



CITY OF SURREY

Engineering Department

CONSULTANT AGREEMENT

NO. X

SAMPLE AGREEMENT

Date

Consultant

**CONSULTANT AGREEMENT
NO. X D1**

THIS AGREEMENT dated the _____ (“Reference Date”).

BETWEEN:

CITY OF SURREY
13450 104 Avenue
Surrey, B.C. V3T 1V8
(the "City")

OF THE FIRST PART

AND:

Address

(the "Consultant")

OF THE SECOND PART

WHEREAS the City desires to retain the Consultant to provide Consulting Services as hereinafter defined in connection with the **(Project)**.

NOW THEREFORE in consideration of One Dollar (\$1.00) paid by the City to the Consultant (the receipt and sufficiency whereof is hereby acknowledged by the Consultant) and other good and valuable consideration, the parties agree with each other as follows:

Services

1. The Consultant covenants and agrees to provide consulting services as described generally in Schedule A, **excluding those identified as optional (“Optional Services”)**, including anything and everything required to be done for the fulfillment and completion of this Agreement (the “Consulting Services”).
2. The City agrees to pay the Consultant the fees and disbursements as set out in Schedule B on a time and materials basis, up to a maximum of **\$X** including GST (the “Fees”) for completed Consulting Services. For clarity, any disbursements set out shall be amended by the definition of disbursements in paragraph 16.
3. The Consultant covenants and agrees to provide Consulting Services in accordance with the Project Schedule as set out in Schedule C (the “Project Schedule”).
4. The Consultant covenants and agrees to not engage other professional consultants other than those named in Schedule B and Schedule D for performance of Consulting Services, except with the prior written approval from the City (the “Personnel”).
5. The Term of this Agreement shall commence on the Reference Date and continue until the Consulting Services are completed or this Agreement is terminated (the “Term”).

Additional Services and Amendments

6. The Consultant will not provide any additional Consulting Services in excess of those identified in Schedule A without the prior written consent of the City.
7. The Consultant covenants and agrees to perform additional Consulting Services if requested in writing by the City (“Additional Services”). The terms of this Agreement will apply to any Additional Services. The Fees will be increased or decreased by written agreement of the City and the Consultant according to the charge-out hourly rates set out in Schedule B.
8. There will be no change to the Project Schedule for any changes in scope of the Consulting Services for the Additional Services unless agreed to in writing by the parties.

Personnel and Professional Experience

9. Where the Project requires engineering technical deliverables (surveys, models, reports, plans, drawings, etc.), the Consultant agrees to have a qualified professional (i.e., AIBC, BCLS, P.Eng., P.Geo., R.P.Bio., etc.) registered, and in good standing, in the Province of British Columbia, certify that the Consulting Services and Agreement are completed in accordance with good industry standards; and the latest edition of the City of Surrey Design Criteria Manual, Master Municipal Construction Documents and the City of Surrey Standard Construction Documents as applicable to the Project.
10. The Consultant agrees that the Consulting Services are provided to the City on the understanding that the City is relying upon the Consultant’s experience and expertise necessary to complete the Agreement.
11. The Consultant covenants and agrees to perform all Consulting Services with such degree of care, skill and diligence as would reasonably be expected from a consultant qualified in British Columbia to perform services similar in scope, nature and complexity to the Consulting Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff.
12. The Consultant understands and agrees that the City will hold the Consultant responsible for the sealed reports and drawings submitted by the Consultant under this Agreement. The City will hold the Consultant responsible for any errors or omissions made by the Consultant, provided that the maximum limitation period will be in accordance with the Limitation Act of British Columbia, and no inspection, site visit, permit approval or issuance of a certificate by the City will relieve the Consultant of this responsibility.
13. The Consultant shall administer, coordinate, manage and be responsible for Consulting Services performed by sub-consultants.

Fees

14. The Consultant shall submit monthly invoices to the City which include:
 - (a) the names, number of hours worked and charge-out rates of all Personnel that have performed Consulting Services under the terms of this Agreement for the previous month, accompanied by such supporting documentation as may reasonably be required by the City;
 - (b) any Disbursements incurred in the previous month; and
 - (c) a monthly status summary of:
 - i. the total budget, the budget expended for the current invoice, budget expended to date;
 - ii. summary of approved Additional Services and approved budget;
 - iii. description of Consulting Services performed this month;
 - iv. the status of the Project and percentage of completion; and
 - v. any other relevant information regarding the status of the Project under this Agreement, including schedule, which the Consultant considers important.
15. Costs of general management, corporate administration, and financial supporting services and general overheads are deemed to be included in the hourly charge-out rates in Schedule B.
16. Disbursements are actual out of pocket costs for the following items, as reasonably incurred by the Consultant, to perform the Consulting Services and substantiated by supporting invoices: external printing costs; local travel on a per kilometre basis, not to exceed CRA Automobile Allowance Rates; courier services; third-party utility and agency permit fees; and testing and laboratory services (the "Disbursements"). Costs of office supplies and printing, computers, software, telephone, field equipment, travel outside of the Lower Mainland, accommodations, and food and beverages are deemed to be covered by the hourly charge-out rates.
17. The Consultant shall pay all fees and disbursements of the sub-consultants for the work performed and the City shall reimburse the Consultant at actual cost of the sub-consultant's invoice plus 5% to the Consultant for overhead and administration, as set out in Schedule B and provided that the maximum payable by the City to the Consultant shall not exceed the maximum Fee as specified in paragraph 2 of this Agreement.
18. Payment of monthly invoices by the City shall be made within thirty (30) days after receipt by the City.
19. If the Project Schedule is delayed for reasons beyond the reasonable control of the Consultant, the hourly charge-out rates in Schedule B shall remain fixed for a period of two years from the Reference Date, following which the Consultant may request annual increases to the hourly rate for the remaining Consulting Services to be provided. The increase will be based on the month following the period of two years from the Reference Date and will not be greater than the Consumer Price Index (All items, for the previous 12 month average) for Vancouver, British Columbia as published by Statistics

Canada(CPI). <https://www2.gov.bc.ca/gov/content/data/statistics/economy/consumer-price-index>

20. At the sole option of the City, within two years of the Reference Date, the City may enter into a separate agreement with the Consultant to provide the Optional Services for the Fees.

Confidentiality and Copyright

21. Except as provided for by law or otherwise by this Agreement, the Consultant will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Consultant as a result of the performance of the Consulting Services and this Agreement, and will not, without the prior express written consent of the City, publish, release, disclose or permit to be disclosed any such information to any person or corporation, either before, during or after termination of this Agreement, except as reasonably required to complete the Consulting Services.
22. Upon request by the City, the Consultant agrees to return to the City all of the City's property at the completion of this Agreement, including any and all copies or originals of reports provided by the City.
23. The Consultant hereby sells, assigns and transfers to the City the right, title and interest required for the City to use and receive the benefit of all the reports, drawings, plans, designs, models, specifications, concepts, products, designs or processes or other such work product produced by or resulting from the Consulting Services rendered by the Consultant. This does not give the City the right to sell any such work product to any third party and the City may sell the work product only with the prior approval of the Consultant.
24. The Consultant may retain copies of the work product, and re-use without written approval by the City.
25. The City shall have a permanent royalty-free license to use any product which is patentable or capable of trademark, produced by or resulting from the Consulting Services rendered by the Consultant.
26. The Consultant acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia and agrees to any disclosure of information by the City required by law.

Independent Consultant

27. The Consultant and the City agree that this Agreement is a contract for Consulting Services and is not a contract of employment and that the Consultant is responsible to pay all wages, salaries, pension benefits, Workers' Compensation Board costs, health, dental and life insurance benefits and all other taxes, costs or charges to its employees which are not, and are not considered to be employees or agents of the City.

Insurance and Indemnity

28. The Consultant shall maintain at its own expense at and at all times throughout the duration of this Agreement, insurances as follows:
- (a) professional liability insurance in the amount of ~~X~~ Million (~~\$X~~,000,000) Dollars per claim insuring the Consultant's liability resulting from errors and omissions in the performance of Consulting Services under this Agreement. This coverage shall be maintained for a period of twenty-four (24) months following termination of this Agreement.
 - (b) commercial general liability insurance on an occurrence basis, in an amount not less than 3 Million (\$3,000,000) Dollars inclusive per occurrence against death, bodily injury and property damage occurring by virtue of the Consultant's operations in respect of this Agreement. This policy shall be endorsed to add the City as an additional insured but only with respect to the Consulting Services provided under this Agreement. Such insurance shall include, but not be limited to:
 - products and completed operations;
 - blanket written contractual liability;
 - contingent employer's liability;
 - personal injury;
 - non-owned automobile liability;
 - employees as additional insured; and
 - cross liability.
 - (c) automobile liability insurance on all vehicles owned, operated or licensed in the name of the Consultant in an amount not less than 3 Million (\$3,000,000) Dollars per occurrence and in aggregate for bodily injury, death and damage to property.
29. The Consultant shall provide the City with thirty (30) days advance written notice by fax, email or mail of cancellation or material changes to applicable level of required insurance coverage.
30. The Consultant shall forward to the City proof of insurance in the form of a standard certificate of insurance issued by the insurer or broker within thirty (30) days of execution of this Agreement.
31. The Consultant acknowledges that any requirements of the City as to the amount of coverage under any policy of insurance shall not constitute a representation by the City that the amount required is adequate and the Consultant acknowledges that it is solely responsible for obtaining and maintaining policies of insurance in adequate amounts.
32. The Consultant agrees to indemnify and save harmless the City, its officers, and employees, from and against any and all losses, damages, tort, claims, actions, causes of action (collectively referred to as "Claims"), or other expenses that the City may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, to the extent they are based upon, arise out of or occur, directly or consequentially, by reason of any negligent act or omission of the Consultant or any

agent, sub-consultant, employee, officer, director or contractor of the Consultant pursuant to this Agreement, excepting always liability arising out of the independent negligent acts of the City.

Dispute Resolution

33. The City shall be entitled to withhold fees for non-completed work or for amount in dispute. The parties agree to use their best efforts to diligently pursue resolution of any Fees in dispute within thirty (30) days of the City's written notice of dispute. If resolution is not achieved, the Fees in dispute shall be referred to negotiation and mediation in accordance with paragraphs 33 through to 36, inclusive, of this Agreement.
34. The parties agree to use their best efforts to resolve any dispute, claim or controversy, whether based on contract, tort, statute, or other legal or equitable theory arising out of or related to this Agreement, or in respect of any defined legal relationship associated with or from this Agreement (the "Dispute").
35. The parties will make reasonable efforts to resolve any Dispute as follows:
 - (a) Negotiation – The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.
 - (b) Mediation – If all or any portion of a Dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 14 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Surrey, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation; and
 - (c) Litigation – If within 90 days of the mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.
36. The parties agree that the processes above described for settlement of a Dispute will involve disclosing information confidential to the disclosing party. The parties agree to keep confidential all information so tendered, including the fact that these settlement processes are occurring or have occurred, and not to disclose to any party not involved in such settlement processes such information without the prior express written consent of the disclosing party.

Termination

37. The City may at its sole discretion terminate this Agreement at any time by providing thirty (30) days' notice, which notice is to be provided in writing by fax, email or mail.
38. Upon receipt of such written notice, the Consultant shall perform no Consulting Services other than the Consulting Services which the Consultant and the City mutually agree is reasonably required to close the files and return all documents to the City. In the event the Consultant and City cannot mutually agree on what is reasonably required to close the files, the determination and the opinion of the City as to what is reasonably required to close the files shall prevail.
39. If this Agreement is terminated, the Consultant shall be paid for all the Consulting Services performed under this Agreement and shall be compensated for Consulting Services required to close its files as pursuant to paragraph 38.

General Terms

40. This Agreement, including the Schedules and any other documents expressly referred to in this Agreement, contains the entire Agreement of the parties regarding the provision of Consulting Services and no understandings or agreements, oral or otherwise, exist between the parties.
41. In the event of a conflict or ambiguity, the following order of precedence shall apply:
 - (a) Agreement;
 - (b) Schedule A – Consulting Services;
 - (c) Schedule D – Personnel;
 - (d) Schedule B – Fees; and
 - (e) Schedule C – Project Schedule.
42. The headings in this agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of this Agreement.
43. Wherever the singular, plural, masculine, feminine or neuter is used throughout this agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the context so requires.
44. Neither party may assign this Agreement without the prior written consent of the other party.
45. If during the term of this Agreement, control of the Consultant, being a corporation, is acquired by another corporation or individual or individuals, the terms of such acquisition shall ensure that this Agreement shall be completed. In the event of such an acquisition, the Consultant shall promptly notify the City and the City shall then have the option of terminating this Agreement on thirty (30) days' notice. Such notice shall be given by the City in writing to the Consultant within ten (10) working days of receiving the notification of the change in control.

City of Surrey
per

Authorized Signatory (*signature*)
Engineering Department

Authorized Signatory (*print name*)
Engineering Department

Consultant Name
per

Authorized Signatory (*signature*)

Authorized Signatory (*print name*)

SCHEDULE "A"

City of Surrey

CONSULTING SERVICES



Engineering Department

Insert Date of Terms of Reference

SCHEDULE "B"

City of Surrey

FEES



Engineering Department

Insert Date of Consultant Proposal

SCHEDULE "C"

City of Surrey

PROJECT SCHEDULE



Engineering Department

Insert Date of Consultant Proposal

City of Surrey

PERSONNEL



Engineering Department

Insert Date of Consultant Proposal