

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**

**REQUEST FOR QUOTES**

**CEDAR STREET TENNIS COURT REFURBISHMENT**

**JUNE 14, 2021**

## **1. INTRODUCTION**

### **1.1. PURPOSE**

The Regional District of Okanagan Similkameen (RDOS) is requesting quotes from suitably experienced contractors for refurbishment of the tennis court facility on Cedar Street in OK Falls, B.C.

### **1.2. BACKGROUND**

The RDOS provides services for six municipalities and nine electoral areas. It has a geographic area of approximately 10,400 km<sup>2</sup> and serves 82,000 residents. The Cedar Street tennis courts are an RDOS-operated public facility located at 1134 Cedar Street in Okanagan Falls. The courts are asphalt-surfaced and surrounded by chain-link fence. The approximate dimension of the courts is 120' by 60' (7200 square feet). The existing asphalt surface is very worn and has extensive linear cracking.

Photos of the existing court surface are included in Appendix A.

## **2. SCOPE OF WORK AND SCHEDULE**

### **2.1. SCOPE OF WORK**

The Work includes the following:

#### **Division 1 – Fencing**

- a) Remove chain-link mesh and poles as required to accommodate asphalt work.
- b) Upon completion of asphalt work and surface coatings, reinstall chain-link mesh and poles; extend poles and raise mesh as required to accommodate additional asphalt layer. Gaps between the mesh and asphalt should not exceed 1".
- c) Install one additional man gate at the north end of the courts to match the existing gate at the south end.

#### **Division 2 – Asphalt**

- a) Mill large cracks, repair base gravels as required, patch with hot mix asphalt.
- b) Prepare surface for asphalt overlay.
- c) Apply tack coat (SS1 Primer or equivalent) to existing asphalt.
- d) Install a new 50mm layer of Class 1 medium mix asphalt.

#### **Division 3 – Surface Coatings and Linework**

- a) Supply and install 5-coat Plexipave surface coating system (2 coats "Acrylic Resurfacer", 2 coats "Plexipave Color Filler Coat", 1 coat "Plexichrome Color Finish Coat" according to manufacture's specifications included in Appendix B.

Regional District Okanagan-Similkameen  
RFQ Cedar Street Tennis Court Refurbishment

- b) Install linework for tennis (x1) and pickleball (x4) using "Plexicolor line paint" as per manufacturer's specifications. The playing lines will be taped, and two coats of line paint will be brush applied. All playing lines will be straight and true.

**2.2. SCHEDULE**

The entire scope of work must be completed by July 31, 2021, unless otherwise agreed to by the RDOS.

**3. INSTRUCTIONS TO PROPONENTS**

**3.1. RATES**

The RDOS is requesting that proponents provide a lump-sum cost for the Work using the form included in Appendix C

**3.2. EXPERIENCE**

The proponent must show they have an understanding of the work, what the work involves and what is required to complete the project. The Proponent must demonstrate that they have completed three (3) projects of similar scope.

**3.3. SAFETY PLAN**

Prior to the start of the Work, the successful Proponent will be required to supply the Regional District with a site-specific Work Safety Plan, including provisions for Covid-19.

**3.4. ENVIRONMENTAL PLAN**

Prior to the start of the Work, the successful Proponent will be required to provide an environmental management plan including a Spill Contingency Plan.

**3.5. INSURANCE REQUIREMENTS**

The successful Proponent will be required to provide proof of insurance using the RDOS's standard insurance form. The insurance form, with minimum insurance requirements is included in Appendix D.

**3.6. QUOTE SUBMISSIONS**

Quotes will be accepted in hardcopy and/or by email.

Hardcopy quote submissions and their envelopes should be clearly marked with the name and address of the Proponent, the RFQ title, and be addressed as follows:

Community Services Department  
Regional District of Okanagan-Similkameen  
101 Martin Street

Regional District Okanagan-Similkameen  
RFQ Cedar Street Tennis Court Refurbishment

Penticton, BC V2A 5J9

Quote submissions sent via email should include the RFQ title in the subject line, and sent to the Project Contact:

Doug Reeve [dreeve@rdos.bc.ca](mailto:dreeve@rdos.bc.ca)

Quotes must be received on or before the Closing Time of:

☒E: June 28, 2021

d/D☒: 10:00AM PST

The Proponent is responsible for ensuring its Quote is received at the address or email set out above by the Closing Time.

Proponents wishing to make revisions to their Quote after submission but prior to the Closing Time may do so by submitting the revisions by email or hard copy to the Project Contact listed above.

Quotes received after the Closing Time will not be considered.

### **3.7. INQUIRIES**

Proponents must carefully examine the RFQ documents for any other factor that may affect the Work. No consideration will be given after submission of a Quote to any claim that there was any misunderstanding with respect to undertaking of the Work.

Proponents finding discrepancies or omissions in this RFQ, or having doubts as to the meaning or intent of any provisions therein, should immediately notify the Regional District project contact. If there are any changes, additions, or deletions to the RFQ, Proponents will be advised by means of an Addendum issued by the Regional District. All Addenda will become part of the RFQ. Receipt of Addenda should be acknowledged by the Proponent in their submission.

Verbal discussions between the Proponent and the RDOS (including Regional District directors, trustees, management, Parks and Recreation Commission members, or staff) shall not become a part of the RFQ or modify the RFQ unless confirmed by written Addendum.

All project inquiries must be submitted by:

DATE: June 18, 2021

TIME: 10:00AM PST

#### **4. GENERAL TERMS OF QUOTE PROCESS**

##### **4.1. QUOTE PREPARATION COSTS**

All expenses incurred by the Proponent in preparation and submission of a Quote are to be borne by the Proponent. The Regional District shall not be responsible for any costs involved in or associated with any meetings, discussion or negotiation following submission that may or may not result in acceptance of the Quote and award of a contract.

##### **4.2. QUOTE CONFIDENTIALITY**

All Quote submissions become the property of the Regional District and will not be returned. The Regional District reserves the right to make copies of Quotes for its internal review and for review by its financial, accounting, legal, and technical consultants.

Proponents should be aware that the Regional District is a “public body” as defined in and subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. **If the Proponent believes any of the information provided by them in their Quote is confidential, then they should identify it as such and provide a rationale as to why it should not be released under “Freedom of Information” legislation.**

The rationale for keeping information confidential under this legislation includes:

- a) Trade secrets of the Proponent;
- b) Financial, commercial, scientific or technical information, the disclosure of which could reasonably be expected to result in material financial loss or gain or could reasonably be expected to prejudice the competitive position of the Proponent; or
- c) Information the disclosure of which could be reasonably expected to interfere with contractual or other negotiations of the Proponent.

##### **4.3. CONFLICT OF INTEREST**

Quotes must disclose any actual or potential conflicts of interest and existing business relationships the Proponent may have with the Regional District, its elected or appointed officials or employees. The Regional District may rely on such disclosure.

##### **4.4. NO COLLUSION**

Except as otherwise specified or as arising by reason of the provision of the contract documents, no person whether natural, or body corporate, other than the Proponent has or will have any interest or share in this Quote or in the proposed contract which may be completed in respect thereof. By submission of a Quote, the Proponent certifies that there is no collusion or arrangement between the Proponent and any other actual or prospective Proponents in connection with Quotes submitted for this project and the Proponent has no knowledge of the contents of other Quotes and has made no comparison of figures or agreement or arrangement, express or implied, with any other party in connection with the making of the Quote.

##### **4.5. LITIGATION**

Proponents who, either directly or indirectly through another corporation or entity, have been or are

Regional District Okanagan-Similkameen  
RFQ Cedar Street Tennis Court Refurbishment

in litigation, or who have served notice with intent to proceed with court action against the Regional District in connection with any contract for works or services, may be considered ineligible Proponents. Receipt of Quotes from such Proponents may be disqualified from the evaluation process.

**4.6. NO CONTRACT**

This RFQ is not a tender and does not commit the Regional District in any way to select a preferred Proponent. By submitting a Quote and participating in the process as outlined in this RFQ, Proponents expressly agree that no contractual, tort or other legal obligation of any kind is formed under or imposed on the Regional District by this RFQ or submissions prior to the acceptance of a Quote and the execution of a formal written contract.

**4.7. ACCEPTANCE OF QUOTE**

The acceptance of a Quote will be made in writing from the Regional District, and will be sent to the successful Proponent at the address given in the submitted Quote. Following acceptance, the Proponent is expected to enter into a contract with the Regional District to perform the works or services set out in their Quote. Acceptance of a Quote may be subject to approval by the RDOS Board of Directors.

The agreement that the successful Proponent will be expected to execute with the Regional District will contain terms similar to those contained in the sample Contracting Services Agreement provided in Appendix E. The agreement attachments will include the entire Request for Quote, the Proponent's Quote submission and any mutually agreed upon modifications, changes or negotiated adjustments.

**4.8. WORKERS COMPENSATION ACT**

While undertaking the Work, the Contractor will be required to meet or exceed at all times the Provincial Occupational Health and Safety Regulations. The Contractor will be designated as the Prime Contractor for the purposes of health and safety of the Work site as set out in the WCB Act Section 118, and the Occupational Health and Safety Regulations Sections 3 and 20.

The Proponent, and any proposed sub-contractor(s), should provide a Workers Compensation Board Registration Number in the Quote and shall at the time of signing a contract, provide proof of having an account that is active and in good standing with Work Safe BC.

**4.9. GENERAL**

The Regional District reserves the right to reject any or all quotations, to waive any informality, to accept in whole or part such quotations as may be deemed in the best interest of the Regional District. The Regional District also reserves the right to cancel this RFQ at any time.

The Regional District of Okanagan-Similkameen reserves the right to negotiate on any details – including changes to specifications and price. If specifications require significant modification, all business providing quotations shall have the opportunity to adjust their quotes.

**Appendix A – Photos**



## **Appendix B – Flexipave Specifications**



A Division of California Products • An Employee Owned Company  
 150 Dascomb Road, Andover Massachusetts 01810 USA  
 Phone: 978-623-9980 / 800-225-1141 • Fax: 978-623-9960  
 www.plexipave.com • info@plexipave.com

**SECTION 10.5**

**SITE IMPROVEMENTS  
 ATHLETIC FACILITIES**

EXTERIOR/INTERIOR

ACRYLIC LATEX

UNPIGMENTED SURFACE SYSTEM

**PLEXIPAVE® COLOR BASE**

**DESCRIPTION:**

Plexipave Color Base is an asbestos free, naturally colored texture base used for mixing with Plexichrome and water to produce Fortified Plexipave. By adding appropriate amounts of each, the on-the-job determination of color will lower material costs and eliminate the need for warehousing large quantities of ready to use Fortified Plexipave in different colors. With its filler properties, job mixed Fortified Plexipave provides a durable, uniformly textured, medium play tennis surface.

The Plexipave Color Finishing system can be used on properly prepared asphalt and concrete surfaces. Outdoor concrete surface must be constructed with a vapor barrier under the slab and have adequate perimeter drainage.

**SURFACE USES:**

Over asphalt surfaces and suitable concrete:

- Tennis Courts
- Basketball Courts
- Light Traffic Footpaths and Walks
- Gymnasiums
- Play areas
- Multi-Purpose Sports Areas

**APPLICATION:**

- Use 50 Durometer Flexible rubber squeegees for Fortified Plexipave Filler Coats, and Fortified Plexipave Finish Coats.

**DRYING TIME:**

- 30 minutes to one hour per coat.
- A three-coat application in normal summer drying weather can often be made over a properly prepared surface in one day.
- Indoor applications require fans and good ventilation.

**COLOR RANGE:**

Neutral (Color obtained by the addition of Plexichrome).

**COVERAGE (For 30•20•20 Mix):**

- First Coat: 10-15 sq. yds./gal. (.1-.07 gal/sq.yd.)
- Second Coat: 15-20 sq. yds./gal. (.07-.05 gal/sq. yd.)
- Third Coat 20-25 sq. yds./gal. (.05-.04 gal/sq. yd.)
- Depending on surface porosity.

**Mix**

**Fortified Plexipave:** A 30:20:20 mix is used to obtain Fortified Plexipave using 30 gallons of Plexipave Color Base, 20 gallons of Plexichrome, and 20 gallons of water. Mix may be adjusted depending on the porosity of the surface and ambient temperature at the time of applications.

**LIMITATIONS:**

- Apply only when ambient temperature is 50°F and rising.
- Do not apply when rain or high humidity is imminent.
- Do not apply when surface temperature is in excess of 140°F.
- Allow asphalt to cure at least 14 days before application
- Allow concrete to cure 28 days. Do not use curing agents or concrete hardeners.

**SPECIFICATIONS  
PLEXIPAVE COLOR BASE  
COLOR SURFACE SYSTEM**

**1.0 SCOPE**

- 1.1 This specification pertains to the application of job-mixed Plexipave Color Base and Plexichrome over tennis courts and other recreational areas as designated in the Site Plans. The material in colors indicated shall be for use over asphalt, concrete surfaces and must be equally durable over both. Special Binder and pigment content give excellent color development and durability.

**2.0 SURFACE PREPARATION**

- 2.1 Prior to applying this system, the net sleeves, center strap anchor and fencing shall be installed and approved by the owner.
- 2.2 The asphalt (or concrete) surface to receive the color finish shall be clean, sound, free of grease, oils and other foreign materials and shall be to the grade and pitch shown in the plans.
- 2.3 Edges adjacent to buildings, curbing and landscaping not to be coated with this Color Finish System shall be adequately masked with tape or otherwise protected during these applications. The contractor shall also erect appropriate temporary barriers to protect the coatings during drying and curing periods.
- 2.4 New asphalt should cure approximately 14 days prior to the application of surfacing materials. New concrete should cure for 28 days. Concrete shall have a wood float or broom finish. **DO NOT STEEL TROWEL. DO NOT USE CURING AGENTS OR CONCRETE HARDNERS.** Also, uncoated concrete surfaces must be acid washed with Concrete Preparer.
- 2.5 Repair all ridges, cracks and birdbath prior to the application of the surfacing material (See specification 10.14). After patching, the surface shall not vary more than  $\pm 1/8$  in 10 ft. measured in any direction.

**3.0 APPLICATION OF SURFACE FILLER COAT**

- 3.1 **Asphalt-** Over asphalt, apply two coats of Acrylic Resurfacer to provide a uniformly textured surface. Allow coats to thoroughly dry before the application of subsequent coats.
- 3.2 **Concrete-** After the surface has been acid washed and leveled, the concrete surface must be primed with California Ti-Coat (See Specifications 10.17). Acrylic Resurfacer then must be applied to the surface within a 3 hour period while the Ti-coat is tacky to the touch.

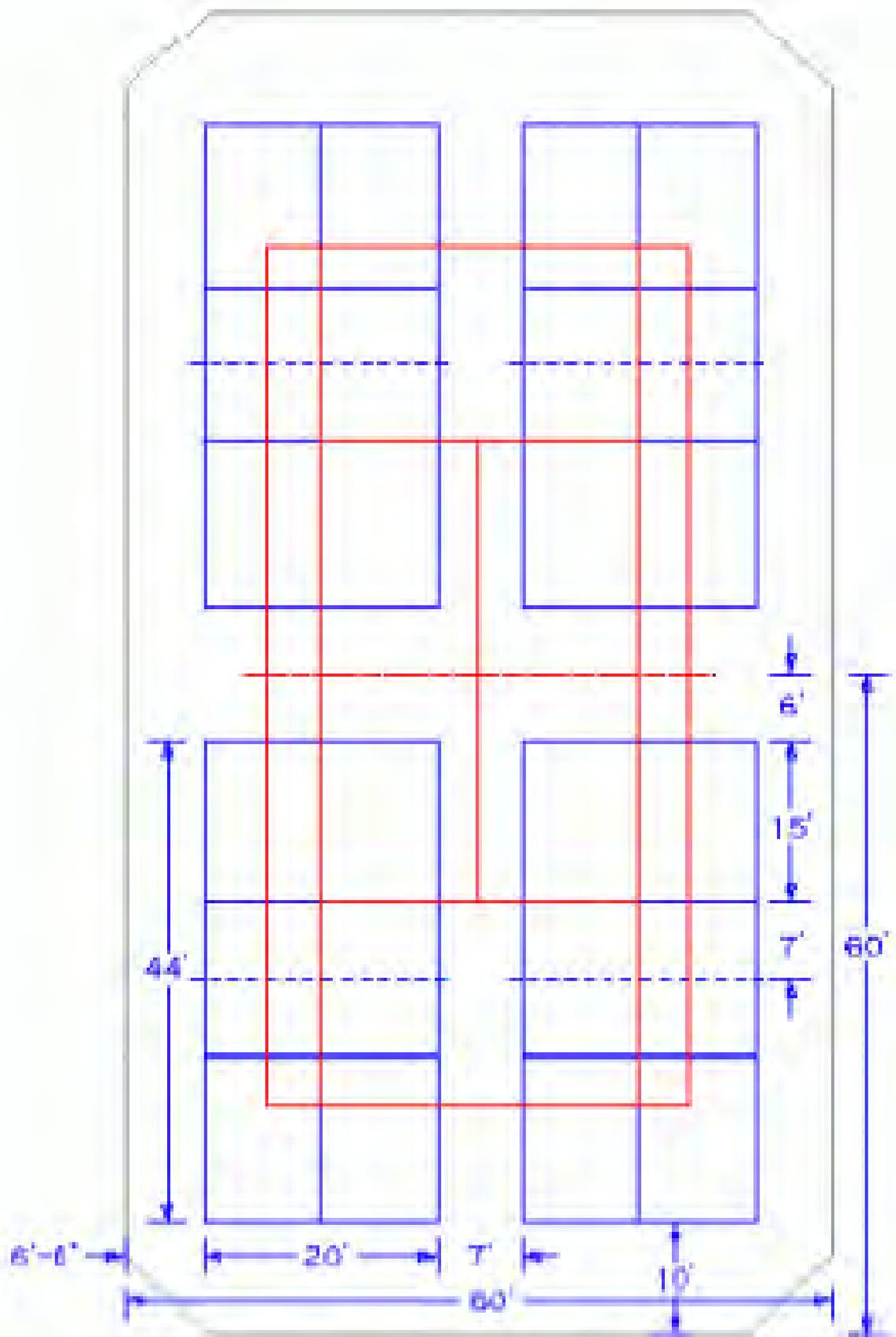
**4.0 COLOR COAT APPLICATION**

- 4.1 Over new asphalt or concrete surfaces that have been properly prepared, apply two coats of job mixed Fortified Plexipave using a mix of Plexipave Color Base and Plexichrome (Color Base: 20 gallons; Plexichrome: 20 gallons; Water 20-22 gallons). All work shall be done by experienced, carefully trained workmen. The first coat shall be applied lengthwise of the court and the second coat, crosswise of the court.
- 4.2 The final finish coat shall be either Plexichrome or Job Mix Fortified Plexipave. For a Plexichrome finish, mix 1 part Plexichrome, 1 part water and apply with a wide hair-type broom crosswise of the court.
- For Job Mix Fortified Plexipave use a mix of Plexipave Color Base and Plexichrome (Color Base: 30 gallons; Plexichrome: 20 gallons; water: 20-22 gallons). The application shall be made crosswise of the court using a 50 durometer flexible rubber squeegee.
- 4.3 White lines conforming to U.S. Tennis Association specifications shall be laid-out and Plexicolor Line Paint (100% acrylic latex) applied by brush using masking tape or templates.

**5.0 GENERAL**

Materials specified for the Color Finish System shall be delivered to the site in sealed, properly labeled containers and water used in mixing shall be fresh and clear. Coverage rates are based upon manufacturer's material prior to mixing with water.

Upon completion, the contractor shall remove all containers, surplus materials and debris and leave the site in a clean and orderly condition acceptable to the owner. Gates shall be secured.



**Appendix C – Lump-Sum Price**

All prices quoted are to be all inclusive, as well as:

1. In Canadian dollars;
2. FOB to construction site;
3. Exclusive of GST.

Contractor:

---

Contact:

---

Phone:

---

<b>Supply/Install Specification</b> <b>Refurbishment of Cedar Street Tennis Courts</b>	<b>Lump Sum Amount</b>
Division 1 - Fencing	
Division 2 - Asphalt	
Division 3 – Surface Coatings and Linework	
Total	

**Appendix D – Insurance Requirements**



Type of Insurance	Insurer Name and Policy Number	Policy Term yyyy/mm/dd	Limits of Liability/Amount
<b>Section 1</b>  Comprehensive/ Commercial General Liability  <b>(See Particulars on            Page 1 marked with an X)</b>		From:  To:	Bodily Injury, Death & Property Damage  \$ _____ Per Occurrence \$ _____ Aggregate \$ _____ Umbrella Limit \$ _____ Excess Limit \$ _____ Deductible  <b>MINIMUM PER OCCURRENCE \$5,000,000</b>
<b>Section 2:</b> <input type="checkbox"/> indicates that the coverage is included. Automobile Liability (owned or leased vehicles)	<b>If insured by ICBC,            attach a copy of the            ICBC form APV-47</b>	From:  To:	Personal Injury & Property Damage  \$ _____ Limit  <b>MINIMUM \$5,000.000</b>  Reviewed: Broker <input type="checkbox"/> Initials
<b>Section 3:</b> <input type="checkbox"/> indicates that the coverage is included.  Contractor's Equipment:		From:  To:	Reviewed: Broker <input type="checkbox"/> Initials  \$ _____ Limit \$ _____ Deductible
<b>Section 4:</b> <input type="checkbox"/> indicates that the coverage is included.  Professional Liability <input type="checkbox"/> Claims Made Basis  <input type="checkbox"/> Coverage Primary and not contractual		From:  To:	Reviewed: Broker <input type="checkbox"/> Initials  \$ _____ Per Occurrence \$ _____ Aggregate \$ _____ Deductible Per Claim, minimum \$50,000
<b>Section 5:</b> <input type="checkbox"/> indicates that the coverage is included.  Builder's Risk:		From:  To:	Reviewed: Broker <input type="checkbox"/> Initials  \$ _____ Limit \$ _____ Deductible  <input type="checkbox"/> Regional District of Okanagan-Similkameen, added as Additional Insured
<b>Section 6:</b> <input type="checkbox"/> indicates that the coverage is included.  Other:		From:  To:	Reviewed: Broker <input type="checkbox"/> Initials  \$ _____ Limit \$ _____ Deductible

The Insurer confirms the above details are accurate and reflect the Insured's coverage. It is understood and agreed any deductible or reimbursement clause contained in the policy shall be the sole responsibility of the Named Insured.

\_\_\_\_\_  
 (Authorized to Sign on Behalf of Insurers)

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Insured's

\_\_\_\_\_  
 Date Signed

**Appendix E – Sample Contracting Services Agreement**

## **CONTRACTING AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

BETWEEN:

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**

101 Martin Street  
Penticton, British Columbia, V2A 5J9

(hereinafter called the "Regional District")

OF THE FIRST PART

AND:

**Contractor**

(hereinafter called the "Contractor")

OF THE SECOND PART

WHEREAS the Regional District desires to engage the services of the Contractor as an independent contractor to perform contracting services and the Contractor has agreed to provide contracting services subject to the hereinafter terms and conditions.

AND WHEREAS the parties hereto wish to set out herein their respective rights and obligations.

NOW THEREFORE, the Regional District and the Contractor in consideration of their mutual rights and obligations as hereinafter set forth do hereby agree as follows:

**As described in the RFQ document and Quote and construction work involved....**

### **SECTION 1. INTERPRETATION**

1.1 For purposes of this Agreement, except as otherwise expressly provided:

- (a) Section—all references in this Agreement to a designated "section" or other subdivision or to a Schedule is to the designated section or other subdivision of, or Schedule to, this Agreement;
- (b) Whole Agreement—the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section or other subdivision or Schedule;
- (c) Headings—any headings have been inserted for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (d) Non-limiting—the singular of any term includes the plural, and vice versa; the use of any term referable to a particular gender is equally applicable to any gender and, where

applicable, a body corporate; the word “or” is not exclusive and the word “including” is not limiting (whether or not non-limiting language, such as “without limitation” or “but not limited to” or words of similar import is used with reference thereto).

## **SECTION 2 CONTRACTOR’S DUTIES**

- 2.1 The Contractor shall provide, and has agreed to provide to the Regional District all Services set out in the Request for Quote (attached hereto as Schedule “A”) and the Contractor’s Quote (attached hereto as Schedule “B”), both of which form part of this agreement (hereinafter collectively called the “Services”). The Services shall be provided within the times specified in Schedules A and B.
- 2.2 In performing the Services under this Agreement, the Contractor shall, at all times, act in the best interests of the Regional District and exercise that degree of professional skill, care and diligence required according to generally accepted professional science and engineering standards applicable to the performance of such Services at the time and place the Services are performed.
- 2.3 It is agreed that in awarding the professional Services encompassed within this agreement to the Contractor, the Regional District has relied upon the Contractor’s representations concerning the experience of certain identified personnel in the employ of the Contractor. It is agreed that, in performing the Services under this agreement, the Contractor shall designate those key staff and subcontractors specified in Schedule “B” to carry out and provide the Services to be provided by the Contractor as referred to herein.
- 2.4 The Contractor shall request of the Regional District any information or data contained in Regional District files which the Contractor requires in order to perform the Services. The Regional District is only obligated to provide to the Contractor information and data that is pertinent to the terms of reference and work program set out in Schedules “A” and “B”. The Contractor may rely on such information or data as may be provided by the Regional District without independent verification.
- 2.5 To ensure that the Project is processed in a timely manner, the Contractor and the Regional District will apply their best efforts to meeting the following deadlines:
- a) Phone call inquiries from the Regional District will be returned within 24 hours;
  - b) Public inquiries to the Contractor on technical issues will be returned within 48 hours;
  - c) Meetings will be scheduled within 5 working days from date of request;
  - d) Review comments for material submitted by the Contractor will be processed by the Regional District within 14 days of receipt.
- 2.6 Costs which have not been identified by the Contractor in the cost estimate will not be paid by the Regional District without prior approval and confirmation in writing. No payment shall be made to the Contractor for cost overruns that have not been the subject of prior notice and approval by the Regional District.
- Any change in the rates charged for fees and disbursements must be approved in advance, in writing, by the Regional District.
- 2.7 The Contractor shall submit to the Regional District regular progress reports, as requested from time to time, and such additional reports as may be reasonably required.

## 2.8 Water Shutdowns

The Contractor shall undertake personal face to face meetings with residents for the purposes of notification of impending Works, allowing a minimum of 48 hours notice of disruption or obstruction to a resident's access. Costs for this will be incidental to the Works.

Notification for water shutdowns and inactivation of hydrants at anytime shall be given to the Okanagan Falls Fire Department.

## SECTION 3 FEES AND DISBURSEMENTS

- 3.1 The Contractor shall receive from the Regional District for the performance of the Services the compensation referred to in Schedule "B" and any negotiated and approved changes.
- 3.2 Invoices may be rendered on a monthly basis prorated to the work completed or, at the conclusion of each phase by the Contractor to the Regional District, and shall be delivered to the Regional District of Okanagan-Similkameen, 101 Martin Street, Penticton, British Columbia, V2A 5J9. Invoices shall be payable in full by the Regional District within thirty (30) days of receipt.
- 3.3 The Contractor shall provide all necessary and sufficient substantiation to the Regional District in order to verify any invoice upon request. If the Regional District is unable to verify any invoice within the said period, any payment by the Regional District either may be withheld or may be made and treated as an advance pending verification of the invoice.
- 3.4 Any necessary adjustments which have not been made prior to payment of an invoice may be made by the Regional District at the time of a later payment. If the Regional District is shown to have overpaid, the Regional District may deduct the amount from any other sums due to the Contractor from the Regional District or the Contractor shall pay the amount to the Regional District within thirty (30) days of the amount being agreed upon or otherwise established.
- 3.5 The Regional District may request the Contractor to submit prior to payment of the final invoice a statutory declaration or other proof that there are no outstanding costs, assessments, liens or claims in connection with the project.

## SECTION 4 CONFIDENTIALITY, OWNERSHIP AND USE OF DOCUMENTS AND MATERIALS

- 4.1 The Contractor acknowledges that in the performance of the Contractor's responsibilities hereunder, the Contractor may have access to confidential information, records and customer lists of the Regional District (the "Confidential Information"). During and after the term of this Agreement, the Contractor shall not, directly or indirectly, disclose such Confidential Information to any person or use any such Confidential Information, except:
  - (a) as required in the course of performing such Services and then only to staff of the Regional District on a need-to-know basis; or
  - (b) with the prior written consent of the Regional District;

and all Confidential Information which the Contractor shall prepare or use or come in contact with shall be and remain the Regional District's sole property and shall not be removed from the

Regional District's premises without its prior written consent, except as required in the normal course of performing the Services under this Agreement.

- 4.2 The Contractor agrees that all base materials, research results, computer programs, computer files, drawings, documents and notes and materials of any type whatsoever developed or prepared by the Contractor (hereinafter called the "Documents") in the performance of the Services shall vest and become the absolute property of the Regional District, including copyright of such Documents and upon completion of the Services or termination of this Agreement, all copies of Documents shall be delivered by the Contractor to the Regional District. The Contractor may retain one copy of it's materials for record purposes.
- 4.3 The Contractor agrees that all restrictions in this Section 4 are reasonable, fair and valid in all the circumstances and, to the fullest extent permitted by law, hereby waives all defences to the strict enforcement thereof by the Regional District.
- 4.4 The Regional District acknowledges and agrees that the Contractor's Services have been provided for a specific purpose. Any reuse, modification, or misuse of the Contractor's studies, reports, drawings, plans, designs, specifications, models, software, processes, documents, or other information by the Regional District or third parties shall be at the Regional District's sole risk and responsibility.

## **SECTION 5 SPECIAL TOOLS AND EQUIPMENT**

- 5.1 All necessary special tools, equipment and other things shall be acquired by the Contractor solely at the Contractor's cost and shall be the property of the Contractor unless the Regional District specifically authorizes the purchase of a specific item at the Regional District's expense.
- 5.2 The cost of special tools, equipment and other things that have not been specifically identified in detail by the Contractor or specifically authorized in writing by the Regional District during performance of the project shall be considered to be within the overhead of the Contractor.
- 5.3 If the Regional District specifically authorizes, in writing, that the Contractor shall purchase any special tool, equipment, or other things at the expense of the Regional District then such items shall become the property of the Regional District. The Contractor shall bear the risk of loss or damage, normal wear and tear excepted, to all such items for the time when such items are out of the possession and control of the Regional District. Upon completion of the project, the Contractor shall deliver all such special tools, equipment and other things to the Regional District.

## **SECTION 6 SUB-CONSULTANTS AND SUB-CONTRACTORS**

- 6.1 The Contractor may, with the prior written approval of the Regional District, engage the services of sub-consultants or sub-contractors to perform work which the Contractor is unable to perform.
- 6.2 The sub-consultants and sub-contractors shall agree in writing prior to their participation in the Project to be bound by duties and obligations arising out of this Agreement between the Contractor and the Regional District.
- 6.3 The Contractor shall be responsible to the Regional District for all work carried out by sub-consultants and sub-contractors in connection with the project as if such work had been

performed by the Contractor.

- 6.4 The Contractor shall be responsible to the Regional District for the acts and omissions of all sub-consultants and sub-contractors, their employees and agents, as if such sub-consultants and sub-contractors, their employees and agents, were persons directly employed by the Contractor.

## **SECTION 7 TERMINATION AND SUSPENSION**

### **By the Regional District :**

- 7.1 If the Contractor is in default in the performance of any of his material obligations set forth in this agreement, then the Regional District may, by written notice to the Contractor, require such default to be remedied. If, within seven (7) days after delivery of such notice, such default shall not have been corrected or reasonable steps to correct such default have not been taken, the Regional District may, without limiting any other right or remedy the Regional District may have, immediately terminate this agreement and discharge its obligations under this agreement by paying for the cost of the Services rendered and disbursements incurred by the Contractor and remaining unpaid as of the effective date of the termination.
- 7.2 The Regional District may terminate this Agreement upon seven (7) days' prior written notice in the event the Contractor:
- (a) fails to complete the Services or any portion thereon within the time specified by this Agreement;
  - (b) becomes insolvent;
  - (c) commits an act of bankruptcy;
  - (d) assigns this Agreement without the required written consent of the Regional District;
  - (e) fails to adhere to or perform any of the provisions of this Agreement;
  - (f) has any conflict of interest which may, in the opinion of the Regional District, adversely affect any project for which the Services are being provided; or
  - (g) there is a change in the personnel referred to in Schedule "B" herein without the prior written approval of the Regional District.
- 7.3 Notwithstanding anything herein to the contrary, the Regional District may, for whatever reason, terminate this Agreement on One (1) months' prior written notice to the Contractor, in which case the term of this Agreement shall expire upon the effective date set out in the aforesaid notice, and the Regional District shall have no further obligation to the Contractor for the balance of the term of this Agreement save and except as may exist on the termination date.

Upon receipt of such written notice, the Contractor shall perform no further Services other than those reasonably necessary to close out the project.

In such event, the Contractor shall be paid by the Regional District for all Services performed and all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination. On said payment the Regional District shall have no further liability of any nature whatsoever to the Contractor for any loss of profit or any other losses suffered, either directly or indirectly, by the Contractor as a result of the termination of this agreement.

- 7.4 The Contractor shall, upon termination, forthwith provide to the Regional District a reproducible copy of all materials used by the Contractor or prepared by the Contractor in regards to the Services.
- 7.5 The Contractor agrees that the termination or suspension of this agreement or any change thereto does not operate as to relieve or discharge the Contractor from any obligation under this agreement or imposed upon the Contractor by law in respect of the Services or any portion of the Services that the Contractor has completed to date or such termination or suspension. This indemnity shall survive the expiry or sooner termination of this agreement.

**By the Contractor :**

- 7.6 If the Regional District is shown to be in default in performance of any of its material obligations set forth in this agreement, then the Contractor may, by written notice to the Regional District, require such default to be corrected.

If, within seven (7) days after receipt of such notice such default shall not have been corrected, or reasonable steps have not been taken to correct such default, the Contractor may, without limiting any other right or remedy he may have, immediately terminate this agreement. In such an event, the Contractor shall be paid by the Regional District for all Services performed and disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

- 7.7 If the Contractor's Services are suspended by the Regional District at any time for more than thirty (30) days through no fault of the Contractor, then the Contractor shall have the right at any time until such suspension is lifted by the Regional District, to terminate this agreement upon giving written notice thereof to the Regional District.

In such event, the Contractor shall be paid by the Regional District for all Services performed and all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such suspension.

**SECTION 8 INSURANCE AND INDEMNITY**

- 8.1 The Contractor shall maintain in full force and effect with insurers licensed in the Province of British Columbia, all insurance as outlined on the attached **Certificate of Insurance – Standard Certificate Form** as provided by the Regional District. This form must be completed by the Contractor's insurance broker and returned to the Regional District.:
- 8.2 For any engineered design component to the Work, the Contractor shall, at his expense, establish and maintain Errors and Omissions Insurance in respect to the Services and operations of the Contractor based on the following:
1. Preliminary Project where fees do not exceed \$15,000: Insurance limit shall be a minimum of \$250,000 per claim and \$500,000 per policy period.
  2. Studies with no designing required: Insurance limit shall be a minimum of \$500,000 per claim and \$1,000,000 per policy period.
  3. Design assignments and/ or planning services covering projects not exceeding \$1,000,000 in value: Insurance limit shall be a minimum of \$1,000,000 per claim and \$1,000,000 per policy period.
  4. Design assignments and/ or planning services covering projects exceeding \$1,000,000 in value:

Insurance limit shall be a minimum of \$2,000,000 per claim.

- 8.3 The Contractor's Professional Errors and Omissions Insurance shall be maintained continuously during the term of this Contractor Agreement and subsequently continue to be in force for twelve (12) months beyond the project completion date of Services (i.e., submission of Final Report, as approved in writing by the Regional District).

The Contractor will provide 30 days written notice in advance of cancelation of any policies.

- 8.4 General liability insurance must be obtained on an occurrence basis for the Contractor with limits of not less than \$5,000,000 inclusive per occurrence for bodily injury and property damage. Detailed coverage is to be as specified on the provided Standard Contractor's Certificate Form.

- 8.5 The Contractor shall at all times indemnify, defend, release, hold harmless and forever discharge the Regional District, and the Regional District elected and appointed officials, officers, employees and agents from and against all liability, claims, damages, losses, costs, actions, causes of action, suits, proceedings and expenses at law and in equity, whether known or unknown, including all actual legal and other professional fees and disbursements on a full indemnity basis, whether arising directly or indirectly from death, personal or bodily injury, sickness, disease, property loss, property damage or other loss or damage which may result from or be connected with the performance of this Agreement, including any breach or default of this Agreement by the Contractor or its employee.

## **SECTION 9 ARBITRATION**

- 9.1 All matters in dispute under this agreement may, with the concurrence of both the Regional District and the Contractor, be submitted to arbitration to a single arbitrator appointed jointly by them and the provisions of the *Arbitration Act* shall apply.
- 9.2 No one shall be nominated to act as arbitrator who is in any way financially interested in the project or in the affairs of either the Regional District or the Contractor.

## **SECTION 10 INDEPENDENT CONTRACTOR**

- 10.1 Nothing in this agreement or the Contractor's performance of his duties under this agreement shall constitute or create an employer-employee relationship. The Contractor shall act solely as an independent contractor and not as an employee or agent of the Regional District and is not authorized to create obligations on the part of the Regional District to third parties.

## **SECTION 11 WAIVER**

- 11.1 Any failure of the Regional District at any time to enforce or require strict compliance with any of the terms of this agreement shall not constitute a waiver or relinquishment of any such terms and the same shall remain at all times in full force and effect.

## **SECTION 12 RECORDS AND AUDIT**

- 12.1 The Contractor shall keep reasonable and proper records, accounts, statements and other relevant documents for a period of not less than twelve (12) months after completion of the

Project or for such extended period as the Regional District may request in advance and in writing.

- 12.2 The Contractor shall permit the Regional District to inspect, audit and copy all records, accounts, statements and other relevant documents of the Contractor relating to the Project at all reasonable business hours in the offices of the Contractor unless otherwise agreed in writing by the parties.

### **SECTION 13 SUCCESSORS AND ASSIGNS**

- 13.1 This agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, administrators, successors and assigns, as the case may be.
- 13.2 Neither party may assign this agreement without the prior consent in writing of the other, which consent shall not be unreasonably withheld.

### **SECTION 14 COMPLIANCE WITH LAWS**

- 14.1 The Contractor shall comply with all applicable bylaws and regulations of the Regional District and all applicable laws of the Province of British Columbia and the Government of Canada. Without restricting the generality of the foregoing, the Contractor shall abide by all provisions of the Workers' Compensation Act of British Columbia and upon request by the Regional District shall supply proof that all assessments have been paid.
- 14.2 The laws of the Province of British Columbia shall govern this agreement and any arbitration or litigation in respect thereof.

### **SECTION 15 TERM**

- 15.1 The parties hereto agree that the Term of this Contractor Agreement will begin on the date of execution until [REDACTED].

### **SECTION 16 ENTIRE AGREEMENT**

- 16.1 This agreement constitutes and expresses the whole agreement of the parties with reference to the engagement of the Contractor by the Regional District.

### **SECTION 17 NOTICE**

- 17.1 Except in the case of emergency, when notice may be given by telephone with later confirmation in writing, any notice, request, approval, demand or other communication which may be or is hereby required or permitted to be given under this agreement shall be in writing and either delivered by hand or sent by facsimile transmission addressed as follows:

- (a) if to the Regional District:

101 Martin Street, Penticton, BC, V2A 5J9

Fax No. 250-492-0063; and

(b) if to the Contractor:

or at such other address or facsimile number, which notice has been given as provided in this section. Any notice which is delivered by hand will be deemed to have been given on the first day on which it is delivered. Any notice which is sent by facsimile transmission will be deemed to have been given on the first day after it is transmitted, provided that the sender obtains written confirmation of successful transmission. If a party will promptly give notice of its new address or facsimile number, or both, to such other parties provided in this section, whereupon such notice to such party will thereafter be sent to such new address or facsimile number.

## **SECTION 18 TIME OF THE ESSENCE**

18.1 Time shall remain of the essence with respect to this Agreement.

## **SECTION 19 EXECUTION**

19.1 This agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original and the counterparts together from a valid and binding agreement which may be sufficient evidence by any one such original counterpart.

19.2 In the event this agreement is executed by two or more persons, the covenants and agreements herein shall be deemed to be joint and several covenants.

## **SECTION 20 ELECTRONIC MAIL**

20.1 This agreement may be executed by the parties and transmitted by facsimile or electronic mail and if so executed and transmitted, this agreement will be for all purposes as effective as if the parties hereto had delivered an executed original of this agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and year first above written.

The signatures of the Signing  
Authority of the  
**REGIONAL DISTRICT OF  
OKANAGAN - SIMILKAMEEN**  
was hereto affixed:

\_\_\_\_\_  
*Karla Kozakevich, Chairman*

\_\_\_\_\_  
*Bill Newell, Chief Administrative Officer*

The signatures of the Signing  
Authority of the  
**CONTRACTOR**  
by its authorized signatories  
was hereto affixed:

\_\_\_\_\_  
*Authorized Signatory*

\_\_\_\_\_  
*Authorized Signatory*

*Corporate seal*