or termination of this Agreement, whichever applies.

23. Copyright & Intellectual Property

The Consultant irrevocably grants to the District the unrestricted license for the District to use and make copies of for the District's purposes and activities any work whatsoever generated by or on behalf of the Consultant in performing the Services in which copyright may exist. Without limiting the foregoing, the Consultant irrevocably grants to the District the unrestricted license for the District to use for the District's purposes and activities all technical information and intellectual property, including inventions, conceived or developed, or first actually reduced to practice, in performing the Services. For clarity, the licenses granted by this section shall survive the expiry or earlier termination of this Agreement.

24. Agreement for Services

This is an agreement for the performance of services and the Consultant is engaged under this Agreement as an independent Consultant for the sole purpose of providing the Services. This Agreement does not create a joint venture or partnership. Neither the Consultant nor any of its employees or Consultants is engaged by the District as an agent of the District or has any authority to bind the District in any way whatsoever.

25. Withholding Taxes

The Consultant will be pay and remit, and otherwise be responsible for, all withholding taxes, income taxes, Canada Pension Plan contributions, employment insurance deductions and any other deductions required by the applicable provincial or federal statutes for the Consultant and any of its employees. The Consultant agrees to indemnify and hold harmless the District should the District be required to pay any remittances described above.

26. Assignment

The Consultant shall not assign this Agreement or the benefit hereof without the prior written consent of the District, at its sole discretion.

27. Time of the Essence

Time is of the essence of this Agreement.

The Consultant must advise the District immediately of any shortage or delay of any kind. If delivery of goods and services is not completed by the delivery date, the District reserves the right to terminate this Agreement in whole or in part and to purchase substitute goods and services elsewhere and charge the Consultant with any incidental or consequential damages that might be incurred.

28. Alternative Rights & Remedies

Exercise by a party to this Agreement of any right or remedy of that party, whether granted in or under this Agreement or at law or equity, does not limit or affect any other right or remedy of any kind, whatever its source, that the party may have against the other party and does not affect the right of the party exercising the right or remedy to exercise other rights or remedies against the other party.

29. Notice

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

- (a) To the District:
District of Summerland
Municipal Hall
PO Box 159, 13211 Henry Ave
Summerland, BC. V0H 1Z0
Attention: **Devon van der Meulen, Manager of Utilities**
E-mail Address: dvandermeulen@summerland.ca

- (b) To the Consultant:

E-mail Address: _____
Attention: _____

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

Any notice, direction, demand, approval or waiver delivered is to be considered given on the next business day after it is dispatched for delivery. Any notice, direction, demand, approval or waiver sent by fax or e-mail is to be considered given on the day it is sent, if that day is a

business day and if that day is not a business day, it is to be considered given on the next business day after the date it is sent. In this section, business day means a day other than a Saturday, Sunday or B.C. statutory holiday.

30. Interpretation & Governing Law

In this Agreement

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

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

31. Binding on Successors

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

32. Entire Agreement

This Agreement is the entire agreement between the parties and it terminates and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

33. Waiver

The waiver by the District of any breach of this Agreement by the Consultant, shall not require, nor be construed to require, the District to waive any subsequent breach of the same condition, covenant, or obligation. Failure by the District to take any action in respect of any breach of any obligation under this Agreement by the Consultant shall not be considered to be a waiver of such obligation.

Waiver of any breach by either party shall be expressed and in writing to be effective, and a waiver of a particular breach does not waive any other breaches of the Agreement.

As evidence of their agreement to be bound by this Agreement, the parties have executed this Agreement below, on the respective dates written below.

DISTRICT OF SUMMERLAND

by its authorized signatories:

Signature

Name

Date

DISTRICT OF SUMMERLAND

by its authorized signatories:

Signature

Name

Date

CONSULTANT:

by its authorized signatories:

Signature

Name

Date

CONSULTANT:

by its authorized signatories:

Signature

Name

Date

SCHEDULE A

DISTRICT OF SUMMERLAND – GENERAL TERMS AND CONDITIONS

1.0 Application

The following Terms and Conditions shall govern this Agreement unless otherwise agreed to in writing by the District.

2.0 Definitions

In the Contract Agreement Documents, unless the context requires otherwise,

- a. **“Agreement”** means the written Agreement between the District of Summerland and the Consultant.
- b. **“CAO”** means the Corporate Administrative Officer or her designate.
- c. **“Consultant”** means the individual, firm, co-partnership, or corporation retained by the District to perform the Project or Work in accordance with the Agreement Documents.
- d. **“Contract”** means the written Agreement between the District of Summerland and the successful Proponent resulting from this Contract.
- e. **“Agreement Documents”** means the documents outlined in Section 5 – Agreement Documents.
- f. **“Agreement Fee”** means the lump sum rates as outlined in Schedule ‘B’ – Budget – Fees and Expenses.
- g. **“Consultant”** means the individual, firm, co-partnership, or corporation retained by the District to perform the Work in accordance with the Agreement Documents.
- h. **“Director”** means the Director, as appointed by the Council of the District, and their duly appointed representative.
- i. **“District”** means The Corporation of the District of Summerland, and it’s appointed Representative as assigned by the CAO.
- j. **“District’s Representative”** means that person or persons appointed by the CAO or Director to manage and administer the Agreement.
- k. **“Equipment”** means anything and everything, except persons and material, used by the Consultant in the performance of the Work.
- l. **“Person”** means an individual, a body corporate, a firm, partnership, association, or any other legal entity or an employee or agent thereof.
- m. **“Project”** means all materials, labour, equipment, transportation, traffic control or other ancillary items required by the Consultant to complete the Work, in accordance with the Agreement Documents.
- n. **“Services”** means the services and Work described in the Scope, including all acts, services and Work necessary to achieve the objectives set out in the Contract or Agreement.

- o. **“Specifications”** means the specification, Scope of Work and other requirements for the Services set out in the Agreement.
- p. **“Standards”** means any and all laws, enactments, bylaws, statutes, regulations, rules, orders, permits, licenses, codes, building codes, professional standards and specifications (including Canadian Standards Association standards) applicable to the provision of the Services, as they are in force from time to time or in the latest current version, as the case may be.
- q. **“Work”** means and includes anything and everything required to complete the Services for the fulfillment and completion of this Agreement.

3.0 Performance of Work

- 3.1 The Consultant shall diligently and carefully perform the Work required hereunder in a manner consistent with prudent industry standards.
- 3.2 The Consultant shall furnish all skills, labor, supervision, materials, equipment and supplies necessary thereof and, if permitted to subcontract, shall be fully responsible for all Work and services performed by subconsultants.
- 3.3 The Consultant must be prepared to submit a list of potential subconsultants for approval by the District prior to the commencement of any Work. The Consultant is responsible for supervising and coordinating all Services delegated to the subconsultant(s) and for the proper execution of the Services.
- 3.4 The District may, in its sole discretion, require security clearances in a form satisfactory to the District from the Consultant (and the Consultant's subconsultants). Any costs associated with obtaining such security clearances will be borne by the Consultant at no cost to the District.
- 3.5 The Consultant shall perform all Work in substantial compliance with Consultant's safety procedures and those of the District site safety procedures the Consultant has been instructed to follow and been provided copies of in writing prior reasonably in advance of provision of Work to that site, where the same do not conflict with applicable law.
- 3.6 The Consultant shall interfere minimally with the District's operations or that of other Consultants.
- 3.7 Upon completion of the Work, the Consultant shall leave the work site clear of all tools, equipment, and rubbish.
- 3.8 The Consultant shall not, without prior written authorization of the District, make any alterations or substitutions in the Work, or perform extra Work. The Consultant is not entitled to any payment for unauthorized Work.
- 3.9 The Consultant shall comply with all the District of Summerland by-laws, ordinances, legal requirements, rules, regulations, codes and orders during the performance of the Work.

4.0 Notice to Proceed

- 4.1 The District will issue a formal Notice to Proceed.
- 4.2 The Consultant must commence the Work on the date specified in the Notice to Proceed.

5.0 Changes and/or Modifications to the Scope of Project and Work

- 5.1 The Consultant is advised that the District may modify elements of the Project Scope where these modifications are in the best interests of the District. This may include deletion or certain tasks/deliverables, and/or cancellation of the Project. The District will ensure that the Consultant is paid all eligible fees for Works completed to the date of any proposed modification.
- 5.2 Where anticipated delays occur (for any reason) that impact (delay) aspects of the Consultant's Work program, the Consultant shall not seek compensation for said delays.
- 5.3 Where the District requests the Consultant to provide Work that the Consultant considers is not included in the original Scope of Work, the Consultant must notify the District that a change order will be required.
- 5.4 The District shall not be required to pay for any Work not included in the Scope of Work unless the Director or District Representative approves a Change Order prior to the Consultant performing the Work.
- 5.5 Should the Consultant consider that any request or instruction from the District constitutes a change in the scope of the Work, the Consultant shall so advise the District within ten days in writing. Without said written advice within the time period specified, the District shall not be obligated to make any payments of additional fees to the Consultant.

6.0 Payment

- 6.1 The Agreement Fee shall be firm, expressed in Canadian currency, and shall be all inclusive for the Work. Taxes shall be in addition to the Agreement Fee.
- 6.2 The District will pay the Consultant within 30 days from the date the Consultant submits an invoice for payment.
- 6.3 The Director may request the Consultant to submit, at no cost to the District, with the final invoice, a Statutory Declaration or other proof, that there are no outstanding costs, assessments, liens, or claims against the Consultant or against the District's property arising out of or in connection with the Work.
- 6.4 The Consultant shall submit detailed invoices. Each invoice will show the Agreement Number, the Services provided, the percentage of the Services that are complete, where applicable, and the amount of GST applicable.

Invoices are to be submitted to:
District of Summerland
13211 Henry Avenue, Box 159
Summerland, BC V0H 1Z0

Attention: Devon van der Meulen, Manager of Utilities

7.0 Taxes, Tariffs, and Duties

- 7.1 The Consultant is responsible for all taxes, tariffs, and duties applicable to labour, Work and equipment and these taxes, tariffs, and duties shall be included in the Agreement Fee. Notwithstanding, GST and applicable PST shall be billed as a separate item.

8.0 Withholding Taxes

- 8.1 The Consultant will be pay and remit, and otherwise be responsible for, all withholding taxes, income taxes, Canada Pension Plan contributions, employment insurance deductions and any other deductions required by the applicable provincial or federal statutes for the Consultant and any of its employees. The Consultant agrees to indemnify and hold harmless the District should the District be required to pay any remittances described above.

9.0 Payment Withheld & Holdbacks

- 9.1 Notwithstanding the invoicing process, the District may withhold or nullify the whole or part of any payment or set off against payment to the extent necessary, if in the opinion of the District acting reasonably, to protect themselves from loss due to one or more of the following:
- (a) the Consultant is not performing the Work, has failed to comply with any requirements of the Agreement, including adherence to the agreed milestones and Schedule for Services and Scope, to the satisfaction of the Director;
 - (b) defective Work is not being remedied;
 - (c) there is an affidavit, claim of lien, or lien filed against the equipment on which the Work is done or is being done, or reasonable evidence of the probable filing of an affidavit, claim of lien, or lien;
 - (d) the Consultant is failing to make prompt payments to anyone employed by the Consultant in connection with the Work; or
 - (e) an unsatisfied claim exists for damages caused by the Consultant in connection with the Work.
- 9.2 Where sub-Consultants or suppliers of material are not receiving prompt payment, the District may deduct the amount of such payments from amounts otherwise due to the Consultant and will, if deducted, hold these funds in trust until such time as the Consultant has resolved the issue to the satisfaction of the Director.

10.0 Inspection of Work

- 10.1 The District's Representative may, at any time, enter into any place or premises where the Consultant is undertaking Work to inspect the Work and to ensure the Work is being performed in accordance with the Agreement Documents.
- 10.2 The District's Representative, upon written notice to the Consultant, has the authority to stop the Work or to order the Consultant to take remedial action where, the Consultant is not performing the Work in accordance with the Agreement Documents; or he is of the opinion that there exists a danger to life or to property.
- 10.3 The Consultant shall immediately obey the provisions of the notice and will not be entitled to any extra payment unless approved by a Change Order.
- 10.4 The District is not required to make inspections. Inspections made by the District do not relieve or release the Consultant from being responsible for the supervision of its operations under this Agreement, from making its own inspections, and for ensuring the Work is being performed in accordance with the Agreement Documents.

11.0 Sub-Consultants

- 11.1 The Director has the right, without any liability to the District, to reject any proposed sub-Consultant and to require the Consultant to substitute another sub-Consultant that is acceptable to the Director.
- 11.2 Sub-Consultants approved by the Director shall not be changed without the written consent of the Director.

12.0 Warranty as to Work

- 12.1 Without limitation to any additional warranties provided by the Consultant, the Consultant warrants that:
 - (a) all Work shall be of merchantable quality and free from defects in workmanship and materials;
 - (b) all Work shall strictly conform to applicable samples, specifications and drawings;
 - (c) all Work shall be fit for the purpose intended for the District;
 - (d) all Work shall be free and clear of all liens, charges and encumbrances;
 - (e) the Work must comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies;
 - (f) the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and,
 - (g) the Work must comply with all applicable environmental protection laws and regulations.
- 12.2 Unless a longer warranty period is specified on the face of the purchase order or is otherwise provided, the foregoing warranty shall be valid for one year from the date of acceptance of the Work by the District. If at any time prior to the expiration of any applicable warranty period, any weakness, deficiency, failure, breakdown or deterioration in workmanship or material is discovered in the Work performed by the Consultant, or if the Work does not conform to the terms and conditions of this Agreement, the District may at its option:
 - (a) require the Consultant to promptly replace, redesign or correct the defective or non-conforming Work at no expense to the District, or
 - (b) the District may replace or correct the defective Work and charge the Consultant with the expenses incurred by the District.
- 12.3 The Consultant agrees to indemnify and save harmless the District, its members, officers, employees, assigns, agents, clients and the public from any liability, loss, cost and expense arising either directly or indirectly, from breach of any warranty given by the Consultant hereunder.
- 12.4 All costs for the repair of the Work during the warranty term of this Contract shall be paid for by the Consultant.
- 12.5 Warranty on all consignment inventory shall commence upon physical installation.

13.0 Indemnity

- 13.1 The Consultant shall indemnify, and save harmless, the District, and its elected and appointed officials, employees, Consultants, and agents, from and against all claims, losses, damages, costs, expenses (including legal fees and

disbursements), liabilities, actions and proceedings, suffered, made, incurred, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner caused by, based upon, occasioned by or attributable to, any wilful or negligent act or omission, or other actionable wrong, on the part of the Consultant, its employees, subconsultants, subconsultants or agents, connected with the performance or breach of this Agreement by the Consultant. The Consultant's obligations under this section shall survive the expiry or earlier termination of this Consulting Services Agreement.

14.0 Wages and WorkSafe BC

- 14.1 The Consultant shall, at times, in providing the Services and otherwise performing its obligations under this Agreement, comply with the requirements of the British Columbia Employment Standards Act, the *Workers Compensation Act* (British Columbia), and all other applicable federal and provincial legislation regarding wages and labour regulations, including the Occupational Health and Safety Regulation, during performance of this Agreement, and ensure compliance by its sub-Consultants, workers, and suppliers.
- 14.2 The Consultant shall, upon request from the District, provide evidence of any required registration under the Acts and evidence of compliance with any requirement under that Act to make any payments or pay assessment.
- 14.3 The Consultant shall, upon request by the District, provide proof of payment in good standing, by producing a Clearance Letter, with WorkSafe BC.

15.0 Insurance Certificates

- 15.1 The Consultant shall provide the District with Certificates of Insurance confirming placement and maintenance of the insurance, promptly after a request to do so from time to time by the District.

16.0 District May Insure

- 16.1 If the Consultant fails to insure as required, the District may effect the insurance in the name and at the expense of the Consultant and the Consultant shall promptly repay the District all costs incurred by the District in doing so. For clarity, the District has no obligation to effect such insurance.

17.0 Certificates of Insurance

- 17.1 The Consultant shall cause all policies of insurance required to be taken out by it under this Agreement to be with insurance companies satisfactory to the District and to;
 - (a) name the District as additional insured;
 - (b) include that the District is protected notwithstanding any act, neglect or misrepresentation by the Consultant which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
 - (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;

- (d) be primary and non-contributing with respect to any policies carried by the District and shall provide that any coverage carried by the District is in excess coverage;
- (e) not be cancelled or materially changed without the insurer providing the District with 30 days written notice stating when such cancellation or change is to be effective;
- (f) be maintained for a period of 12 months per occurrence;
- (g) not include a deductible greater than \$5,000.00 per occurrence;
- (h) include a cross liability clause; and,
- (i) be on other terms acceptable to the District Representative, acting reasonably.

17.2 The District is not responsible for any risks of loss or damage to equipment supplied until the equipment is finally accepted by the District and is registered in the name of the District of Summerland within the Province of British Columbia.

17.3 The Consultant shall provide, maintain, and pay for the following insurance policies with insurers licensed in British Columbia, providing coverage to the Consultant and any sub-Consultant performing Work provided by this Consulting Services Agreement:

- (a) Commercial General Liability Insurance;
- (b) Automobile Liability Insurance; and,
- (c) Errors and Omissions Insurance.

17.4 Commercial General Liability Insurance

- (a) The Consultant shall obtain and maintain a minimum of \$2,000,000 inclusive per occurrence Commercial General Liability Insurance covering death, bodily injury, property loss and damage and all other losses arising out of or in connection with the provision of the Services, or in such a greater amount as may be required by the District in the performance of this Consulting Services Agreement.

17.5 Automobile Liability Insurance

- (b) The Consultant shall provide and maintain a minimum of \$5,000,000 inclusive per occurrence 3rd party liability insurance covering use or operation of all motor vehicles and trailers owned, non-owned, leased, rented, licensed, and unlicensed vehicles or equipment controlled or used in performance of this Agreement.

18.0 Errors and Omissions Insurance

18.1 The Consultant shall, at the Consultant's expense, establish and maintain a minimum of \$2,000,000 per occurrence / \$2,000,000 aggregate Professional Liability Errors and Omissions insurance, with a maximum deductible of \$50,000

18.2 The Consultant accepts responsibility for the acts and omissions of all employees of their Project Team, Sub-Consultants it may engage in rendering the Service on the Project.

- 18.3 The Consultant's professional errors and omissions insurance shall remain in force for the life of the Project and for twenty-four (24) months after completion of the Services.

19.0 Removal of Liens

- 19.1 The Consultant shall immediately remove, at their own expense, all liens filed or registered against the District's equipment or the District's property.

20.0 Permits

- 20.1 The Consultant shall, at their own expense, procure all permits, certificates, and licenses required by law and for the District for the execution of the Work.

21.0 Bankruptcy or Default by Consultant

- 21.1 If the Consultant:
- (a) is adjudged bankrupt; or
 - (b) makes a general assignment for the benefit of creditors due to insolvency; or
 - (c) has a receiver appointed because of his insolvency,

the District may, without prejudice to any other of the District's rights or remedies, give the Consultant, the receiver, or the trustee written notice and terminate the Agreement.

- 21.2 If the Consultant fails to perform the Work in accordance with the Agreement Documents, the District may provide written notice informing the Consultant that he is in default of his contractual obligations and instruct the Consultant to correct the default within five days, or such other longer specified time as outlined in the notice.

- 21.3 If the Consultant fails to correct the default within the time specified, the District may, without prejudice to any other of the District's rights or remedies,
- (a) correct the default and deduct the District's direct costs from any payment owing to the Consultant or any security held by the District; and/or
 - (b) deduct any portion of the remaining Work from the Agreement; or
 - (c) terminate the Agreement.

22.0 Dispute Resolution

- 22.1 The Director shall be the interpreter of the requirements of the Agreement.
- 22.2 In the event of any Dispute, which shall be any disagreement or misunderstanding between the District and the Consultant after initial attempts at resolution, either party may provide the other with a written summary of the Agreement question at issue and the redress sought.
- 22.3 Within fourteen calendar days of receipt of such communication the recipient shall acknowledge and respond in writing addressing all the issues raised in the initial communication or request a time extension.
- 22.4 If a party does not provide any written response to the written communication issued as per the foregoing, the communication will be deemed to have been accepted by the receiving party.

- 22.5 If there is an exchange of communication and issues remain unresolved, both parties shall:
- (a) make immediate bona fide efforts to resolve the outstanding issues by amicable negotiations involving the assistance of senior persons in both parties' organizations and;
 - (b) provide frank, conditional, and timely disclosure of all relevant facts, information, and documents to facilitate those negotiations.
- 22.6 If the dispute cannot be settled within fourteen calendar days of the end of the above negotiations, or such other time period as agreed to by both parties, the dispute may be referred to and finally resolved by arbitration conducted by a single arbitrator, agreed to by both parties, and under the rules of the British Columbia International Commercial Arbitration Centre. The place of arbitration shall be in Summerland, BC unless otherwise agreed to by both parties. The findings of the arbitrator shall be final and binding upon both parties.
- 22.7 The Consultant shall not delay any of the Work on account of or during any dispute, negotiation, or arbitration proceedings. The parties shall each bear their own costs throughout the process and the costs of a mediator or arbitrator shall be divided equally between the parties.

23.0 Early Termination and Termination Notice at District's Discretion

- 23.1 Without prejudice to any right or remedy to which the District may be entitled, the District may at any time and in its sole discretion and without reason, terminate this Agreement upon notice to the Consultant.
- 23.2 If the District terminates this Agreement under this section, the Consultant shall be entitled to be paid for all Services satisfactorily performed by the Consultant up to the date of such termination in accordance with this Consulting Services Agreement. The Consultant is not entitled to, and irrevocably waives and releases the District from any and all claims for, any damages or compensation for costs incurred, loss of profit or loss of opportunity, directly or indirectly arising out of termination of this Agreement.

24.0 Termination for Default

- 24.1 The District may terminate all or any part of, the Services by giving notice of termination to the Consultant, which is effective upon delivery of the notice, if:
- (b) the Consultant breaches this Agreement and the Consultant has not cured the breach, within five days after notice of the breach is given to the Consultant by the District; or
 - (c) the Consultant becomes bankrupt or insolvent, a received order is made against the Consultant, an assignment is made for the benefit of its creditors, an order is made or resolution passed for the winding up or dissolution of the Consultant, or the Consultant takes the benefit of any enactment relating to bankrupt or insolvent debtors.
- 24.2 Without limiting any other right or remedy available to the District, if the District terminates part or all of the Services under this section, the District may arrange, upon such terms and conditions and in such manner as the District considers appropriate, for performance of all or any part of the Services remaining to be completed, and the

Consultant shall be liable to the District for any expenses reasonably and necessarily incurred by the District in engaging the services of another person to perform those Services (including the amount by which the fees, disbursements and other costs payable by the District exceed those that would have been payable to the Consultant for completion of the Services under this Agreement). The District may set off against, and withhold from amounts due to the Consultant, such amounts as the District estimates shall be required to cover the District's costs of correcting any breaches of the Consultant's obligations under this Agreement and to be incurred by the District to complete all or any part of the Services.

25.0 Remedies

25.1 On any early termination of the Agreement by the District:

- (a) The District shall pay to the Consultant the money owing to them under this Agreement to the date of termination and upon such payment being made the District shall have no further obligation to the Consultant under this Agreement; and
- (b) If the Consultant's right to perform the Work is terminated in accordance with the provisions of the Agreement, the District shall not be liable to the Consultant for any damage or loss, including economic loss, sustained, or suffered by the Consultant as a result of any action taken by the District

26.0 Copyright & Intellectual Property

26.1 The Consultant irrevocably grants to the District the unrestricted license for the District to use and make copies of for the District's purposes and activities any Work whatsoever generated by or on behalf of the Consultant in performing the Services in which copyright may exist. Without limiting the foregoing, the Consultant irrevocably grants to the District the unrestricted license for the District to use for the District's purposes and activities all technical information and intellectual property, including inventions, conceived or developed, or first actually reduced to practice, in performing the Services. For clarity, the licenses granted by this section shall survive the expiry or earlier termination of this Agreement.

27.0 Freedom of Information and Protection of Privacy Act

27.1 The District is subject to the Province of British Columbia's *Freedom of Information and Protection of Privacy Act*. All documents shall be received and held, to the extent reasonable, in confidence by the District and the information shall not be disclosed except to the degree necessary for carrying out the District's purposes or required by law.