



REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

REQUEST FOR PROPOSALS

CONSTRUCTION OF A PUBLIC WASHROOM

AT CENTENNIAL PARK IN OKANAGAN FALLS, BC

NOVEMBER 18, 2021

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN
REQUEST FOR PROPOSALS FOR CONSTRUCTION OF A
PUBLIC WASHROOM AT CENTENNIAL PARK**

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DEFINITIONS

“**CONTRACTOR**” means the Proponent whose Proposal has been accepted by the Regional District and enters into an agreement with the Regional District to carry out the Work.

“**PROPONENT**” means the responder to this RFP.

“**PROPOSAL**” means a proposal to carry out the Work submitted by a Proponent in response to this RFP.

“**REGIONAL DISTRICT**” or “**RDOS**” means the Regional District of Okanagan-Similkameen.

“**RFP**” means this Request for Proposals.

“**WORK**” means and includes anything and everything required to be done for fulfillment and completion of the project in accordance with this RFP and Proposal.

1. INTRODUCTION

1.1. PURPOSE

The Regional District of Okanagan-Similkameen is requesting submission of Proposals from contractors for construction of a public washroom at Centennial Park in Okanagan Falls, BC.

1.2. BACKGROUND

Centennial Park is a 0.5 hectare public green space located at 1115 Willow Street in Okanagan Falls, BC. The park is owned and managed by the Okanagan Falls Irrigation District.

The public washroom project at Centennial Park includes all work necessary to construct a new public washroom with two stalls and a utility room.

SUPPORTING DOCUMENTS

- Scope of Work Document – November 16, 2021, Landform Architecture Ltd. (Appendix A).
- Architectural Drawings – November 5, 2021, Landform Architecture Ltd. (Appendix B).

2. INSTRUCTIONS TO PROPONENTS

2.1. SUBMISSION OF PROPOSALS

Proposals will be accepted in hardcopy and/or by email. If submitting by hardcopy please enclose two (2) copies.

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

**Community Services Department
Regional District of Okanagan-Similkameen
101 Martin Street
Penticton, BC V2A 5J9**

Email Proposal submissions should include the RFP program title in the subject line, and be sent to the project contact:

Doug Reeve dreeve@rdos.bc.ca

Proposals must be received on or before the **Closing Time** of:

TIME: 10:00 AM local time

DATE: Monday, December 13th, 2021

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

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

Proposals received after the Closing Time will not be considered and will be returned.

2.2. PROPONENT'S BRIEFING MEETING

A proponent's briefing meeting will be held at **11:00am Tuesday, November 30th, 2021** at Centennial Park in Okanagan Falls. Relevant questions received at the site meeting will be assembled and distributed as an addendum to the RFP. Proponent attendance at the meeting is optional.

2.3. ENQUIRIES

Proponents must carefully examine the RFP documents and the project site to fully understand existing conditions, site limitations, and any other factor that may affect the Work. No consideration will be given after submission of a Proposal to any claim that there was any misunderstanding with respect to undertaking of the Work.

Proponents finding discrepancies or omissions in this RFP, 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 RFP, Proponents will be advised by means of an Addendum issued by the Regional District. All Addenda will become part of the RFP. 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 RFP or modify the RFP unless confirmed by written Addendum.

All project enquiries must be submitted by **Tuesday December 7th at 12:00 noon**.

3. GENERAL TERMS OF PROPOSAL PROCESS

3.1. PROPOSAL PREPARATION COSTS

All expenses incurred by the Proponent in preparation and submission of a Proposal 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 Proposal and award of a contract.

3.2. PROPOSAL EVALUATION

A Proposals evaluation criteria is included in Appendix C. The evaluation team may consider other criteria that, at their discretion, is relevant to the evaluation process. Any additional criteria considered will be used in the evaluation of all Proposals.

The Regional District, at its sole discretion, reserves the right to:

- reject any or all Proposals whether complete or not,
- reject any Proposal it considers not in its best interests,
- waive any minor irregularity or insufficiency in any Proposal submitted,
- not be liable for misunderstandings or errors in the Request for Proposals,
- issue addenda to the Request for Proposals,
- contact references provided by the Proponents,
- retain independent persons or contractors for assistance in evaluating Proposals,
- request points of clarification to assist the Regional District in evaluating Proposals,
- negotiate changes with the successful Proponent,
- select a Proposal with a higher price if it offers greater value,
- award separate contracts for separate work components, and
- withdraw the Request for Proposals.

3.3. PROPOSAL CONFIDENTIALITY

All Proposal submissions become the property of the Regional District and will not be returned. The Regional District reserves the right to make copies of Proposals 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 Proposal 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.

3.4. CONFLICT OF INTEREST

Proposals 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.

3.5. 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 Proposal or in the proposed contract which may be completed in respect thereof. By submission of a Proposal, the Proponent certifies that there is no collusion or arrangement between the Proponent and any other actual or prospective Proponents in connection with Proposals submitted for this project and the Proponent has no knowledge of the contents of other Proposals 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 Proposal.

3.6. LITIGATION

Proponents who, either directly or indirectly through another corporation or entity, have been or are 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 Proposals from such Proponents may be disqualified from the evaluation process.

3.7. NO CONTRACT

This RFP is not a tender and does not commit the Regional District in any way to select a preferred Proponent. By submitting a Proposal and participating in the process as outlined in this RFP, 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 RFP or submissions prior to the acceptance of a Proposal and the execution of a formal written contract.

3.8. ACCEPTANCE OF PROPOSAL

The acceptance of a Proposal will be made in writing from the Regional District, and will be sent to the successful Proponent at the address given in the submitted Proposal. 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 Proposal. Acceptance of a Proposal is 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 draft Contracting Services Agreement provided in Appendix D. The agreement attachments will include the entire Request for Proposal, the Proponent's Proposal submission and any mutually agreed upon modifications, changes or negotiated adjustments.

3.9. PROPOSAL CONTENT

The Proponent shall address all the information requested in this RFP. Content to be included in the Proposal:

- Proponent Information: Full name, address and telephone number of the submitting office of the Proponent.
- Project Manager: The Proposal shall identify the proposed project manager who will be the single point of contact, responsible for direct interaction with the Regional District. State his/her position and professional discipline. Describe the work to be performed by the project manager, his/her qualifications and substantive experience directly related to the proposed Work.
- Proposed Project Team: The Proposal shall list key individuals/subcontractors who will have major responsibilities for the performance of the Work. Describe the task to be performed by each and their qualifications and substantive experience directly related to the proposed project.
- References: The Proposal shall provide no less than two (2) references that are relevant to the proposed Work. The references should be from a third party who can provide information about the performance of the Proponent in delivering services for the experience cited.
- Project Schedule and Work Plan: Provide a preliminary Work Plan, including schedule. See section 4.4 for further details.
- Safe Work Procedures: Provide details of safe work procedures that will be followed during construction activities at the work site, including spill contingency plans.
- Quality Control: Describe steps that will be taken to ensure all aspects of the project are completed to design specifications, building codes and industry best practices.

3.10. NO SUBSTITUTIONS

The project manager and sub-contractors listed in the Proposal may not be changed without the written consent of the Regional District.

3.11. SAFETY REQUIREMENTS

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.

3.12. WORKERS COMPENSATION ACT

The Proponent, and any proposed sub-contractor(s), should provide a Workers Compensation Board Registration Number in the Proposal 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. SCOPE OF WORK AND SCHEDULE

4.1. SCOPE OF WORK

The Contractor will provide all equipment, materials and services required to construct the public washroom and septic system at Centennial Park. See Scope of Work document in Appendix A.

The work area and any adjacent areas disturbed during construction shall be maintained in a tidy and organized fashion. All areas/infrastructure disturbed by the Work must be restored to pre-construction condition. For clarity, this includes restoration of damage to any landscaping and irrigation components.

The Contractor is responsible to secure all permits not already in place and meet local, provincial and federal regulations. Note that a Building Permit application has been submitted for this project.

4.2. PRELIMINARY CONSTRUCTION SCHEDULE

The Work cannot begin before January 3rd, 2022 and must be completed no later than April 30th, 2022. An earlier completion date is preferred.

4.3. WORK PLAN

Upon acceptance of a Proposal, the Proponent shall prepare a written plan outlining tasks, schedule and responsibilities from start to finish for the Work. The plan shall include a map of the project site, access points, exclusion zones, and any staging areas.

4.4. SAFETY PLAN

Prior to the start of the Work, the successful Proponent will be required to supply the Regional District with a written worksite hazard assessment and site-specific Work Safety Plan. This plan will include provisions for the safety of the general public who may be attending Centennial Park.

4.5. INSURANCE AND BONDING REQUIREMENTS

Insurance requirements will be as detailed in Article 8 of the attached sample contract (Appendix D).

The Contractor must provide a SAC Performance Bond 2012 and a Labour and Material Payment Bond, each in the amount of 50% of the Contract price, covering the performance of the Work including the Contractor's obligations during the Maintenance Period, issued by a surety licensed to carry on the business of a suretyship in the Province of British Columbia, and in a form acceptable to the Regional District.

5. COMMUNICATIONS AND REPORTING

Weekly status updates to the Regional District project contact are required throughout the project. These may be in the form of a short email update.

The Contractor will provide the RDOS copies of all documents for applications, permits and

reporting related to the project.

6. MAINTENANCE PERIOD

Completed Works will be subject to a maintenance period of twelve (12) months following declaration of Substantial Performance. The Contractor shall be responsible for the repair of all defects and deficiencies during this period. The Contractor shall not be held responsible for the repair of any third party damage to the Work.

7. CONTRACT TERM

The contract term is not less than one year from the date of Substantial Performance provided all warranty deficiencies have been rectified during the Maintenance Period.

8. FEES, DISBURSEMENTS AND HOLDBACK

The Proposal shall specify a maximum or upset cost for all labour, materials, equipment, permits, and all other expenses necessary to complete the Work. Any costs incurred by the Contractor above the submitted maximum cost will be the sole responsibility of the Contractor unless pre-approved by the Regional District.

Proposals must provide separate upset costs for construction of the washroom building and the septic system.

All prices quoted are to be:

1. In Canadian dollars;
2. Inclusive of duty, where applicable;
3. FOB to construction site;
4. Exclusive of GST.

Proponents must provide a list (using the form in Appendix E) of force account rates for all Contractor and Subcontractor labour and equipment. Equipment rates must not exceed rates in the most recent Equipment Rental Rate Guide published by the BC Road Builders and Heavy Construction Association. Equipment rental rates must include operator and fuel.

A holdback amount of 10% will be applied to all invoices.

APPENDIX A – Scope of Work

APPENDIX B - Architectural Design

APPENDIX C – Proposal Evaluation Criteria

Proponent's Name: _____			
Project Title: Centennial Park Public Washroom			
Evaluation Date: _____			
Evaluator: _____			
Step 1:		YES	NO
Mandatories	Proposal received prior to closing		
	Sub-contractor list submitted		
	Project Manager identified		
	Proposed schedule included		
	Reference List		
	Hourly rates provided		
	Maximum or upset fee included		
Complete proposal as requested			
Step 2:		Assigned Points	Points
Proponent (25 points)	Qualifications of firm and project team members	5	
	Experience of firm and project team members	10	
	Past Performance / References	10	
Proposal (25 points)	Schedule/Work Plan	5	
	Safe Work Procedures	10	
	Quality Control	10	
Price (50 points)	Points for Price = (lowest cost Proposal divided by Proposal being evaluated) x (50% weight)	50	
Total Score	Proponent + Proposal + Price Scores	100	

APPENDIX D – Sample Contract

CONTRACTING SERVICES AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2021.

BETWEEN :

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN
101 Martin Street
Penticton, British Columbia, V2A 5J9

(hereinafter called the “Regional District”)

OF THE FIRST PART

AND :

(hereinafter called the “Contractor”)

OF THE SECOND PART

WHEREAS the Contractor has agreed to provide certain design and construction services to the Regional District in connection with a certain Work described as follows:

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:

Article 1 Contractor’s Duties

- 1.1 The Contractor shall provide to the Regional District all Work set out in the Request for Proposal (attached hereto as Schedule “A”) and the Contractor’s Proposal (attached hereto as Schedule “B”), both of which form part of this agreement.
- 1.2 In performing the Work under this agreement, the Contractor shall, at all times, act in the best interests of the Regional District and exercise that degree of skill, care and diligence required according to generally accepted engineering and construction standards applicable to the performance of such Work at the time and place the Work are performed.
- 1.3 It is agreed that in awarding the Work encompassed within this agreement to the Contractor, the Regional District has relied upon the Contractor’s representations concerning the expertise of certain identified personnel in the employ of the Contractor. It is agreed that, in performing the Work under this agreement, the Contractor shall assign such identified personnel to the Work.
- 1.4 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 Work. 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.

- 1.5 The Contractor shall be responsible for the quality, completeness, accuracy, and coordination of the Work. The Contractor shall provide a cost-efficient design that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available materials. The Contractor shall provide for all quality control reviews required by governmental authorities having jurisdiction over the Work.
- 1.6 To ensure that the Work 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 7 days of receipt.
- 1.7 At the commencement of the Work, the Contractor shall, at the Regional District's request, provide the Regional District with a detailed analysis of the cost estimate for each component of the Work including a monthly and cumulative cash flow relative to the approved schedule of work. The cost estimates for fees and disbursements shall be as set out in Schedule "B".

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.

Article 2 Fees, Disbursements and Holdback Payment

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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 Work.
- 2.5 When the Contractor considers that the Work is substantially performed, the Contractor shall

deliver to the Owner a comprehensive list of items to be completed or corrected, together with a written application for a review by the Owner to establish Substantial Performance of the Work. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the Contract.

- 2.6 The Owner will review the Work to verify the validity of the application and shall promptly, and in any event, no later than 20 calendar days after receipt of the Contractor's list an application:
 1. advise the Contractor in writing that the Work is not substantially performed and give reasons why, or
 2. state the date of Substantial Performance of the Work in a certificate and issue a copy of the certificate to the Contractor.
- 2.7 Immediately following the issuance of the certificate of Substantial Performance of the Work, the Contractor shall establish a reasonable date for finishing the Work.
- 2.8 After the issuance of the certificate of Substantial Performance of the Work, the Contractor shall:
 1. submit an application for payment of the holdback amount,
 2. submit a 'Statutory Declaration' to state that all accounts for labour, subcontracts, products, equipment and other indebtedness which may have been incurred by the Contractor in the Substantial Performance of the Work and for which the Owner might in any way be held responsible have been paid in full, except for the amounts properly retained as a holdback or as an identified amount in dispute.
- 2.9 Upon receipt of the application for payment of the holdback amount and the Statutory Declaration the Owner will release the lien holdback except for two times the amount required to complete the items listed on the comprehensive list of deficiencies produced at the time of application for Substantial Performance of the Work.
- 2.10 When the Contractor considers the Work is completed, the Contractor shall submit an application for final payment. The Owner will respond within 10 calendar days and advise the Contractor in writing that the application is valid or give reasons why it is not valid.
- 2.11 When the Owner finds the Contractor's application for final payment valid, the Owner will release the remaining lien holdback within 20 calendar days.

Article 3 Confidentiality, Ownership and Use of Documents and Materials

- 3.1 The Contractor shall act in a confidential manner and make his best efforts to keep confidential for an unlimited period of time all communications, plans, specifications, reports or other information used in connection with the Work unless the same are stated by the Regional District to be in the public domain except as required by law; or by prior written consent of the Regional District. The Contractor shall instruct all his employees and agents, in writing, of the obligations under this Article.
- 3.2 All studies, reports, drawings, plans, designs, specifications, models, photographs, software; i.e. custom applications, digital data, etc., and other intellectual properties and materials developed for the Regional District are the property of the Regional District regardless of whether the Work proceeds and the Regional District reserves the copyright, patent and

trademark therein and in the work executed there from and they shall not be used on any other work without the prior written agreement of the Regional District.

- 3.3 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.

Article 4 Special Tools and Equipment

- 4.1 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.
- 4.2 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 Work shall be considered to be within the overhead of the Contractor.
- 4.3 If the Regional District specifically authorizes, in writing, that the Contractor shall purchase any special tool, equipment, or other thing 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 Work, the Contractor shall deliver all such special tools, equipment and other things to the Regional District.

Article 5 Sub-Contractors

- 5.1 The Contractor may, with the prior written approval of the Regional District, engage the services of sub-contractors to perform work which the Contractor is unable to perform.
- 5.2 The Contractor shall advise the sub-contractors in writing prior to their participation in the Work of the duties and obligations arising out of this agreement between the Contractor and the Regional District.
- 5.3 The Contractor shall be responsible to the Regional District for all work carried out by sub-contractors in connection with the Work as if such work had been performed by the Contractor.
- 5.4 The Contractor shall be responsible to the Regional District for the acts and omissions of all sub-contractors, their employees and agents, as if such sub-contractors, their employees and agents, were persons directly employed by the Contractor.

Article 6 Termination and Suspension

By the Regional District :

- 6.1 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 thirty (30) 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.

- 6.2 If the Regional District decides for any reason not to proceed with the Work, the Regional District may terminate this agreement by giving thirty (30) days prior written notice to the Contractor. Upon receipt of such written notice, the Contractor shall perform no further services other than those reasonably necessary to close out the Work.

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.

By the Contractor :

- 6.3 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 thirty (30) 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.

- 6.4 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.

Article 7 Compliance With Laws

- 7.1 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.

- 7.2 The laws of the Province of British Columbia shall govern this agreement and any arbitration or litigation in respect thereof.

Article 8 Insurance

- 8.1 Comprehensive General Liability

At the time of signing this Contracting Services Agreement, the Contractor shall provide, maintain, and pay for Comprehensive General Liability Insurance on an occurrence basis for the Contractor with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily

injury and property damage and shall include coverage for:

1. premises, activities and operations liability
2. blanket contractual liability
3. cross liability
4. contingent employer's liability
5. owners and Contractors protective liability
6. employees as additional insureds
7. personal injury
8. broad form loss of use
9. broad form property damage
10. owned and non-owned automobile liability
11. the Regional District as an additional insured

This insurance shall be maintained continuously from commencement of the Work until the date of the completion certificate.

8.2 Public Liability and Property Damage Insurance

The Contractor shall, at all times, indemnify and save harmless the Regional District and its officers, directors, agents, and employees from and against all claims, damages, losses and expenses arising from personal injury, death, or damage to third party property to the extent directly attributable to the negligent acts, errors, or omissions of the Contractor.

The Contractor shall maintain and keep in force during the term of the Contract and until the date of the completion certificate, Two Million Dollars (\$2,000,000) inclusive limits for public liability and property damage, against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage to property arising out of the performance of the Work.

The Regional District shall, at all times, defend, indemnify, and save harmless the Contractor and its agents, officers, directors, and employees from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, court and arbitration costs, arising out of or resulting from the Services performed by the Contractor, inclusive of any claims made by third parties, or any claims against the Contractor arising from the acts, errors, or omissions of the Regional District, its employees, agents, contractors, and subcontractors. Such indemnification shall not apply to the extent such claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees, court and arbitration costs arising out of the negligent acts, errors or omissions of the Regional District.

8.3 Equipment Insurance:

Notwithstanding anything contained elsewhere herein, it is understood and agreed that the Regional District shall not be liable for any loss or damage to the Contractor's equipment, including loss or use thereof. Each and every policy insuring the Contractor's equipment to be used on the Work shall contain the following clause:

"It is agreed that the right to subrogation against the Regional District or any of its officers, employees or agents of their parent, subsidiary, affiliated or associated companies or corporations is hereby waived."

8.4 The Contractor shall, at all times, indemnify and save harmless the Regional District and its officers, directors, agents, and employees from and against all claims, damages, losses and

expenses arising from personal injury, death, or damage, inclusive of claims made by third parties, to the extent directly attributable to the negligent acts, errors, or omissions of the Contractor.

The Regional District shall, at all times, indemnify and save harmless the Contractor and its officers, directors, agents, and employees from and against all claims, damages, losses and expenses arising from personal injury, death, or damage, inclusive of claims made by third parties, to the extent directly attributable to the negligent acts, errors, or omissions of the Regional District.

Article 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 Commercial Arbitration Act shall apply.
- 9.2 No one shall be nominated to act as arbitrator who is in any way financially interested in the Work or in the affairs of either the Regional District or the Contractor.

Article 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.

Article 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.

Article 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 Work 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 Work at all reasonable business hours in the offices of the Contractor unless otherwise agreed in writing by the parties.

Article 13 Successors and Assigns

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

Article 14 Notices

14.1 All notices required by this agreement to be given by either party shall be deemed to be properly given and received within two (2) business days, if made in writing to the other party, by registered mail, or facsimile addressed to the regular business address of such party.

Article 15 Term

15.1 The parties hereto agree that the Term of this Contracting Services Agreement will be from _____ to _____.

Article 16 Entire Agreement

16.1 This agreement constitutes the sole and entire agreement between the Regional District and the Contractor relating to the Work and supersedes all prior agreements and communications between them whether written or oral respecting the subject matter hereof and no other terms, conditions or warranties whether expressed or implied shall form a part hereof.

16.2 The Contractor, by signing this agreement, is agreeing in writing to be the Principal Contractor and agrees to perform all the duties and responsibilities of the Principal Contractor as set out in the most current edition of the Workers' Compensation Board, Occupational Health and Safety Regulation including amendments and the duties and responsibilities normally required of a Contractor by the Workers' Compensation Board.

16.3 Wherever the masculine gender is used in this agreement it includes the feminine and body corporate where the context so requires.

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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:

Mark Pendergraft, Chair

Bill Newell, Chief Administrative Officer

XYZ CONTRACTING LTD.
by its authorized signatories:

Authorized Signatory

Authorized Signatory

DRAFT

