

P17-4561

September 1, 2017

Cc: Scott Kemp Architect via email: scott@smkarchitect.com

Shannon Ralfs  
Director of Lands  
Malahat First Nation  
110 Thunder Road  
Mill Bay, BC  
V0R 2P4

Attn: Shannon Ralfs, Director of Lands

**Re: Malahat Recreation Centre  
Structural Engineering Services  
Mill Bay, BC**

Dear Shannon,

Herold Engineering Limited is pleased to submit the following proposal for Structural Engineering Services associated with the above mentioned project. We have based our proposal on the preliminary drawings prepared by Scott M. Kemp Architect dated August 1 2017.

**Project Description** *(the "Project")*

It is our understanding that the project consists of the design and construction of a new mixed use facility that includes a health centre, daycare and a recreation centre. The proposed building is a single storey structure consisting of a combination of traditional heavy timber construction and conventional timber framing bearing on cast-in-place concrete footings and foundations.

**Scope of Services** *(the "Services")*

Herold Engineering Limited will complete the preliminary and detailed design, prepare tender/ construction drawings and provide services during construction including general inspections and shop drawing review.

**Company Profile**

Herold Engineering has a current staff size of over 65 employees including 23 structural engineers and five civil engineers involved in a wide variety of building, bridge, marine and municipal infrastructure projects throughout British Columbia. A significant amount of our work is with First Nations Communities for buildings, marine and civil engineering services.

We work closely with many First Nations groups. Below is a list of past and current First Nations projects including housing, health and gathering centres, community centres and schools that have undergone renovation or restoration services from our firm.

- Ucluth First Nations Community Centre
- Ucluelet First Nation. Hitacu Bachelor Units
- Snuneymuxw First Nation Multi Use Building – Structural
- Snuneymuxw First Nation Office Building
- Komox First Nation Administration Building
- Malahat First Nations Library and Gathering Place
- Ucluelet First Nation - Government Building
- Fort Nelson, First Nation - Wellness Centre
- Songhees First Nation - Longhouse Repairs
- Toquaht First Nation - Chenatha Industrial Building
- Hitatsoo First Nation Community Building, Ucluelet
- Tseshaht Market Addition, Port Alberni
- Halalt First Nation –Community Centre
- Lake Cowichan First Nation - Office Addition and Renovations
- Klahoose First Nation - Multi-Centre, Cortes Island
- Songhees First Nation - Recreation and Wellness Centre, Victoria
- Tillicum Lelum Elder & Youth Services, Nanaimo
- The Gathering Place – Vancouver Island University, Nanaimo
- The Gathering Place – North Island College, Port Alberni
- The Gathering Place – North Island College, Campbell River
- Chemainus First Nation - Pre-School, Chemainus
- Kw'umult Lelum Child and Family Services Building, Nanaimo
- Native Economic Development Centre – Port Alberni
- Nuw-Chah-Nulth Tribal Council Administration Building – Port Alberni
- Port Albion Administration Building – Port Albion
- Cormorant Island Health Centre – Alert Bay
- Hesquiaht Health Care Centre – Hot Springs Cove
- Ucluelet Health Care Centre – Port Albion
- Kitasoo First Nation - Triplex
- Campground for Huu-ay-aht First Nation – Pachena Bay
- Cowichan Tribes Facility – Duncan
- Tin Wis Addition - Tofino
- Chemainus First Nation - Tribal Council Community Centre
- Chemainus First Nation - Elders Center
- Chemainus First Nation - Health Center



**Klahoose First Nation Multi-Centre**



**Songhees Recreation and Wellness Centre**

Herold Engineering has been in business for over 20 years and has gradually grown to our current size by providing an excellent service for a fair price.

Our success is based on two fundamental principles. The first principle is that we must work in a respectful manner with our staff, our clients and those we work with on a daily basis. The second principle is that we must work with people in a trustful manner if we are to achieve success in the work we do.

**Services Not Provided** (*"Services Not Provided"*)

- Contract administration
- Geotechnical engineering
- Material testing
- Building envelope
- Seismic restraint of non-structural elements (i.e., mechanical, electrical or t-bar)
- Specialty structural elements (i.e., glazing, steel stud, railings or guards)
- Non-structural elements (i.e., cladding or storage tanks)
- Landscape elements (i.e., retaining walls, planters or pole/light bases)
- Preparation or review of cost estimates
- Design of elements for temporary loading (i.e., formwork, falsework or shoring)
- Preparation of fabrication, erection or record drawings

**Fees**

The following fee does not include disbursements which will be charged back at cost or standard GST charges which will be added to monthly invoices.

- Estimated Structural Design Fee.....\$29,500.00

The above mentioned fee includes contract administration which encompasses field reviews, attendance at meetings, progress draw reviews, review of site instructions, responding to RFI's & providing record drawings at completion.

**Revisions / Changes in Scope**

Herold Engineering Limited reserves the right to renegotiate the above fees should the scope of work vary significantly from the original work described.

**Schedule**

Upon acceptance of this proposal, we will proceed with the assignment.

**Payment**

Invoices will be submitted on a monthly basis for that portion of the work actually performed to the date of the invoice. Terms are net 30 days as per Schedule 1a attached.

**Liability**

In the event of a claim, Herold Engineering Limited's liability will be as per Schedule 1a attached.

### **Agreement**

If you are in agreement with the proposal and attached Schedule 1a, please sign the acceptance as noted below and return one copy.

We look forward to working on this project with your office and ask that you contact the undersigned if you have any questions regarding this proposal.

Yours truly,

**HEROLD ENGINEERING LIMITED**



Sean Herold, P.Eng.  
Principal

Enclosure

*I/We do hereby accept the within proposal and acknowledge that upon providing a signed copy of this letter to Herold Engineering Limited, I/We have entered into an agreement with Herold Engineering Limited comprised of this proposal and the terms and conditions attached as Schedule 1a (the "Agreement").*

\_\_\_\_\_  
Malahat First Nation

\_\_\_\_\_  
Date

**Payment**

The Client will pay Herold Engineering the fees as described in the proposal plus all applicable taxes and duties including without limitation the Goods and Services Tax (GST). In addition to the Services, the Client will also pay for any and all additional services requested of Herold Engineering even if those services are not listed as Services ("Additional Services").

Herold Engineering will submit invoices to the Client requesting payment for that portion of the Services and Additional Services completed to the date of the invoice. The Client agrees to pay the invoice within 30 days of the date of the invoice (the "Due Date"). Invoices unpaid by the Due Date will be charged interest at a rate of 18% per annum from the date of the invoice until paid.

Herold Engineering may, at its sole discretion, suspend the provision of any and all Services or Additional Services in respect to the Project if one or more invoices remain unpaid for more than 60 days from the Date of Invoice.

**General Provisions**

The Client shall not assign the whole or any part of this Agreement without the express written consent of Herold Engineering. Herold Engineering may assign to subcontractors and agents such part of the Services or Additional Services as Herold Engineering in its sole discretion shall determine. This proposal, if accepted, shall be governed by and construed in accordance with the laws of the Province of British Columbia.

**Obligations of Client**

The Client will assist Herold Engineering by providing all available and necessary information that Herold Engineering reasonably requires to provide the Services (or Additional Services). The Client will examine all requests, reports or other documents presented by Herold Engineering relating to the Services and Additional Services and will promptly provide in writing decisions or general instructions pertaining thereto so as not to delay the provision of the Services or Additional Services.

**Termination**

Herold Engineering may, without prejudice to any other right or remedy it may have, terminate this agreement if:

- (a) the Client is in breach of any of its obligation under this Agreement; or
- (b) the Client is insolvent or makes a general assignment for the benefit of creditors or if a receiver is appointed; or
- (c) Herold Engineering is prevented from performing the Services (or Additional Services) for a period of thirty days or more as the result of an event which is unavoidable and beyond the control of Herold Engineering that includes without limitation an order of a Court or other public authority, a labour dispute, a communication line failure, power failure or any other natural disaster or Act of God.

If Herold Engineering terminates this Agreement under (a), (b) or (c) above, Herold Engineering shall be entitled to be paid for all Services or Additional Services performed to the date of termination. Further, if Herold Engineering terminates this Agreement under (a) or (b) then Herold Engineering is also entitled to receive from the Client an amount that Herold Engineering, acting reasonably, determines is equivalent to the profit that Herold Engineering has lost as a result of not completing all of its Services or Additional Services, as the case may be, under this Agreement.

If Herold Engineering terminates this Agreement under (a), (b) or (c) above the Client releases and discharges Herold Engineering of and from any and all of its obligations under this Agreement.

**Confidentiality**

Except as may be required to advance or protect the legal interests of the Client or Herold Engineering or as may be required by law, the parties will keep strictly confidential and will not, without the written consent of the other party, disclose to anyone, either before, during or after termination of this Agreement, the information which comes to the knowledge of a party as a result of this Agreement.

**Ownership of Documents and Designs**

All right, title and interest in and to any products, technology or other intellectual property developed by Herold Engineering in performing the Services or Additional Services pursuant to the terms of this Agreement including without limitation all drawings, designs, reports, working papers, computations, manuals, documentation and documents of every kind (the "Work Product") shall remain the property of Herold Engineering. Provided the Client has completed all of its obligations under the Agreement, the Client shall be entitled to receive copies of the Work Product at the Client's expense. No part of the Work Product may be reproduced or re-used without the express written consent of Herold Engineering.

**Liability**

Herold Engineering is only liable for loss and damage that is directly attributable to its negligent acts, errors or omissions (the "Recoverable Loss and Damage") and in the event of a claim for Recoverable Loss and Damage, the parties agree that the maximum liability of Herold Engineering, whether in contract or tort, is limited to the amount of fees paid by the Client to Herold Engineering on account of Services (or Additional Services) in relation to the Project as of the date the claim is made.

In no event will Herold Engineering be liable for any indirect, incidental, special, consequential or punitive damages as a consequence of negligent acts, errors or omissions by Herold Engineering or the failure of Herold Engineering to satisfy and/or perform, any term or provision of this Agreement and without limiting the generality of the foregoing, Herold Engineering shall not, under any circumstances, be liable for loss or damage resulting from delays in the completion of the Project, or loss of earnings or loss of profits, howsoever caused.

**Dispute Resolution**

The purpose of this clause is to establish a process whereby any dispute or difference of opinion under or in connection with this Agreement can be resolved in a fair, efficient and cost-effective manner. Both parties shall use their best efforts to resolve any dispute or difference of opinion under or in connection with this Agreement by good faith amicable negotiations on a "without prejudice" basis, and shall provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

If a dispute or difference of opinion is not resolved to the reasonable mutual satisfaction of the parties within 10 Business Days of the commencement of negotiations, or within such longer period as may be agreed to by the parties in writing, the dispute or difference of opinion shall be submitted to mediation. Both parties agree not to commence litigation without first seeking agreement through the mediation process. Notwithstanding any provision herein to the contrary, nothing herein prevents Herold Engineering from filing a Builders Lien or enforcing a Builders Lien.

Mediation shall consist of structured, non-binding negotiations with the assistance of a mediator on a "without prejudice" basis. The mediator shall be appointed by agreement of the parties and shall be impartial and free from any actual or apparent conflict of interest. The costs of mediation shall be shared equally by both parties. If the parties are unable to agree on the appointment of a Mediator or if the dispute or difference of opinion proceeds to Mediation but is not resolved to the reasonable mutual satisfaction of both parties within 30 calendar days of the appointment of the Mediator, (or within such longer time as may be agreed to in writing by the parties), either party is at liberty to commence legal proceedings in the Province of British Columbia.