



REQUEST FOR PROPOSALS No. 24-032

Boulton Community Park Playground Design-Build

ISSUED: May 3, 2024

CLOSING DATE AND TIME:

Submissions must be received on or before:
3:00 PM (15:00 hrs) Local Time on May 30, 2024

Submissions and Questions are to be directed to:

Jordan Vander Klok, Parks Planner
jvanderklok@rdn.bc.ca

Questions are requested at least five (5) business days before the closing date.

Proponent's Information Meeting:

No site meeting will be held.

Proposals will not be opened in public.



1. Instructions to Proponents

1.1 Closing Date/Time/Submission Method

Submissions must be received on or before 3:00 PM (15:00 hrs), Local Time, on May 30, 2024.

Submission Method:

By Email: In PDF format with “24-032 Boulton Community Park Playground” as the subject line at this electronic address:

jvanderklok@rdn.bc.ca

Please note: Maximum email file size limit is 20MB, or less. The RDN will not be liable for any technological delays of submissions.

Submissions received in any other manner will not be accepted.

1.2 Amendment to Proposals

Proposals may be amended in writing and sent via email to the RDN contact person identified on the cover page on or before the closing. Such amendments should be signed by the authorized signatory of the Proponent.

1.3 Addenda and Questions & Answers

If the RDN determines that an amendment or questions & answers are required for this RFP, the RDN will post the Addendum on the RDN (<https://www.rdn.bc.ca/current-bid-opportunities>) and BC Bid (<https://bcbid.gov.bc.ca/>) websites. Each addendum will be incorporated into and become part of the RFP. No amendment of any kind to the RFP is effective unless it is contained in a written addendum issued by the RDN. It is the sole responsibility of the Proponent to check and ensure all amendments are included prior to submitting their final Proposal submission.

1.4 Withdrawal of Proposals

The Proponent may withdraw their Proposal at any time by submitting a written withdrawal email to the RDN contact person identified on the cover page on or before the closing.

1.5 Unsuccessful Vendors

The Regional District will offer debriefings to unsuccessful Proponents, on request, at a mutually agreeable time.



2. INTRODUCTION

The purpose of this Request for Proposal is to solicit submissions from qualified firms to design, manufacture, and install a new playground in Boulton Community Park.

The total budget for this RFP is **\$240,000** excluding GST.

The desired completion date is September 30, 2024.

3. BACKGROUND

Boulton Community Park is located at 1291 Boulton Drive, Parksville, B.C. in the French Creek area. The park contains an existing playground, paved sport court and asphalt path.

4. SCOPE OF SERVICES AND DELIVERABLES

This project includes design, supply, delivery, and installation of a new playground. The installation component will include removal of the existing playground, construction of a new playground border, and supply and installation of engineered wood fiber safety surfacing.

4.1 Playground Equipment

The following information is intended to guide and inform the playground equipment design included in proposal submissions.

- The new playground area is a 14m x 17m rectangle (inside-to-inside of playground border).
- Accessible concrete ramp to be included. Contractor to provide detail.
- The proposed equipment must include one or more composite structures which contain climbing and sliding features.
- The design must be appropriate for junior (2-5) and senior (5-12) age groups.
- Design to include 1 saucer swing and 1 tot swing, or equivalent swings arrangement.
- The RDN will work with the successful vendor to finalize colour choice before manufacture.

4.2 Installation

The successful proponent will be the Prime Contractor for this project. Work will include, but is not limited to, the following:

- Removal and disposal of existing playground equipment and timber border
- Excavation and grading as required to establish new playground area dimensions
- Installation of new playground border and accessible ramp
- Supply, delivery, and installation of new playground equipment
- Supply, delivery, and installation of engineered wood fiber playground safety surfacing
- Site clean-up and remediation



Additional Contractor Requirements and Responsibilities:

- Location of all services and BC One-Call prior to construction.
- Notice of Project requirements as per WorkSafe BC.
- Provide power, water, sanitary facilities as required to complete the work.

5. REFERENCE/BACKGROUND INFORMATION

Appendix A includes the following information:

- Photographs of existing park conditions
- Scaled PDF showing the size and location of the new playground area
- Construction details for playground edging
- Construction notes and requirements

6. PROPOSAL SUBMISSION AND EVALUATION

To assist in receiving similar and relevant information, and to ensure your Proposal receives fair evaluation, the RDN asks Proponents to please provide the following information in your proposal for evaluation:

Technical Proposal:

a) Company Profile

- Provide company background and expertise.

b) Playground Design and Layout

- Playground designs shall fit into the area labelled in the attached PDF. It is the responsibility of the bidder to ensure that proposed equipment and all applicable safety zones will fit into the proposed play area.
- Provide one layout plan with proposed equipment labelled and shown in an appropriate metric scale (e.g. 1:100).
- Provide minimum three coloured 3-D renders from different viewpoints to illustrate the components and the play area.
- Provide a product description for all proposed playground equipment. Describe inclusive and accessible play options included in the proposed design.

c) Warranty

- Provide warranty details. Warranty must include workmanship, parts, and materials. Provide information regarding how warranty claims will be responded to, including approximate wait times for parts and service.

d) Work Schedule

- Include a project schedule showing playground manufacturing, delivery, and installation timelines.



e) Comparable Project References

- Provide three references for projects of similar size and scope. Include project budget, project images, and contact information (name, email, phone number) for each project.

Financial Proposal:

Table A – Playground Supply and Install

Item No.	Description	Lump Sum Price
A1	Mobilization and Demobilization	
A2	Excavation and Grading	
A3	Removals – Existing Playground and Timber Border	
A4	Playground Equipment Design, Supply, Delivery	
A5	Playground Equipment Installation	
A6	Playground Edge – Timber Border	
A7	Accessible Concrete Ramp	
A8	Supply and Install EWF Safety Surfacing	
A9	Playground Inspection and Report	
A10	Site Restoration	
	Subtotal:	

Having examined the Project site and have carefully examined all the documents including any addenda issued as supplements thereto, and having examined the site, we hereby offer to perform the Work set forth in the aforesaid documents for the Contract Price. Prices include the Contractor’s labour, materials, equipment, material costs, overhead and profit, all taxes, and duties, and shall represent the cost to the Owner of such charges excluding GST which shall be shown separately.

Sub Total: \$ _____

GST: \$ _____

TOTAL CONTRACT PRICE: \$ _____

Table B – Provisional Items

Item No.	Description	Lump Sum Price
B1	Playground Edge – Concrete Curb	
	Subtotal:	



- The financial evaluation of proposals will be based solely on Table 'A'.
- If the RDN chooses to award Provisional Item B1, the contract price will be modified by **removing** item A6 and **adding** item B1.

Proposals will be evaluated on the following basis 60% Technical, 40% Financial.

Technical Proposals can achieve a maximum score of 60, with each section valued as follows:

Company Profile:	10
Playground Design and Layout:	30
Warranty:	5
Work Schedule:	5
Project References:	<u>10</u>
TOTAL:	60

A technical proposal score of 35 or lower will disqualify the proposal from further consideration.

The lowest price financial proposal will receive full marks. Other proposals will receive reduced scores based on the proportion higher than the lowest price. i.e. $\text{Score} = \text{Min Cost} / \text{Cost} \times \text{Fee Points}$.

Proposals submitted should be in enough detail to allow the RDN to determine the Proponent's qualifications and capabilities from the documents received. The selection committee, formed at the RDN's sole discretion, will score the Proposals in accordance with the criteria provided.

The RDN may evaluate proposals on a comparative basis by comparing one proponent's proposal to another proponent's proposal. The RDN reserves the right to not complete a detailed evaluation if the RDN concludes the proposal is materially incomplete or, irregular or contain any financial or commercial terms that are unacceptable to the RDN.

The selection committee may proceed with an award recommendation or the RDN may proceed to negotiate with the highest evaluated proponent with the intent of developing an agreement. If the parties after having bargained in good faith are unable to conclude a formal agreement, the RDN and the Proponent will be released without penalty or further obligations other than any surviving obligations regarding confidentiality and the RDN may, at its discretion, contact the Proponent of the next best rated Proposal and attempt to conclude a formal agreement with it, and so on until a contract is concluded or the proposal process is cancelled.

The RDN reserves the right to award the assignment in whole or in part or to add or delete any portion of the work. Throughout the evaluation process, the evaluation committee may seek additional clarification on any aspect of the Proposal to verify or clarify the information provided and conduct any background investigation and/or seek any additional information it considers necessary.



7. PROPOSED PURCHASE CONTRACT

The RDN's preferred form of Contract is attached herein. Proponents should carefully review this form of Contract. Should any vendors request that RDN consider revisions to the form of Contract, Proponents should include any clauses of concern in their proposal submission and suggest replacement language.

8. GENERAL CONDITIONS

8.1 No Contract

By submitting a Request for Proposal and participating in the process as outlined in this RFP, proponents expressly agree that no contract of any kind is formed until a fully executed contract is in place.

8.2 Privilege Clause

The lowest or any proposal may not necessarily be accepted.

8.3 Acceptance and Rejection of Submissions

This RFP does not commit the RDN, in any way to select a preferred Proponent, or to proceed to negotiate a contract, or to award any contract. The RDN reserves the right in its sole discretion cancel this RFP, up until award, for any reason whatsoever.

The RDN may accept or waive a minor and inconsequential irregularity, or where applicable to do so, the RDN may, as a condition of acceptance of the Submission, request a Proponent to correct a minor or inconsequential irregularity with no change in the Submission.

8.4 Conflict of Interest

Proponents shall disclose in their Proposals any actual or potential Conflict of Interest and existing business relationships it may have with the RDN, its elected officials, appointed officials or employees.

8.5 Solicitation of Board Members and RDN Staff

Proponents and their agents will not contact any member of the RDN Board or RDN Staff with respect to this RFP, other than the RDN Contact named in this document.

8.6 Litigation Clause

The RDN may, in its absolute discretion, reject a Proposal submitted by Proponent, if the Proponent, or any officer or director of the Proponent is or has been engaged either directly or indirectly through another corporation in legal action against the RDN, its elected or appointed officers and employees in relation to:

- (a) any other contract for works or services; or
- (b) any matter arising from the RDN's exercise of its powers, duties, or functions under the Local Government Act, Community Charter or another enactment within five years of the date of this Call for Proposals.



In determining whether to reject a Proposal under this clause, the RDN will consider whether the litigation is likely to affect the Proponent's ability to work with the RDN, its consultants and representatives and whether the RDN's experience with the Proponent indicates that the RDN is likely to incur increased staff and legal costs in the administration of this Contract if it is awarded to the Proponent.

8.7 Exclusion of Liability

Proponents are solely responsible for their own expenses in preparing and submitting a Proposal and for any meetings, negotiations, or discussions with the RDN. The RDN will not be liable to any Proponent for any claims, whether for costs, expense, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this RFP. Except as expressly and specifically permitted in these Instructions to Proponents, no Proponent shall have any claim for compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim.

8.8 Ownership of Proposals

All Proposals, including attachments and any documentation, submitted to and accepted by the RDN in response to this RFP become the property of the RDN.

8.9 Freedom of Information

All submissions will be held in confidence by the RDN. The RDN is bound by the Freedom of Information and Protection of Privacy Act (British Columbia) and all documents submitted to the RDN will be subject to provisions of this legislation. The successful vendor and value of the award is routinely released.



NOTES

- New playground area to be 14m x 17m

APPENDIX 1

Boltbee Community Park Playground - Location



NOTES

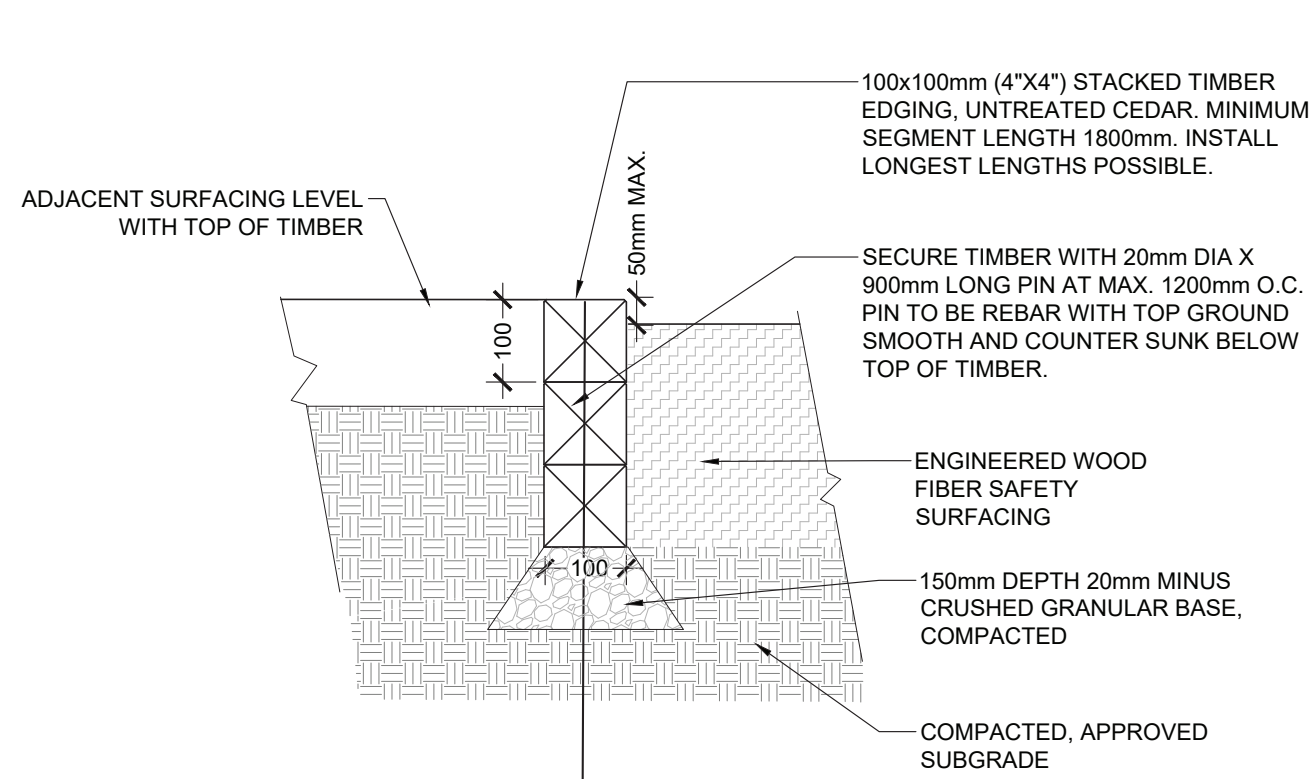
- Existing playground, timber edge, pea gravel surfacing to be removed and disposed off site.
- Existing asphalt pathway and site furnishings to be retained and protected during construction
- Playground border elevation to match adjacent asphalt path
- Accessible ramp to be located at asphalt path entrance to the playground

APPENDIX 1

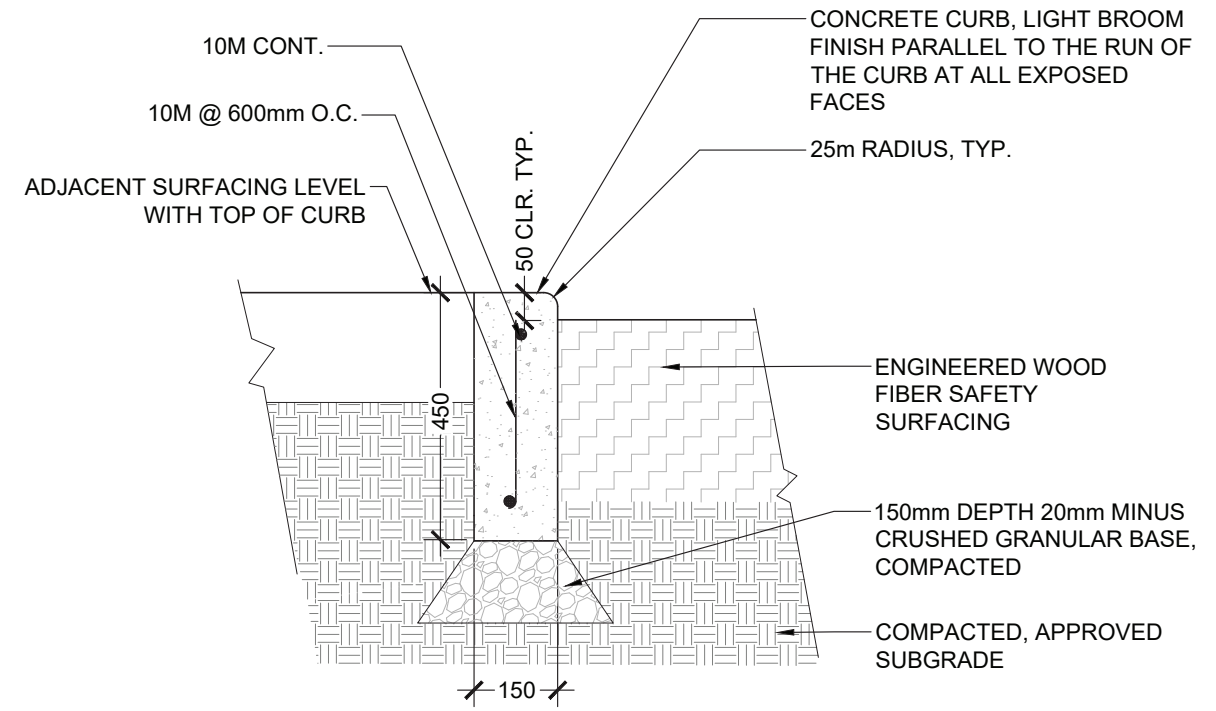
Boulton Community Park Playground - Removals, Elevation, Ramp Location

NOTES:

1. TIMBER SHALL BE SECURED WITH A MINIMUM OF TWO (2) 20mm DIA. X 900mm REBAR AT MAX.: 1200mm O.C., 600mm FROM TIMBER JOINTS, AND 200mm FROM END OF TIMBER EDGE.
2. TIMBER TO BE UNTREATED RED OR YELLOW CEDAR, #1 OR BETTER.
3. TIMBER EDGING TO HAVE FLUSH AND TIGHT TRANSITIONS TO ADJACENT MATERIALS, NO GAPS.



TIMBER BORDER DETAIL



CONCRETE CURB DETAIL (PROVISIONAL ITEM)

APPENDIX 1

Boulton Community Park Playground - Border Details

BETWEEN: _____ (the "Contractor")

AND: The Regional District of Nanaimo (the "Regional District")

THIS AGREEMENT WITNESSES that the Contractor and the REGIONAL DISTRICT agree as follows:

1. The Contractor shall provide all labour, Contractor's Plant and Equipment and materials required to perform the Work within the required time, as required by the Contract Documents.
2. The REGIONAL DISTRICT shall pay the Contractor the Contract Price, as required by the Contract Documents.
3. The Contract Price shall be the sum in Canadian Dollars of the following:
 - (a) Up to the Tender Price set out in the accepted Tender Form and;
 - (b) Payments made on account of change orders, as may be required by the Contract Documents.

The Contract Price shall be the entire compensation owing to the Contractor by the REGIONAL DISTRICT for the Work and shall cover and include all supervision, labour, materials, Contractor's Plant and Equipment, overhead, profit, financing costs and all other costs and expenses whatsoever incurred in performing the Contract.

4. The Contractor shall commence the Work within 7 Days after issuance of the Notice to Proceed from the REGIONAL DISTRICT, unless the Notice to Proceed states otherwise, and shall attain completion of the Work by September 30, 2024.
5. The Contract Documents shall form a part of this Agreement as though recited in full.
6. The Contract supersedes all prior negotiations, representations, or agreements, whether written or oral and is the entire agreement between REGIONAL DISTRICT and the Contractor with respect to the subject matter of this Agreement.
7. Defined terms in this Agreement shall have the same meanings as set out in the General Conditions, except where the contrary is expressed.
8. In entering into and executing this Agreement, the Contractor has relied on its own examination of the Site, access to the Site, and on all other data, matters and things requisite to the fulfilment of the Work, and on its own knowledge of existing services or utilities along or crossing or in the vicinity of the route or facility to be installed or

constructed under this Contract, and not on any representation or warranty of the REGIONAL DISTRICT.

9. The Contractor shall not assign the Contract, or any portion of the Contract, or any payments due or to become due under the Contract, without the express written consent of the REGIONAL DISTRICT.
10. No action or failure to act by the REGIONAL DISTRICT or an authorized representative of the REGIONAL DISTRICT shall constitute a waiver of any right or duty afforded any of them under the Contract or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
11. This Agreement shall enure to the benefit of and be binding upon the REGIONAL DISTRICT and the Contractor and their respective heirs, executors, legal representatives, successors and permitted assigns. In the event of more than one person being the Contractor, the grants, covenants, provisos and claims, rights, powers, privileges, and liabilities shall be construed and held to be several as well as joint.
12. Time shall be of the essence of this Agreement.
13. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as follows:

The Regional District of Nanaimo by its authorized signatory on _____ day of _____, 20__ (the date of Agreement):

SIGNED on behalf of the REGIONAL DISTRICT by:

Signature: _____

Name: _____

Title: _____

[CONTRACTOR'S NAME]

by its authorized signatory on _____ day of _____, 20__ :

SIGNED on behalf of the Contractor by:

Signature: _____

Name: _____

Title: _____

END OF SECTION

GENERAL CONDITIONS of CONTRACT

PART 1 LAW APPLICABLE

This Contract shall be construed under and according to the laws of the Province of British Columbia, Canada.

PART 2 ACCEPTANCE

For the purpose of this Tender, acceptance of the work shall mean the acceptance of the work for final payment of the contract price but not for the purpose of extinguishing any covenant or agreement on the part of the Contractor to be performed or fulfilled under this contract which has not in fact been performed or fulfilled at the time of such acceptance, all of which covenants and agreements shall continue to be binding on the Contractor until they have been fulfilled.

PART 3 PRIME CONTRACTOR DESIGNATION

The Contractor must be registered with WorkSafe BC and be in good standing with remittance up to date throughout the agreement and is designated as the Prime Contractor and shall fulfill the Prime Contractor responsibilities as defined in:

- a) *WorkSafeBC Occupational Health and Safety Regulation*, Notice of Project, Section 20.2, and Coordination of multiple employer workplaces, Section 20.3;
- b) *Workers Compensation Act* (BC), Coordination at multiple-employer workplaces, Section 118, Subsections (1) & (2); and
- c) General Requirements, Section 3.10 WorkSafe BC.

PART 4 QUALITY OF WORK AND MATERIALS

The whole of the materials and/or the work, whether or not so stated herein, shall be done in the most substantial and professional manner with new materials, articles, equipment and work of the best quality and description and by employment of properly skilled trades and in strict conformity with and as required by this contract to the satisfaction of the REGIONAL DISTRICT whether or not so stated herein. Materials and equipment shall be the products of suppliers or manufacturers of established reputation engaged in the supply or manufacture of such materials or equipment.

Materials are to be installed or incorporated into the Work applied in accordance with the manufacturer's directions. Use the techniques and application best suited for the type of material being used.

PART 5 JUDGE OF WORK AND MATERIALS

The REGIONAL DISTRICT shall be the final judge of all work, materials, and plants in respect of both quality and quantity and their decisions of all questions in dispute with regard thereto will be final.

All materials shall be subject to inspection and test by and shall meet the approval of the REGIONAL DISTRICT.

In case any materials, equipment and supplies are defective in material or quality or otherwise not in conformity with the specifications of the contract, the REGIONAL DISTRICT shall have the right either to reject them or to require their correction.

Acceptance or rejection of the materials, equipment, supplies, etc. shall be made as promptly as practicable after delivery, but failure to inspect and accept or reject supplies shall not relieve the contractor from responsibility for such supplies as are not in accordance with the specifications.

PART 6 RECTIFICATION OF DAMAGE AND DEFECTS

The Contractor shall rectify any loss or damage for which, in the opinion of the REGIONAL DISTRICT, the Contractor is responsible, at no charge to the REGIONAL DISTRICT and to the satisfaction of the REGIONAL DISTRICT. In the alternative, the REGIONAL DISTRICT may repair the loss or damage and the Contractor shall pay to the REGIONAL DISTRICT the costs of repairing the loss or damage forthwith upon demand from the REGIONAL DISTRICT. Where, in the opinion of the REGIONAL DISTRICT, it is not practical or desirable to repair the loss or damage, the REGIONAL DISTRICT may estimate the cost of the loss or damage and deduct such estimated amount from the amount owing to the Contractor hereunder.

PART 7 WARRANTY AND GUARANTEE

A minimum one-year warranty on all materials and workmanship shall apply from date of acceptance. Additional warranty information from the successful contractor shall be included here.

PART 8 ASSIGNMENT

The Contractor shall not assign, sub-contract or let out as task work any part of the work, and shall not assign any interest herein or any right to payment hereunder without first having had and obtained the consent in writing of the REGIONAL DISTRICT; which consent the REGIONAL DISTRICT may withhold in its absolute discretion. If the REGIONAL DISTRICT should consent to any such assignment, sub-contracting or letting out as task work of all or any part of the work, the Contractor shall by reason thereof be in no ways relieved from his responsibility for the fulfillment of the work, but shall continue to be responsible for the same in the same manner as if all the work had been performed by the Contractor himself.

PART 9 TERMINATION

The REGIONAL DISTRICT may by written notice to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

- a) If the Contractor fails to perform the work within the time specified herein or any extension thereof.

- b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms and in any of these circumstances, does not cure such failure within a period of ten (10) days, or such longer period as the REGIONAL DISTRICT may authorize, in writing, after receipt of notice from the REGIONAL DISTRICT specifying any such failure.

- d) In the event that the Contractor performs any act or does anything by which the REGIONAL DISTRICT shall incur any liability whatsoever.

- e) The REGIONAL DISTRICT may terminate the Agreement, without any cost or penalty or consequence whatsoever, if it concludes, acting reasonably on the information available to it, that the Contractor is in material non-compliance with, or has been convicted of a material offence or violation of, health, safety, labour or environmental laws.

- f) In the event that any creditor of the Contractor causes a writ of execution or similar writ or court order to be served upon the REGIONAL DISTRICT requiring the REGIONAL DISTRICT to pay to such creditor or to a sheriff or other public official or to the Court any portion of the consideration due to the Contractor under this Contract.

- g) In the event that the Contractor shall be adjudged bankrupt or if it should make a general assignment for the benefit of creditors or if it becomes insolvent or is appointed by a creditor or if it should take the benefit of any Act that may be in force for bankrupt or insolvent debtors.

Upon termination of the Contract as aforesaid, the REGIONAL DISTRICT shall have no obligation to the Contractor except for such labour and materials as have been supplied or performed up to the date of the termination of the Contract.

PART 10 STATUTES, MUNICIPAL BY-LAWS, AND PERMITS

Unless otherwise noted, the Contractor shall take out all necessary permits and licenses required to permit the Contractor to perform its obligations under the Contract. The Contractor shall give all notices and comply with all REGIONAL DISTRICT regulations, all laws, by-laws, ordinances, rules, and regulations, whether federal, provincial or municipal, relating to the business it carries on and the services provided pursuant to the Contract, including the Workers' Compensation Act and the Employment Standards Act.

PART 11 SITE INSPECTION

The Contractor shall make site inspections of all appropriate areas to determine their general condition and to ensure the fulfillment of the contract requirements.

PART 12 USE OF PREMISES

The Contractor shall abide by, and shall ensure its employees abide by, all appropriate regulations, including but not limited to regulations relating to fire, safety, parking, traffic control and health. The Contractor will ensure that all of its employees are aware of the applicable regulations.

PART 13 DAMAGE TO PERSON AND PROPERTY

The Contractor shall use due care that no persons are injured, no property damaged or lost, and no rights are infringed in the performance of the Work, and the Contractor shall be solely responsible for all loss, damages, costs and expenses in respect of any injury to persons, damage of property, or infringement of the rights of others incurred in the performance of the Work or caused in any other manner whatsoever by the Contractor, or its employees.

PART 14 CLEAN UP

The Contractor shall at all times conduct the work in an orderly and reasonably tidy manner and shall at suitable intervals remove any accumulation of rubbish or refuse materials. At no time shall any person employed by the Contractor or by any of his Subcontractors discard any litter or garbage on or adjacent to the site, except into a suitable container. Upon completion and before final acceptance of the work, the Contractor shall remove all rubbish, surplus, or discarded materials and equipment and shall leave the site in a clean and neat condition.

PART 15 ACCESS AND PUBLIC SAFETY

The Contractor shall effectively warn and protect the public and other personnel from any danger as a result of the work being done.

No material or equipment shall be stored where it will interfere with the free and safe passage of vehicular or pedestrian traffic or where it creates a hazard or a nuisance.

PART 16 CURRENCY OF PAYMENT

All reference to money in this Contract shall refer to and mean lawful money of Canada.

PART 17 DAMAGES FOR DELAY

If the work is not completed and/or the materials delivered before or upon the expiration of the time limited therefore all costs which the REGIONAL DISTRICT shall be put to by reason thereof shall be charged to the Contractor.

PART 18 PAYMENTS

The Contractor will be solely responsible for invoicing the REGIONAL DISTRICT ensuring to include the REGIONAL DISTRICT's Purchase Order number on all invoices to assure timely payment. Payments will be subject to a 10% holdback as per the Province of British Columbia's Builder's Lien Act.

All invoices are subject to prior review and approval by the REGIONAL DISTRICT and approved invoices will be paid on a net 30 day basis unless otherwise negotiated and agreed to in writing.

If the REGIONAL DISTRICT does not approve of the services or part of them which are the subject of the invoice, the REGIONAL DISTRICT shall advise the Contractor in writing of the reasons for non-approval and the Contractor shall remedy at no additional cost to the REGIONAL DISTRICT before the REGIONAL DISTRICT shall be obliged to pay the invoice or any part of it, as the case may be.

PART 19 CHANGE ORDERS

If for any reason it may become desirable during the course of the work to change the alignment, dimensions, or design, or to add to or to omit portions thereof, the REGIONAL DISTRICT reserves the right to issue change orders to give effect to such changes as may, in the opinion of the REGIONAL DISTRICT be necessary or desirable.

The change may or may not result in a change in the amount of the work. If the changes do, in the opinion of the REGIONAL DISTRICT, change the amount of the work, the contract price shall be adjusted as mutually agreed between the Contractor and the REGIONAL DISTRICT.

Should the Contractor and the REGIONAL DISTRICT fail to agree on the value of the change in the amount of work, the Contractor shall nevertheless change the work so ordered, and the value thereof shall be referred to the arbitration of three persons, one to be appointed by the Contractor, one to be appointed by the REGIONAL DISTRICT, and the third to be appointed by such two persons before proceeding with the arbitration. The decision of any two of the arbitrators shall be binding and shall be deemed to be a submission to arbitration within the provisions of the "Arbitration Act".

PART 20 STATUTORY DECLARATION

Prior to any payment to the Contractor, if requested by the REGIONAL DISTRICT, the Contractor shall deliver to the REGIONAL DISTRICT a statutory declaration in a form satisfactory to the REGIONAL DISTRICT declaring that all subcontractors, labour and accounts for material and equipment have been paid and that no persons, firms or REGIONAL DISTRICTs have any lien against the lands comprising the work site or the work together with such other documentation as the REGIONAL DISTRICT, acting reasonably, determines is necessary or desirable.

PART 21 BUILDERS LIENS

The Contractor shall, at its own expense, cause any and all builders liens and other liens for labour, services or materials alleged to have been furnished with respect to the lands comprising the work site or the work which may be registered against or otherwise affect the lands or the work, except liens properly filed by the Contractor on its own behalf, to be paid, satisfied, released or vacated forthwith after the REGIONAL DISTRICT has sent written notice of any claim for any such lien. In the event of a bona fide dispute regarding the validity or correctness of any claim for such lien, the Contractor shall be entitled to defend against a claim for such lien in any proceedings brought in respect therefor after first paying into court the amount claimed plus any interest payable, or providing sufficient security therefor and such cost as the court may direct and registering all such documents as may be necessary to cancel such lien, or providing such other reasonable security in respect of such claims as the REGIONAL DISTRICT may in writing approve. Upon receiving satisfactory security for any costs and an indemnity in writing from the Contractor, the REGIONAL DISTRICT may authorize the Contractor to apply to the court in the name of the REGIONAL DISTRICT to have any lien removed upon payment into court or deposit in court of satisfactory security therefor.

PART 22 PROTECTION OF REGIONAL DISTRICT AGAINST CLAIMS

The Contractor shall assume the defense of and indemnify and hold harmless the REGIONAL DISTRICT and its officers, employees, and agents, from and against all claims relating to materials furnished and to inventions, copyrights, trademarks, or patents and rights thereto used by the Contractor in the execution of this contract and in subsequent use and/or operation by the REGIONAL DISTRICT.

PART 23 INDEMNIFICATION AND INSURANCE

23.1 Indemnification and Release

23.1.1 The Contractor shall save harmless and indemnify the REGIONAL DISTRICT and its directors, officers, servants, employees and agents (the "Indemnified Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising in any way out of or connected with the Work by the Contractor or its subcontractors, or their servants or employees under this Contract, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Indemnified Parties or any on them.

23.1.2 Unless otherwise specified in the Contract, the Contractor shall save harmless and indemnify the Indemnified Parties from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature arising in any way from liability of any nature or kind for or on account of any copyrighted or un-copyrighted composition, secret or other process, patented or unpatented invention, articles or

appliances manufactured, supplied or used in the Work, and/or to be used by the REGIONAL DISTRICT before or after completion of the Work as a result of the Work performed by the Contractor, and if the Contractor shall fail to save harmless and indemnify in manner aforesaid, any money collected from the Indemnified Parties shall be charged to the Contractor.

23.1.3 The Contractor shall release and discharge the REGIONAL DISTRICT and its directors, officers, servants, employees and agents (the "Released Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) which the Contractor or its subcontractors or their servants or employees might have in any manner arising in any way out of or connected with the Work by the Contractor or its subcontractors, or their servants or employees under this Contract, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Released Parties or any on them.

23.1.4 The indemnity provided in the Clause 24.1.1 by the Contractor to the Indemnified Parties shall not in any way be limited or restricted by any insurance or by limitations on the amount or type of damages, compensation or benefits payable under the Workers' Compensation Act or any other similar statutes.

23.2 Insurance Obtained by Contractor

23.2.1 General

The Contractor shall itself and cause each subcontractor to obtain and maintain, at its own expense, the insurance set out below until all conditions of the Contract have been fully complied with.

23.2.2 Commercial General Liability Insurance

Commercial General Liability Insurance providing third party bodily injury, death, and property damage coverage in an amount of not less than \$5,000,000 per occurrence, indicating that the REGIONAL DISTRICT is added as Additional Insureds. The policy shall include Premises and Operations Liability; Contractor's Protective Liability with respect to the operations of sub-contractors; Completed Operations Liability; Contractual Liability; Non-Owned Automobile Liability; and a Cross Liability and/or Severability of Interest clause protecting each insured to the same extent as if they separately insured.

The policy shall also contain a clause providing that the REGIONAL DISTRICT will receive 30 days' notice of cancellation or of any material change in

coverage which will reduce the extent of coverage provided to the REGIONAL DISTRICT.

The Contractor shall file with the REGIONAL DISTRICT, prior to the commencement of work, a certificate of insurance in a form acceptable to the REGIONAL DISTRICT evidencing this policy. The Contractor shall also file with the REGIONAL DISTRICT evidence of the renewal on this policy. The Contractor is responsible for paying all deductibles.

23.2.3 Automobile Third Party Liability Insurance

A Standard Owner's Form Automobile Policy for each vehicle used in the performance of the Contract and regulated by the Insurance (Motor Vehicle) Act or similar legislation. The Third-Party Legal Liability Limits are to be in an amount not less than \$2,000,000 per occurrence.

23.2.4 Contractor's Equipment Insurance

The Contractor shall maintain an All-Risk insurance policy covering all construction equipment, mobile equipment, miscellaneous equipment, tools, office contents and other miscellaneous property whether owned, leased or rented or for which the Contractor may be responsible, that is used in any way in connection with this Contract.

23.2.5 Other Insurance

The Contractor and subcontractors shall provide at their own cost any additional insurance which they are required by law to provide or which they consider necessary.

23.2.6 Waiver of Subrogation

Each insurance policy obtained by the Contractor or any subcontractor in accordance with clause 24.2.4 shall include the following clause:

"Waiver of Subrogation

It is understood and agreed that in the event of a loss and upon payment of any claim hereunder, the insurer will waive its right of subrogation against the REGIONAL DISTRICT and any of their servants, agents, employees, parent, subsidiary, affiliated or related firms."

23.2.7 Indemnity Not Restricted by Insurance

The provisions for insurance shown above shall not in any way limit the indemnity granted by the Contractor to the Indemnified Parties elsewhere in this section.

23.2.8 Maintenance of Insurance

All required insurance shall be maintained until final completion of the work, including the making good of faulty work and materials, except that coverage of Completed Operations Liability shall in any event be maintained for 12 months from date of final acceptance by the REGIONAL DISTRICT.

PART 24 HOURS OF WORK

Unless alternate arrangements have been made in writing with the authority (ies) with jurisdiction, no work will be permitted outside the hours defined below:

“Before 7:00 a.m. or after 7:00 p.m., Monday to Saturday and before 9:00 a.m. or after 7:00 p.m., on Sundays and Statutory Holidays.”

PART 25 FORCE MAJEURE

Neither party shall be responsible for any delay or failure to perform its obligations under this agreement where such a delay or failure is due to fire, flood, explosion, war, embargo, governmental action, act of public authority, act of God, pandemic, epidemic, or to any other cause beyond its control, except labour disruption. In the event force majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party and shall take all reasonable steps to eliminate the cause. Should the force majeure event last longer than 30 calendar days, the REGIONAL DISTRICT may terminate this agreement immediately by written notice to the contractor without further liability, expense, or cost of any kind.

PART 26 DISPUTE RESOLUTION

26.1 If the parties to this Agreement are unable to agree on the interpretation or application of any provision in the Agreement, or are unable to resolve any other issue relating to this Agreement, the parties agree to the following process in the order it is set out:

- (a) the party initiating the process will send written notice to the other party (the “Dispute Notice”); and
- (b) the parties will promptly, diligently and in good faith, including the senior management of both parties, take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute.

26.2 If the parties are unable to negotiate a resolution within 30 days of the Dispute Notice, the parties may request the assistance of a mediator agreed to by the parties within 30 days written notice of a request to appoint a mediator by any party, failing which the mediator will be appointed by the B.C. International Commercial Arbitration Centre (BCICAC), and unless the parties agree otherwise, this mediation will follow BCICAC rules and will terminate 60 days after the appointment of the mediator.

26.3 The parties will be responsible for their own costs under the dispute resolution process set out in this part 21.0.

PART 27 INDEPENDENT CONTRACTOR

The Contractor shall be, and in all respects be deemed to be, an independent contractor and nothing in this *Agreement* shall be construed to mean that the Contractor is an employee of the REGIONAL DISTRICT or that any agency, joint venture, or partnership exists between the Contractor and the REGIONAL DISTRICT.

PART 28 CONFIDENTIALITY AND PRIVACY

28.1 Confidentiality

The Contractor will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of, relating to or arising out of the performance of the Services and this Contract (the “**Confidential Information**”) and will not disclose such Confidential Information.

Notwithstanding the preceding sentence, the Contractor may disclose the Confidential Information:

- (a) with the prior written consent of RDN;
- (b) in strict confidence to the Contractor’s professional advisors;
- (c) to Subcontractors who, in each case, need to know the applicable Confidential Information for the purposes of performing the Services;
and
- (d) as otherwise required by law or permitted by this Contract.

The Contractor will require all Personnel and Subcontractors to enter into an agreement with the Contractor containing provisions in the same form as those found herein.

28.2 Exceptions to Confidentiality Obligations

The obligations of confidentiality will not apply to:

- (a) information that is, or subsequently becomes, publicly available other than through a breach of this Contract or through a breach of a confidentiality agreement which another person has entered into concerning the Confidential Information;
- (b) information that the Contractor already possessed independently before commencing the Services;

- (c) information that is rightfully received from a third party without breach of any obligation of confidentiality by such third party; or
- (d) information which is independently developed without the use of the Confidential Information.

28.3 Collection or Use of Confidential Information

Except with the prior written consent of the RDN, the Contractor will not collect or use, and will ensure that its professional advisors and Subcontractors do not collect or use, the Confidential Information for any purpose other than complying with the terms of this Contract or performing the Services. Without limiting the generality of the foregoing, except with the prior written consent of RDN, the Contractor will not collect or use, and will ensure that its professional advisors and Subcontractors do not collect or use, the Confidential Information to advance the commercial or other interests of the Contractor or any Subcontractor or any entity affiliated with the Contractor or any Subcontractor.

28.4 Privacy

The Contractor acknowledges that the RDN is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, as amended (“**FOIPPA**”), and accordingly, any documents, information and data submitted to RDN by the Contractor under this Contract, as well as any resultant studies, documents, information, and data received by the RDN may be disclosed under FOIPPA. The Contractor will not do or omit to do anything that causes the RDN to be not in compliance with FOIPPA.

28.5 Publicity

The Contractor will not issue any press release or speak to the media about this Contract or the subject matter of this Contract without the prior written consent of the RDN, which consent may be unreasonably withheld. The Contractor will refer all media inquiries relating to the Services or the Contract to the RDN.

PART 29 COMPETENCY AND QUALIFICATIONS

The Contractor will employ properly licensed, trained, and unimpaired workers throughout the duration of the contract.

PART 30 UTILITY LOCATION

It is the responsibility of the Contractor to locate any utilities in the vicinity of any construction, exploration, or investigation if required.