



RFP No. PRC 01-2020

Public Art Master Plan

Issue Date: December 18, 2020

Closing date and time:

Proposals must be received before 2:00 pm Pacific standard time on **Tuesday January 17, 2021**. An electronic submission is allowed.

Submission address:

Proposals can be submitted to the Parks and Recreation Department in a sealed envelope marked **RFP No. PRC 01- 2020 Public Art Master Plan**

Addressed to:

**Dan Henderson, Parks & Recreation Coordinator
Corporation of the Township of Esquimalt
1151 Esquimalt Road.
Victoria, BC V9A 3N6**

OR

Submitted electronically by email to:

**Dan Henderson, Parks & Recreation Coordinator
dan.henderson@esquimalt.ca**

Proposal results:

Proposals will not be opened publicly. Results will be communicated to all bidders.

Addenda: It is solely the responsibility of the bidder to ensure that it has obtained, prior to the closing date and time, any addenda issued by the Township of Esquimalt. Addenda will be posted on Esquimalt's website.

Contact person: All inquiries related to this Request for Proposal are to be directed, in writing, to the following person. Information obtained from any other source is not official and should not be relied upon:

Dan Henderson, Parks & Recreation
Coordinator Email:

dan.henderson@esquimalt.ca

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APPENDICES

APPENDIX A: Professional Services Agreement

1. INTRODUCTION

The Township of Esquimalt (The Township) is inviting qualified consultants to submit proposals for the development of a Public Art Master Plan.

2. BACKGROUND

The comprehensive Public Art Master Plan is intended to assist in defining the future direction, philosophy, policies, priorities, and actions for the Township of Esquimalt relating to public art. The Township of Esquimalt is a town of 19,000 and is unique to the Capital Region. We are looking for a proponent that can deliver a Public Art Master Plan that reflects our unique qualities and will include consultation with our Community including, but not limited to: First Nations Communities, Art groups, Chamber of Commerce and Youth.

3. SCOPE OF WORK

The successful proponent will lead and otherwise be responsible for all elements of the project, objectives, including reporting at key milestones, timely communications with the Township's project lead on emerging project issues, and maintaining complete documentation (i.e. notes, minutes, presentations) from internal and external meetings.

The proponent will be required to work with a project working group made up of Township staff from various Departments. They will meet regularly with the project working group, as determined and scheduled by the proponent. The proponent will be responsible for developing and executing the public engagement activities with the support of the project working group.

Research and information gathering for the Public Art Master Plan will include the following elements at a minimum:

- a) A review of existing Township documents and processes relating to public art:
 - a. Public Art Policy
 - b. Official Community Plan

- b) A review and evaluation of trends and emerging best practices in public art programs and their financial implications. Information on specific areas will include, but not limited to:
 - a. Municipal funding models for funding Public Art
 - b. Developer public art projects
 - c. Developer contributions to municipal public art
 - d. Integration of ecology/environment into public art process
 - e. Models for the selection of public art pieces and processes
 - f. Permanent collections
 - g. Ephemeral and temporary projects
 - h. Funding for the maintenance of a public art collection

- i. Private artwork donations
 - j. Requests to sell artwork to the Township
- c) A comprehensive stakeholder input process to identify community and Council priorities. A final consultation plan will be developed in conjunction with the successful consultant and Township staff and will need to meet current COVID Safety Plan requirements. The consultation plan may include, but is not limited to:
- a. Workshop with Township staff
 - b. Workshop with Civic Committees
 - c. Workshop with Council
 - d. Consultation and Workshop with First Nation Communities
 - e. Workshop/Open House with the community
 - f. Workshop/Open House with community Arts & Business Stakeholders
 - g. Workshop with Youth
 - h. Online survey

It is expected that the Consultant will deliver a Public Art Master Plan that will serve the Township for the next five (5) years and will provide a vision that will help identify Township and community priorities for strengthening public art in Esquimalt.

Project Deliverables (include, but are not limited to):

- 1) A draft report that is presented in a clear, concise and easy to understand format that includes:
 - a. Synopsis of the input and findings from the community and stakeholder input as outlined in Section 2
 - b. Analysis of community and stakeholder input
 - c. A summary of trends and best practices as outlined in Section 2
 - d. Strategies, goals and objectives, relevant to Esquimalt, with expected outcomes
 - e. Recommendations for funding public art and setting up Financial Reserves
 - f. Recommendations for short and long term maintenance of collection
 - g. Recommendations on neighborhood of geographical themes and locations
- 2) A Powerpoint Presentation to Council on the findings and discussion of the draft Public Art Master Plan report.
- 3) A comprehensive print-ready Final report that includes the feedback received during the draft review stage.

Supporting Documents

The Township will provide the successful Proponent with copies of the following information:

Public Art Policy
Official Community Plan
Council Strategic Plan
Township Annual Reports

4. SCHEDULE

Project Timeline (to be reviewed and confirmed with proponent)

Award RFP	Winter 2021
Research	Winter/Spring 2021
Consultation	Spring 2021
Draft Master Plan	July 2021
Final Master Plan	Fall 2021

5. PROPOSAL INQUIRIES

All inquiries are to be in writing and to be sent to:

Dan Henderson, Community Recreation Coordinator
Email: dan.henderson@esquimalt.ca
Telephone: 250-412-8507

6. PROPOSAL REQUIREMENTS

The Proponent shall provide proposals that are clearly laid out to address the items listed below. Proposals are to be submitted electronically via email to dan.henderson@esquimalt.ca. It is the Proponent's responsibility to ensure the receipt of their submitted proposal by the deadline.

- Title Page:
 - Reference the RFP number and title, the firm's address, the name and number of the contact person and the date of the Proposal.
- Section 1 – Proponent's and Staff Qualifications and Roles:

- The Proponent shall provide information on key individuals that will be undertaking this Work. This information should highlight the various individuals who will be involved in the project, and their relevant experience.
- If a sub-consultant/contract is to be used, this information should also be supplied.
- The Proponent shall also provide a brief corporate profile, covering the company's history, office location(s,) the corporate operating philosophy, *etc.*

- Section 2 – Scope of Work and Schedule

The Proponent will outline their understanding of the Scope of Work that includes the following:

- Proposed methodology for each phase of the scope of work
- Identifies what the Proponent can offer as value added services to the Township of Esquimalt
- A milestone schedule indicating the expected duration of each phase of the scope of work

- Section 3 - References

- Provide a minimum of 3, maximum of 5 selected projects. Proponent is to provide details on past projects the Proponent has completed that are of a similar nature to this type of project (*e.g. modification of existing building structures and layout*)
- Each reference shall contain the following:
 - Name of the contact person
 - Position contact person held in the previous project
 - Phone number and email address
 - Project name/description/cost of project

- Section 4 – Fee Proposal

- Provide a fee proposal for the scope of work, including rates for the personnel identified in Section 1, a breakdown of hours, and information on all additional rates such as office charge, administration, disbursements, travel (etc.)

- Section 5 – Project Schedule
 - Provide a milestone schedule outlining major tasks and approximate timeline to completion.

- Section 6 - Insurance:
 - Provide a copy of the Proponent’s professional liability insurance

7. EVALUATION CRITERIA

The following criteria outlined below will be used in the evaluation of the Proposals.

Criterion	Weighting
Fee Proposal	40%
Project Team Experience and Capacity	25%
Methodology	25%
Project Schedule	10%

8. GENERAL INSTRUCTIONS FOR THE PROPONENTS

The following instructions, terms and conditions apply to all Proposals related to this Request for Proposals.

8.1 The Corporation of The Township of Esquimalt expressly reserves rights to the following:

- 8.1.1 To accept any Proposal;
- 8.1.2 To reject any and/or all irregularities in the Proposal submitted;
- 8.1.3 To reject any and/or all Proposals;
- 8.1.4 To accept a Proposal that is not the lowest cost;
- 8.1.5 To make decisions with due regard to quality of service and experience, compliance with requirements and any other such factors as may be necessary in the circumstances;
- 8.1.6 To work with any Participant whose Proposal, in the opinion of the Management, is in the best interest of The Township;
- 8.1.7 To cancel or re-issue the RFP

8.2 All Proposals must be submitted to the Parks and Recreation Department, Department in a sealed envelope marked RFP No. PRC 01- 2020 Public Art Master Plan

Addressed to:

**Dan Henderson, Parks & Recreation Coordinator
 Corporation of the Township of Esquimalt
 1151 Esquimalt Road.
 Victoria, BC V9A 3N6**

OR

**Submitted electronically by email to:
Dan Henderson, Parks & Recreation Coordinator
dan.henderson@esquimalt.ca**

The Proposal is to be saved as an email attachment in PDF file format. The body of the email must reference the title of the proposal. Do not include your fee in the body of the email, as the attachments will not be opened until the Proposal closing time:

January 17, 2021 at 2:00 P.M. Pacific Daylight Time

- 8.3 A Proposal will not be considered if it is deemed to be incomplete in any fashion or unsigned by the appropriate authority.
- 8.4 Any Proposal received after the hour and date specified will not be considered and will be returned unopened.
- 8.5 Telephoned or faxed Proposals will not be accepted.
- 8.6 Modification of a Proposal after RFP closing date will result in the return of the Proposal.
- 8.7 Any contract that may be entered into as a result of this Proposal will be subject to the laws of the Province of British Columbia.
- 8.8 It is the responsibility of the Proponent to thoroughly examine these documents and satisfy itself as to the full requirements of this RFP.
- 8.9 While the Township has used considerable effort to ensure an accurate representation of information in this RFP, the information contained herein is supplied solely as a guideline for Proponents. The information is not guaranteed to be accurate, nor is it necessarily comprehensive or exhaustive. The Township will assume no responsibility for any oral information or suggestion(s).
- 8.10 Proponents are solely responsible for their own expenses in preparing a response and for subsequent negotiations, if any. If The Township elects to reject all responses, The Township will not be liable to any Proponent for any claims, whether for costs or damages incurred by the Proponent in preparing the response, loss of any anticipated profit in connection with any final contract, or any other matter whatsoever.
- 8.11 All documents, reports, proposal submissions, working papers or other materials submitted to The Township shall become the sole and exclusive property of The Township and as such, are subject to Freedom of Information Legislation. To request documentation confidentiality, proponents must submit a covering letter, with their proposal, detailing the specifics of their request.

- 8.12 Except as expressly and specifically permitted in these General Instructions to Proponents, no Proponent shall have any claim for any compensation of any kind whatsoever, as a result of participating in the RFP, and by submitting a proposal each Proponent shall be deemed to have agreed that it has no claim.
- 8.13 The Proponent warrants that the Proponent is not employed by The Township, nor is an immediate relative of such an employee, if the goods or services to be supplied under this Proposal are intended to be supplied to the department in which such employee works.
- 8.14 If the Proponent is a company, the Proponent warrants that none of its officers, directors or employees with authority to bind the company is an immediate relative of employees of The Township, if the goods or services to be supplied under this proposal are intended to be supplied to the department in which such employee works.
- 8.15 In this section "Immediate Relative" means a spouse, parent, child, brother, sister, brother-in-law, or sister-in-law of a municipal employee.
- 8.16 If any director, officer, employee, agent or other representative of a Proponent makes any representation or solicitation to any Mayor, Councillor, officer or employee of The Township with respect to the Proposal, whether before or after the submission of the Proposal, The Township shall be entitled to reject or not accept the Proposal.
- 8.17 The key personnel named in the Proponents RFP response, shall remain in these key positions throughout the project. In the event that key personnel leave the firm, or for any unknown reason are unable to continue fulfilling their role, the Proponent must propose a suitable replacement, and obtain written consent from The Township. Acceptance of the proposed replacement is at the sole discretion of The Township.
- 8.18 Any and all addenda to this RFP opportunity will be forwarded to all prospective Proponents. It is the sole responsibility of participants to ensure they have provided accurate contact information to receive all addenda prior to RFP closing.
- 8.19 Proponents responding to this competitive process agree to the terms and conditions of the Proposal opportunity as issued by The Township. Submissions shall not contain any alterations to the posted document other than entering data in the spaces provided or including attachments as necessary. Participants who alter the document as issued may be disqualified from this competition.
- 8.20 The Proponent shall indemnify and save harmless The Township and its officials, officers, employees and agents from any claim, lawsuit, liability, debt, demand, loss or judgment (including costs, defence expense and interest) whatsoever and howsoever arising either directly or indirectly as a result of the granting of this contract or the use of The Township's property or facilities.

- 8.21 The Proponent shall waive all rights or subrogation or recourse against The Township as a result of the granting of this contract or the use of The Township's property or facilities.
- 8.22 The Proponent shall indemnify and pay The Township promptly, on demand for any loss or damage to The Township's property and facilities arising either directly or indirectly as a result of the use of the property or facilities under the terms of this contract.
- 8.23 The successful proponent must possess an inter-municipal or non-resident business licence and will be required to provide evidence of same.
- 8.24 The Proponent must be registered and remain in good standing, throughout the terms of this contract with WorkSafe BC and will be required to provide evidence of same.
- 8.25 **INSURANCE**
- 8.25.1 The Proponent shall, at their own expense, provide and maintain until the completion of the Project the following insurance in a form acceptable to The Township with an insurer licensed in British Columbia:
- 8.25.1.1 Comprehensive General Liability Insurance \$2,000,000.00
- 8.25.2 The Proponent shall provide The Township with a Certificate of Insurance prior to the commencement of the Proponent programs and within two weeks of the expiry date of the policy to evidence renewal of the policy and continuous coverage.
- 8.25.3 The Township shall be under no obligation to verify that the coverage outlined in Clause 8.25.1 is adequate for the needs of the Proponent.
- 8.26 The successful Proponent will enter into a contract in the format as in the attached in Appendix "A", including all conditions included in the RFP.
- 8.27 All Proposals shall be irrevocable to remain open for acceptance for at least (60) sixty days after closing time, whether or not another Proposal has been accepted.
- 8.28 **BEST OFFER**
- 8.28.1 The Township will notify the successful Proponent that its Proposal has been selected as the Best Offer.
- 8.28.2 A contract is formed only when the owner issues a purchase order to the selected Proponent who has submitted the Best Offer.

APPENDIX A

PROFESSIONAL SERVICES AGREEMENT

Dated this [Click here to enter date.](#)th day of [Click here to enter month.](#), [Click here to enter year.](#)

BETWEEN:

1 CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Esquimalt, BC V9A 3P1

("The Township")

OF THE FIRST PART

AND:

[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

("Consultant")

OF THE SECOND PART

- A. The Township wishes to retain services of the Consultant, for the [Click here to enter text.](#) as specified in the attached Schedule "A".
- B. The Consultant, in order to perform the services as described in the attached Schedule "A", has the skill, training, and technical knowledge expected of a properly qualified and experienced person in a work environment.
- C. The Consultant is willing to provide the services as described in Schedule "A" for the fees as outlined in Schedule "B".

The Parties agree as follows:

1.0 AGREEMENT

1.1 Attached hereto and forming part of this Agreement are:

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

2.0 DEFINITIONS

In this Agreement:

- 2.1 "**Fees**" means the fees to be paid by The Township to the Consultant as set in the Terms of Payment, Schedule "B".
- 2.2 "**Services**" means those services to be provided by the Consultant in accordance with Schedule "A".
- 2.3 "**PSAB**" means Public Sector Accounting Board.

3.0 **TERM**

- 3.1 This Agreement commences on [Click here to enter text.](#) and ends upon completion of the Services to the full satisfaction of The Township, which completion shall not be later than [Click here to enter text.](#)

4.0 **SERVICES**

- 4.1 The Consultant shall provide the Services described in the attached Schedule "A" entitled [Click here to insert name of project.](#) (the "**Project**").
- 4.2 The Consultant shall comply with all reasonable requirements established by The Township for the performance of the Services, including but not limited to value, security, safety, emergency procedures, and access.
- 4.3 The Consultant shall exercise the degree of care, skill, and diligence normally provided by professional consultants in the performance of services in respect of projects of a similar nature to those services required under this Agreement.
- 4.4 The Township and the Consultant, by agreement in writing, may from time to time, make changes to the Services by altering, adding to, or deducting from the scope of the Services. The time for completion of the Services shall be adjusted accordingly. All Services shall be executed under the conditions of this Agreement.

5.0 **INVOICING**

- 5.1 Invoices are to be addressed to the Financial Services Department, The Township of Esquimalt, 1229 Esquimalt Road Esquimalt B.C., V9A 3P1.
- 5.2 The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
- 5.3 **Taxes must be shown separately** on the invoice.
- 5.4 The invoices must conform to The Township's *PSAB* requirements.

6.0 **PAYMENT**

- 6.1 The Township agrees to pay the Consultant in accordance with the provisions of Schedule "B".
- 6.2 The Township shall not pay any amount exceeding [Click here to enter text.](#) (excluding applicable taxes) in Canadian funds, unless prior written authorization has been obtained by the Consultant from The Township.
- 6.3 Where changes have been made to the Services in accordance with Clause 4.4, The Township and the Consultant may adjust the payment schedules accordingly.

7.0 **CONSULTANT**

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

8.0 **SUB-CONSULTANTS**

- 8.1 The Consultant may not hire any Sub-consultant without the prior approval of The Township. The Township shall be entitled to inquire as to the credentials and qualifications of the Sub-consultant and satisfy itself that the Sub-consultant is a suitable party to provide services in connection with this Agreement.
- 8.2 The Consultant shall be responsible for all services under this Agreement even if the Sub-consultants are approved by The Township.
- 8.3 For Sub-consultants retained by the Consultant and approved by The Township, the Consultant shall bind the Sub-consultant to the terms of this Agreement.

9.0 **INFORMATION AND PROPRIETARY RIGHTS**

- 9.1 The Township agrees to provide the Consultant with such information as may be reasonably required by the Consultant in the performance of the Services.
- 9.2 Any information collected or generated by the Consultant in the course of the performance of the Agreement is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), as well as all other regulation requirements governing the management of personal information.
- 9.3 The Consultant agrees that all data, information, and material provided to the Consultant by The Township are and shall be confidential, both during and after the term of this Agreement. The Consultant acknowledges that this is a fundamental term of this Agreement and the Consultant and its officers, directors, and employees will not directly or indirectly disclose or use at any time any confidential information acquired in the course of performing this Agreement. All provided data, reports, and material shall be returned to The Township upon termination of the Agreement.
- 9.4 All material prepared or assembled by the Consultant in connection with this Agreement and the Services shall be the property of The Township. This includes all reports, drawings, sketches, designs, plans, specifications, media copy, logos, questionnaires, tapes, computer applications, photographs, and other materials of any type whatsoever. Proprietary software supplied by the Consultant is excluded.
- 9.5 Copyright and all such material shall belong exclusively to The Township and, whenever requested by The Township, the Consultant shall execute any and all applications, assignments, and other instruments which The Township deems necessary in order to apply for and obtain the copyright to any part of the work produced by the Consultant and in order to assign to The Township the sole and exclusive copyright in such work.

10.0 **LEGAL REQUIREMENTS**

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

11.0 **INDEMNITY AND INSURANCE**

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

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

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

12.0 **BREACH OF CONTRACT**

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

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

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

13.0 **SUSPENSION OF AGREEMENT**

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

14.0 **TERMINATION OF AGREEMENT**

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

15.0 TERMINATION FOR CONVENIENCE

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

16.0 DISPUTE RESOLUTION

16.1 All claims, disputes, and other matters arising out of this Agreement or relating to a breach may, upon the agreement of both parties, be referred to either:

1. Mediation – voluntary, no risk, non-binding process bringing the parties to a resolution. The mediator will be appointed upon the agreement of both parties;

or

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

17.0 FORCE MAJEURE

17.1 Neither party shall be responsible for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to fire, flood, explosion, war, embargo, governmental actions, act of public authority, Act of God, or to any other cause beyond its control except labour disruptions.

17.2 In the event force majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party and shall take all reasonable steps to eliminate the cause.

17.3 Should force majeure event last longer than thirty (30) days either party may terminate this Agreement by notice in writing without further liability, expense or cost of any kind.

18.0 NOTICES

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

The Corporation of the Township of Esquimalt

Attention: [Click here to enter name.](#)

1229 Esquimalt Road

Esquimalt BC V9A 3P1

Phone: (250) [Click here to enter phone number.](#) Fax: (250) [Click here to enter fax number.](#)

Email: [Click here to enter email address.](#)@esquimalt.ca

To the Consultant at:

Click here to enter text.
Click here to enter text.
Click here to enter text.
Click here to enter text.

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

GENERAL

19.0 ASSIGNMENT

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

20.0 TIME OF ESSENCE

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

21.0 GOVERNING LAW

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

22.0 PURCHASE ORDER

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

23.0 SEVERABILITY

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

24.0 WAIVER

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

25.0 **EXECUTION**

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

26.0 **ENTIRE AGREEMENT**

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

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

[Click here to enter consultant name](#) Corporation of the Township of Esquimalt

Per: _____ Per: _____
[Click here to enter name.](#) [Click here to enter name.](#)
[Click here to enter title.](#) [Click here to enter title & name of department.](#)

Per: _____
Corporate Officer

Schedule "A"
Services

Schedule "B"
Terms of Payment

Schedule "C"

Certificate of Insurance