

# **Tender Document**

**The Institute of Horticulture (Hong Kong)**

**Consultancy Services Agreement**

**For**

**Works of Essential Facilities and related Accessories at**

**65 Ting Kok Road, Tai Po,**

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## **Part 1 – Instructions to Tenderers**

### **1. Instruction**

- 1.1 The Institute of Horticulture (Hong Kong) (hereinafter called “the Employer”) intends to employ suitably qualified consultant to carry out consultancy services for the provision of essential facilities and related accessories in its venue at 65 Ting Kok Road, Tai Po (hereafter called “the Site”).
- 1.2 The Services require the condition survey and outline proposal, detail design and tendering services, project management services and other services described in the Tender Document in relation to the provision of essential facilities and related accessories at the Site.
- 1.3 The Services shall be performed by qualified professionals and supported by competent technical staff.

### **2. Submission of Tender**

- 2.1 The Tender shall be enclosed in a sealed envelope and be sent by registered mail to the P.O. Box No. 1018 Sha Tin Central Post Office on the date specified in the Letter of “Invitation to Tender”. The postmark date on the envelope will be regarded as the date of tender submission. The Tender shall consist of:
  - 2.1.1 Two copies of the Tender Document with the Form of Tender (with Appendices) fully completed, signed, witnessed and dated, and the Terms of Payment (with Appendices) fully completed and priced.
  - 2.1.2 The following information shall also be submitted together with the Tender:
    - 2.1.2.1 The completed company brief information of the Tenderer as stipulated in Part 7 together with the organization chart of his company.
    - 2.1.2.2 Proposed organization and curriculum vitae of all key staff to complete the services required for the Consultancy Agreement. Please note that the proposed key staff shall be qualified professionals (Architect, Structural Engineer, Building Services Engineer or Building Surveyor who is recognized by HKIA, HKIE or HKIS respectively).
    - 2.1.2.3 The completed list of relevant job records for the last three years as stipulated in Part 7, including both the completed and current jobs. The job records shall include job’s particular information such as building site name, client’s name & his contact information, brief description of works, approximate contract sum, time and status (whether finished or not). This list shall be written in either Chinese or English.

2.1.2.4 The technical proposal includes work plan with proposed programme for execution of the Services.

2.1.2.5 The completed and signed Declaration of Ethical Commitment, Confirmation Letter for “Anti-Collusion Requirement” and Declaration Form for “Conflict of Interest” as stipulated in Part 8 of Item 1, 2 and 3 respectively.

2.1.2.6 The tenderer shall possess a valid Business Registration Certificate and sufficient resources to carry out the services as required in these Tender Documents Copy of the valid Tenderer's Business Registration Certificate and Professional Liabilities Insurance Certificate with Limit of Indemnity not less than \$20,000,000.00 and amount of retention not more than \$100,000.00 for each and every claim.

2.1.3 All submitted documents will not be returned.

### **3. Amendments to Tender Document**

3.1 No unauthorized alteration or erasure to the Tender Document is allowed. If any alteration or erasure is made, the Tender may not be considered.

3.2 The Tenderer must submit compliant bids without qualification. Non-compliant or qualified tenders may be rejected.

3.3 Alternative tenders will not be considered before the assessment of conforming tenders is concluded; and only the alternative tenders may be considered provided that a complaint and unqualified tender is also submitted.

### **4. Discrepancies and Errors**

4.1 The Tenderer shall carefully check that he has received the complete Tender Document and shall inform the Employer in writing should he find any deficiency in this respect.

4.2 The Employer takes no responsibility for the completeness or accuracy of these Tender Documents. Should there be any doubt as to the meaning of any of the Tender Documents or as to anything to be done or not to be done under the Agreement or as to these Instructions or any other matter, the Tenderer shall raise any queries to the Employer in writing in order that the clarification may be issued before the tender closing date.

4.3 The Tenderer shall be deemed to have carefully examined the Tender Document and all relevant documentation, and to have satisfied himself as to the correctness and sufficiency of his tenders and the risks and obligations that he has offered to undertake. The Employer will not accept any claims arising from any oversight or misinterpretation of the Tender Document.

4.4 In the event of the Tenderer discovering a genuine error in his Tender after it has

been deposited, the Tenderer may draw attention in writing to the error and submit an amendment. This may be accepted provided that such amendment is received before the tender closing date. However, acceptance to such amendment is totally subject to the Employer's discretion.

- 4.5 Should examination of the Tender reveal errors of such magnitude, as in the opinion of the Employer, would involve the Tenderer in serious loss, then the nature and amount of such errors will be communicated to the Tenderer and he will be asked to confirm in writing that he is prepared to abide by his Tender.

## **5. Acceptance**

- 5.1 This Consultancy Services Agreement is to be considered on an "overall" basis (i.e. Section 2 of Part 6). Tender with only partial or incomplete offers will not be considered further.

The Employer reserves the right to select any tender which in its sole discretion it deems most likely to meet its overall objectives for the Project. The Employer is keen to award this Consultancy Services Agreement to the Tenderer who is able to offer the best balance between technical and financial matters. In the event that the Employer believes that the fee offer would be insufficient to support the resources included in the tender then the Employer may at the Employer's sole discretion eliminate the tender from further consideration.

- 5.2 The Employer is not bound to accept the lowest or any tender received and reserves the right to reject any non-conforming tender which does not comply with the requirements of Tender. The Employer will not be and is not required to give any explanation for the selection or rejection of any tender.
- 5.3 The Employer may reserve the right to negotiate with any tenderers about the terms of their offers.
- 5.4 The Tenderer shall note that the Employer may accept the whole or any part of the Services. No claims or reimbursement for insufficient tender rate shall be entertained. The Tenderer shall ensure his rate and price as provided in this Tender covering all his risks, liabilities and obligations set out or implied in the Agreement and all matters and things necessary for the proper execution of the Services.
- 5.5 By signing and submitting a tender, the tenderer agrees and warrants to comply with all terms and conditions set out in these Tender Documents. When the Tenderer's offer is accepted by the Employer, this Tender Document except these Instructions to Tenderers together with Letter of Appointment shall form part of the Agreement.
- 5.6 Should the Tenderer not having received any further notice after expiring the validity period of tenders, he shall treat his Tender as unsuccessful.

## **6. Preliminary Site Visit**

6.1 The Tenderer is strongly suggested to conduct site visit to get familiar with the general building conditions prior to the submission of tender. The Tenderer's preliminary recommendations, if any, are welcome to be included in the Tender.

## **7. Offering Gratuities**

7.1 The Tenderer shall not and shall ensure that its agents and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) to any agent or member of the Employer. Any breach of or non-compliance with this clause by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its tender, and if the Contract has been awarded to the Tenderer without knowing the breach, the Employer shall be entitled to immediately terminate the Contract and claim for all losses and costs incurred.

## **8. Confidentiality, Probity and Anti-collusion**

8.1 If the tenderer is a company, no subsidiary or holding company (which are defined in sections 13 to 15 of the Companies Ordinance (Cap. 622)) of the tenderer or subsidiary of the tenderer's holding company may tender for this Consultancy Services.

8.2 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in clause 8.3 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

8.3 The tenderer shall complete and submit with his tender the Non-collusive Tendering Certificate (in the form as set out in Part 8 as part of its Tender. The signatory to the Certificate shall be a person authorized to sign the Consultancy Agreement on the tenderer's behalf.

8.4 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in clause 8.2 above or in the Non-collusive Tendering Certificate submitted by it under clause 8.3 above, the Employer shall be entitled to, without compensation to any person or liability on the part of the Institute:

- (a) reject the Tenderer's Tender;
- (b) if the Institute has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and
- (c) if the Institute has entered into the Contract with the Tenderer, terminate the Contract.

8.5 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Institute against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties

and/or undertakings in clause 8.1 above or in the Non-collusive Tendering Certificate submitted by it under clause 8.2 above.

## **9. Validity Period**

- 9.1 The tender shall remain open for acceptance by the Employer not less than one hundred and twenty (120) days after the Tender Closing Date (“Tender Validity Period”). Without prejudice to other rights and claims of the Employer, where a Tenderer rejects this Tender Validity Period or counter-proposes a shorter validity period, its quotation will not be considered further.
- 9.2 If a Tenderer withdraws its offer before expiry of the Quotation Validity Period, without prejudice to other rights and claims of the Employer, due notice will be taken of the Service Provider’s action which may prejudice its future standing as a contractor of the Institute of Horticulture (Hong Kong).

## **10. Authorization**

- 10.1 The Tenderer shall authorize the Employer to check and enquire on performance, technical skill or competence via sending or calling or making reference enquiries with his past employers, contractors, suppliers, etc.

## **11. Others**

- 11.1 Any memoranda, letters, drawings and information given prior to the issue of Tender Document shall not form part of the Agreement.
- 11.2 Tender must be submitted in the form of a lump sum fixed price offer.
- 11.3 The Employer accepts no liability for any expenses or costs incurred by the Tenderer in the preparation of his Tender.
- 11.4 This Consultancy Services Agreement is governed by and shall be construed in accordance with the Laws of HKSAR.
- 11.5 Unless otherwise provided, the Tender shall be denominated in Hong Kong Dollars.

## **12. Enquiries**

- 12.1 Enquiries concerning the Tender Documents shall be made not later than three (3) working days prior to the Tender Closing Date or the Extended Tender Closing Date, as the case may be, to the following e-mail –

iohort\_hk@yahoo.com.hk

- 12.2 After lodging a tender with the Employer, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Employer on its tender or these Tender Documents. The shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto

shall be in writing or formally documented in writing.

### 13. Tender Briefing

13.1 A briefing session is scheduled as follows –

<b>Date and Time</b>	<b>Location of Tender Briefing</b>
20 December, 2024 at 10:00 am	Institute of Horticulture (Hong Kong) 65 Ting Kok Road, Tai Po, N.T.

All interested parties are recommended to attend the briefing session before submitting their tenders in order to acquaint themselves with the requirements of this tender exercise and to determine the scale and cost of the Services to be provided.

13.2 Tenderers are advised to send email to the address in Item 12 above at least one day before the specified date to register for the briefing.

## Part 2 - Scope of Services

### (A) Introduction

1. The Institute of Horticulture (Hong Kong) is a non-profit making charitable organisation established in 1997. It aims to promote the development of horticulture in Hong Kong. To educate the community on how to make use the urban horticulture to enhance biological diversities in Hong Kong dense environment, the Institute will launch a programme on ‘Urban Horticulture for Biodiversity Enhancement’ (the Programme) funded by The Hong Kong Jockey Club Charities Trust, in its venue (the Site) at 65 Ting Kok Road, Tai Po, N.T.
2. Information of the Site:
  - 2.1 Location 65 Ting Kok Road, Tai Po, N.T.
  - 2.2 Land Use Horticulture and associated activities
  - 2.3 Existing Facilities Office, classroom, latrines, storerooms, shade, landscaped areas
  - 2.4 Year of Built Before 1997
  - 2.5 Total Site Area About 2,750 m<sup>2</sup>
3. For the implementation of the Programme, some essential facilities including the replacement and reprovision of perimeter fence, the erection of a modular classroom, a



modular accessible toilet block, a modular greenhouse and a potting shed, are required to be additionally constructed at the Site. The Institute of Horticulture (Hong Kong) (hereinafter called “the Employer”) intends to employ qualified consultant to provide the **Professional Consultancy Services** as stipulated in Scope of Services in Section B for the provision of these essential facilities. The major work required for the Consultant are listed as follows -

- 3.1 Site inspection and provision of feasible proposal with timeline in relation to the construction of the required essential facilities mentioned in Part 5 at 65 Ting Kok Road, Tai Po, N.T.
- 3.2 Design and submission to relevant Government Departments and authorities for approval.
- 3.3 Drafting works tender documents with cost estimates, issue and analysis of tenders for the appointment of works contractors to deliver the construction works.
- 3.4 Exercising due skill, care and diligence to manage the Works Contract for the construction of those essential facilities and to ensure the works are properly and safely executed, issuance of work completion certificates, payment certification and to assist the Employer to fulfill all legal obligations.
- 3.5 Co-operating and collaborating with the Employer on all issues relating to the construction works and to ensure the timely execution and completion of the works.

4. Abbreviations used in this document are listed below:

AP/RSE	The Authorized Person / The Registered Structural Engineer registered under the Buildings Ordinance
BD	The Buildings Department of Hong Kong.
EMSD	The Electrical and Mechanical Services Department of Hong Kong
DSD	The Drainage Services Department of Hong Kong
FSD	The Fire Services Department of Hong Kong
WSD	The Water Supplies Department of Hong Kong
HKIA	The Hong Kong Institute of Architects
HKIE	The Hong Kong Institute of Engineers
HKIS	The Hong Kong Institute of Surveyors
HyD	The Highways Department
LandsD	Lands Department
Professional	The building surveyors, the architects, the structural engineers or the civil engineers qualified and recognized by HKIS, HKIA and HKIE respectively.
Professional Assistance	The personnel technically competent with sufficient relevant academic qualification and working experience.

## **(B) Scope of Services**

The Consultant shall provide competent personnel and efficient resources to perform and complete the professional consultancy services for provision of essential facilities and related accessories at 65 Ting Kok Road, Tai Po within specified period of duration and in compliance with the requirements as stated in the Agreement. The requirements of competent personnel provided by the Consultant shall be referred to Part 2 – Requirements of Consultant’s Personnel hereof.

The scope of services for the Agreement shall include, but not limited to the following:

### **Stage 1: Feasibility Study and Proposal**

1.	Carry out a feasibility study and prepare construction works proposals for the essential facilities including the replacement and reprovision of new perimeter fence, the erection of a modular classroom, a modular accessible toilet block, a modular greenhouse and a potting shed at 65 Ting Kok Road, Tai Po within 4 weeks from the date of appointment including preliminary cost estimate and tentative programme of the Construction Works. As advised by Building Department, the proposed plot ratio and site coverage for the whole development should not exceed the permissible limits under First Schedule of Building (Planning) Regulations.
2.	Attend regular or ad hoc meetings, including but not limited to the meetings with Employer’s representatives, internal consultants, property manager, Government departments and so forth at all times.
3.	Responsible for liaising with owners or occupiers of adjacent lands as necessary in order to facilitate the site inspection and the subsequent construction works.
4.	Consolidate Employer’s brief for the preparation of recommendations (in the Survey Report) which shall include design proposals, cost estimate, proposed cash flow schedule, tentative working programme for major activities of the Construction Works etc.
5.	Search the layout of all existing underground services and liaise with Government departments and utilities companies for the works required. Special attention be made to underground town gas pipes which may run along the paving area of the site.
6.	Provide a preliminary programme of the Services and allow sufficient time for comments and approval by the Employer.
7.	Retrieve Approved plans including but not limited to the Setting Out Plan and/or Dimension Plan showing the coordinates of the boundary, General Building Plans, Drainage Plans, Plumbing Layout Plan and diagram, Structural Plans, calculations and associated documents from LandsD, BD and relevant drawings from other Government Departments and utilities companies for reference, as necessary. The above retrieved drawings and building plans should be treated as the Employer’s property and shall be handed over to the Employer upon the completion of survey.

8.	To prepare and submit the plumbing layout plans and diagrams of the fresh and flushing water supplies for the existing and new facilities to Water Supplies Department for approval.
9.	In order to implement suitable drainage connection works for the additional potting shed, greenhouse, accessible toilet and paving area, the Consultant should identify the existing drainage system including any site clearance, inspection and testing works. Prepare the drainage layout plans of the existing and new facilities for submission to Drainage Services Department for approval as appropriate. Please refer the letter of Drainage Services Department at Annex I for reference and compliance.
10.	To arrange necessary testing and checking on the existing electricity supply and loading situations of the site. To assess whether the electricity supply can cater for additional electrical facilities. The consultant should be responsible for the design and apply to utilities company, where necessary, to ensure sufficient power supply to the required additional facilities.
11.	Prepare one original and two certified true copies of Survey Report with color record photographs.
12.	Provide one soft copy for the whole Survey Report.

**Stage 2: Design and Submissions to the Employer, relevant Government Departments and authorities, including Building Authority for approval**

1. Illustrate a detailed design with options in color perspectives, drawings and calculations, all design shall furnish with sample boards, cost estimates, working programmes etc for the Employer's approval.
2. Consolidate the Employer's brief and comments on outline proposals as required in Stage 1 of the Services, prepare and submit at least 3 detailed proposals (3 schemes) and tentative working programme as well as detailed cost breakdowns with quantities of all works items which shall be based on the latest instructions from the Employer.
3. To provide Authorized Person and/or other related parties to liaise with relevant Government Departments for all submissions until obtaining the approval, subsequent consent for the commencement of works and obtain acknowledgment upon completion.
4. Submit detailed drawings, calculations, construction details and photos etc. to LandsD, BD, DSD, EMSD, FSD, WSD, or other related Government departments for any major activities of the Construction Works which require approval and consent from the relevant departments prior to the commencement of works.
5. To participate in Government Departments/ Employer's meetings to present/ elaborate the design proposals at all times and to enquire comments from participants at above meetings and to modify the design proposals from time to time and when required.

6. Liaise with Government departments and utilities companies for the works required.

### **Stage 3: Tendering for Construction Works**

1. Preparation of Tenders
  - 1.1 Prepare detailed design drawings and specifications.
  - 1.2 Prepare working drawings and submit selected samples of suitable materials for Employer's consideration and approval.
  - 1.3 Prepare tender document package including the pricing documents, tender drawings, specifications, etc for the purpose of invitation of tenders.
  - 1.4 Submit tender document package to the Employer for approval prior to the invitation of tenders.
  - 1.5 Participate in the selection of prospective tenderers for tender invitation. The list of prospective tenderers must be agreed and accepted by the Employer.
  - 1.5 Conduct pre-qualification exercise to all prospective Tenderers according to the requirements and criteria provided by the Employer, and prepare pre-qualification analysis report with recommendations for Employer's consideration and approval. The finalized requirements and criteria on the pre-qualification must be agreed and accepted by the Employer.
2. Tendering
  - 2.1 Invitation of tenderers to make offers, conduct site visits with the selected tenderers, answer enquires from the tenderers, and issue addendum, if necessary.
  - 2.2 Arrange opening of tenders in the present of the Employer's representatives. Check and examine tenders upon receipt of tender submission and make sure all works items have been priced for detailed analysis.
  - 2.3 Carry out tender assessments in accordance with the pre-determined assessment criteria and scoring system. Issue tender queries, if necessary.
  - 2.4 Arrange tender interview in the present of the Employer's representatives.
  - 2.5 Prepare tender analysis reports.
3. Participate in the Employer's meetings to present tender analysis report to the Employer at all times, make recommendations, and advise the Employer on Award of the Construction Works Contract to the appropriate tenderer.
4. Issue "Letter of Award" to the successful tenderer if instructed by the Employer.

5. Prepare three (3) sets of official Contract Documents for signing with the successful tenderer.
6. Sign the Construction works Contract (hereinto called “Works Contract”), as and when instructed by the Employer, with the successful tenderer (hereinto called “Contractor”).

#### **Stage 4. Project Management**

1. Arrange pre-contract meeting with the Employer and Contractor to discuss works execution and programing, and site organization. Prepare site supervision plan to control and monitor of the execution of the works.
2. Provide all necessary information to the Contractor, arrange the commencement of works and check and approve Contractor’s submissions which shall include but not limited to the insurance’s documents, Master Working Programme, material submission etc.
3. Attend regular or ad hoc progress meetings from commencement to completion of the project. The Consultant should lead/attend all progress meeting at least once a month with the present of the Contractor’s representatives and his internal consultants etc to review from time to time the progress of works and performance of Contractor at office or non-office hours to give directions and instructions to Contractor or attend to enquiries from owners, occupants, and record minutes of meetings.
4. During the construction works, assign professional / professional assistant to carry out site inspection in accordance with the requirements of the “Technical Memorandum” for Supervision Plans issued by Building Department.
5. On-site checking by professional/professional assistance to inspect or ensure the Contractor has adopted safety working procedures and all works has been done in full compliance with design specifications and relevant authorities’ requirement, and provide site inspection report each time and submit the report to the Employer.
6. Submit monthly reports to the Employer in respect of progress of forecast and actual expenditure for the Works Contract.
7. Check and endorse the Contractor’s Project Safety Plan prior to the commencement of Works Contract.
8. Assign professional/professional assistance to conduct joint site safety inspection with the Contractor’s Registered Safety Officer at least once a month. Require the Contractor to submit report upon completion of joint site inspection, the report should be endorsed by the Registered Safety Officer and Consultant and then submitted to the Employer.
9. Assign professional/professional assistance to perform emergency duties during typhoon, inclement weather and/or other natural disasters, and monitor closely Contractor to carry out all preventive works and measures against such adverse situations and to report to the Employer’s representatives any damage immediately.

10. Provide post-contract administration services throughout the duration of the Agreement period including but not limited to the lodging application to Government Departments, issuance of instructions to the Contractor whenever necessary, checking the Contractor's monthly payment applications against workdone and endorsing payment certificates as required, accepting or rejecting the Contractor's submitted materials, equipment and shop drawings etc.
11. Handle contractual claims, valuation of variations, and participate in disputes between the Contractor and Employer.

### **Stage 5. Works Completion and Defects Liability Period**

1. Issue Certificate of Practical Completion of the Works.
2. Check and examine the Contractor's final account submissions, and settle final account between the Employer and Contractor.
3. Obtain as-built drawings and operation manuals from the Contractor, if any, which should show the services as installed, and provide initial guidance and training to the Employer for operation and maintenance of new equipment.
4. Carry out handover inspections with the Employer and Contractor to identify defects, if any.
5. Instruct the Contractor to make good any outstanding defects upon completion of the Works, and carry out periodic checking or prepare questionnaires to individual owners to reveal any defects as a result of poor workmanship or defective materials, and issue subsequent defect list reports during Defect Liability Period and ensure Contractors to complete the defects within reasonable time.
6. Carry out final inspection, release retention money through certifying Contractor's final payment application upon expiry of Defects Liability Period.
7. Issue Certificate of Completion of Making Good Defects to discharge parties' liabilities.

### **(C) Requirement of Consultant's Personnel**

1. For the execution of this Agreement, the Consultant's personnel assigned for the Agreement shall comply with the following requirements:
  - 1.1 **Senior Professional Staff**
    - (a) Authorized Person under the Buildings Ordinance; or

- (b) Registered Architect (RA), Registered Professional Engineer (RPE), or Registered Professional Surveyor (RPS) registered under the respective Architects, Engineers and Surveyors Registration Ordinance and have at least 10 years post-qualification experience.

**1.2 Professional Staff**

- (a) Members of the HKIA, HKIE or HKIS, or architects, engineers and surveyors registered under the respective Architects, Engineers and Surveyors Registration Ordinance and have at least 3 years post-qualification experience
- (b) The members of HKIE or engineers registered under the Engineers Registration Ordinance shall be in the disciplines of civil and structural engineering; where the members of HKIS or surveyors registered under the Surveyors Registration Ordinance shall be in the discipline of Building Surveying.

**1.3 Professional Assistance**

- (a) Diploma or Higher Certificate or Higher Diploma in Building Studies or relevant disciplines from a recognized institute/polytechnic/university or other equivalent qualifications, plus at least 5 years of relevant experience; or
- (b) Degree in Building Studies or relevant disciplines from a recognized institute/polytechnic/university or other equivalent qualifications, plus at least 3 years of relevant experience;

**1.4 Clerk of Works**

- (a) Member of the Institute of Clerks of Works, plus at least 5 years of relevant experience; or
- (b) Diploma or Higher Certificate in Building Studies from a recognized institute/polytechnic/university or relevant disciplines or other equivalent qualifications, plus at least 5 years of relevant experience; and
- (c) Certificate in Safety and Health Supervisor (Construction) issued by the Occupational Safety and Health Council or equivalent qualification.

**Part 3 Form of Contract**

**Relevant General Conditions of Employment Clause Numbers shown in brackets**

1.	Date for Commencement of Services (Clause 14.1)	Within 7 days after serving of the Employer’s written notice for commencement of the Service
2.	Tentative Period for Completion (Clause 14.2)	

	<ul style="list-style-type: none"> <li>Stage 1 - Feasibility Study and Proposal</li> </ul>	Within 15 days from the Date for Commencement
	<ul style="list-style-type: none"> <li>Stage 2 –Design and Submission to Building Authority for approval</li> </ul>	30 days from the date for completion of Stage 1 or receipt of the Employer’s notice for commencement of Stage 2
	<ul style="list-style-type: none"> <li>Stage 3 –Tendering for Construction Works</li> </ul>	30 days from the date for completion of Stage 2 or receipt of the Employer’s notice for commencement of Stage 3
	<ul style="list-style-type: none"> <li>Stage 4 - Project Management and work competition.</li> </ul>	45 days from the date for completion of Stage 3 or receipt of the Employer’s notice for commencement of Stage 4
	<ul style="list-style-type: none"> <li>Stage 5 – Defects Liability Period</li> </ul>	Twelve (12) months of Defects Liability Period upon the completion of the Construction Works
3.	Limit of Public Liability Insurance (Clause 10)	HK\$20 million for any one occurrence
4.	Limit of Professional Indemnity Insurance (Clause 11)	HK\$20 million for any one occurrence
5.	Amount of Surety Bond (Clause 8)	10% of the Agreement Sum

## Part 4 - General Conditions of Employment

### Definitions, Interpretation and Governing Law

#### 1. Definitions

- 1.1 In this Agreement, the following words and expressions shall have the meanings assigned to them except where the context otherwise requires:
- 1.2 “Agreement” means the General Conditions of Employment, the Scope of Services, the Terms of Payment, the Form of Tender, and the Letter of Appointment (including any documents specified in the Letter of Appointment as forming part of the Agreement).
- 1.3 “Agreement Sum” means the sum as accepted by the Employer. The Agreement Sum shall be deemed to cover all its risks, liabilities and obligations set out or implied in the Agreement (subject only to its right to additional remuneration in certain cases, as expressly provided in the Agreement) and all matters necessary for the proper provision of the Services.



- 1.4 “Employer” means the Institute of Horticulture (Hong Kong), the occupier of 65 Ting Kok Road, Tai Po, N.T.
  - 1.5 “Consultant” means the person, firm or company appointed by the Employer to provide the Services and includes the person representatives or permitted assigns of that person, firm or company.
  - 1.6 “Consultant’s Programme” means the programme prepared by the Consultant and approved by the Employer.
  - 1.7 “Deliverables” means the items referred to in the Scope of Services.
  - 1.8 “General Conditions of Employment” means these conditions of employment.
  - 1.9 “Enactment” means any Ordinance, proclamation, rule, regulation, order, resolution, notice, and rule of court, by-law or other instrument having legislative effect in Hong Kong.
  - 1.10 “Form of Tender” means the form entitled as such which has been prepared by the Employer and completed by the Consultant and delivered by the Consultant to the Employer with his proposal for the provision of the Services.
  - 1.11 “Services” means the services set out or referred to in the documents forming the Agreement as services to be provided by the Consultant.
  - 1.12 “Scope of Services” means the document entitled as such which describes the services to be provided by the Consultant and any modification thereof or addition thereto which may from time to time be furnished by or agreed in writing by the Employer.
  - 1.13 “Terms of Payment” means the document entitled as such setting out the agreed arrangements for the payment of the Consultant by the Employer.
  - 1.14 “Schedule of Payment” means the document entitled as such setting out the agreed arrangements for the payment of the Consultant by the Employer.
2. Singular to include the plural etc.
    - 2.1 Words and expressions in the singular include the plural and words and expressions in the plural include the singular.
  3. Laws
    - 3.1 The Agreement shall be governed by and interpreted according to the laws for the time being in force in Hong Kong.

## Documents and Information

#### 4. Disclosure

- 4.1 The Consultant shall not use or disclose details of any Deliverables or Employer's data including any terms and conditions of the proposed construction works or any information, specification, documents, drawing, plan, software, data or particulars to any third parties other than persons employed or engaged by the Consultant in carrying out the services of the Agreement.

#### 5. Ownership and Copyrights

- 5.1 Each Deliverables and other document by the Consultant in accordance with the Agreement shall be the property of the Employer. The Consultant shall provide a set of as-built drawings and updated documents as appropriate to the Employer upon the completion of the Services. Upon submission, all copyright relating to the same is deemed to have been released to the Employer without extra costs.

#### Obligations and Duties of the Consultant

#### 6. General Obligations and Duties

- 6.1 The Consultant shall carry out and complete the Services in all respects in accordance with the Agreement.
- 6.2 The Consultant shall be responsible for the overall co-ordination, administration, management and communication in respect of the proposed construction works.
- 6.3 The Consultant shall report to and take instructions from the Employer. The direction, instruction, approval given by the Employer shall not in any way diminish or relieve the duties and obligations of the Consultant as required in the Agreement.
- 6.4 The Consultant shall exercise all reasonable professional skill, care and diligence in the discharge of his duties under the Agreement, and shall take full responsibility for the sufficiency and adequacy of all Deliverables. Whenever the Consultant's project in-charge takes a leave or vacation more than seven (7) days, he shall obtain the Employer's approval.
- 6.5 The Consultant shall undertake all contract administration of remedial works as a result of original contractor's failure in performing his duties, including procuring other remediation work's contracts, valuation of work done and settlement of all contractors' accounts.
- 6.6 The Consultant shall not have the right to assign or transfer the benefit and obligations of the Agreement or any part thereof without prior written consent of the Employer.
- 6.7 The Consultant shall indemnify and keep indemnified the Employer against all claims for damages, losses, costs of proceedings which are arising out of or as a consequence of any breach or non-performance of the Agreement.

#### 7. Approval of Deliverables

- 7.1 The Consultant shall submit all Deliverables to the Employer's for approval, and shall submit such of the Deliverables as may by Enactment be required to any relevant authority or department and obtain the approval and/or consent of that authority or department (as required) in both cases and in accordance with the Consultant's programme.
- 7.2 Any approval or withholding of approval by the Employer on or in respect of any Deliverables or other matter will in no way relieve the Consultant of any of its liabilities or responsibilities under the Agreement.
- 7.3 Without obtaining written approval from the Employer on the Deliverables of the particular Stage and written permission to proceed to the next prescribed Stage of works, the Consultant shall not be entitled to any payment as specified in the relevant Section of this Agreement.

## 8. Bond

- 8.1 When required by the Employer the Consultant shall at his own expense produce to the Employer a Bond duly executed under seal by an insurance company or bank acknowledging that the insurance company or bank is liable with the Consultant in a sum as stated in the Form of Contract.

## 9. Liability

- 9.1 The Consultant shall hold harmless and indemnify the Employer, its servants and agents from and against any liability for death or bodily injury (whether fatal or otherwise), any loss of or damage to any property (including property belonging to the Employer, or for which the Employer is responsible) and any other loss, damage, costs and expenses, provided that the said liability, loss, damage, costs or expenses shall have arisen out of or in consequence of the Consultant's neglect, error and omission in the performance of the Agreement. Provided further that the Consultant shall not be responsible to indemnify the Employer for any liability, loss, damage, costs and expenses caused by the negligence of the Employer, its servants and agents, and that any liability of the Consultant to indemnify the Employer as aforesaid shall be reduced proportionately to the extent that the negligence of the Employer, its servants or agents, may have contributed to the said liability, loss, damage, costs or expenses.

## 10. Public Liability Insurances

- 10.1 Without prejudice to the obligations of the Consultant under the Agreement, the Consultant shall effect and maintain public liability insurance in its name and in the name of the Employer against any liability on the part of either of them for the death of or any bodily injury to any person or for the loss of or any damage to any property arising out of the Consultant's performance of the Services, such insurance to entitle the Consultant or the Employer (as the case may be) to a maximum indemnity from the insurer of not less than the sum stated in the Part 3 – Form of Contract in respect of any one incident. Such insurance shall also indemnify the Consultant and the Employer against any costs, charges, and expenses which either of them may incur

in connection with any claim made against either of them in respect of such liability.

11. Professional Liability Insurance

11.1 Without prejudice to the obligations of the Consultant under the Agreement, the Consultant shall take out professional indemnity insurance in a sum not less than that stated in the Part 3 – Form of Contract. The said insurance shall be maintained in force throughout the duration of the Agreement. The Employer shall be entitled to determine whether insurance is so available.

12. Approval and Production of Terms of Insurance

12.1 The Consultant shall whenever required by the Employer produce to the Employer the policies of insurance and receipts for payment of the current premiums.

13. Remedy in the event of Failure to Insure

13.1 If the Consultant shall at any time fail to produce to the Employer, upon receiving a request to do so, satisfactory evidence that it has effected and is maintaining any of the insurances which it may be required to effect under the terms of the Agreement, the Employer may effect and keep in forces any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Consultant or recover the same as a debt due from the Consultant.

14. Commencement and Completion

14.1 The Consultant shall commence the provision of the Services on the date specified in the Part 3 – Form of Contract or, where none is specified, within seven (7) days after serving of written notice by the Employer to the Consultant in confirming the appointment, and shall thereafter proceed with the provision of the Services with all due diligence and expedition.

14.2 The Consultant shall deliver all Deliverables within the period of time specified in the Part 3 – Form of Contract to the satisfaction of the Employer or, where the Consultant's Programme is approved by the Employer, within the period of time in accordance with the Consultant's Programme.

14.3 The Consultant's duties in respect of each stage of the Services shall be deemed to be completed when the Employer has made the final payment to the Consultant in respect of that stage of the Services.

15. Variations, Valuation and Payment

15.1 The Employer shall order in writing any variation to the Services or to the manner in which the Services are to be provided under the Agreement which may in his opinion be necessary for the completion of the Services or the proposed construction works and shall have the power to order any such variation which for any other reason shall in his opinion be desirable for or to achieve the satisfactory completion

of the Services or the proposed construction works.

- 15.2 The Consultant shall before proceeding to carry out any ordered variation submit to the Employer an estimate of the number of man-hours which implementation of the variation will involve and the names and grades of the members who will undertake such implementation together with the estimated period of time required and the effect on the Consultant's Programme.
- 15.3 The value of any variation ordered by the Employer shall be ascertained by the Employer in accordance with the following principles. Where a service is, in his opinion of the Employer, of similar character and executed under similar conditions to a service in respect of which a price is indicated in the Part 6 - Terms of Payment, that service shall be valued by reference to such price. Where a service is, in the opinion of the Employer, not of similar character or is not executed under similar conditions, any price stated in the Part 6 - Terms of Payment shall be used as the basis for valuation so far as may be reasonable. If no price stated in the Part 6 - Terms of Payment can reasonably be used as the basis for such valuation, any rate stated in the Terms of Payment shall be used as the basis for valuation so far as may be reasonable, failing which a fair valuation shall be made. Failing agreement between the Employer and the Consultant as to any price or rate to be applied or taken into account in arriving at the valuation, The Employer shall determine the value in accordance with the foregoing principles and shall notify the Consultant accordingly.
- 15.4 Unless provided otherwise, the fees quoted in the Summary of Professional Fees shall be inclusive of all labour, materials and expenses incurred in carrying out the services under the Agreement.
- 15.5 Payment will be made in accordance with the Terms of Payment.

## 16. Termination

- 16.1 This Agreement may be terminated:
  - (a) by either party ("Non-defaulting Party") at any time for a breach of this Agreement or fail to perform a material obligation of this Agreement provided that a written notice of its intention to exercise its right of termination and specifically notifying the other party ("Defaulting Party") of its basis for termination and that the Defaulting Party does not within fourteen (14) days from the receipt of such notice remedy the breach or failure, or such reasonable additional time as may be agreed by the Non-defaulting Party if the breach or failure cannot reasonably be remedied within the said fourteen (14) days, then the Non-defaulting party shall be entitled to terminate this Agreement with not less than fourteen (14) days prior written notice;
  - (b) by the Employer within not less than fourteen (14) days prior to the Consultant in the event that:
    - (i) either the subsequent Stages of Services or the Construction Works is suspended or abandoned;
    - (ii) the consultant commits an act of dishonesty or fraud or any act of

- illegality reasonably deemed by the Employer to reflect adversely on any of its Related Companies or the Consultant's character or integrity;
- (iii) the Consultant is in breach of the confidentiality provision and conflict of interest provision set out in this agreement;
- (iv) the Consultant fails, ceases, or threatens to cease, to carry on services as prescribed in the Stages of Services or other services are not stated but that are necessary for the completion of the Services in the Agreement

(c) by the Employer with not less than fourteen (14) days prior written notice to the Consultant without cause;

(d) In the event that the Defaulting Party goes into liquidation or bankruptcy or it shall become insolvent or enter into any composition or scheme of arrangement with its creditors, the Non-defaulting Party may, by giving written notice, terminate the Agreement with immediate effect.

16.2 Any termination of the Agreement shall not prejudice or affect the accrued rights or claims of either party.

16.3 Upon the termination of the Agreement for any reason, the Consultant shall immediately return to the Employer any documents or other material belonging to the Employer (including all copies of such documents and other material) in its possession or control.

16.4 Neither the Employer nor the Consultant shall be responsible for any delay or failure to perform the respective obligations under the Agreement in the event that such delays or failure to perform are because of Acts of Gods, Acts of Government (cause of delay due to any necessities of Government permission, approval, license or etc), earthquakes, floods, fire, riots, strikes, lockouts (other than by the parties themselves) stoppages or the progress of work is interrupted beyond a reasonable period of time, and the Employer shall have the right to terminate the Agreement.

16.5 In the event of any termination, the Consultant shall be entitled to be paid the fees commensurate with the services that have been performed up to the date of termination or shall return the Employer any amount overpaid to him previously. The fee payable or recoverable shall be calculated on a pro rata basis according to the stages of services as indicated in the Schedule of Payment in the Part 6 - Term of Payment.

16.6 In the event of any termination, all Deliverables which are under preparation or which for any other reason are not yet in the Employer's possession and ownership shall forthwith pass to the Employer and the Employer shall be at liberty to take possession of the same

16.7 In the event of any termination, the Consultant shall proceed in an orderly manner to take such steps as are necessary to bring to an end in the shortest possible period his duties under the Agreement as economically as possible to the Employer.

## 17. Ethical Commitment – Confidentially

17.1 Except as necessary for the performance of the Services the Consultant shall not

(except with the prior written consent or as instructed by the Employer) disclose the terms and conditions of this Agreement or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the Employer in connection therewith, or any such or similar information generated or produced by the Consultant pursuant to this Agreement, to any person other than a person employed or engaged by the Consultant in carrying out this Assignment, an agent of the Consultant, any approved sub-consultant or the Consultant' accountants, insurers and legal advisers.

- 17.2 Any disclosure to any person, agent, sub-consultant, accountant, insurer, legal adviser permitted under sub-clause 17.1 of this clause shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purposes of this Agreement.
- 17.3 The Consultant shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents, sub-consultants, accountants, insurers and legal advisers as mentioned in sub-clause 17.1 are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this Agreement. If required by the Employer, the Consultant undertake to procure for and on behalf of the Employer a confidentiality agreement in a form to be prescribed by the Employer from any director, employee, agent, sub-consultant, accountant, insurer and legal adviser to whom any confidential information is to be disclosed.
- 17.4 The Consultant shall not without the prior written consent of the Employer publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this Agreement.
- 17.5 The Consultant shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential arising out of or in connection with any breach by the Consultant or their directors, employees, agents, sub-consultants, accountants, insurers or legal advisers of this clause.
- 17.6 The provision of this clause shall survive the termination of this Agreement (however occasioned) and shall continue in full force and effect notwithstanding such termination.

## 18. Prevention of Bribery

- 18.1 The Consultant shall prohibit their directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) or violate any relevant provision under the Prevention of Bribery Ordinance. The Consultant shall also caution their directors, employees, agents and sub-consultants against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the Assignment. The Consultant shall take all necessary measures (including by way of a code of conduct or

contractual provisions where appropriate) to ensure that their directors, employees, agents and sub-consultants are aware of the aforesaid prohibition and will not solicit or accept any advantages, excessive hospitality, etc. when conducting business in connection with this Agreement.

## 19. Conflict of Interest

19.1 The Consultant shall require their employees, agents and sub-consultants who are involved in this Agreement to declare in writing to the Consultant any conflict or potential conflict between their personal/financial interests and their duties in connection with this Agreement. In the event that such conflict or potential conflict is disclosed in a declaration, the Consultant shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

19.2 The Consultant shall prohibit their employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Agreement. The Consultant shall require their agents and sub-consultants to impose similar restriction on their employees by way of a contractual provision.

19.3 The Consultant shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their employees, agents and subconsultants who are involved in this Agreement are aware of the provisions under the aforesaid sub-clauses 19.1 and 19.2.

## 20. Declaration of Ethical Commitment

20.1 The Consultant shall submit a signed declaration in Part 8 of Item 1 prescribed or approved by the Employer to confirm compliance with the provisions in aforesaid sub-clauses 17, 18 and 19, on confidentiality, prevention of bribery and declaration of interest. If the Consultant fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Consultant shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses 17, 18 and 19 on confidentiality, prevention of bribery and declaration of interest, the consultant and their sub-consultants employed for the performance of duties under this Agreement are required to deposit with the Employer a code of conduct issued to their staff.

## 21. Severability

21.1 The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of the Agreement.

## 22. Resolution of Disputes

22.1 If any dispute arises in connection with or arising out of the Agreement or the provision of the Services, it shall in the first place be referred to mediation, such



mediation shall be conducted in accordance with the Mediation Rules of the Hong Kong International Arbitration Centre (HKIAC) Mediation Rules or any modification thereof for the time being in force.

- 22.2 If both parties fail to resolve the dispute for mediation within a reasonable time, either party may request by notice in writing to other party that such dispute shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance or any modification thereof for the time being in force.
- 22.3 Final decision of an arbitrator shall be agreed by both parties or failing agreement within fourteen (14) days after either party has given to the other party a written notice to concur in the appointment of arbitrator, a person to be appointed on the request of either party by the President or Vice-President for the time being of The Hong Kong Institute of Architects co-jointly with the President or Senior Vice President for the time being of the Hong Kong Institute of Surveyors.
- 22.4 Any award issued by an arbitrator appointed pursuant to this Clause shall be final and binding upon the parties.
- 22.5 Performance of duties under this Agreement are required to deposit with the Employer a code of conduct issued to their staff.

23. Opting-Out Clause of the Contracts (Rights of Third Parties) Ordinance (CAP. 623)

- 23.1 Any person, corporate or unincorporated who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Ordinance (Cap 623) to enforce any terms of this Contract.

**Part 5 Special Conditions of Employment - Proposed Essential Facilities and Related Accessories at the Site of 65 Ting Kok Road, Tai Po**

The proposed essential facilities to deliver the Programme of ‘Urban Horticulture for Biodiversity Enhancement’ in the Site at 65 Ting Kok Road, Tai Po, N.T., are as follows:

1.	Replacement of the existing dilapidated fence (about 300m) with a 2-metre-high perimeter fence for security reason. Attention is drawn that level differences are found in some areas and the height of perimeter fence may have to be adjusted when required. The Consultant should arrange to carry out land survey to demarcate the coordinates of the boundary fencing. Such survey should be carried out by registered land surveyor. The survey report should be verified and accepted by Lands Department.
2.	Demolition of the existing greenhouse and its footing as well as to re-provide a modular greenhouse (about 96m <sup>2</sup> ) with related accessories and equipment, including but not limited to exhaust fans, air-conditioners, fluorescent tubes, rolling benches and tables for plant production. Consultant should follow relevant demolition regulations and Code of

	Practice in arranging the demolition work. A registered specialist contractor in demolition category is required for the demolition work. At least a water point with sink for washing and a water point for irrigation are required.
3.	A potting shed (about 32m <sup>2</sup> ) of steel frame structure covered with shading net for hardening off of plant seedlings and other nursery facilities including a water point with sink for washing.
4.	A modular classroom (about 56m <sup>2</sup> ) with air-conditioners and lighting to accommodate at least 25 people.
5.	A modular accessible toilet (1 cubicle) for persons with a disability including wheelchairs persons. The toilet should be connected to the main drainage system and equipped with exhaust fan and LED lighting.
6.	Reconstruction of paving area and provision of tree rings. Appropriate drainage facilities must be provided to collect and properly discharge the runoff water collected within the site to nearby recognized drainage system without causing flooding risk to neighboring lands/premises.
7.	Design and construct a Barrier Free Access from the main entrance to major facilities of the venues such as toilets and modular classroom.

Please refer to Annex II for the new facilities

## **Part 6 - Terms of Payment**

### **SECTION 1 – REMUNERATION**

1. The Agreement Sum
  - 1.1 The Agreement is based on a Lump Sum Fixed Price.
  - 1.2 The Consultant shall be required to provide the Services for the Agreement Sum without any further adjustments except as provided for elsewhere in the Agreement.
  - 1.3 The Agreement Sum shall be deemed to be inclusive of all labour including overtime, materials, equipment, overhead charges and profit as well as the fluctuations, risks, liabilities and obligations.
2. Schedule of Fees
  - 2.1 The Consultant shall show all the cost breakdown of the Agreement Sum in the Schedule of Fees. In arriving at the Agreement Sum the Consultant shall be deemed to have allowed for the nature and extent of the Services as ascertained by reference to the Agreement documents as a whole and this shall not be limited in any manner whatsoever by the descriptions in the Schedule of Fees.
  - 2.2 The prices inserted in the Schedule of Fees shall be in whole Hong Kong dollar and

shall be deemed to be the fully inclusive value of the Services covering all labour including overtime, materials, equipment, overhead charges and profit as well as the risks, liabilities and obligations arising out of or implied from the Agreement.

- 2.3 Items against which no price is entered shall be deemed to be covered by prices set against the other items shown in the Schedule of Fees and by entering no price against that item the Consultant will be deemed to have waived his right to any entitlement to additional costs if the scope of Services for that item is varied under the Agreement.
- 2.4 The staff hourly rates shall be applicable to variations instructed on a time charge basis. The hourly rates included in the Schedules of Fees shall be deemed to be fully inclusive of all staff cost, materials, equipment, overhead charges and profit, as well as the risks, liabilities and obligations arising out of or implied from the Agreement. Records of such Services must be submitted to the Employer in which the Services were completed.
- 2.5 All rates included in the Schedules of Fees shall be fixed for the duration of the Agreement.

### 3. Payments

- 3.1 The payment will be made upon satisfactory completion of services as prescribed in accordance with Schedule of Payment.
- 3.2 Upon satisfactory completion of the prescribed stages of Services the Consultant may apply to the Employer for an interim payment. Each application shall state the amount claimed together with all information necessary to support the application.
- 3.3 The Consultant may include in his application for an interim payment the value of variation completed.
- 3.4 The Consultant shall be responsible for any testing fee and fee payable to the Government.
- 3.5 Upon receipt of the Consultant's payment application together with all information necessary to support the application the Employer shall certify the amount due and make payment within reasonable time after receiving fund transfers from The Hong Kong Jockey Club Charities Trust.

## SECTION 2 - SCHEDULE OF FEES

Specification for Senior Professional, Professional, Professional Assistance, Clerk of Works shall comply with Part 2 -Requirements of Consultant's Personnel

Item No.	Description of Works	Qty.	Unit	Unit Rate (HKD)	Total Amount (HKD)
1.	<b>Stage 1 - Feasibility Study and Proposal</b>				
	1.1	Senior Professional (e.g. AP)		hr.	
	1.2	Professional		hr.	
	1.3	Professional Assistance		hr.	
	1.4	Consultant's Other Cost	One	Sum	
	<b>Sub-total for Stage 1</b>				
2.	<b>Stage 2 - Design and Submission to Building Authority for approval</b>				
	2.1	Senior Professional (e.g. AP)		hr.	
	2.2	Professional		hr.	
	2.3	Professional Assistance		hr.	
	2.4	Consultant's Other Cost	One	Sum	
	<b>Sub-total for Stage 2</b>				
3.	<b>Stage 3 – Tendering for Construction Works</b>				
	3.1	Senior Professional (e.g. AP)		hr.	
	3.2	Professional		hr.	
	3.3	Professional Assistance		hr.	
	3.4	Consultant's Other Cost	One	Sum	
	<b>Sub-total for Stage 3</b>				
4.	<b>Stage 4 - Project Management</b>				
	4.1	Senior Professional (e.g. AP)		hr.	
	4.2	Professional		hr.	
	4.3	Professional Assistance		hr.	
	4.4	Consultant's Other Cost	One	Sum	
	<b>Sub-total for Stage 4</b>				
5.	<b>Stage 5 – Works Completion and Defect Liability Period</b>				
	5.1	Senior Professional (e.g. AP)		hr.	
	5.2	Professional		hr.	

	5.3	Professional Assistance		hr.		
	5.4	Consultant's Other Cost	One	Sum		
	<b>'Sub-total for Stage 5</b>					
6.	<b>SUMMARY OF FEES</b>					
	<b>Stage 1 - Feasibility Study and Proposal</b>					<b>\$</b>
	<b>Stage 2 - Design and Submission to Building Authority for approval</b>					<b>\$</b>
	<b>Stage 3 – Tender</b>					<b>\$</b>
	<b>Stage 4 - Project Management</b>					<b>\$</b>
	<b>Stage 5 - Works Completion and Defect Liability Period</b>					<b>\$</b>
	<b>AGREEMENT SUM (Carried to Form of Tender)</b>					<b>\$</b>

**The tenderer to note:**

- 1) **The Project Budget means the estimated total construction cost of the Construction Works, which is for reference only. The tenderer should base on the Project Budget to complete this Schedule of Fees for the assessment of tenders.**
- 2) **The unit rate does not equal to the commonly known “Professional Time Charge”**

## SECTION 3 - SCHEDULE OF PAYMENT

**Professional fees for Stage 1 of “Feasibility Study and Proposal” and Stage 2 of “Design and Submission to Building Authority for approval” shall be in a fixed lump sum whereas fee for Stage 3 & 4 of “Tender” & “Project Management” shall be in a fixed percentage of Final Contract Sum for the Construction Works subject to the confirmation of the Employer in writing. (Please refer to Summary of Professional Fee as stipulated in “Form of Tender”)**

In complying stages of the Services and upon satisfactory completion of services as prescribed, payment will be made according to following Schedule:

Stage of Consultancy Services		Percentage of Stage Sum (%)
<b>1.</b>	<b>Stage 1 - Feasibility Study and Proposal</b>	
1.1	Upon Confirmation of Appointment	-
1.2	Upon Approval of Feasibility Study Report and Proposal by the Employer. (Two hard copies of the Report and one DVD rom containing all Report data)	5%
<b>2.</b>	<b>Stage 2 - Design and Submission to Building Authority for approval</b>	
2.1	Upon Completion of Detail Design and approval of proposal by the Building Authority to the acceptance of the Employer. (Two hard copies of Design and one DVD rom containing all tender information)	15%
<b>3.</b>	<b>Stage 3 - Tendering of Construction Works</b>	
3.1	Upon Completion of tendering	10%
<b>4.</b>	<b>Stage 4 - Project Management</b>	
4.1	Upon Completion of 50% Construction Works	20%
<b>5.</b>	<b>Stage 5 - Works Completion and Defect Liability Period</b>	
5.1	Upon Practical Completion of the Construction Works and Settlement of Final Account with the Contractor	40%
5.2	Upon Issuance of Certificate of Completion of Making Good Defects to release parties' liabilities.	10%

## Part 7 - Company brief information

請填寫以下資料

### A. 公司簡介資料

項目	內容	資料
1.	公司名稱 (中文)	
2.	公司名稱 (英文)	
3.	公司成立 (年份)	_____年
4.	是否有限公司	(是/否)
5.	規模 (全職人數)	_____人
6.	ISO9001	(有/沒有)
7.	專業彌償保險證明	(有/沒有)
8.	註冊建築師/ 註冊屋宇測量師人數	_____名
9.	屋宇署登記人士人數 (包括認可人士/ 註冊結構工程師 / 註冊岩土工程師)	_____名
10.	財政狀況 銀行證明文件 (-如有 須呈交副本) 核數報告 3 年 (-如有 須呈交副本)	(有/沒有) (有/沒有)
11.	顧問公司的<紀律守則> (如有須呈交副本)	(有/沒有)

### B. 工程顧問經驗

請列出過去 3 年獲委任為維修工程顧問的經驗，工程額不得少於 HK\$ 2,000,000.00

年份	屋苑/大廈	工程內容	工程額	業主/承造商	聯絡電話

上述資料由\_\_\_\_\_公司提供

\_\_\_\_\_  
(經正式授權代表投標者簽署) 及公司印

\*Please note that the Employer is allowed to contact the above owners or contractors for the purpose of consultant's performances.

## Part 8 – Declarations and Confirmations

1. Declaration of Ethical Commitment (Appendix I)
2. Declaration of Interest (Appendix II)
3. Confirmation Letter for Anti-Collusion Requirement (Appendix III)



**Declaration of Ethical Commitments**

To: Institute of Horticulture (Hong Kong) (the "Employer")

Re: The Articles of Agreement for Consultancy Services for the Provision of Essential Facilities and related Accessories at 65 Ting Kok Road, Tai Po, N.T.

In accordance with the Ethical Commitments clauses in the Contract (as defined in the Articles of Agreement):

1. I/We (the "Consultant") confirm that the Consultant has complied with the following provisions and have ensured that the Consultant's directors, employees, agents and subconsultants (where applicable) are aware of the following provisions:
  - (i) prohibiting the Consultant or its directors, employees, agents and sub-consultants (where applicable) involved in the Contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance (Cap. 201), any hospitality, entertainment or inducement which could impair the impartiality of the Contract or any advantage and excessive hospitality when conducting business in connection with the Contract;
  - (ii) requiring its directors, employees, agents and sub-consultants (where applicable) involved in the Contract to declare to the Consultant in writing any conflict or potential conflict between their personal / financial interests (including those of their immediate family members namely their spouse, parents, children, siblings, grandparents, grandchildren, spouse's parents) with their relevant duties in relation to the Contract. If any conflict or potential conflict is disclosed in a declaration, the Consultant shall immediately take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
  - (iii) declaring to the Owner in writing any conflict or potential conflict between the Consultant's personal / financial interests and its duties in relation to the Contract. If any conflict or potential conflict is disclosed in the declaration, the Consultant shall immediately take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
  - (iv) prohibiting its directors and employees (where applicable) involved in the Contract to engage in any project or work, with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with the Contract; and

requiring the Consultant's agents and sub-consultants (where applicable) to do the same; and

- (v) taking all measures as necessary to protect any confidential / privileged information or data entrusted to the Consultant by or on behalf of the Owner from being divulged to a third party other than those allowed in the Contract.

- 2. The Consultant further confirms that the Consultant has ensured that its accountants, insurers and legal advisers (where applicable) are aware of the confidentiality provisions of the Contract requiring the Consultant to take all measures as necessary to prevent any third party (other than those permitted under the Contract) from obtaining any confidential / privileged information or data entrusted to the Consultant by or on behalf of the Owner.

If the Services Agreement is entered into in the name of an individual, sign and complete the following:

\_\_\_\_\_ [signature]

\_\_\_\_\_ [name]

—  
\_\_\_\_\_ [date]

If the Services Agreement is entered into in the name of a company / organisation, sign and complete the following:

\_\_\_\_\_  
[Signature of the company's authorized representative and seal of the company]

\_\_\_\_\_  
[Name of company, name and title of authorized representative]

\_\_\_\_\_ [date]

# Delete as appropriate.

**Confirmation Letter for Anti-Collusion Requirement**

To: Institute of Horticulture (Hong Kong) (the "Employer")

Re: The Articles of Agreement for Consultancy Services for the Provision of Essential Facilities and related Accessories at 65 Ting Kok Road, Tai Po, N.T.

I/We \_\_\_\_\_ refer to my/our tender for the above Tender.

I/We confirm that as at the time of submission of this letter and other than the Excepted Communications referred to in the last paragraph of this letter, I/We had not communicated to any person other than Institute of Horticulture (Hong Kong) (hereafter referred to as the IHHK) the amount of any tender, adjusted the amount of any tender by arrangement with any other person, made any arrangement with any other person about whether or not I/we or that other person should tender, or otherwise colluded with any other person in any manner whatsoever, and undertake that at any time thereafter in the tendering process for the above Tender until the tenderer is notified by the IHHK of the outcome of the tender exercise and other than the Excepted Communications referred to in the last paragraph of this letter, I/we will not communicate to any person other than the IHHK the amount of any tender, adjust the amount of any tender by arrangement with any other person, make any arrangement with any other person about whether or not I/we or that other person should tender or otherwise collude with any other person in any manner whatsoever.

In this letter, the expression "Excepted Communications" means my/our communications in strict confidence with my/our own insurers or brokers to obtain an insurance quotation for computation of tender price and communications in strict confidence with my/our consultants or sub-contractors to solicit their assistance in preparation of tender submission.

Signed for and on behalf of the tenderer with company chop,

\_\_\_\_\_  
Name and Post Title:

Date:

### **Declaration of Conflict of Interest**

To: Institute of Horticulture (Hong Kong) (the "Employer")

Re: The Articles of Agreement for Consultancy Services for the Provision of Essential Facilities and related Accessories at 65 Ting Kok Road, Tai Po, N.T.

I hereby declare that there is no conflict of interest, whether actual, potential or perceived, between my duties of Consultant to the Institute of Horticulture (Hong Kong) in relation to the captioned tender exercise, including without limitation those in relation to the preparation of the tender documentation, the assessment of tenders and the conduct of negotiations, and my financial, professional, commercial, personal or other interests.

2. I undertake to —

- (a) hold in strict confidence all tender information that I have access to through my official duties to the Institute of Horticulture (Hong Kong) in relation to the captioned tender exercise, including without limitation those in relation to the preparation of the tender documentation (including tender specifications and marking schemes), the assessment of tenders and the conduct of negotiations. Tender information includes details of tenders received and any other sensitive, restricted or confidential information relating to a tender;
- (b) refrain from making any unauthorised disclosure or taking advantage of any tender information referred to in paragraph 2(a) above whether or not for personal gain;
- (c) declare any actual, potential or perceived conflict of interest with my official duties to the Institute of Horticulture (Hong Kong) in relation to the captioned tender exercise, including without limitation those in relation to the preparation of the tender documentation (including tender specifications and marking schemes), the assessment of tenders and the conduct of negotiations immediately when I become aware of any such conflict; and
- (d) take steps to avoid any conflict of interest with any potential tenderer or tenderer by not putting myself in a position of obligation towards any of them; for example, by not accepting any favour or lavish or excessive entertainment, and not over-socialising with any of them.

3. The undertakings in paragraphs 2(a) and (b) above shall not apply —

- (a) if and when the disclosure and information therein referred to becomes a matter of public knowledge (other than by reason of a breach of paragraphs 2(a) and (b) above); or
- (b) to any communications or disclosures caused or permitted by me to colleagues in the Government who are or are expected to be involved in the course of their official duties in the captioned tender exercise or parts thereof.
- (c) to disclosures of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction.

4. I hereby declare that the information contained in this declaration is true, accurate and complete to the best of my knowledge. I understand that if any information is untrue, inaccurate or incomplete, I may be subject to criminal investigation and prosecution, and may be terminated my employment as Consultant even the contract is awarded.

If the Services Agreement is entered into in the name of an individual, sign and complete the following:

\_\_\_\_\_ [signature]

\_\_\_\_\_ [name]

\_\_\_\_\_ [date]

If the Services Agreement is entered into in the name of a company / organisation, sign and complete the following:

\_\_\_\_\_  
[Signature of the company's authorized representative and seal of the company]

\_\_\_\_\_  
[Name of company, name and title of authorized representative]

\_\_\_\_\_ [date]